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Dear BSCC Members,

The ACLU has followed the work of the Title 15 and 24 revisions Executive Steering Committee (ESC), whose recommendations you are now being asked to ratify. We have serious concerns about the process followed in preparing these recommendations, as well as some of the recommendations themselves. Specifically, the decision to give the initial decision-making to working groups made up almost entirely of members of the regulated community, the sheriffs, as well as the decision to close the meetings of the working groups to the public. Some of the decisions coming out of these closed-door meetings, and later adopted by the ESC, are of great concern. Among the most egregious are the decisions to allow video visitation to take the place of in-person visitation and the decision to reject recommendations to incorporate the existing legal requirements of the federal Prison Rape Elimination Act (PREA) into the regulations.

Jail Visitation.

The Programs and Services working group was made up entirely of sheriff's department employees. That group made a recommendation concerning the current requirements for inmate visitation. The regulations have for decades required that inmates be allowed two visits per week, totaling one hour. The working group recommended, and the ESC adopted the recommendation, to define "visit" as meaning either "in-person visit," "contact visit" or "video visit." (Proposed Section 1006). The effect of this amendment would be to allow video visits to satisfy all requirements for inmate visits and thus eliminate the requirement for in-person visits. This recommendation is part of a nationwide trend whereby jails and prisons around the country are eliminating in-person visits. The working group also recommended, and the ESC adopted, an amendment reducing the required visits from two per week, totaling one hour, to one per week, totaling one hour. (Proposed section 1062). We strongly urge you to reject these recommendations.

The notion that California would eliminate the requirement for in-person visits for county jail inmates is shocking. A principal underlying rationale for this Administration's policy of Criminal Justice Realignment is that housing lower-level offenders closer to their families will

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help them maintain family ties and this will contribute to reducing recidivism. This is well-supported by research. According to a 2015 Department of Justice report,<sup>1</sup> in-person visitation is essential to a person's successful reentry into their community and has many proven benefits: reduced disciplinary infractions and violence while incarcerated, reduced recidivism upon release, and an increased chance of obtaining post-release employment. In-person visitation is critically important for maintaining family relationships during periods of incarceration, particularly for children who struggle with the incarceration of their loved ones. The BSCC should be doing all it can to help successfully implement realignment, not undermine it, as these recommendations do. For these reasons we urge you to reject the ESC's recommendations for Title 15 sections 1006 (definitions) and section 1062 (visitation).

### The Prison Rape Elimination Act.

The Prison Rape Elimination Act of 2003 (PREA), Pub. L. No. 108-79, 117 Stat. 972 (2003) (codified at 42 U.S.C. §§ 15601-15609), was passed by Congress and signed by President George W. Bush in 2003. The purpose of PREA is to end the unacceptable sexual assaults that occur in custodial facilities and to ensure the basic dignity and human rights of all detained people. Federal regulations on PREA implementation have now been adopted and are binding on every detention facility in the United States. (28 CFR Part 115, et seq.) Furthermore, the BSCC has been on notice for several years about the application of PREA to all detention facilities within California.<sup>2</sup>

We are therefore extremely disappointed and concerned that the proposed revisions to Title 15 and 24 fail to adopt most, if not all, of the standards required under PREA.

Under the federal statute, any correctional accreditation organization that seeks Federal grants must adopt accreditation standards regarding sexual abuse that are consistent with the national standards. (42 U.S.C. 15608.) The federal statute does not contain a definition of "accreditation organization," however, the BSCC is the regulatory agency in California with jurisdiction over county jails. As such, BSCC both adopts and enforces jail standards on the counties. And, as the agency through which federal funds such as the Byrne/JAG grants are distributed, BSCC is very familiar with the requirements of PREA, and the 5% of federal funds that it has been required to redirect due to the state's noncompliance with PREA in recent years. Additionally, it is clear that the BSCC has an ethical duty to obey federal law and include PREA standards in Title 15 and Title 24.

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<sup>1</sup> U.S. Department of Justice, National Institute of Corrections (2015). Video Visiting in Corrections: Benefits, Limitations and Implementation Considerations. Washington D.C. P. 3. Retrieved from <https://s3.amazonaws.com/static.nicic.gov/Library/029609.pdf>.

<sup>2</sup> The issue of incorporating PREA standards into Title 15 and 24 has been raised previously at the BSCC's Standing Committee on Juvenile Justice. (See Minutes of the Juvenile Justice Standing Committee dated Oct. 30, 2013 and July 5, 2014.)

The working groups have failed to incorporate required PREA standards in numerous areas, including the following:

- Jails must adopt new screening, classification, and housing procedures that screen people's risk level for sexual assault and make efforts to place them in the way that makes them safe.
- Jails also have to minimize opportunities for sexual assault by having sufficient staffing, rounds, and video monitoring, and by getting rid of physical spaces that might invite attacks.
- Jails must also stop cross-gender viewing and monitoring in spaces where inmates are naked, as well as cross-gender invasive searching.
- Case-by-case assessments: PREA regulations prohibit prisons and jails from automatically placing incarcerated people in protective custody based solely on their sexual orientation or gender identity. Prisoners cannot be placed in segregated housing against their will unless there has been an individualized assessment of all available alternatives and there are no available alternatives.
- PREA requires training in effective and professional communication with lesbian, gay, bisexual, transgender, and intersex (LGBTI) inmates and gender nonconforming inmates and require the screening process to consider whether the inmate is, or is perceived to be, LGBTI or gender nonconforming. The standards also require that post-incident reviews consider whether the incident was motivated by LGBTI identification, status, or perceived status.

None of these requirements, as well as many others, are included in the working groups' draft revisions. Therefore, we urge the Executive Steering Committee to send the draft revisions back to the working groups with instructions to incorporate the standards required by PREA. We would be happy to provide technical assistance to the working groups to achieve this critically important goal.

Respectfully,



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