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Sexual Abuse of Juveniles in Correctional Facilities: A Violation of the Prison Rape Elimination Act

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SEXUAL ABUSE OF JUVENILES IN CORRECTIONAL FACILITIES: A VIOLATION OF THE PRISON RAPE ELIMINATION ACT

SARA MEDINA*

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INTRODUCTION

Countless young adults are subjected to sexual abuse in juvenile correctional facilities.[1] "Ebony V." describes her harrowing sexual abuse by a staff member: "[During the day] he'd come pick me up from the lunchroom . . . he took me back to the unit and had sex with me . . . [At night,] most of the time we went to the schoolhouse right next door to the unit or we went to his office."[2]

Unfortunately, Ebony V. is not alone in her experience.[3] The San Mateo County, California juvenile justice system became a hunting ground for a child psychiatrist, Dr. William Ayres.[4] One victim described being raped by Ayres at the age of twelve at least seven to ten times.[5] Another victim reflected on the impact of Ayers' sexual abuse and how the victim "fell into a cycle of turning [his] pain into anger and hurting others."[6]

Society views prison rape and sexual abuse of juveniles as an innate part of prison life.[7] Unfortunately, the sexual maltreatment committed by individuals who are in supervisory roles contributes to the improper

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1. See Clifton Adcock, Most Juvenile Facilities Don't Comply with U.S. Rape Prevention Standards, OKLA. WATCH (Feb. 25, 2016), http://oklahomawatch.org/2016/02/25/most-juvenile-facilities-dont-comply-with-u-s-rape-prevention-law/ (acknowledging that there is an increase of sexual abuse in juvenile facilities).

2. *See* Jamie Fellner, *Sexually Abused: The Nightmare of Juveniles in Confinement*, HUFFINGTON POST (Feb. 1, 2010), http://www.huffingtonpost.com/jamie-fellner/sexually-abused-thenight_b_444240.html (noting the National Prison Rape Elimination Commission's report concluded that the rates of sexual abuse are highest in juvenile corrections facilities).

3. *See* Richard A. Mendel, *Maltreatment of Youth in U.S. Juvenile Corrections Facilities*, ANNIE E. CASEY FOUND. 1, 3 (2015), http://www.aecf.org/m/resourcedoc/aecfmaltreatmentyouthuscorrections-2015.pdf (stating that systemic sexual maltreatment of juveniles is prominent in correctional facilities and the Prison Rape Elimination Act offers statutory protections for individuals subjected to sexual abuse).

4. *See* Victoria Balfour, *Juvenile Sexual Assault Victims of Dr. William Ayres: The Forgotten Victims*, PRISON LEGAL NEWS (Sept. 2, 2016), https://www.prisonlegalnews.org/news/2016/sep/2/juvenile-sexual-assault-victims-dr-william-ayres-forgotten-victims/ (indicating how Dr. Ayers used his professional status to molest at least 1,000 boys over the 40 years he treated both private adolescent patients and juvenile offenders in San Mateo County, California).

5. *See id.* (describing how Dr. Ayres threatened the victims).

6. *See id.* (articulating that the damage Dr. Ayers inflicted on his victims will leave lifelong emotional scars).

7. *See Rampant Sexual Abuse Puts Teens in Danger at Juvenile Prisons*, INDIANAPOLIS STAR (July 13, 2010), https://justdetention.org/rampant-sexual-abuse-puts-teens-in-danger-at-juvenile-prisons/ (characterizing the attitudes of how sexual abuse in prison is not taken as seriously as sexual abuse in society).

normalization of sexual abuse of adolescent children in prison.[8]

Recent reports indicate the tragic truth about rape and sexual abuse by prison workers.[9] The National Survey of Youth in Custody by the federal Bureau of Justice Statistics ("BJS") found that between 2007 and 2012, the rate of formal sex abuse allegations against staff in state juvenile justice facilities doubled, even as the number of children entering those systems dropped.[10] The study also indicated that, among the young adolescents and children who were victims of staff sexual misconduct, roughly six of every seven reported multiple incidents and one in every five reported eleven or more incidents.[11]

Juveniles are developmentally different from adults and, as such, they require heightened specialized care and treatment by well-trained staff.[12] *Atkins v. Virginia* was foundational in recognizing juvenile's rights when it held that juveniles have diminished mental capacities and are in need of additional protections.[13] Juveniles' physical and mental vulnerabilities increase the need for stronger protections in correctional facilities.[14] Despite laws like the Prison Rape Elimination Act ("PREA"), which protects prisoners against sexual abuse, the number of sexual assaults in correctional

8. *See* Gary Hunter, *Sexual Abuse by Prison and Jail Staff Proves Persistent, Pandemic*, PRISON LEGAL NEWS (Dec. 12, 2016), https://www.prisonlegalnews.org/news/2009/may/15/sexual-abuse-by-prison-and-jail-staff-proves-persistent-pandemic/ (emphasizing how sexual misconduct by employees has not changed despite enacting laws criminalizing sex between prisoners and prison staff).

9. *See id.* (illustrating how rampant staff abuse is when a former mental health counselor at a juvenile detention center was convicted of first-degree sexual misconduct).

10. *See* Joaquin Sapien, *Report Cites Failure to Act Against Abusers of Juveniles in Detention*, PROPUBLICA (Feb. 3, 2016), https://www.propublica.org/article/report-cites-failure-to-act-against-abusers-of-juveniles-in-detention (explaining how juvenile detention administrators consistently downplay findings of sexual abuse in juvenile facilities and fail to take action).

11. *See* Mendel, *supra* note 3, at 3 (addressing how widespread sexual abuse is in juvenile facilities).

12. *See* Roper v. Simmons, 543 U.S. 551, 569 (2005) (asserting that juveniles are different from adults because youth lack maturity and have an underdeveloped sense of responsibility); *see also* Graham v. Florida, 560 U.S. 48, 68 (2010) (acknowledging psychological differences between youth and adults).

13. *See* Atkins v. Virginia, 536 U.S. 304, 314 (2002) (comparing mentally disabled persons with juveniles and establishing added protections).

14. *See* Mendel, *supra* note 3, at 3, 23 (articulating that being a youth in a confinement facility automatically increases the risk of being sexually abused); *see also* J.D.B. v. North Carolina, 564 U.S. 261, 269 (2011) (highlighting that juveniles have significant cognitive differences from adults).

facilities continues to rise, especially in juvenile populations.[15]

This Comment argues that states are failing to adhere to PREA in juvenile correctional facilities, resulting in a violation of individuals' Eighth Amendment constitutional right to be protected from cruel and unusual punishment.[16] Part II discusses PREA and summarizes the basic principles of Eighth Amendment jurisprudence.[17] Part III argues that states' protections of juveniles in correctional facilities are insufficient, violate the Eighth Amendment, and do not follow PREA standards.[18] Part IV recommends that states should implement policies that eradicate staff-on-inmate sexual abuse and create juvenile-specific oversight committees.[19] Part V concludes by reiterating that states' failure to follow PREA standards is a violation of juveniles' Eight Amendment right.[20]

I. BACKGROUND

Prisoners are endowed with equal protections under the Constitution and laws of the United States.[21] There are two major laws designed to protect juveniles from sexual assault in facilities.[22] First, The Civil Rights of Institutionalized Persons Act ("CRIPA") requires prisoners to have similar constitutional safeguards as civilians.[23] Second, PREA intends to protect imprisoned persons from sexual abuse and sexual harassment.[24]

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15. *See* Mendel, *supra* note 3, at 6 (establishing that there is pervasive staff-on-youth sexual abuse in juvenile facilities that jeopardizes a youth's safety).

16. *See* U.S. CONST. amend. VIII; Prison Rape Elimination Act, 34 U.S.C. §§ 30301-30309 (2017).

17. *See infra* Part II (addressing the protections for all citizens against cruel and unusual punishment).

18. *See infra* Part III (indicating that states are failing to properly monitor and train staff).

19. *See infra* Part IV (articulating that education and training policies should be created).

20. *See infra* Part V (arguing that states are failing to correctly follow PREA standards).

21. *See* 42 U.S.C. § 1997 (1980) (stating that prisoners like civilized persons in society are awarded similar legal protections).

22. *See id.* (preventing the deprivation of rights of prisoners); *see also* 34 U.S.C. §§ 30302-30309 (2017) (mandating prison facilities to protect inmates from sexual abuse).

23. *See* § 1997(a) (articulating that prisoners are endowed with constitutional rights and cannot be subjected to unlawful confinement conditions).

24. *See* §§ 30302-30309 (asserting that adults and juveniles deserve protections from sexual abuse in prisons).

A. The Civil Rights of Institutionalized Persons Act

CRIPA safeguards institutionalized persons' rights, privileges, or immunities from deprivation.[25] These protections also extend to juveniles in correctional facilities.[26] CRIPA offers prisoners redress for any harm suffered while residing in confined facilities.[27]

B. The Prison Rape Elimination Act

In 2003, PREA was passed in order to "develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape," and to "increase the available data and information on the incidence of prison rape."[28] PREA establishes a "zero-tolerance" standard, intending to ensure that the prevention and eradication of prison rape was a top legislative priority.[29]

PREA requires that BJS create a report each calendar year with comprehensive statistical data and analysis to determine the effects of prison rape.[30] BJS also conducts the National Survey of Youth in Custody ("NSYC"), which gathers mandated data on the incidence and prevalence of sexual assault in juvenile facilities.[31] There have only been two data collection reports of sexual assault in juvenile facilities released.[32] These data reports outline the incidence and effects of sexual abuse in juvenile facilities.[33] The third data collection report is scheduled for release by the

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25. *See* § 1997(a) (outlining that institutionalized persons should not be subjected to egregious conditions).

26. *See* § 1997(a)(1)(B) (stating that juveniles held awaiting trial, residing in facilities to receive care or treatment, or any other institution, excluding residential facilities, are protected under this Act).

27. *See* § 1997 (a) (allowing prisoners to obtain equitable relief for being subjected to conditions which deprived them of their rights, privileges or immunities).

28. *See* § 30302(3), (4) (2017) (accepting that prison rape is a major issue and needs to be immediately addressed).

29. *See* § 30302(1), (2) (recognizing the need for increased accountability of prison officials who fail to detect and address prison rape, and reiterating the importance of protecting the Eighth Amendment rights of prisoners).

30. *See* § 30303(a)(1) (outlining how information about sexual assault in correctional facilities should be collected).

31. *See Data Collection: National Survey of Youth in Custody (NYSC)*, BUREAU OF JUSTICE STATISTICS (Jan. 21, 2017), https://www.bjs.gov/index.cfm?ty=dcdetail&iid=321 (noting that the collection of data is derived directly from youth).

32. *See id*. (stating that the 2008-09 survey included 166 state-owned and 29 privately operated facilities, with an estimated 9,093 completed interviews with youth).

33. *See id*. (articulating that the 2012 survey included 273 state-owned and 53 privately operated facilities, with 8,707 youth sampled from at least one facility in every

end of 2018.[34]

Recently, the BJS and the NSYC data collection conducted further analyses of the second NSYC report to identify the key contextual and individual factors that relate to youth sexual victimization.[35] It found that staff sexual misconduct was most prevalent in detention centers.[36] In addition, facilities with a change resulting in decreased staffing levels had higher rates of staff sexual misconduct.[37]

PREA also established the National Prison Rape Elimination Commission ("NPREC") and mandated it to administer and report a "legal and factual study of the penalogical, physical, mental, medical, social, and economic impacts of prison rape in the United States."[38] NPREC's national standard is a product of a qualified study that uses diverse content to draft criteria.[39]

In accordance with PREA, the Department of Justice ("DOJ") issued a final rule adopting NPREC's national standards to prevent, detect, and respond to prison rape.[40] PREA standards are immediately binding on the Federal Bureau of Prisons.[41] Additionally, PREA encompasses any federal confinement facility "whether administered by [the] government or by a private organization on behalf of such government."[42] A state whose

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state).

34. *See* Allen J. Beck, *PREA Data Collection Activities,* BUREAU OF JUSTICE STATISTICS (2016), https://www.bjs.gov/content/pub/pdf/pdca16.pdf (recognizing that the third report will follow similar survey design and testing as previous reports).

35. *See id*. (examining the impact of facility staff sizes, staff screening methods, and security measures).

36. *See id*. (emphasizing how the environment of a juvenile facility plays a key role in impacting victimization of youth).

37. *See id*. (highlighting that facilities with higher rates of sexual assault house more juveniles and do not have enough staff to monitor what takes place in the facility).

38. *See* 34 U.S.C. § 30306(d)(1) (2017) (indicating that NPREC is responsible for recommending national standards for enhancing the prevention of prison rape).

39. *See Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Juvenile Facilities*, NAT'L PRISON RAPE ELIMINATION COMM'N 1, 2 (2009) (articulating that these standards use testimony from formerly incarcerated survivors of sexual abuse in confinement and consider public comments) [hereinafter, NPREC].

40. *See* PREA Standards Final Rule, 28 C.F.R. §§ 115.5-115.501 (2012) (implementing standards that will foster change by institutionalizing policies to prevent sexual abuse).

41. *See* 34 U.S.C. § 30307(b) (2017) (illustrating that federal prisons nationwide are bound by PREA and are subject to loss of funds for failure to comply with the national standards).

42. *See* § 30309(7) (stating that any local jail, police lockup, or juvenile facility used

governor does not certify full compliance with the standards is subject to the loss of five percent of any DOJ grant funds that it receives.[43]

PREA standards for juvenile facilities are similar to the standards applied in adult prisons and jails.[44] Under the standard of employee training for adult and juvenile facilities, all employees who have contact with inmates must receive training concerning sexual abuse in facilities.[45] Additionally, employees will receive a refresher training every two years.[46] Any employees who violate sexual abuse or sexual harassment policies are sanctioned and terminated.[47]

When a complaint is made against a staff member, criminal and administrative agency investigations are conducted through the use of investigators.[48] When sexual abuse allegations involving juvenile victims arise, these investigators receive special training pertaining to juveniles.[49] Furthermore, the agency will not prematurely terminate an investigation even if the source of the allegation recants.[50]

C. Extension of the Eighth Amendment to Juvenile Facilities

The Eighth Amendment ensures that every individual has a protected right against cruel and unusual punishment.[51] The Eighth Amendment also sets constitutional boundaries on the conditions of imprisonment.[52] These conditions specifically outline protections for prisoners from the use of

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for the custody or care of juvenile inmates is considered a "prison" under PREA).

43. *See* 28 C.F.R. § 115 (defining "full compliance" as "compliance with all material requirements of each standard").

44. *See* NPREC, *supra* note 39 (noting that the standards address the psychological and physical development of the detained population).

45. *See* § 115.31 (discussing that training includes information on how to avoid inappropriate relationships and requires training to be tailored to the juvenile setting).

46. *See* § 115.331(11)(c) (ensuring that employees are well-informed about the agency's current sexual abuse policies).

47. *See* § 115.376(a), (d) (stating that if a staff member resigns, in lieu of termination, a report is made to law enforcement agencies and to any relevant licensing bodies).

48. *See* § 115.371 (noting that investigators will gather evidence, interview victims and suspected perpetrators, and review prior complaints involving the suspected perpetrator).

49. *See id*. (asserting that specialized training includes appropriate techniques for interviewing juvenile victims).

50. *See id*. (illustrating that the agency conducts a thorough investigation of the allegation).

51. *See* U.S. CONST. amend. VIII.

52. *See* Boddie v. Schnieder, 105 F.3d 857, 861 (2d Cir. 1997) (stating that the Eighth Amendment provides specific protections for prisoners).

excess force or mistreatment by prison authorities.[53]

Courts have recognized that the core of the Eighth Amendment proscribes more than just physically barbarous punishments.[54] The Court has extended the Eighth Amendment to require prison officials to provide humane conditions of confinement, which include reasonable measures to guarantee the safety of inmates.[55] Reasonable measures have been defined as rational decisions to abate the risk of harm.[56] The Court also acknowledges that sexual abuse of a prisoner by a corrections officer has no legitimate penological purpose and is "not part of the penalty that criminal offenders pay for their offenses."[57]

Despite clear protection under common law, when a complaint of cruel and unusual punishment is made, finding an Eighth Amendment violation requires two elements to be met.[58] First, the alleged "punishment" must be "objectively, sufficiently serious."[59] The inmate must show that he or she is incarcerated under conditions posing a substantial risk of serious harm.[60] Second, the prison official involved must have a "sufficiently culpable state of mind."[61] Since sexual abuse by a corrections officer constitutes serious harm, allegations of such abuse are cognizable as Eighth Amendment

53. *See* Williams v. Mussomelli, 722 F.2d 1130, 1132 (3d Cir. 1983) (recognizing that prison officials are permitted to use force when necessary to maintain discipline but may not use force that violates the standards of decency).

54. *See* Estelle v. Gamble, 429 U.S. 97, 103 (1976) (citing Gregg v. Georgia, 428 U.S. 153, 171-73 (1976); Trop v. Dulles, 356 U.S. 86, 100-01 (1958); and Weems v. United States, 217 U.S. 349, 373, 378 (1910)) (illustrating the evolving nature of the Eighth Amendment includes broad and idealistic concepts of dignity, civilized standards, humanity, and decency).

55. *See* Farmer v. Brennan, 511 U.S. 825, 832 (1994) (emphasizing that prison officials owe a duty of ensuring a prisoner's safety and the inability to do so is a direct violation of the Eighth Amendment).

56. *See id*. at 847 (identifying that prison officials must be subjectively aware of the risk to the inmate).

57. *See id.* at 834 (articulating that prisoners should not be subjected to sexual abuse).

58. *See id*. (establishing a paradigm for Eighth Amendment violations).

59. *See id*. (citing Rhodes v. Chapman, 452 U.S. 337, 347 (1981)) (outlining that the deprivation must result in the denial of "the minimal civilized measure of life's necessities").

60. *See id*. (citing Helling v. McKinney, 509 U.S. 25, 35 (1993)) (explaining that there must be deliberate indifference of a prison official's actions); *see also* Beers-Capitol v. Whetzel, 256 F.3d 120, 125 (3d Cir. 2001) (acknowledging that sexual abuse is an example of a substantial risk of harm).

61. *See Farmer*, 511 U.S. at 834 (demonstrating that the prison official's knowledge of such conduct would pose significant harm and risk to an inmate's health or safety).

claims.[62] Despite these federal protections, data reporting requirements and extension of the Eighth Amendment protections to prisons, juveniles are still not sufficiently protected.[63]

II. ANALYSIS

A. Sexual Victimization of Juveniles in Correctional Facilities is Unlawful Because It Violates PREA

1. Protections for Juveniles During Court Proceedings Must Extend to Youth Confined in Correctional Facilities

Juvenile facilities violate PREA because specific juvenile protections are not applied to youth in facilities.[64] The juvenile justice system jurisprudence recognizes that juveniles are distinctive from adults and therefore deserve special protections.[65] The Supreme Court of the United States has highlighted differences between a juvenile's diminished capacity and an adult's that are significant enough to warrant added protections.[66] For example, in *Roper v. Simmons*, the Court outlined how juveniles still struggle to define their individual identities.[67] The transient qualities of a juvenile's character, grouped with their prominent immaturity, allows for a diminished culpability for youth offenders.[68] Juveniles' vulnerability and comparative

62. *See id*. (illustrating that sexual abuse of an inmate is considered a serious harm); *see, e.g.,* Hawkins v. St. Clair County, No. 07-142-DRH, 2009 U.S. Dist. LEXIS 26969, at *3 (S.D. Ill. Mar. 5, 2009) (characterizing how failing to properly train and supervise employees endangers the safety of inmates and violates PREA and Eighth Amendment jurisprudence).

63. *See, e.g.*, S.H. v. Stickrath, 251 F.R.D. 293, 297 (S.D. Ohio 2008) (recognizing that the juvenile facility is failing to adhere to PREA standards); *see also* Poore v. Glanz, 46 F. Supp. 3d 1191, 1198 (N.D. Okla. 2014) (exhibiting the deliberate nature of a detention officer to not follow State and Federal standards that require adequate staffing and supervision).

64. *See* 28 C.F.R. § 115.313(a) (2012) (highlighting the inadequacies of facilities to properly protect juveniles from sexual abuse).

65. *See* In re Gault, 387 U.S. 1, 9 (1967) (asserting that juveniles are endowed with enhanced procedural protections).

66. *See* Roper v. Simmons, 543 U.S. 551, 560 (2005) (holding that juveniles lack maturity, have underdeveloped sense of responsibility, are more susceptible to negative influences and outside pressures, and that the character of a juvenile is not as well formed as that of an adult).

67. *See id*. at 570 (recognizing that the nature of a juvenile's character cannot be equated to the failings of an adult).

68. *See id*. at 571 (concluding that juveniles should not be held to the same standard as adults).

lack of control over their immediate surroundings also decreases their ability to escape negative influences.[69] Under judicial scrutiny, a court must consider the culpability of the offender at issue as a whole, versus just at face value.[70] The Court stressed the importance of not overlooking the youthfulness of a juvenile because such youthfulness is significant in distinguishing juveniles from adults.[71] The Court further concluded that because juveniles have a lessened culpability, they are less deserving of the most severe punishments.[72] *Roper* became the foundation for recognizing the importance of juvenile rights and detailing how diminished capacity hampers a juvenile's ability to make conclusive and reasonable decisions.[73] The Court was finally able to accept juveniles for who they are and not hold them to adult standards.[74]

The Court further expanded juveniles' rights in *Graham v. Florida*.[75] It acknowledged that life without parole was too harsh of a punishment for a juvenile.[76] The Court declared that taking offenders' age into consideration would be beneficial in determining the proportionality of the crime and punishment.[77] Through *Graham,* the Court highlighted how developments in psychology and cognitive science continue to show the fundamental differences between juvenile and adult minds.[78] This research brought to

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69. *See id*. at 569 (detailing that a juvenile's mental vulnerability cannot be neglected because it explains their inability to fully understand their actions and decisions).

70. *See id*. at 568 (emphasizing that the mental and physical characteristics of an individual are significant in understanding how to appropriately fixate a punishment).

71. *See id*. at 573 (reiterating that a juvenile's mind and character plays a prominent role in determining culpability for a crime).

72. *See* Roper v. Simmons, 543 U.S. 551, 569 (2005) (indicating that juveniles cannot be classified as being among the worst offenders because their immaturity hinders their ability to make rational decisions).

73. *See id*. at 570 (incorporating a moral standpoint as to why juveniles' mental deficiencies decrease their culpability).

74. *See id*. at 574 (illustrating that there must be a line drawn between childhood and adulthood).

75. *See* Graham v. Florida, 560 U.S. 48, 53 (2010) (establishing that juvenile offenders cannot be sentenced to life imprisonment without parole for non-homicide offenses).

76. *See id*. at 70, 73 (citing Naovarath v. State, 105 Nev. 525, 526 (1989)) (articulating that life without parole is a disproportionate sentence for juveniles because it denies the juvenile offender a chance to demonstrate growth and maturity).

77. *See id*. at 77 (recommending that courts utilize an approach that would account for factual differences among individuals and weighing it against the seriousness of the crime).

78. *See id*. at 68 (explaining how the parts of the brain involved in behavior control

light the importance of creating legal differences for juveniles.[79]

The Court further employed changes of law in regards to interrogation of juveniles.[80] It stated that juveniles should be evaluated using a different standard than adults.[81] The Court discussed how children generally lack the same responsibility, experience, and judgment as adults, making them more predisposed to external pressures.[82] This illustrates the cognitive differences of children and how they are unable to understand their freedom of action.[83] Children lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.[84] To ignore the differences between children and adults would deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults.[85] It is necessary to employ the same increased protections given to juveniles during judicial proceedings and extend them to youth confined in correctional facilities.[86]

While the courts have established further protections for juveniles, juvenile facilities have not.[87] In the Ohio Scioto Juvenile Facility, the supervisor allowed staff members to choose whether or not to report sexual abuse allegations, directly violating PREA by subjecting juveniles to

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continue to mature through late adolescence).

79. *See id*. (asserting that juveniles could no longer be subjected to disproportionate treatment for the crimes committed).

80. *See* J.D.B. v. North Carolina, 564 U.S. 261, 272 (2011) (declaring that officers must take in account the age of a juvenile during interrogation).

81. *See id*. at 274 (citing Eddings v. Okla., 455 U.S. 104, 115 (1982) (stating that children cannot be viewed as being miniature adults because the expectation of juveniles do not involve them being able to comprehend police questioning).

82. *See Graham*, 560 U.S. at 68 (citing Roper v. Simmons, 543 U.S. 551, 569-70 (2005) (articulating how easily influenced juveniles are and how they are incapable of understanding the events occurring around them).

83. *See J.D.B.*, 564 U.S. at 275 (addressing the issue of a juvenile's incompetence to thoroughly understand police interrogations and emphasizing the importance of taking into account a child's age).

84. *See id*. at 273 (noting that children have limitations and cannot fully comprehend not only their actions, but also other people's actions as well).

85. *See id*. at 281 (establishing that the procedural safeguards, developed in Miranda v. Arizona, offered to adults should extend to juveniles).

86. *See Graham*, 560 U.S. at 68 (detailing how the court has recognized special protections for juveniles and realized that they cannot be subjected to disproportionate sentences).

87. *See* S.H. v. Stickrath, 251 F.R.D. 293, 298 (S.D. Ohio 2008) (illustrating that the facility had a history of staff abuse against juvenile inmates).

unnecessary harm.[88] In the Tulsa County Jail, inadequate supervision of a juvenile inmate allowed her to be sexually assaulted by a staff member, highlighting the inability of juvenile facilities to adhere to PREA.[89]

PREA recognizes that juveniles have an increased risk of sexual victimization.[90] On the other hand, it does not explicitly state whether juveniles should receive equal protections as adults in correctional facilities, only mentioning added safeguards for adults.[91] However, the PREA final rule guidelines tailors the adult standard of sexual abuse protection to juveniles.[92] Although PREA standards are in place, several states are failing to adhere to these standards.[93] States have a moral and legal obligation to ensure that juveniles are being properly protected in correctional facilities.[94]

2. Failure to Properly Train and Supervise Employees in Juvenile Facilities Causes Undue Sexual Harm to Youth

After PREA was enacted, youth still encountered sexual abuse from staff members in juvenile correctional facilities.[95] After enactment, the Scioto Juvenile Correctional Facility ("Scioto") staff continued to subject the juveniles in the facility to severe sexual abuse.[96] Since 2003, prosecutors indicted fourteen Scioto Juvenile Corrections Officers for abusing

88. *See* 28 C.F.R. § 115.313(a)(10) (2012) (indicating that employees are mandated to report incidents of sexual abuse).

89. *See* Poore v. Glanz, 46 F. Supp. 3d 1191, 1197 (N.D. Okla. 2014) (demonstrating how the single-staffing in the medical unit increased the likelihood that female juveniles would be subjected to sexual abuse).

90. *See* 34 U.S.C. § 30301(4) (2017) (illustrating that the youth population are vulnerable to sexual assault).

91. *See* § 30301 (overlooking a juvenile's physical and mental state as a principle weakness to sexual abuse).

92. *See* §§ 115.311-115.501 (outlining how sexual abuse in juvenile facilities should be prevented and monitored).

93. *See* Mendel, *supra* note 3, at 10-14 (highlighting Colorado, Georgia, Idaho, Illinois, Iowa, Tennessee and West Virginia as having recurring maltreatment of juveniles in correctional facilities).

94. *See* 42 U.S.C. § 1997 (1980) (ensuring that conditions and practices within juvenile facilities are appropriate and do not cause harm); *see also* §§ 30301-30309 (employing heightened protections for inmates from sexual abuse).

95. *See* S.H. v. Stickrath, 251 F.R.D. 293, 296 (S.D. Ohio 2008) (detailing a class action suit brought on behalf of former juveniles who were incarcerated in a state facility).

96. *See id*. at 295 (articulating that the female juveniles were exposed to grossly unconstitutional conditions of confinement, which included physical and sexual abuse by the staff).

incarcerated minors.[97] An Ohio District Court found that this number was concerning because it was not just one incident of a staff member indicted on abuse charges, but fourteen separate abusers within a five-year span.[98] The number of incidents and officers demonstrates the failure of the state of Ohio to properly adhere to PREA standards by allowing these intolerable confinement conditions to endanger juveniles.[99]

PREA standards explicitly state that there is "zero tolerance of sexual abuse and sexual harassment," especially in juvenile facilities.[100] However, Ohio's inaction in addressing maltreatment in the Scioto facility reveals the State's failure to follow PREA standards.[101] The state of Ohio failed to obey appropriate training, supervising, and monitoring standards as required in PREA.[102] The state of Ohio is responsible for educating their employees on the dynamics of sexual abuse in juvenile facilities, including how to detect and respond to signs of threatened and actual sexual abuse, and how to distinguish between consensual sexual contact and sexual abuse between residents.[103]

The Scioto facility failed to properly train their employees because, had they been properly trained, the staff would have had substantial knowledge about the topic of sexual abuse and would not have willingly participated in sexual acts with juveniles.[104] Faulty training not only made staff members

97. *See id*. (stating that one officer ordered a male youth to expose himself and engage in inappropriate sexual touching; another officer was convicted of sexual battery and attempted sexual battery for forcing a youth to perform sex acts on him and for inappropriately sexually touching another female youth).

98. *See id*. (reiterating the concern of staff-on-inmate sexual abuse in juvenile facilities and demonstrating it is a persistent issue).

99. *See id.* at 296 (highlighting that after this complaint of sexual abuse was filed, the Civil Rights Division of the DOJ opened an investigation on the prison and found that Scioto's juvenile inmates suffered "harm or the risk of harm from constitutional deficiencies as to: [safety]").

100. *See* 28 C.F.R. § 115.311(a) (2012) (stating that sexual abuse in juvenile facilities is prohibited and an agency's approach must be aimed at preventing, detecting, and responding to conduct).

101. *See Stickrath*, 251 F.R.D. at 296 (noting that the Scioto facility lacked proper training and supervision of staff).

102. *See* §§ 115.313, 115.331 (outlining necessary standards for guaranteeing the safety of juveniles by requiring staff members to have adequate training on sexual abuse and encouraging facilities to provide appropriate supervision).

103. *See* § 115.331(a) (detailing the importance of employees' learning and understanding of sexual abuse policies, so they can adequately apply them).

104. *See id*. (illustrating that extensive and sufficient employee training on sexual abuse would help ensure juvenile safety).

incapable of performing their duties of protecting youth but also subjected juveniles to sexual harm.[105] In conjunction with improper training, there were oversight and enforcement issues at the Scioto facility that further deprived juveniles of their constitutional rights to be free from sexual abuse.[106]

Under PREA, an agency must also assess, determine, and document whether adjustments are needed in staffing protocol.[107] Similar to most states, the Scioto facility employed supervisors who improperly failed to conduct unannounced rounds of staff members to discover staff-on-inmate sexual abuse.[108] The facility was also unsuccessful in maintaining staff ratios outlined in PREA, which was discovered through an open DOJ investigation.[109]

States cannot undermine their efforts in adhering to PREA.[110] In its investigation, the DOJ found that incarcerated minors suffered harm or the risk of harm from constitutional deficiencies.[111] States have a mandated duty to protect juveniles from sexual abuse and must do so in a manner that is proactively eliminating any potential harm in correctional facilities.[112] States currently fail to understand that their number one priority should be to ensure the safety of their inmates.[113]

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105. *See Stickrath*, 251 F.R.D. at 296 (reiterating that deficient employee training increased the possibility of sexual abuse because staff members did not possess the necessary knowledge to efficiently recognize and prevent sexual abuse).

106. *See id*. at 300 (stating that abuse at the Scioto facility was a system-wide failure in regards to maintaining appropriate conditions of confinement for juveniles).

107. *See* 28 C.F.R. § 115.313(d), (e) (asserting that supervisors are required to conduct unannounced rounds to deter staff sexual abuse).

108. *See id.* (illustrating that conducting unannounced rounds are fundamental in identifying and deterring staff sexual abuse); *see also Stickrath*, 251 F.R.D. at 297 (emphasizing that these supervisory rounds are necessary to prevent sexual abuse and are mandated through PREA standards).

109. *See* § 115.313(c) (stating that staff ratios should be at a minimum of 1:8 during the day and 1:16 at night to ensure proper supervision of juvenile residents).

110. *See* § 115.311(a) (emphasizing the importance of having a zero-tolerance policy in place in juvenile facilities in order to prevent and detect sexual abuse).

111. *See Stickrath*, 251 F.R.D. at 296 (elaborating on how unfit the facility was in protecting juvenile inmates from sexual abuse).

112. *See* NPREC, *supra* note 39, at 11 (asserting that facilities need a sexual abuse prevention strategy for staff to identify inappropriate staff relationships and to respond immediately to incidents of abuse).

113. *See* 34 U.S.C. § 30302(2)-(3), (7) (2017) (articulating that through the development of national standards, states have the ability to prevent sexual abuse in prison and to protect the Eighth Amendment rights of individuals).

Deficient training and supervision of corrections officers has become the theme of juvenile facilities nationwide.[114] Courts have illustrated the dangerous consequences of persistent patterns of sexual abuse and have warned that the inadequate training of corrections officers contributes to the failure of preventing sexual abuse in juvenile detainees' experiences.[115] In the St. Clair County detention facility in Illinois, it became custom to allow corrections officers to have unmonitored access to juvenile inmates.[116] This deliberately violates the PREA provisions of supervision and monitoring.[117]

PREA standards are not procedural recommendations; they are mandated through federal law.[118] States cannot pick and choose which parts of law they are willing to abide by and they cannot be apathetic in enforcement.[119] States have an obligation to ensure the safety of their prisoner populations, especially juvenile detainees.[120] When a state, like South Dakota, fails to be in full compliance with the national standards, then five percent of grant funds are reduced.[121] However, these financial penalties did not begin until 2017, which affected the actual ability for the punishment to deter states.[122]

States are not the only entities responsible for adhering to PREA.[123] The government also allows juvenile facilities not to adhere to PREA when it

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114. *See* Hawkins v. St. Clair County, No. 07-142-DRH, 2009 U.S. Dist. LEXIS 26969, at *3 (S.D. Ill. Mar. 31, 2009) (concluding that St. Clair County Detention Center failed to train and supervise corrections officers properly and did not enforce policies to prevent and deter sexual misconduct by employees).

115. *See id.* at *18 (revealing that officers were not trained to identify and respond to signs of employee misconduct or to monitor one another).

116. *See id*. at *12 (illustrating conscious disregard by the St. Clair County facility to not follow proper PREA standards).

117. *See* 28 C.F.R. § 115.313(d)-(e) (2012) (stating that a facility should have monitoring technologies and supervising officials should conduct unannounced rounds during shifts).

118. *See* 34 U.S.C. § 30307(a)(4), (c)(2)(A) (2017) (outlining that each state is required to adopt and be in full compliance with PREA national standards).

119. *See* U.S. CONST. art. VI, § 1, cl. 2 (stating that federal law is the supreme law of the land and states are automatically bound); *see also* Mendel, *supra* note 3, at 24 (noting that there are repercussions for when states fail to follow PREA standards).

120. *See* 28 C.F.R. § 115.311(a) (discussing the policies in place to prevent and detect sexual abuse in juvenile facilities).

121. *See* 34 U.S.C. § 30307(c)(2) (implementing restrictions for federal funds if states do not adhere to national standards to ensure proper PREA compliance).

122. *See* Mendel, *supra* note 3, at 24 (detailing that the DOJ will most likely extend the deadline of withholding funds for non-compliant states).

123. *See* § 30305(a) (stating that the federal government has an obligation to carry out PREA regulations and ensure that states are following PREA standards as well).

fails to enforce grant penalties on states that do not appropriately follow PREA standards.[124] Failing to immediately invoke grant reductions allows states to escape accountability.[125] Waiting fourteen years to implement financial penalties is an injustice to those individuals who suffered sexual abuse in juvenile facilities.[126] The five percent grant reduction is an insignificant amount because it does not have a substantial effect on state practice.[127] This minimal penalty of reduced funds undermines the goal of eradicating sexual abuse from juvenile facilities.[128] The federal government needs to implement a higher grant reduction percentage in order to create change, reduce sexual abuse in juvenile facilities, and ensure that these issues are a legitimate priority.[129]

When states do not hold facilities accountable, it allows detention officers to ignore jail standards and enter into juvenile female inmates' cells unannounced, increasing the opportunity to sexually assault youth, which is both inexcusable and unlawful.[130] According to the Oklahoma Jail Standards, any cell entry of a juvenile female requires two detention officers and one of them must be female.[131] Oklahoma implemented this law to properly safeguard juveniles from sexual assault as required under PREA.[132]

PREA standards also require that supervising officers properly oversee detention facilities.[133] It is unlawful for an active supervisor of a juvenile

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124. *See* § 30307(c)(2) (articulating that state grant reductions are necessary to make sure states obeying PREA standards).

125. *See id*. (outlining the importance that states are in full compliance with PREA in order to safeguard inmates from unnecessary sexual abuses).

126. *See* § 30301(14) (noting the incompetency by the federal government to effectively eliminate sexual abuse in juvenile correctional facilities).

127. *See* 28 C.F.R. § 115(a) (addressing that the adopted DOJ national standards were meant to maximize the desired effect while minimizing the financial impact on jurisdictions).

128. *See id*. (illustrating that the lack of financial penalty for failing to adhere to PREA standards is more of a slap on the wrist instead of actually forcing states to create changes in their prison facilities).

129. *See id*. (recognizing the need to increase financial penalties on states to ensure accountability).

130. *See* Poore v. Glanz, 46 F. Supp. 3d 1191, 1194 (N.D. Okla. 2014) (highlighting the detention facility's failure to provide adequate supervision for female juveniles).

131. *See* OKLA. ADMIN. CODE § 310:670-7-1 (2015) (stating that staff members are not permitted to see juvenile inmates alone but must have another detention officer present, except in life endangering situations).

132. *See id*. (acknowledging the importance of having protections for inmates and ensuring that detention officers adhere to the law).

133. *See* § 115.313(a), (d) (2012) (indicating that supervisors need to provide

detention facility to fail to fulfill his duty of ensuring the safety of a juvenile inmate.[134] Sheriff Stanley Glanz blatantly ignored Oklahoma Jail Standards and PREA.[135] Sheriff Glanz's inefficiency was demonstrated through his inaction after a reported incident in 2008, which involved a male nurse watching a fifteen-year-old female inmate showering.[136] Appropriate action, such as installing video cameras, failed to take place after the incident.[137] Video monitoring would have monitored any areas where staff or residents may be isolated and would have been a deterrent for staff members committing sexual abuse.[138] To be compliant with PREA, correctional facilities must use technological advancements as tools to protect juveniles from sexual abuse.[139]

Failure to act is just as detrimental as committing the act itself.[140] Turning a blind eye does not eliminate the problem of sexual abuse but actually condones it.[141] Even though failure to act is not explicitly addressed in PREA, it is implied through its education and training policies, which ensure that youth detained in juvenile correctional facilities are free from sexual victimization.[142] Employees are required to actively prevent, detect, and

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appropriate monitoring of staff members and implement video recording to assure that juveniles are not subjected to sexual harm).

134. *See Poore*, 46 F. Supp. 3d at 1193-94 (detailing that Sheriff Glanz was responsible for providing adequate supervision and protection of juvenile inmates but illustrated poor judgment and violated both the Oklahoma Jail Standards and PREA).

135. *See id*. at 1195 (asserting that Sheriff Glanz was aware of the proper procedures and his actions of sexual misconduct were in direct defiance of the law).

136. *See id*. at 1198-99 (noting that after the incident was reported, no changes were made with respect to the supervision of the juvenile females).

137. *See id.* at 1199 (articulating that having video monitoring would provide internal oversight of staff); *see also* NPREC, *supra* note 39, at 11 (emphasizing that video monitoring would be a useful tool to confirm staff members' movement and location, enhance accountability, and increase reporting of sexual abuse in juvenile facilities).

138. *See* 28 C.F.R. § 115.313(a) (2012) (recommending that facilities have video monitoring to protect juveniles from sexual abuse and ensure there is adequate supervision).

139. *See id*. (noting that video monitoring can provide tangible proof of any sexual misconduct committed by a staff member).

140. *See Poore*, 46 F. Supp. 3d at 1201 (stating that inaction leads to cyclic sexual abuse patterns).

141. *See* § 115.331(a) (articulating that employees have a duty to report sexual abuse and are responsible for adhering to policies and procedures).

142. *See* §§ 115.311(a), 115.331(a)(10) (mandating states to implement zero tolerance policies for sexual abuse and ensuring that employees comply with mandatory reporting laws).

respond to sexual abuse.[143] When states violate PREA, they are causing unnecessary harm and unlawfully subjecting juveniles to sexual abuse in detention facilities.[144]

B. Sexual Victimization of Juveniles in Correctional Facilities is Unlawful Because It Violates an Individual's Eighth Amendment Right

Juveniles have been subjected to sexual abuse in correctional facilities, which infringes on their Eighth Amendment right of being free from cruel and unusual punishment.[145] The evolution of Eighth Amendment jurisprudence developed from the standards of decency.[146] The evolving standards of decency marked the progress of a maturing society through acknowledging particular rights of people and distinguishing aggravated factors that would create unnecessary and excessive harm.[147] Decency was viewed as being a reflection of society with the main goal of easing sanctions on the guilty.[148] Decency factors in the cultural direction of change.[149] When an individual's Eighth Amendment rights are violated and a court is applying the standards of decency, it must determine whether a punishment is excessive and violates an individual's constitutional rights.[150] Facilities infringe on a juveniles' Eighth Amendment right if they allow them to be

143. *See* § 115.311(a) (indicating that an employee's main role is to ensure the safety of a juvenile inmate).

144. *See* S.H. v. Stickrath, 251 F.R.D. 293, 296 (S.D. Ohio 2008) (highlighting the failure of Ohio's Scioto Facility to properly implement educational training for their employees about sexual abuse); *see also* Hawkins v. St. Clair County, No. 07-142, 2009 U.S. Dist. LEXIS 26969, at *3 (S.D. Ill. Mar. 31, 2009) (illustrating how deficient training and supervision of staff in an Illinois facility led to sexual misconduct by employees).

145. *See* Beers-Capitol v. Whetzel, 256 F.3d 120, 131 (3d Cir. 2001) (stating that a prison official can be liable under the Eighth Amendment for denying an inmate humane conditions).

146. *See* Atkins v. Virginia, 536 U.S. 304, 318 (2002) (concluding that taking the life of a mentally disabled offender is excessive and unconstitutional).

147. *See id*. at 312 (citing Trop v. Dulles, 356 U.S. 86, 100-01 (1958)) (articulating that the underlying concept of the Eighth Amendment involves the dignity of man and ensuring that the destruction of an individual's status is not achieved).

148. *See* Miller v. Alabama, 567 U.S. 460, 495 (2012) (evaluating society's evolution of sentencing practices by initially focusing on rehabilitation then invoking harsh and unjust practices by eliminating the possibility of parole).

149. *See Atkins*, 536 U.S. at 315-16 (asserting that state's legislations play an important role in determining society's views).

150. *See id*. at 321 (indicating that a punishment should be proportionate to the crime); *see, e.g.*, Beers-Capitol v. Whetzel, 256 F.3d 120, 125 (3d Cir. 2001) (stating that sexual assaults by a staff member violated a juvenile's Eighth Amendment right).

subjected to sexual abuse.[151]

The decision in *Atkins v. Virginia* increased restrictions on who could and could not be executed.[152] The Supreme Court of the United States concluded that imposing a sentence of death upon a criminal defendant who had the mental age of a child between the ages of nine and twelve was excessive.[153] This paved the way for juveniles to have added protections from the law because the Court began to see the similarities in vulnerability between mentally disabled persons and juveniles.[154] The Court recognized that juveniles and mentally disabled persons have special protections attached to them.[155] As a result, courts view juvenile offenders and mentally disabled offenders as being less culpable for their actions.[156]

This explicit acknowledgement that juveniles are vulnerable illustrates why youth are not held to the same standard as adults.[157] PREA was itself evidence of the evolving standards of decency as the government took a stand against prison rape.[158] The implementation of PREA recognized the gravity of sexual abuse in prisons and how important it was to offer protections for juvenile inmates.[159] PREA's zero-tolerance standard further

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151. *See Beers-Capitol*, 256 F.3d at 126 (articulating that sexual abuse denies an inmate humane conditions of confinement).

152. *See Atkins*, 536 U.S. at 312 (expanding the standards of decency by providing mentally disabled offenders with protection from execution).

153. *See id*. at 310 (comparing juveniles and mentally disabled persons and acknowledging how their mental limitations distinguish them from the general population).

154. *See* Montgomery v. Louisiana, 136 S. Ct. 718, 735 (2016) (establishing that the Constitution prohibits punishment to a particular class of persons and juveniles belong to a protected class).

155. *See Atkins*, 536 U.S. at 349-50 (stating that mentally disabled persons have diminished capacities, which raises the question of whether execution is appropriate for their actions); *see also* Roper v. Simmons, 543 U.S. 551, 569 (2005) (articulating that juveniles lack the cognitive capacity to understand their actions).

156. *See Atkins*, 536 U.S. at 316 (indicating that the national consensus is against carrying out executions for mentally disabled offenders); *see also Roper*, 543 U.S. at 569 (asserting that due to juveniles' underdevelopment they are perceived to have a lessened culpability than adults).

157. *See Roper*, 543 U.S. at 569 (explaining that juveniles are cognitively incapable of perceiving certain criminal situations as adults).

158. *See* 34 U.S.C. § 30301(2) (2017) (acknowledging the gravity of prison rape in correctional facilities and the need to provide better protections for inmates).

159. *See* § 30301(2) (illustrating the frequency of sexual assaults in prisons and how inadequacies of staff member trainings increase an inmate's susceptibility to sexual abuse).

demonstrates the need for establishing safeguards for prisoners.[160] However, despite these evolving standards of decency and enactment of PREA, facilities continue to violate juveniles' Eighth Amendment rights and ignore their duties of ensuring the safety of juvenile inmates.[161] The government may hold prison officials who violate standards of decency accountable under the Eighth Amendment.[162] Staff officials who sexually abuse juveniles exceedingly endanger a youth's health and safety by exposing them to unfair punishment.[163] Subjecting juveniles to sexual abuse directly violates their constitutional safeguards against inhumane confinement conditions.[164]

Before PREA was enacted, juveniles seeking justice from sexual assaults by staff sought protection under the Eighth Amendment.[165] The Eighth Amendment provided a constitutional shield against conditions that involved unnecessary and wanton infliction of pain.[166] These protections under the Eighth Amendment were explicitly designed to protect individuals convicted of crimes, which juvenile facilities are failing to do.[167] In *Beers-Capitol v. Whetzel*, Barry Whetzel, a counselor, sexually assaulted two female juvenile residents, Amie Marie Beers-Capitol and Aliya Tate, during their stay at the

160. *See* § 30302(1)-(2) (asserting that eliminating prison rape in prisons requires full cooperation by facilities).

161. *See* Beers-Capitol v. Whetzel, 256 F.3d 120, 126 (3d Cir. 2001) (demonstrating that facilities allowing sexual abuse to occur, and not taking proper action, infringes upon an individual's Eighth Amendment right).

162. *See* Atkins v. Virginia, 536 U.S. 304, 310 (2002) (expanding the class of individuals who are protected under the Eighth Amendment to include juveniles); *see also* Hudson v. McMillian, 503 U.S. 1, 8 (1992) (emphasizing that the Eighth Amendment prohibits prison officials from unnecessarily inflicting pain in a manner that offends contemporary standards of decency).

163. *See* S.H. v. Stickrath, 251 F.R.D. 293, 296 (S.D. Ohio 2008) (illustrating how a prison official's actions can create unconstitutional conditions of confinement for juveniles).

164. *See* U.S. CONST. amend. VIII (prohibiting prison authorities from imposing excessive punishments that are cruel and unusual).

165. *See Beers-Capitol*, 256 F.3d at 125 (detailing that female juvenile residents in a state juvenile detention facility brought an Eighth Amendment claim against an employee who sexually assaulted them).

166. *See* U.S. CONST. amend. VIII (establishing an absolute prohibition of punishments that are cruel and unusual in nature).

167. *See id*. (imposing the standards of decency and ensuring that individuals convicted of crimes do not receive punishments grossly disproportionate to the crimes they committed); *see also* 42 U.S.C. § 1997(a) (1980) (emphasizing that institutionalized persons are entitled to constitutional rights and cannot be subjected to flagrant conditions).

Youth Development Center ("YDC") in New Castle, Pennsylvania.[168] Whetzel began making sexual comments to Beers-Capitol a few weeks after she arrived at the facility.[169] Similarly, when in a counseling session with Tate, Whetzel began touching her inappropriately.[170]

When the Third Circuit Court assessed if the matter met the two necessary requirements for an Eighth Amendment violation, it determined that the sexual assaults against Beers-Capitol and Tate were sufficiently serious.[171] However, whether the executive director of YDC was deliberately indifferent remained questionable.[172] It was unclear if Robert Liggett's managerial position subjected him to responsibility for his employee's actions.[173] A supervising public official has no affirmative constitutional duty to prevent violations.[174] However, if a court finds a supervising official liable for his actions, then the managing facility is liable as well.[175] There are four elements to show a supervisor is liable in an Eighth Amendment claim for a failure to properly supervise staff members.[176]

However, if the risk and the failure of a supervisory official is so great and obvious, then the supervising official is held accountable.[177] In *Beers-*

168. *See Beers-Capitol*, 256 F.3d at 125 (asserting that these sexual assaults were continuous and progressive in nature).

169. *See id*. at 128 (acknowledging that Whetzel's sexual advances increased from comments to molestation and ultimately led to sexual intercourse with Beers-Capitol).

170. *See id*. at 129 (articulating that the sexual abuse escalated to Whetzel touching Tate's genitals).

171. *See id.* at 125 (recognizing that sexual abuse is a deprivation under the Eighth Amendment).

172. *See id*. at 135 (contending that the policies Liggett implemented created an unsafe environment at YDC, which allowed Whetzel to commit his abuse over an extended period of time).

173. *See id*. at 126 (indicating that because Liggett is in a supervisory position he has a duty to ensure that his employees are adhering to the facility's operational policies).

174. *See* Miskovitch v. Hostoffer, No. 06-1410, 2010 WL 2404424, at *5 (W.D. Pa. May 19, 2010) (asserting that a supervising official has to knowingly permit a continuing policy for Eighth Amendment liability to attach).

175. *See* 42 U.S.C. § 1983 (stating that every person who subjects, or causes another to be subjected to, a deprivation of a federally secured right is liable for that transgression).

176. *See Beers-Capitol*, 256 F.3d at 134 (citing City of Canton v. Harris, 489 U.S. 378 (1989) and Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989)) (requiring the plaintiff to identify: (1) the existing policy that created an unreasonable risk of the injury, (2) the supervisor was aware of the risk, (3) the supervisor was indifferent to the risk, and (4) the injury resulted from the faulty policy).

177. *See id.* (demonstrating that a supervisor's failure to respond suggests a deliberate indifference on their part as a supervisor).

Capitol, the Court held that Liggett did not exhibit deliberate indifference.[178] A deliberate indifference claim requires that an official knows of the substantial risk before the injury occurs.[179] The Court highlighted that it was necessary for a pattern of sexual abuse violations to be present.[180] The Court found that even though it seemed as though Liggett implemented deficient policies, these policies did not make Liggett deliberately indifferent to the risk of sexual harm.[181]

Despite the prison rules requiring all allegations of abuse to be reported, Liggett allowed staff members to decide on their own whether or not to report an allegation.[182] Although PREA standards were not applicable at this time, Pennsylvania state law still bound Liggett for his actions.[183] This is because the child abuse statute does not allow employees to pick and choose whether to report an allegation.[184] Liggett, allowing his employees to make the self-serving decision not to report abuse allegations, was not only defiant of the law, but also exhibited his inability to fulfill his duty of protecting inmates from sexual abuse.[185] Moreover, Liggett failed to properly train and educate his staff members.[186]

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178. *See id*. at 137 (stating that the plaintiffs did not show that Liggett was aware of a "pattern" of sexual assaults).

179. *See id*. (citing Lewis v. Richards, 107 F.3d 549, 553 (7th Cir. 1997)) (holding that a plaintiff cannot make a deliberate indifference claim if the official knows of the attack after the fact); s*ee also* B v. Duff, No. 06-C-4912, 2009 WL 2147936, at *12 (N.D. Ill. Jul. 17, 2009) (demonstrating that the prison official did not know about a substantial risk because the minor failed to give notice about her sexual abuse); *but see* Rivera-Rodriguez v. Pereira-Castillo, No. 04-1389, 2005 WL 290160, at *4 (D.P.R. Jan. 31, 2005) (finding that the correctional officers could be found deliberately indifferent, as the complaint alleged that the defendants were aware of security lapses and the unreasonable risk of assault, but failed to provide adequate security).

180. *See Beers-Capitol*, 256 F.3d at 126 (insisting that being aware of recurring sexual abuse by staff members, would suggest the need to alter employee education and training).

181. *See id*. at 134 (acknowledging that even though Liggett's policies were deficient, reporting conduct does not constitute deliberate indifference).

182. *See id*. at 135 (characterizing Liggett's actions as improperly operating a juvenile facility and placing juveniles at a high risk for abuse at the hands of staff).

183. *See* 23 PA. CONS. STAT. § 6311 (2015) (mandating supervisors to initiate investigations of the alleged abuse and stating that there is no discretion under this law).

184. *See id*. (implying that the child abuse statute requires mandated reporting of all abuse allegations).

185. *See Beers-Capitol*, 256 F.3d at 127 (illustrating that Liggett's duty as an executive director was to ensure the health and safety of his inmates and not create situations where juveniles were subjected to sexual harm).

186. *See id*. at 135-36 (addressing Liggett's inadequacies of allowing unsupervised

Although the Eighth Amendment claim was not successful in finding Liggett liable for his actions, the Eighth Amendment is intended to hold correctional officers accountable for failing to protect inmates from harm.[187] This accountability is important to ensure that inmates are not deprived of their constitutional rights of being free from sexual abuse by prison staff.[188]

The crux of the Eighth Amendment is proportionality.[189] The subjection of juveniles to sexual abuse while in correctional facilities is directly disproportionate to the crimes they committed.[190] Even though individuals are punished for their actions, being exposed to cruel punishment, such as sexual abuse, is not a part of their sentence.[191] Sexual assault of a prisoner by a guard meets the criteria of the Eighth Amendment wanton and unnecessary pain standard.[192] Therefore, any act of sexual abuse committed by staff members in juvenile correctional facilities directly violates the Eighth Amendment.[193] Under both PREA and the Eighth Amendment, juveniles must be protected from sexual abuse in correctional facilities, yet states are failing to guarantee these mandated safeguards.[194]

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interactions between male staff and female residents, nonexistent supervision of staff at night, and no surveillance system to monitor staff behavior).

187. *See* U.S. CONST. amend. VIII (articulating that correctional officers violate the Eighth Amendment if they are deliberately indifferent to an individual's constitutional rights); *see also Beers-Capitol*, 256 F.3d at 137 (highlighting that Liggett was aware of the abuse after the fact, but a successful deliberate indifference claim requires showing that the defendant knew of the risk before the injury occurred).

188. *See Beers-Capitol*, 256 F.3d at 142 (stating that prisoners have a clearly established right to not be sexually abused by an employee while in confinement); *see also* 42 U.S.C. § 1997(a) (1980) (outlining that individuals in supervisory roles have a heightened obligation to protect their inmates).

189. *See* Graham v. Florida, 560 U.S. 48, 59 (2010) (citing Weems v. United States, 217 U.S. 349, 367 (1910)) (asserting that the punishment for a crime should be equivalent to the offense).

190. *See Rampant Sexual Abuse Puts Teens in Danger at Juvenile Prisons*, *supra* note 7 (emphasizing that sexual abuse should not be a normalized treatment towards juveniles).

191. *See* U.S. CONST. amend. VIII (prohibiting punishments that involve unnecessary and wanton infliction of pain in order to protect those convicted of crimes).

192. *See* K.M. v. Ala. Dep't of Youth Servs., 360 F. Supp. 2d 1253, 1259 (M.D. Ala. 2005) (establishing that a guard's sexual acts do not serve a legitimate purpose and thus violate a constitutional right).

193. *See, e.g.*, *Beers-Capitol*, 256 F.3d at 125 (stating that sexual assaults are sufficiently serious and cannot be a continuing part of juvenile correctional facilities).

194. *See* Mendel, *supra* note 3, at 3, 6-7 (highlighting the continuing epidemic of sexual abuse in juvenile facilities and encouraging states to be compliant with PREA in order to ensure the safety, health, and well-being of youth).

III. POLICY RECOMMENDATION

A. States Should Implement Policies that Eradicate Staff-on-Inmate Abuse Among Juveniles Through Education and Training

The education and training policies currently in place at correctional facilities are insufficient in protecting juveniles from sexual abuse.[195] For example, after completing the necessary education and training, there is no minimum threshold that employees must meet to illustrate their understanding of the sexual abuse policies.[196] This training cannot be undermined because employees are responsible for preventing and protecting juveniles from sexual abuse.[197]

To ensure that employees fully comprehend the training policies, a self-assessment test should be administered. This self-assessment test must create five various scenarios about staff-on-inmate contact and must evaluate how well employees respond to the different situations. This test would be based off of a number scale (1-5), with one having complete inadequacy of sexual abuse training and five demonstrating adequate training. For an employee to successfully pass training and obtain a job, he or she must score within the range of 20-25.

B. Juvenile-Specific Oversight Committees Should Be Created in Order to Enforce PREA Standards

Appropriate supervision and monitoring is required in juvenile facilities.[198] In numerous facilities supervisors ignore allegations of sexual abuse.[199] Supervisors and employees need to be held accountable for their

195. *See* 28 C.F.R. § 115.331(a)-(c) (2012) (explaining how the PREA standards do address having training tailored to the unique needs of juveniles but fail to provide proper refresher training for employees).

196. *See* § 115.331(d) (articulating that employees need only to provide an electronic signature to show their understanding of the training they received).

197. *See* § 115.331(a) (stating that employees are obligated to detect and respond to signs of sexual abuse).

198. *See* § 115.313(a) (noting that the primary goal of employees is to protect residents against sexual abuse).

199. *See, e.g.*, Hawkins v. St. Clair County, No. 07-142-DRH, 2009 U.S. Dist. LEXIS 26969, at *3 (S.D. Ill. Mar. 31, 2009) (concluding that the detention center failed to properly supervise corrections officers and did not enforce policies to deter sexual misconduct by employees); Poore v. Glanz, 46 F. Supp. 3d 1191, 1194 (N.D. Okla. 2014) (addressing how the detention failed to provide adequate supervision of juveniles).

actions.[200] Juvenile-specific oversight committees must be created so that each state has a delegated committee that supervises and advises employees of juvenile correctional facilities. These committees must visit facilities quarterly and report on how well the facility is complying with appropriate sexual abuse policies and procedures. The purpose of these committees would be to ensure PREA standards are being followed.

IV. CONCLUSION

The courts have recognized that youth are deserving of special procedural protections because of their significant diminished capacity compared with adults.[201] Furthermore, the Eighth Amendment jurisprudence on standards of decency has incorporated added protections for juveniles.[202] PREA offers tailored sexual abuse protections for juveniles in correctional facilities.[203] However, despite these protections, states are failing to adhere to PREA standards.[204] The Eighth Amendment further extends protections to juveniles.[205] To eliminate sexual abuse in juvenile facilities, juvenile-specific oversight committees need to be established. It is vital for states to implement policies that strengthen employee education, training, monitoring and oversight.[206] Juveniles deserve, and are entitled to, constitutional safeguards.[207] Juveniles have an increased vulnerability to sexual abuse and it is our duty as a society to ensure their safety and health.[208]

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200. *See* § 115.313(e) (recognizing the need for unannounced supervisory rounds to identify abusers and deter staff from sexual abuse).

201. *See* Roper v. Simmons, 543 U.S. 551, 561 (2005) (holding that juveniles lack maturity, have underdeveloped sense of responsibility, and are more susceptible to negative influences; resulting in the need for required enhanced procedural protections).

202. *See* Atkins v. Virginia, 536 U.S. 304, 318 (2002) (illustrating how the court compared mentally disabled persons with juveniles and concluded that due to diminished capacity, one cannot be subjected to a death sentence).

203. *See* 34 U.S.C. §§ 30301-30309 (2017) (noting that sexual abuse in prisons is a serious problem and facilities must prevent sexual abuse in juvenile populations).

204. *See* S.H. v. Stickrath, 251 F.R.D. 293, 297 (S.D. Ohio 2008); *Hawkins*, No. 07-142, 2009 U.S. Dist. LEXIS 26969, at *3; *Poore*, 46 F. Supp. 3d at 1196.

205. *See* U.S. CONST. amend. VIII (stating that sexual abuse is directly disproportionate to the crimes juveniles committed).

206. *See* 28 C.F.R. § 115.331(c) (2012) (detailing the importance of providing thorough sexual abuse trainings).

207. *See* 34 U.S.C. § 30302(3), (7) (2017) (asserting that juveniles have special protections and facilities must ensure that these constitutional safeguards are not violated).

208. *See* § 30301(5) (recognizing the importance of having adequately trained prison staff to prevent and report inmate sexual assaults).