

TITLE 8 CIVIL RIGHTS

- 8-1.000 Civil Rights Division**
- 8-2.000 Enforcement of Civil Rights Civil Statutes**
- 8-3.000 Enforcement of Civil Rights Criminal Statutes**

CIVIL RIGHTS DIVISION**8-1.010 General****8-1.100 Statutes and Executive Orders Administered by the Civil Rights Division****8-1.010 General**

The Assistant Attorney General in charge of the Civil Rights Division, subject to the general supervision of the Attorney General and under the direction of the Deputy Attorney General, is responsible for conducting, handling, or supervising civil rights matters, as more particularly described in 28 C.F.R. § 0.50. The Division is headed by an Assistant Attorney General, and now consists of the following Sections: Administrative Management Section, Appellate Section, Coordination and Review Section, Criminal Section, Disability Rights Section, Educational Opportunities Section, Employment Litigation Section, Housing and Civil Enforcement Section, Special Litigation Section, and Voting Section, and the Office of Special Counsel for Immigration Related Unfair Labor Practices.

Because of the sensitive nature of the constitutional and statutory issues involved and the desirability of uniform application of federal law in this field, close consultation between United States Attorneys and the Division on civil rights matters is of prime importance. Attorneys from the Division may conduct litigation in conjunction with the United States Attorney. Such attorneys will maintain close liaison and consult with the United States Attorney on a continuing basis.

Any statements issued to the press in connection with the institution of judicial proceedings in civil rights cases should be coordinated through the Department's Office of Public Affairs and the Assistant Attorney General, Civil Rights Division.

8-1.100 Statutes and Executive Orders Administered by the Civil Rights Division

The following is a list of federal statutes and executive orders administered by the Civil Rights Division.

A. CIVIL STATUTES. 15 U.S.C. §§ 1691e(h), 3151(c); 18 U.S.C. § 248; 20 U.S.C. §§ 1681(a), 1706, 1709; 28 U.S.C. § 1862; 29 U.S.C. §§ 794, 1577(c); 31 U.S.C. §§ 6720, 6721(d); 42 U.S.C. §§ 300w-7(c), 300x-7(c), 300y-9(c), 708(c), 1971, 1973 to 1973ff-4, 1997, 2000a-3(a), 2000a-5(a), 2000b(a), 2000c-6(a), 2000d, 2000e-5(f), 2000e-6(a), 2000h-2, 3613, 3789d(c)(3), 3789d(c)(4)(C), 5309(c), 8625(c), 9906(c); 14141, 3789d(c); 49 U.S.C. §§ 306(e), 1615(a)(4).

B. CRIMINAL STATUTES. 18 U.S.C. §§ 241 to 248, 594, 841 to 848, 875, 876, 924, 1001, 1503, 1504, 1508 to 1513, 1581 to 1594, 1621 to 1623, 2191 to 2196; 42 U.S.C. §§ 300a-8, 1973i(a)-(e), 1973j(a)-(c), 1973aa-3, 1973bb(b), 1973dd-3(b)-(c), 1974, 1974a, 2000e-8, 2000e-10, 3631; 46 U.S.C. §§ 658, 701.

The Civil Rights Division shares enforcement responsibility under some of these statutes with the Criminal Division, generally depending upon whether the matter involves discrimination or intimidation on account of race, or, in the case of those statutes dealing with obstruction of justice, relates to civil rights

litigation. *See* 28 C.F.R. §§ 0.50 *and* 0.55. The Civil Rights Division has responsibility under 18 U.S.C. § 1001 with respect to false official statements made in connection with alleged violations of federal civil rights statutes.

C. EXECUTIVE ORDERS. 11246, 12250.

8-2.000
ENFORCEMENT OF CIVIL
RIGHTS CIVIL STATUTES

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8-2.010 General Procedures

Federal law protects against discrimination in voting, public accommodations and facilities, public schools, employment, housing, credit, and in all programs and activities receiving federal financial assistance. In all of these areas the Attorney General is authorized under specific conditions to institute civil actions for appropriate relief.

This chapter will deal with the procedures for investigation and trial which are generally applicable to civil statutes administered by the Civil Rights Division, the functions of Sections with enforcement activities under these statutes, and with the special procedures which must be followed in connection with enforcement of many civil rights statutes. These special procedures are described in the paragraphs devoted to the Section which is responsible for enforcing the statute.

8-2.100 Investigation and Trials

Except for any particular civil case or category of civil case (*see* USAM 8-2.180) that may be assigned by the Assistant Attorney General of the Civil Rights Division to the United States Attorney for trial, the Civil Rights Division has the responsibility for handling all civil matters and cases, including all correspondence, motions, responses, briefs and arguments. For administrative and informational purposes, the Division will keep the United States Attorney advised of the progress of such matters by forwarding to him/her copies of correspondence and pleadings served on opposing counsel and/or filed with the trial court. The Division should confer with the United States Attorney with respect to the position to be taken in civil cases, and utilize such assistance as may be mutually agreeable between the Division and the United States Attorney. Notwithstanding the foregoing case responsibilities, the Division and the United States Attorney should cooperate in assisting each other by taking complementary steps to protect fully the interests of the United States and to assure the successful prosecution of the litigation.

The following procedures are generally applicable to investigations and trials in civil matters in which the Civil Rights Division has responsibility.

8-2.110 Investigations

With certain exceptions noted below, the FBI is generally authorized to conduct preliminary investigations into civil rights complaints without prior authorization from the Assistant Attorney General, Civil Rights Division, or from the United States Attorney. (Instructions for standard preliminary investigations have been devised and furnished to the FBI for many of the civil statutes administered by the Division. Copies of such instructions may be obtained from the appropriate Section in the Division.) The United States Attorney will be notified when any investigation is commenced in his/her district, and when the size, extent, or scope of any investigation, absent an emergency, is other than routine, the Assistant Attorney General, Civil Rights Division, or his/her authorized Section Chief shall advise and consult with the United States Attorney prior to the instigation of such investigation.

When complaints are received by the United States Attorney, the appropriate Section of the Civil Rights Division should be consulted as to how best to proceed with the complaint. Such complaints also may be referred to the FBI for investigation.

When the Division requests the FBI to conduct an investigation, a copy of the request will be forwarded to the United States Attorney for the District. During or upon completion of the preliminary investigation, the United States Attorney should forward his/her views to the Assistant Attorney General, Civil Rights Division, to the attention of the Chief of the Section which has enforcement responsibility for the matter being investigated.

8-2.120 Institution of Civil Proceedings -- Authorization

In most instances, the institution of judicial proceedings in civil rights cases must be authorized by the Assistant Attorney General of the Civil Rights Division, and the complaint must be signed by the Assistant Attorney General. Some civil rights statutes also require the complaint to be signed by the Attorney General. One category of cases -- Fair Housing Act "election" cases delegated to United States Attorneys (*see* USAM 8-2.230) -- does not require the signature of the Assistant Attorney General.

8-2.130 Trials

The Civil Rights Division will supervise, support and coordinate, as appropriate, the preparation of pleadings and other legal documents in connection with the trial and preparation of civil cases under the civil rights statutes. It will ordinarily provide personnel to conduct or to assist at the trial of such cases, after consultation with the United States Attorney.

8-2.140 Interventions

Title IX of the Civil Rights Act of 1964 (42 U.S.C. § 2000h-2) authorizes the Attorney General to intervene in cases of general public importance involving alleged denials of equal protection of the laws on account of race, color, religion, sex or national origin. In light of the statutory requirement of certification by the Attorney General, any request for intervention from a private litigant received by the United States Attorney should be forwarded to the Department with a recommendation. This authority to intervene has been used most frequently in cases involving discrimination in schools, prisons, and in the selection of jurors. There are other civil rights statutes which also authorize the Attorney General to intervene in private cases. The Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988, authorizes the Attorney General to intervene in cases initiated by private individuals when she or he certifies that the case of general public importance. (42 U.S.C. § 3613(e)). Similarly, the Civil Rights for Institutionalized Persons Act (CRIPA) (*see* USAM 8-2.261), and Americans With Disabilities Act authorizes intervention (*see* USAM 8-2.410). The United States Attorney should notify the Assistant Attorney General, Civil Rights Division, upon learning of a case in his/her District in which intervention by the United States under 42 U.S.C. § 2000h-2 might be appropriate.

8-2.150 Appeals

Appeals in civil rights cases are supervised by the Appellate Section of the Civil Rights Division. For United States Attorneys' appellate responsibilities. *See* USAM 2-3.210.

8-2.160 Cooperation with Private Litigants

It is the long-standing policy of the Department to avoid providing legal advice or providing information developed through our investigations to private litigants. It is appropriate, however, to advise private citizens who are not litigants of their rights under the federal laws which we are authorized to enforce, including their right to be represented by private attorneys. In addition, in cases in which the United States is a co-litigant with a private plaintiff, it is appropriate to consult with the co-litigant about evidence the United States expects to submit to the court.

8-2.170 Standards for Amicus Participation

A. Guidelines. Although guidelines cannot cover all possible cases, amicus participation by the Civil Rights Division ("the Division") should generally be limited to the following types of cases:

- In which a court requests participation by the Division;
- Which challenge the constitutionality of a federal civil rights statute; (cf. 28 U.S.C. § 2403(a));
- Which involve the interpretation of a civil rights statute, Executive Order, or regulation that the Department of Justice (or another federal agency) is empowered to enforce;
- Which raise issues the resolution of which will likely affect the scope of the Division's enforcement jurisdiction (e.g., cases involving the concept of state action under the Fourteenth Amendment);
- Which raise issues that could affect in a significant way private enforcement of the statutes the Division enforces; and
- Cases in which a special federal interest is clear and is not likely to be well-served by the private litigants.

There will, of course, be instances not fitting the above criteria in which amicus participation should nevertheless be considered.

B. Other Factors. In addition to these necessarily general standards, there are other factors that should be considered in determining whether to make a recommendation for amicus participation. These include:

- The importance of the issue to be addressed, the level of the court in which it is posed, and the probable impact of its resolution;
- The probability of the Division being able to contribute substantially to the resolution of the case (e.g., competence of private counsel, state of the record, timeliness);
- The wisdom of amicus participation as distinguished from intervention; and
- The availability of Division resources.

C. Amicus participation in district courts. Section Chiefs who wish to recommend amicus participation in a district court should send their proposal to the appropriate Deputy Assistant Attorney General. They will be notified if the filing of an amicus brief has been approved. Thereafter, they will coordinate the filing of the brief and any other papers through the appropriate Deputy.

D. Amicus participation in the courts of appeals and the Supreme Court. The Appellate Section has primary responsibility for the Division's amicus participation in appellate courts, subject to the general supervision of the Assistant Attorney General and to authorization by the Solicitor General. The procedures to be followed are explained in the Civil Rights Resource Manual at 1.

8-2.180 Concurrent Enforcement Authority

With respect to civil litigation, United States Attorneys presently have concurrent authority with the Civil Rights Division to enforce the following federal civil rights statutes:

- A. Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a (*see* USAM 8-2.281);
- B. Title II of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a *et seq.* (*see* USAM 8-2.233);
- C. Title III of the Civil Rights Act of 1964, 42 U.S.C. § 2000b *et seq.* (*see* USAM 8-2.262);
- D. Section 706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5, (*see* USAM 8-2.211) and

E. Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601, *et seq.* (The Fair Housing Act) (*see* USAM 8-2.231).

F. Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. § 248 (*see* USAM 8-2.264).

Upon initiation of an investigation, the United States Attorney shall notify the Civil Rights Division of the nature and scope of the investigation. Once the United States Attorney determines that litigation is warranted, the United States Attorney shall provide the Assistant Attorney General for Civil Rights with a copy of a litigation justification memorandum and proposed pleadings.

The United States Attorney shall also consult with the Assistant Attorney General for Civil Rights as to the merits of the litigation prior to filing. The Assistant Attorney General for Civil Rights shall retain final authority to determine what cases ought to be filed, compromised, or settled regardless of the judicial districts in which they arise.

In areas in which the United States Attorneys have concurrent authority with the Civil Rights Division, the United States Attorney shall report on a quarterly basis (i.e., January 1, April 1, July 1, and October 1 of each year), the name, nature, and status of all civil rights complaints received. The report should identify each matter closed during the quarter and state briefly why it was closed.

8-2.190 Production or Disclosure in Federal and State Proceedings of Material or Information Contained in Civil Rights Division Files

Procedures governing production or disclosure in federal and state proceedings of material or information contained in Civil Rights Division files are set out at USAM 8-3.195. (Demands in judicial proceedings for the production or disclosure of information in Civil Rights Division files most often relate to criminal matters. For this reason the procedures to be followed are set out in the chapter pertaining to the Criminal Section of the Division.)

8-2.210 Employment Litigation Section

The Employment Litigation Section is responsible for the enforcement of Title VII of the Civil Rights Act of 1964, as amended, with respect to the statute's prohibition of employment discrimination by state and local governments; and Executive Orders 11246 and 11375, which prohibit employment discrimination by contractors and subcontractors working on federal or federally-assisted contracts. The Section also defends: (1) suits challenging the constitutionality of congressionally authorized preference programs under the Small Business Administration's 8(a) program and other minority and disadvantaged business enterprise programs; and (2) actions in which a federal contractor, subcontractor or grantee seeks to enjoin the termination or suspension of federal contracts or funds under Executive Order 11246 or federal funding statutes.

8-2.211 Employment Litigation Section -- Affirmative Suits Under Title VII

Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) as amended, forbids employment practices that discriminate on the basis of race, color, religion, sex or national origin by employers, labor organizations, employment agencies, state and local governments, governmental agencies, political subdivisions and the federal government. In addition to discriminatory terminations and refusals to hire, the Act forbids all other discriminatory practices with respect to terms or conditions of employment as well as retaliation for engaging in activities protected by the Act.

The Department of Justice shares enforcement authority under Title VII with the Equal Employment Opportunity Commission (EEOC). The Department has authority to seek to remedy employment discrimination by state and local governments, and their agencies and political subdivisions. Enforcement authority as to private employers belongs to the EEOC. The EEOC also has primary enforcement responsibility with respect to the federal government.

NOTE: The Civil Division generally defends federal agencies in employment discrimination suits filed by individuals against the government. The United States Attorney should notify the Civil Division, rather than the Civil Rights Division, whenever such a suit is filed in his or her district.

Persons who complain to the United States Attorneys' Offices of employment discrimination by employers and other organizations covered by Title VII, other than the federal government, should be advised immediately to file their complaint with the EEOC. Those who complain of discrimination by an agency of the federal government should be advised to bring their complaint to the attention of the equal employment opportunity officer of the agency involved and the EEOC.

In the case of a Title VII charge of discrimination against a state or local government, or governmental agency, if the EEOC has found reasonable cause and has been unable to secure an acceptable conciliation agreement, it will refer the charge to the Employment Litigation Section, which may file a civil action under Section 706 of Title VII. In addition, this Section may, without prior referral, initiate pattern or practice suits under Section 707 of Title VII against state or local government employers.

8-2.212 Employment Litigation Section -- Affirmative Suits Under Executive Orders 11246 and 11375

The Attorney General may also, in certain circumstances, bring actions against contractors or subcontractors with the federal government or contractors or subcontractors on federally-assisted contracts to enforce the requirements of Executive Order 11246, as amended by Executive Order 11375. Executive Order 11246 forbids discrimination based on race, color, religion, sex or national origin by such contractors or subcontractors. Primary enforcement responsibility is vested in the Department of Labor, which may, if unable to obtain compliance, refer the case to the Department of Justice for appropriate legal proceedings. The text of Executive Order 11246, as amended by Executive Order 11375, is set forth immediately following Section 2000e of Title 42 of the United States Code. Since allegations of violations of Executive Order 11246 may present unfamiliar questions, the Department of Labor normally refers cases under the Order directly to the Civil Rights Division.

8-2.213 Employment Litigation Section -- Defensive Suits

The responsibility of the Employment Litigation Section extends to suits in which a federal contractor, subcontractor or grantee sues to enjoin the actual or threatened termination or suspension of federal contracts or funds under Executive Order 11246, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d-2000d-6), or other federal funding statutes. The Section also is responsible for defending actions that challenge the constitutionality of congressionally authorized preference programs under the Small Business Administration's 8(a) program (15 U.S.C. § 637(a)) and other minority and disadvantaged business enterprise programs. In such cases, the defense of the agency's action is the responsibility of the Employment Litigation Section.

8-2.214 Employment Litigation Section -- United States Attorney Responsibilities

Each United States Attorney has concurrent authority with the Employment Litigation Section with respect to individual cases of discriminatory employment practices by state and local governments under Section 706 of Title VII, 42 U.S.C. § 2000e-5. Each United States Attorney's Office may work out appropriate procedures with the Employment Litigation Section for the handling of suits under Section 706. Authority for the initiation and compromise of such suits remains with the Assistant Attorney General.

Any United States Attorney who learns or has reason to believe that a state or local government employer is engaging in a pattern or practice of employment discrimination covered by Section 707 of Title VII should advise the Assistant Attorney General, Civil Rights Division.

8-2.220 Educational Opportunities Litigation Section

The Educational Opportunities Litigation Section enforces federal statutes which prohibit public school officials from engaging in discriminatory practices. The Supreme Court's landmark decision in *Brown v. Board of Education* mandates that public school officials not assign students to schools and classes on a racial basis, or deny students equal educational opportunity on the basis of race or color. Subsequent federal legislation and court decisions mandate that school officials not discriminate against students on the

basis of gender or language barriers. Thus, the Section's work covers a variety of legal issues involving both elementary and secondary schools and institutions of higher education.

The laws for which this Section has responsibility include Title IV of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974. In addition, the Section enforces Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act with respect to students enrolled in public educational institutions.

The Section continues to litigate a large number of cases in which it challenges practices of school districts which result in illegal student segregation. Such discriminatory practices usually involve decisions of school districts in reorganizing the structure of a district, new methods of assigning students to classes, constructing new schools, and modifying student attendance zones.

8-2.221 Educational Opportunities Litigation Section -- Title IV of the Civil Rights Act of 1964

Under Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c), the Attorney General is authorized, when certain statutory conditions are met, to institute public school desegregation suits against school officials and others who may be necessary to the granting of appropriate relief.

Under the terms of Title IV, complaints of discrimination or segregation in public schools and colleges must be in writing and signed by a parent or group of parents or, in the case of colleges, by the person aggrieved. The complaint should contain a statement to the effect that the children involved are being deprived by a school board of the equal protection of the laws, or, if it is a college-level complaint, to the effect that the complainant has been denied admission to or not permitted to continue in attendance of a public college by reason of race, color, religion, or national origin. Complainants should be advised of these requirements. No particular form of complaint is required; it need not be under oath. The United States Attorney should review any information indicating a violation of this Act, and submit his/her recommendation concerning further action to the Assistant Attorney General, Civil Rights Division.

8-2.222 Educational Opportunities Litigation Section -- The Equal Educational Opportunities Act of 1974

The Equal Educational Opportunities Act of 1974 (20 U.S.C. § 1701 et seq.) also authorizes the Attorney General to institute public school desegregation suits against school officials and others. The segregative acts of school officials which deny equal educational opportunity are specifically described (20 U.S.C. § 1703(a) to (e)). In addition, such a suit may be filed when public school officials fail to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional program (20 U.S.C. § 1703(f)). Unlike Title IV (*see* USAM 8-2.221), jurisdiction under this Act does not require a written complaint from parents, and the Attorney General may institute a civil action on behalf of any individual denied equal educational opportunity. The United States Attorney should review any information indicating a violation of this Act, and submit his/her recommendation concerning further action to the Assistant Attorney General, Civil Rights Division.

8-2.223 Educational Opportunities Litigation Section -- Defensive Litigation

The defense of the Department of Education's determination to terminate federal funds to an educational institution under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and other federal statutes is administered by the Educational Opportunities Section.

8-2.224 Educational Opportunities Litigation Section -- Referrals

There are several federal statutes for which the Section has enforcement authority, although only after a referral from another government agency. Those statutes, generally, prohibit the recipients of federal financial assistance from discrimination on several bases:

A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, which prohibits the exclusion, the denial of benefits, and discrimination on the grounds of race, color or national origin in programs or activities receiving federal funds.

B. Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, which prohibits the exclusion, the denial of benefits, and discrimination on the basis of sex in programs or activities receiving federal funds.

C. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, which prohibits the exclusion, the denial of benefits, and discrimination in programs or activities receiving federal funds by reason of handicap.

D. Title II of the Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134, which provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. [A public entity is any instrumentality of the state such as a school district. A qualified individual with a disability is a person, who with the aid of services, can participate in the school district's program.]

The statutes have implementing regulations which help define violations as well as set forth enforcement procedures. The regulations authorize the administrative agencies to enforce the above statutes in several ways. *See Civil Rights Resource Manual at 2.*

8-2.230 Housing and Civil Enforcement Section

The Housing and Civil Enforcement Section is responsible for administering the enforcement of federal statutes regarding equal housing opportunity, equal credit opportunity, discrimination in places of public accommodation, and discrimination in the provision of municipal services. The primary statutes with which this Section is concerned are the Fair Housing Act (Title VIII of the Civil Rights Act of 1968), as amended by the Fair Housing Amendments Act of 1988, (42 U.S.C. §§ 3601 to 3619); the Equal Credit Opportunity Act (15 U.S.C. §§ 1691 to 1691f); and Title II of the Civil Rights Act of 1964 (42 U.S.C. § 2000a). This section is also responsible for enforcing several statutes which prohibit discrimination in, among other things, housing-related programs where the operator of the program receives federal funds, i.e., Title VI of the Civil Rights Act of 1964, (42 U.S.C. §§ 2000d-2000d-4), prohibiting discrimination on the basis of race, color, or national origin in federally funded programs (*see USAM 8-2.240*); Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), prohibiting discrimination on the basis of handicap in federally funded programs. Such cases can be brought only after referral from the agency (Department of Housing and Urban Development) which administers the federally funded program. Numerous sample pleadings and forms for enforcement of these statutes are included in the Civil Rights Resource Manual at 101 et seq.

8-2.231 Housing and Civil Enforcement Section -- Fair Housing Act

The Fair Housing Act is Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

Subject to certain specified limitations, Title VIII, as amended by the Fair Housing Amendments Act of 1988, forbids discrimination based on race, color, religion, sex, familial status (families with children under age 18), national origin, or handicap in the sale, rental, advertising, or financing of housing. Practices forbidden by the law include not only the direct refusal to sell, rent, or finance, but also more sophisticated forms of discrimination such as providing false information about housing availability, blockbusting, racial steering, redlining, and discrimination by the use of zoning or other land use power. In addition, with respect to handicapped individuals, discrimination includes the refusal to permit the reasonable modification of existing premises and the refusal to make reasonable accommodations in rules, policies, practices, or services. Finally, the statute requires that most multifamily dwellings constructed for initial occupancy after March 1991 be handicapped-accessible.

The Fair Housing Amendments Act created a new remedial structure to enforce the rights granted by the Fair Housing Act, significantly strengthening the federal role in the enforcement process. The Department of Justice and the Department of Housing and Urban Development (HUD) share enforcement responsibility under the amended Act. HUD is authorized to receive and investigate complaints of

discrimination from individual private citizens and to attempt to obtain voluntary compliance with the Act through conciliation. In the event that the conciliation process fails to achieve voluntary compliance, HUD is further authorized, when it finds reasonable cause, to issue administrative charges alleging that the Act has been violated. After a charge is issued, the matter can proceed along one of two routes: (1) HUD litigates the case on behalf of the individual victim before an administrative law judge; or (2) one of the parties to the administrative charge elects to have the case heard in federal court, in which case, the Attorney General, acting through the Civil Rights Division, is required by the statute to initiate and maintain a lawsuit in federal court on behalf of the individual victim. In addition, if HUD believes prompt judicial action is necessary to preserve the availability of housing which is the subject of a complaint filed with that agency, it may request the Attorney General to seek a temporary restraining order from a federal court pending completion of the administrative process.

The Housing and Civil Enforcement Section has concurrent authority with United States Attorneys' Offices (USAOs) to litigate and handle cases in which there is a pattern or practice of unlawful discrimination or the discriminatory denial of rights protected by the Act to any group of persons (42 U.S.C. § 3614(a)). *See* USAM 8-2.180. Such cases may be initiated by the Attorney General without any referral from HUD. The Section also has responsibility for determining whether or not to initiate other cases referred by HUD such as (1) referrals involving zoning or land use issues (42 U.S.C. § 3614(b)(1)); (2) referrals involving breaches of conciliation agreements (42 U.S.C. § 3614(b)(2)); and (3) referrals involving enforcement of HUD subpoenas (42 U.S.C. § 3614(c)). Finally, in conjunction with the Appellate Section, the Section has responsibility for enforcement of orders entered by HUD administrative law judges in Fair Housing Act cases which are enforced through the HUD administrative court system. *See* 42 U.S.C. § 3612(j).

The United States Attorneys also have been delegated concurrent authority in Fair Housing Act matters to pursue and initiate fair housing and fair lending pattern or practice matters. Although most of these investigations are handled by the Housing and Civil Enforcement Section, United States Attorneys may participate or take the lead in investigating and initiating such matters under this concurrent authority. If any United States Attorney receives information about housing discrimination involving such things as discrimination in the rental or sale of houses or apartments, lending, blockbusting or racial steering, he/she should contact the Housing and Civil Enforcement Section to determine how to proceed and which office will be responsible for any investigation that is initiated. The notice should be directed to the attention of the Chief of the Housing and Civil Enforcement Section. In the event that the United States Attorney determines that litigation is warranted, he/she shall provide the Assistant Attorney General for Civil Rights with a litigation justification memorandum and proposed pleadings. The Assistant Attorney General for Civil Rights has the final authority to determine what cases are to be filed, compromised, or settled. This decision will be made after consultation with the United States Attorney concerning the merits of the proposed litigation. *See* USAM 8-2.180.

Each United States Attorney also has concurrent authority with the Housing and Civil Enforcement Section with respect to the Fair Housing Act "election" cases referred from HUD. The Housing and Civil Enforcement Section is responsible for coordinating with the USAOs in determining which office should handle the "election" cases from HUD which require filing. When such cases are assigned to USAOs, the Section is available to lend whatever support it can to assist the USAOs in meeting this responsibility. A detailed manual has been prepared by the Housing and Civil Enforcement Section.

The USAOs also have responsibility for (1) enforcing administrative subpoenas issued by HUD under Section 811 of the Fair Housing Act (42 U.S.C. § 3611) for possible suit under 42 U.S.C. 3614(c); HUD will either refer these matters directly to USAOs or to the Housing and Civil Enforcement Section, which will then coordinate with the appropriate USAO; (2) enforcement of orders issued by administrative law judges. Although the Housing and Civil Enforcement Section, in conjunction with the Appellate Section, will be responsible for obtaining appropriate orders of enforcement from the court of appeals under 42 U.S.C. § 3612(j), USAOs, in coordination with the Housing and Civil Enforcement Section, shall have responsibility for seeking collection of such judgments, when necessary.

The use of force or threats of force to interfere with fair housing rights may violate the criminal provisions of Title IX of the 1968 Civil Rights Act (42 U.S.C. § 3631) as well as the civil provisions (42 U.S.C. § 3617). The determination of whether or not to proceed civilly will be made by the Assistant Attorney General, Civil Rights Division, in consultation with the United States Attorney. Criminal prosecutions under 42 U.S.C. § 3631 are supervised, supported and coordinated as appropriate by the Criminal Section of this Division. *See* USAM 8-3.000.

8-2.232 Housing and Civil Enforcement Section -- Equal Credit Opportunity Act

The Equal Credit Opportunity Act (ECOA) forbids discrimination in the extension of credit based on race, color, religion, sex, marital status, national origin, age, because a credit applicant receives public assistance, or because a credit applicant has exercised rights under the Consumer Credit Protection Act. The coverage of the law became effective in stages and its final form became effective on March 23, 1977.

Certain administrative enforcement responsibilities are given by the statute to twelve federal agencies, with the Federal Trade Commission having the broadest responsibility. Private suits are also provided for. The Attorney General is authorized to sue for injunctive and monetary relief. The Attorney General may sue when a case is referred by one of the twelve federal regulatory agencies or when he/she finds a pattern or practice of credit discrimination. (ECOA was amended in 1991 to require that the federal bank regulatory agencies refer matters to DOJ when they have reason to believe that a lender they supervise is engaged in a pattern or practice of discrimination under ECOA.)

When information about discrimination in credit is brought to the attention of the United States Attorney, he/she should notify the Assistant Attorney General, Civil Rights Division, attention: Chief of the Housing and Civil Enforcement Section, who will then communicate with complainants by a form letter which advises them of their private rights and of the Attorney General's responsibilities under the Act. The Chief of the Housing and Civil Enforcement Section will also determine, in consultation with the United States Attorney, whether investigative or litigative action is appropriate.

The Division has devised a standard preliminary investigation for violations of the Equal Credit Opportunity Act, which is available from the Housing and Civil Enforcement Section upon request.

8-2.233 Housing and Civil Enforcement Section -- Title II of the Civil Rights Act of 1964

Title II of the Civil Rights Act of 1964 (42 U.S.C. § 2000a) prohibits discrimination on account of race, color, religion, or national origin in places of public accommodation, such as hotels, restaurants, and theaters. Under the Act, the Attorney General is authorized to bring a civil action whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by Title II, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights secured by that Title. This statute does not authorize the Attorney General to pursue individual complaints of discrimination in the area of public accommodations, but individuals may pursue such claims privately under Title II and under other civil rights statutes. The Act also does not authorize the United States to seek monetary relief in such cases. The Attorney General may intervene in such suits in the discretion of the court upon certification that the case is of general importance.

The statute expressly requires the complaint in such a suit to be signed by the Attorney General. The Attorney General is authorized to request that the case be heard by a three-judge court, upon certification that the case is of general public importance. The Act requires the trial court to expedite the case. *See generally* the Civil Rights Resource Manual at 3.

The United States Attorneys' concurrent enforcement responsibilities under Title II are discussed in USAM 8-2.180.

8-2.240 Coordination and Review Section

The Coordination and Review Section has two principal responsibilities. First, the Section has staff responsibility for providing coordination and leadership for the enforcement by all Executive agencies of laws that prohibit discrimination on the basis of race, color, national origin, sex, or religion by recipients of federal financial assistance. Recipients include state and local governments (and agencies and departments thereof), corporations, partnerships, and individuals. The coordination and leadership authority derives from Executive Order 12250, 3 C.F.R. § 298. (Staff responsibility for coordination and leadership regarding discrimination on the basis of disability is provided by the Civil Rights Division's Disability Rights Section.)

The principal nondiscrimination laws are: Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin; and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., which prohibits discrimination on the basis of sex in education programs and activities. In addition, many program-specific statutes include their own nondiscrimination provisions that apply to federal aid recipients. The text of some of these laws is provided in the Civil Rights Resource Manual at 4.

Secondly, pursuant to a Memorandum of Understanding with the Department's Office of Justice Programs and the Criminal Division, the Section investigates complaints alleging discrimination on the basis of race, color, national origin, sex, or religion made against recipients of financial assistance from the Department of Justice. These investigations are undertaken under Title VI and Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d(c). Funding recipients include state and local law enforcement agencies, state departments of corrections, and courts. In carrying out this responsibility, the Section works closely with the Civil Rights Division's Special Litigation and Criminal sections, which have overlapping responsibilities under statutes they enforce. The Section also coordinates its investigations with the Department's fundgranting components, including the Office of Justice Programs and the Office of Community Oriented Policing Services.

8-2.241 Civil Laws Governing Law Enforcement Misconduct

The Department, acting principally through the Civil Rights Division, is authorized under several civil statutes to examine allegations of misconduct by law enforcement officers. These statutes are fully set forth in the Civil Rights Resource Manual at 5, and include:

- Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994 (Police Misconduct Provision), 42 U.S.C. § 14141, which authorizes the Department to file suit challenging a pattern or practice of misconduct by law enforcement officers (or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles) that deprives persons of constitutional or federal statutory rights;
- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., which prohibits recipients of federal financial assistance (including law enforcement agencies) from discriminating on the basis of race, color, or national origin, and is enforced through administrative proceedings and litigation; and
- Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d(c), which prohibits recipients of funds granted by the Department (including law enforcement agencies) from discriminating on the basis of race, color, national origin, sex, or religion, and is enforced through administrative proceedings and litigation.

Responsibility for enforcement of these statutes within the Civil Rights Division generally resides with the Special Litigation Section and the Coordination and Review Section, with the Special Litigation Section handling enforcement of the Police Misconduct Provision and the Coordination and Review Section having responsibility for administrative enforcement of Title VI and the Safe Streets Act provision. These Civil Rights Division Sections coordinate their police misconduct work with the Division's Criminal Section, and with the Department's fund-granting components, including the Office of Justice Programs and the Office of Community Oriented Policing Services.

8-2.250 Special Litigation Counsel

In addition to the sections described in this chapter, the Civil Rights Division has several Special Litigation Counsel. These are senior litigators who are assigned some of the Division's more complex enforcement problems.

8-2.260 Special Litigation Section

The Special Litigation Section has the responsibility to investigate, initiate, and prosecute cases involving deprivation of federal statutory and constitutional rights of institutionalized persons, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997, et seq. The Section also has concurrent authority with United States Attorneys for enforcing Title III of the Civil Rights Act of 1964, 42 U.S.C. § 2000b.

The Special Litigation Section also has responsibility for civil enforcement of the Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. § 248, the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. § 3789(d)c, and Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. The latter provision authorizes the Attorney General to bring civil actions to eliminate a pattern or practice of misconduct by law enforcement officers.

8-2.261 Civil Rights of Institutionalized Persons

The Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997, et seq., authorizes the Attorney General to enforce the constitutional and federal statutory rights of persons confined to state and local institutions. These include facilities for the mentally ill and developmentally disabled, nursing homes, prisons, jails, and juvenile facilities. The investigations and litigation focus on a broad range of issues depending on the type of institution and the nature of alleged unconstitutional conditions. Issues include, for example, abuse, crowding, medical and mental health care, fire safety, sanitation, security, adequacy of treatment and training, and education.

To initiate suit under the Act, the Attorney General must have reasonable cause to believe that the deprivation of rights is part of a pattern or practice of denial rather than an isolated or accidental incident. At the time of commencing the civil action, the Attorney General must personally certify to the court (1) that he/she has previously notified, in writing, the appropriate state officials of the alleged deprivation, supporting facts, and possible remedy; (2) that he/she has notified, in writing, the appropriate state official of his/her intent to conduct an investigation of the state institution and that the Attorney General has made a good faith effort to consult with the appropriate state officials to advise them of federal assistance that may be available, encouraged the appropriate state official to correct the alleged conditions and pattern or practice, and that the appropriate officials have had reasonable time to take appropriate corrective actions; and (3) that this action is of general public importance.

CRIPA also authorizes the Attorney General to intervene in any action commenced in any court of the United States when the Attorney General has reason to believe that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities. A motion to intervene may not be filed until 90 days after the commencement of the action. In the motion to intervene the Attorney General must certify to the court that the appropriate state officials have been notified of (a) the alleged conditions and pattern or practice; (b) the supporting facts giving rise to the alleged conditions; and (c) the minimum measures that may remedy the alleged conditions and pattern or practice. Motions to intervene and certifications must be signed by the Attorney General personally.

When complaints of widespread deprivation in conditions of confinement are received by a United States Attorney, they should be forwarded to the Assistant Attorney General, Civil Rights Division, for evaluation and review prior to any request for investigation.

8-2.262 Title III of the Civil Rights Act of 1964

Title III of the Civil Rights Act of 1964, 42 U.S.C. § 2000b, prohibits discrimination on the basis of race, color, religion, or national origin in public facilities, such as parks, libraries, auditoriums, and prisons. The Special Litigation Section supervises the enforcement of Title III.

Under Title III, the Attorney General is authorized to institute a civil suit upon receipt of a written, signed complaint if it is believed that the complaint is meritorious, and upon certification that the complainants are unable to initiate and maintain appropriate legal proceedings for relief and that the institution of the action will materially further the orderly progress of desegregation in public facilities. The statute expressly requires the complaint in such a suit to be signed by the Attorney General. The United States Attorneys' concurrent enforcement responsibilities under Title III are discussed in USAM 8-2.180.

8-2.263 Unlawful Interference With the Use of Public Facilities

The use of force or threats of force to injure, intimidate, or interfere with a person because of his/her race, color, or national origin and because of his/her use of a public facility constitutes a violation of 18 U.S.C. § 245(b)(2)(B), as well as Title III of the 1964 Act. The determination whether to proceed

civily or criminally will be made by the Assistant Attorney General, Civil Rights Division, or his/her designee, in consultation with the United States Attorney.

8-2.264 Freedom Of Access To Clinic Entrances Act

The use of force or threats of force, physical obstruction, or property damage with the intent to injure, intimidate, or interfere with a person seeking to obtain or provide reproductive health services violates the Freedom Of Access To Clinic Entrances Act, 18 U.S.C. § 248 (1994) (FACE). FACE does not prohibit speech or expressive conduct protected by the First Amendment. The decision to proceed civilly or criminally will be made by the Assistant Attorney General, Civil Rights Division, or his/her designee, in consultation with the United States Attorney. For additional materials concerning FACE litigation, see the Civil Rights Resource Manual at 6 et seq.

8-2.270 Voting Rights -- Overview

The Civil Rights Division's Voting Section safeguards the right to vote of racial and language minorities, disabled and illiterate persons, overseas citizens, persons who change their residence shortly before a presidential election, and persons 18 to 20 years of age. The Voting Section has enforcement responsibility for the Voting Rights Act of 1965, as amended, the National Voter Registration Act of 1993, the Uniformed and Overseas Citizens Absentee Voting Act, and the Voting Assistance for the Elderly and Handicapped Act. Certain portions of these statutes are set forth in the Civil Rights Resource Manual at 13.

8-2.271 United States Attorney Responsibilities

The United States Attorney should promptly bring to the attention of the Chief of the Voting Section any information or complaints indicating the possibility of racial discrimination in voting or of infringements of the right to vote under the federal laws enforced by the Voting Section. The United States Attorney should consult with the Chief of the Voting Section prior to requesting any investigation into possible voting rights violations. Telephonic authorization to initiate an investigation may be obtained in cases where prompt action is necessary.

8-2.272 Racial Discrimination in Voting -- Generally

Racial discrimination in voting, in whatever form, at whatever stage of the electoral process, and whether or not federal elections are involved, is prohibited by 42 U.S.C. § 1971 and by Sections 2 and 11 of the Voting Rights Act, 42 U.S.C. §§ 1973, 1973i. For a discussion of the history and a general overview of the Voting Rights Act of 1965, see the Civil Rights Resource Manual at 19.

8-2.273 Literacy Tests (Section 201)

Section 201 of the Voting Rights Act, 42 U.S.C. § 1973aa, prohibits state and local jurisdictions from requiring voters to be able to read and write. The test ban applies to voting in federal, state, and local elections and to voting in primaries as well as in general or special elections. Banned are not only literacy tests but also understanding tests, educational achievement requirements, moral character requirements, and requirements that registrants prove their qualifications by having other persons vouch for them.

8-2.274 Voter Assistance (Section 208)

Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6, authorizes illiterate and disabled voters to receive assistance from the person of their choice (but prohibits such voters from receiving help from their employers or leaders of their unions).

Although Congress did not explicitly authorize the Attorney General to enforce the voter assistance provision, violations of it will usually constitute violations of other provisions of federal law that the Attorney General is authorized to enforce.

8-2.275 Ban on Practices with Discriminatory Result (Section 2)

Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, bars voting practices that have a discriminatory result or intent. It is the main litigation tool available for attacking electoral systems and redistricting plans that dilute minority voting strength, i.e., that deny minorities a fair opportunity to elect candidates of their choice.

The use of at-large elections by a city, county, or school district or for the election of judges may unlawfully dilute the voting rights of blacks or other minorities in comparison to the results under a fairly-drawn, single-member district plan. A redistricting plan may similarly discriminate against blacks (or other minorities) by unduly overpopulating a majority black district, by dividing concentrations of blacks to prevent the formation of effective black majority districts, or by creating districts that have unnecessarily high black percentages and thus limit the number of districts with viable black majorities. It should be noted that Section 2 does not establish a right to have members of a protected minority elected in numbers equal to their proportion in the population.

8-2.276 Defense of Racially Fair Redistricting Plans

The Voting Section defends from unjustified attack redistricting plans designed to provide minority voters fair opportunities to elect candidates of their choice and endeavors to achieve racially fair results where courts find, following *Shaw v. Reno*, 113 S.Ct. 286 (1993), and *Johnson v. Miller*, 115 S.Ct. 2475 (1995), that redistricting plans constitute unconstitutional racial gerrymanders.

8-2.277 Preclearance of Voting Changes (Section 5)

Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, requires specially covered jurisdictions to preclear any voting changes they make, from polling place relocations to congressional redistrictings, by demonstrating, either to the Attorney General (who has delegated this responsibility to the Assistant Attorney General for Civil Rights) or to the United States District Court for the District of Columbia, that the change is not discriminatory, either in purpose or in effect.

Section 5 applies (as a result of determinations made under Section 4) to all of nine states and parts of seven others. The appendix to the Attorney General's Section 5 guidelines, 28 C.F.R. Part 51, lists the jurisdictions subject to the Section 5 preclearance requirement. See the Civil Rights Resource Manual at 30 for a list of judicial districts containing jurisdictions subject to Section 5. The preclearance requirement applies to a few other jurisdictions by court order under Section 3(c) of the Voting Rights Act, 42 U.S.C. § 1973a(c).

Section 5 enforcement also involves litigation: the Voting Section defends declaratory judgment actions brought by jurisdictions (usually following an objection) to gain judicial preclearance and files enforcement actions to prevent the implementation of unprecleared voting practices. Three-judge courts are required for both kinds of actions.

Jurisdictions seeking to implement voting changes must submit the changes directly to the Voting Section (see 28 C.F.R. § 51.24 for address). Voting changes should not be submitted for review to the United States Attorney. United States Attorneys who receive Section 5 submissions should immediately alert the Voting Section, by telephone, EMail, or fax, and then forward the submission to the Voting Section by mail (and by fax, if it is an urgent matter).

For information on termination of coverage and bailout, see the Civil Rights Resource Manual at 13.

8-2.278 Federal Voter Registration (Section 6)

Section 6 of the Voting Rights Act, 42 U.S.C. § 1973d, authorized federal registration of voters, through certification by the Attorney General, where local registrars would not open voter registration to blacks. Because of the success of the Act, the Department has not needed to request voter registration by federal examiners in many years, and the implementation of the National Voter Registration Act may make further federal voter registration unnecessary. Approval from the Office of Personnel Management must be obtained by a jurisdiction before a federally registered voter can be purged from the local voter lists.

Federal examiners may be contacted on election day to take complaints of discrimination against federally listed voters.

For information on termination of coverage and bailout, see the Civil Rights Resource Manual at 13.

8-2.279 Federal Observer Assignment (Section 8)

Section 8 of the Voting Rights Act, 42 U.S.C. § 1973f, authorizes the Department to request the assignment of federal observers (who generally are employees of the Office of Personnel Management) to monitor polling place activities on election day. Observers monitor the treatment inside the polls not only of blacks but also of Native Americans, Chinese Americans, and Hispanics. Federal observers can be sent only to jurisdictions that (1) are covered under Section 4 -- these are the same jurisdictions that are subject to the preclearance requirement of Section 5 -- and (2) are certified by the Attorney General under Section 6 for the assignment of federal examiners or that are under a Section 3(a) court order.

Federal observers are used when it appears likely that minority voters will be denied the right to vote, denied needed voter assistance (including minority language assistance) in casting their ballots, or otherwise discriminated against in polling place activities. Observers are authorized to watch all polling place activities, including assistance to voters and the counting of ballots, and the information they obtain can be given only to their supervisors and to Department attorneys. Observers are not allowed to give advice or direction to anyone, including poll officials, poll watchers and voters, nor do observers intervene or participate in the conduct of elections in any manner. When observers are present in a county to monitor an election, one or more Department attorneys (usually from the Voting Section) are also present to act as liaison with local officials and minority leaders and to take corrective action based on the information provided by the observers.

The decision to send federal observers to a county for a particular election is made by the Assistant Attorney General, Civil Rights Division, on the basis of pre-election surveys conducted by Voting Section attorneys and after consultation by the Voting Section with United States Attorneys.

For information on termination of coverage and bailout, see the Civil Rights Resource Manual at 13.

8-2.280 Minority Language (Section 4(f)(4) and Section 203(c))

As amended in 1975, 1982, and 1992, Sections 4(f)(4) and 203(c) of the Voting Rights Act, 42 U.S.C. §§ 1973b(f)(4) and 1973aa-1a(c), require certain jurisdictions (based on formulas in the Act) to conduct elections in the languages of one or more language minority groups (American Indians, Asian Americans, Alaskan Natives, and persons of Spanish heritage) as well as in English. Covered jurisdictions are listed in the appendix to 28 C.F.R. Part 55, the Attorney General's minority language guidelines. See the Civil Rights Resource Manual at 30 for a list of judicial districts containing jurisdictions subject to the Act's minority language requirements.

The minority language requirements apply to all phases of the electoral process, from voter registration to assistance at the polls; to federal, state, and local elections, and to primary, general, and special elections. The basic requirement is that affected jurisdictions take whatever steps are necessary to enable minority language citizens to participate effectively in the electoral process. Enforcement of the minority language requirements through lawsuits and through the Section 5 preclearance process have resulted in the adoption of detailed minority language election information programs in counties in the Southwest and California and in New York City.

For further information with respect to the application of the minority language requirements and the Attorney General's interpretation of the duty imposed by these requirements, see 28 C.F.R. Part 55, Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, in the Civil Rights Resource Manual. For information on termination of coverage and bailout, see the Civil Rights Resource Manual at 13.

A three-judge court is required for Section 203(c) enforcement but not for Section 4(f)(4) enforcement.

8-2.281 Application of Preclearance, Examiner, and Observer Provisions to Other Jurisdictions (Section 3)

In voting rights litigation (both Departmental and private), Section 3 of the Voting Rights Act, 42 U.S.C. § 1973a, authorizes courts to impose the preclearance and federal examiner provisions on jurisdictions not otherwise subject to them, and if a court has ordered the federal examiner remedy for a jurisdiction, the Attorney General is authorized to request the use of federal observers in that jurisdiction.

8-2.282 United States Attorney Enforcement of Minority Language Provisions

United States Attorneys have primary enforcement responsibility for the minority language requirements in jurisdictions covered by Section 203 only, which are not subject to preclearance, examiner, and observer provisions of the Voting Rights Act. The affected jurisdictions are listed in 28 C.F.R. Part 55. The Voting Section should be apprised by United States Attorneys on a regular basis of the Section 203 compliance program activities they are pursuing in their districts. Before any Section 203 suit is filed, a memorandum justifying the suit and a copy of the proposed complaint should be forwarded to the Assistant Attorney General, Civil Rights Division, for approval.

8-2.283 Poll Tax (Section 10)

Under the 24th Amendment and *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), the payment of a poll tax cannot be required as a prerequisite to voter registration or voting. The Attorney General is authorized to seek civil relief against the imposition of a poll tax by Section 10 of the Voting Rights Act, 42 U.S.C. § 1973h.

8-2.284 Eighteen-Year-Old Voters (Section 301)

Section 301 of the Voting Rights Act, 42 U.S.C. § 1973bb, authorizes the Attorney General to enforce the 26th Amendment, which prohibits the denial (on account of age) of the right of vote of anyone over the age of 18. A three-judge court is required.

8-2.286 Voting Rights -- Miscellaneous Provisions

For information on the Voting Assistance for the Elderly and Handicapped Act, see the Civil Rights Resource Manual at 14. For information on the National Voter Registration Act of 1993 (Motor Voter Law), see the Civil Rights Resource Manual at 15. For information on the Uniformed and Overseas Citizens Absentee Voting Act, see the Civil Rights Resource Manual at 16. For information on Absentee Voting for President, see the Civil Rights Resource Manual at 17.

For information on how to contact the Voting Section, see the Civil Rights Resource Manual at 18.

8-2.289 Preservation and Production of Voting Records, 42 U.S.C. §§ 1974 to 1974d

State and local officials are required to retain and preserve all records or papers in their possession in connection with registration or other requisites for voting in any general, special, or primary election for federal office. The record must be preserved for a period of 22 months from the date of the particular election. The duty to preserve devolves upon any other person to whom the records may be delivered.

The person having control, custody, or possession of the records shall, upon a demand in writing by the Attorney General or the Attorney General's representative, make the records available for inspection, reproduction and copying. It should be noted that the records must be made available by anyone having custody, whether it be a state executive official or a judicial or quasi-judicial body.

8-2.400 Disability Rights Section

The Disability Rights Section (DRS) investigates and litigates cases under Titles I, II, and III of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, a comprehensive civil rights statute for persons with disabilities. Title I prohibits discrimination on the basis of disability in employment; Title II prohibits such discrimination in the provision of all programs, activities, and services of state and local government, including public transportation; and Title III prohibits such discrimination by public accommodations, commercial facilities, and entities that offer courses or examinations related to professional or educational certification. Titles II and III also require all newly constructed or altered covered facilities to comply with ADA accessibility standards. A more detailed discussion of the ADA is contained in the publication *Civil Rights*, available from the Office of Legal Education Litigation Series in hard copy and as part of the USABook electronic library.

8-2.410 Disability Rights Section -- ADA Enforcement

Allegations of discrimination by state or local government employers under Title I (which are also covered by Title II) are investigated by the Equal Employment Opportunity Commission (EEOC), and referred to the DRS for litigation if necessary. The EEOC retains for litigation Title I matters that involve private employers. Allegations under Titles II and III are investigated and litigated by the Civil Rights Division. Remedies and enforcement procedures for Title I are those provided by Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, and include injunctive relief and compensatory damages with certain prescribed limits. Punitive damages are not available against public employers. Remedies and procedures for enforcement under Title II parallel those available pursuant to Section 504 of the Rehabilitation Act of 1973, and include injunctive relief and compensatory damages. The remedies available under Title III in litigation initiated by the Division include injunctive relief, compensatory damages, and civil penalties of up to \$50,000 for a first violation, and \$100,000 for any subsequent violation.

The DRS has primary responsibility for all of the Department's cases and matters arising under Titles I, II, and III. The DRS coordinates closely with United States Attorneys' offices in all of its cases. In addition, specific United States Attorneys' offices (USAOs), which are participating in a pilot ADA enforcement program, have taken primary responsibility for many ADA cases in their districts. This program is coordinated by the DRS. In addition, all USAOs can facilitate the DRS's effort by referring any ADA complaints they receive to the DRS, and by notifying the DRS of any private ADA lawsuits so that the Department may consider intervention or amicus participation.

United States Attorneys' offices should make efforts to coordinate the positions taken by the Department as defendant in cases involving allegations of disability discrimination (e.g., cases brought under the Rehabilitation Act of 1973), with the positions taken in the Department's affirmative ADA litigation and other defensive litigation handled by the Civil Division. If you become aware of such cases, please contact the Appellate Sections of the Civil Rights Division and the Civil Division.

The DRS is also responsible for providing technical assistance to individuals and entities affected by the ADA (as mandated under Section 504 of the Act), for coordinating ADA technical assistance government-wide, and for the certification of state or local building codes under Title III (pursuant to section 308 of the Act). For information on the DRS's ADA Technical Assistance Program, see the Civil Rights Resource Manual at 31.

The DRS certifies state and local accessibility codes under Title III. See the Civil Rights Resource Manual at 32.

8-2.500 Office of Special Counsel For Immigration Related Unfair Employment Practices

The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) investigates and prosecutes cases of employment discrimination under the Immigration and Nationality Act (INA). The Office was created by Congress in response to the concern that civil and criminal sanctions imposed by the Immigration Reform and Control Act of 1986 (IRCA) might result in employment discrimination against individuals who look or sound "foreign" or who are not U.S. citizens. Injured parties may file charges based on alleged citizenship status or national origin discrimination, document

abuse (i.e., overdocumentation in the employment eligibility verification process), or retaliation with OSC. OSC is responsible for investigating and litigating such claims. OSC also initiates independent investigations based on information it may obtain from a charge, an independent source or referrals from other government agencies. These independent investigations usually involve pattern or practice allegations.

Complaints are tried before specially designated Administrative Law Judges (ALJ), whose decisions are appealable directly to the U.S. Circuit Courts of Appeal. Final decisions and subpoenas issued by an ALJ are enforceable in U.S. District Court. OSC will coordinate these district court cases with the appropriate United States Attorney's Office.

OSC also has an active public outreach component that publishes educational materials and provides training concerning the employment discrimination provisions of the INA. OSC's public outreach also includes employee and employer hotline numbers (800-255-7688 or 800-255-8155, respectively, or 800-362-2735 (TDD line)) with information about the law, a fax-back feature, and attorneys and other office personnel (including Spanish speakers) who are available to answer questions about the law.

ENFORCEMENT OF CIVIL RIGHTS CRIMINAL STATUTES

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8-3.010 Introduction

The United States Attorney is responsible for the enforcement of criminal civil rights statutes in accordance with the procedures set forth below. The Criminal Section oversees the enforcement of the criminal civil rights statutes administered by the Civil Rights Division. The principal statutes are 18 U.S.C. § 241 (conspiracy to injure citizens in the exercise of federal rights); 18 U.S.C. § 242 (willful deprivations of federal rights under color of law); 18 U.S.C. § 245 (interference with federally protected activities); 18 U.S.C. § 247 (damage to religious property); 18 U.S.C. § 248 (Freedom of Access to Clinic Entrances); 42 U.S.C. § 3631 (interference with fair housing activities); 18 U.S.C. § 1581 (peonage); 18 U.S.C. § 1584 (involuntary servitude); 18 U.S.C. § 1589 (forced labor); 18 U.S.C. § 1590 (trafficking with respect to slavery); 18 U.S.C. § 1591 (sex trafficking); and 18 U.S.C. § 1592 (document confiscation in furtherance of slavery).

A detailed description of the Criminal Section, an explanation of the various statutes, and sample forms, are included in the Civil Rights Resource Manual at 33 et seq.

8-3.100 Coordination of Activities

The Civil Rights Division and the United States Attorneys' Offices (USAOs) will work as partners to ensure a vigorous national civil rights enforcement program. The purpose of this chapter is to provide guidance to the United States Attorneys and the Criminal Section of the Civil Rights Division in carrying out their responsibilities in the investigation and prosecution of violations of criminal civil rights statutes in a manner that (1) encourages initiative on the part of individual United States Attorneys and draws upon their litigation expertise and knowledge of the local community; and (2) utilizes the trial expertise and

institutional knowledge of the Criminal Section of the Civil Rights Division. Cooperative prosecutions and investigations utilizing attorneys from both the Criminal Section and the USAOs can be particularly successful and can provide valuable benefits in the enforcement of these statutes. When it is appropriate for either the Civil Rights Division or a USAO to act independently on a matter in a particular district, the office initiating the activity should ensure that the other office is notified in advance of the activity. Specifically, prior to initiating any significant activity in a district, the Civil Rights Division shall provide notice to the designated contact attorney for the USAO. Similarly, USAOs shall advise the Civil Rights Division of matters not already being monitored by the Civil Rights Division which appear likely to result in inquiries to the Civil Rights Division.

8-3.110 Initiation of FBI Investigations

Absent emergency circumstances, the Civil Rights Division shall fax a copy of any initiating FBI investigative request to the designated point of contact for the United States Attorney in the relevant district simultaneously when the request is forwarded to FBI headquarters to allow for any input from the United States Attorney's Office (USAO) before FBI headquarters forwards the request to the field. Similarly, the USAO shall either call with the information or fax a copy of any initiating FBI investigative request to the Chief of the Criminal Section of the Civil Rights Division.

8-3.120 Staffing of Cases

Subject to the general principles contained herein, either the Civil Rights Division or a United States Attorney's Office (USAO) may investigate and prosecute on its own any type of criminal civil rights violation.

At the outset of a criminal investigation initiated by a USAO that may implicate federal criminal civil rights statutes, including human trafficking and involuntary servitude statutes (18 U.S.C. §§ 1581 - 1594), and in no event later than ten days before the commencement of the examination of witnesses before a grand jury, the United States Attorney shall advise the Civil Rights Division in writing of the new investigation. In cases involving sex trafficking of minors in violation of 18 U.S.C. § 1591, the Child Exploitation and Obscenity Section of the Criminal Division should also receive notification. The notification should be by letter or electronic mail and contain the following information: (a) identity of the targets of the investigation; (b) the factual allegations to be investigated; (c) the statutes which may have been violated; (d) the United States Attorney's assessment of the significance of the case and whether the case is one of "national interest," as defined below; and (e) the United States Attorney's proposed staffing of the matter (including whether a Civil Rights Division attorney should be assigned to work directly on the matter). The United States Attorney will advise the Civil Rights Division, as the case develops, of new information relating to the assessment of the case and whether it is one of "national interest."

The staffing proposal of the United States Attorney will be given deference by the Civil Rights Division. If the Civil Rights Division does not express disagreement with a staffing proposal by the United States Attorney within three business days, the proposal is deemed acceptable. The Assistant Attorney General of the Civil Rights Division retains the final and on-going authority to determine the staffing of any criminal civil rights matter.

8-3.130 Cases of National Interest

A case is of "national interest" if it is a case that presents important public policy considerations; a novel issue of law; a case that because of peculiar facts and circumstances, may set important precedent; a case with simultaneous investigations in multiple districts (unless the United States Attorney's Office (USAO) in each district and the Civil Rights Division conclude that national interests are not involved); a case with international or foreign policy implications; an urgent or sensitive case; or a case that substantially affects the uniform application of the law. A case involving a violation of the federal criminal civil rights laws resulting in death is presumed to be a case of national interest. In a case of national interest, the Assistant Attorney General, in consultation with the United States Attorney, may require that the USAO and the Civil Rights Division participate jointly as co-counsel from the initiation of the investigation through prosecution, taking into consideration all of the circumstances, including the experience of the particular USAO and the efficient use of government resources. The Assistant Attorney General for Civil Rights shall have the ultimate authority to determine whether a case is of "national interest", considering all relevant factors and in consultation with the United States Attorney.

8-3.140 Advance Notice/Prior Approvals of Indictments

United States Attorneys need not obtain prior authorization by the Civil Rights Division to indict criminal civil rights cases, unless the case has been deemed by the Assistant Attorney General as a case of national interest or unless approval is required by statute. Prior to presenting any civil rights case for indictment, however, the United States Attorney shall provide written notification to the Civil Rights Division of the intention to seek an indictment or to file a felony information. This notification should occur at least 10 business days before the indictment will be presented to the grand jury, except in emergencies when time is of the essence. The notification should be accompanied by a copy of the proposed indictment and any existing prosecutive memorandum. United States Attorneys are encouraged to provide even earlier notice as a general practice in order to take full advantage of the expertise of the Civil Rights Division.

Even in those cases in which the United States Attorney need not obtain prior authorization to indict, if there exists a significant issue affecting the Department's enforcement of federal civil rights laws, then the Assistant Attorney General may exercise the ultimate authority to disapprove the prosecution.

If prior approval to indict a civil rights matter is required because the case has been deemed by the Assistant Attorney General to be a case of national interest or because approval is required by statute, the United States Attorney will provide to the Civil Rights Division a copy of the proposed indictment and any prosecutive memorandum at least 10 business days in advance of the time when the indictment will be presented to the grand jury. The Civil Rights Division will communicate its authorization decision within 10 business days of receipt of the proposed indictment, unless certification by ranking Department officials is required by law (Sections 245 and 247).

8-3.150 Declinations

The United States Attorneys may decline cases in their offices by orally advising the FBI, which declination shall then be reflected in the investigative report submitted by the FBI.

In all cases resulting in death, the Civil Rights Division will continue to obtain the concurrence of the United States Attorney before closing any such case.

Ultimate declination authority in any case arising under the federal civil rights laws resides with the Assistant Attorney General for Civil Rights.

8-3.160 Appeals

Appeals in civil rights cases are supervised by the Appellate Section of the Civil Rights Division. For United States Attorneys' responsibilities in the handling of criminal appeals. *See* USAM 2-3.210.

8-3.170 Cooperation with State Prosecutions

Frequently, conduct which deprives persons of federally protected rights in violation of federal law also violates state law. In such cases, where state and local authorities undertake vigorous prosecution in state courts, it is Department policy to cooperate fully with the local prosecutor.

Any release of reports of investigation should be in accordance with 28 C.F.R. Part 16.

8-3.180 Subpoenas Issued to FBI Agents

Occasionally FBI agents are subpoenaed to appear to testify in local proceedings or even in federal proceedings to which the United States is not a party. Quite often the subpoena is issued on behalf of a state defendant in a criminal case seeking to obtain the results of an FBI investigation into alleged police mistreatment of the defendant. The Department's policy is to resist such a subpoena except where the FBI agent can give eyewitness testimony like any other witness. *See* 28 C.F.R., Part 16.

When subpoenas are issued to Department of Justice attorneys or agents for either testimony or records in any civil rights matter, the Assistant Attorney General has ultimate authority to determine the Department's position regarding compliance with the subpoena. Any motions to quash or related proceedings should be handled by the United States Attorney's Office in consultation with the Civil Rights Division. *See* the Civil Rights Resource Manual at 48.

8-3.190 Notification to Parties of Closing File

The Criminal Section has developed a procedure for routine notification, at the time a file is closed by the Criminal Section, of sending computer-generated form letters to victims, complainants, subjects and heads of agencies in all investigations of police misconduct. Copies of the form letters are included in the Civil Rights Resource Manual at 37 et seq. No letters are sent in racial violence, FACE, or slavery matters. It is important that United States Attorneys advise the Criminal Section as soon as possible of any matters involving police misconduct which they believe may have prosecutive merit, not more than 30 days after receipt of the final FBI report in the matter. Notice letters will not be sent in any matter in which a United States Attorney's Office has expressed an interest in prosecution or further investigation.

8-3.195 Production or Disclosure in Federal And State Proceedings of Material or Information in Civil Rights Division Files

General procedures to be followed by Department of Justice employees in responding to demands for Department information in federal and state proceedings are contained in 28 C.F.R. Part 16. The Division's specific procedures are set forth in the Civil Rights Resource Manual at 48.

8-3.200 Prior Approvals

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|---------|---|---|
| 8-3.120 | At the outset of a criminal investigation initiated by a USAO that may implicate federal criminal civil rights statutes, including human trafficking and involuntary servitude statutes, and in no event later than ten days before the commencement of the examination of witnesses before a grand jury. | Civil Rights Division to be advised in writing. |
| 8-3.120 | In cases involving sex trafficking of minors in violation of 18 U.S.C. § 1591. | Notify the Child Exploitation and Obscenity Section of the Criminal Division. |
| 8-3.140 | Indictments of cases deemed by the Assistant Attorney General to be of national interest, or as required by statute. | Prior authorization by the Civil Rights Division |



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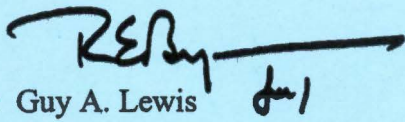
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NOV 20 2002

TO: Holders of United States Attorneys' Manual Title 8


FROM: Guy A. Lewis
Director
Executive Office for United States Attorneys

RE: New Notification Requirements in Human Trafficking and
Involuntary Servitude Cases

AFFECTS: USAM 8-1.100 (B); 8-3.010; and 8-3.120

Please find attached a revision to the United States Attorneys' Manual issued by the Attorney General which sets forth new notification procedures for human trafficking and involuntary servitude cases. The changes affect Title 8, Chapters 1 and 3. The effective date of this policy is November 1, 2002.

Attachment

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PROPOSED REVISIONS TO TITLE 8 (CIVIL RIGHTS)
OF THE U.S. ATTORNEYS' MANUAL

8-1.100(B) Statutes and Executive Orders Administered by the Civil Rights Division

B. CRIMINAL STATUTES. 18 U.S.C. §§ 241 to 248, 594, 841 to 848, 875, 876, 924, 1001, 1503, 1504, 1508 to 1513, 1581 to 1594, 1621 to 1623, 2191 to 2196; 42 U.S.C. §§ 300a-8, 1973i(a)-(e), 1973j(a)-(c), 1973aa-3, 1973bb(b), 1973dd-3(b)-(c), 1974, 1974a, 2000e-8, 2000e-10, 3631; 46 U.S.C. §§ 658, 701.

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* * *

Note that Title 9 (Criminal Division) will also be updated to reflect the new slavery statutes and obligations imposed by those statutes toward victims of trafficking. The Criminal Section of the Civil Rights Division will work with the Criminal Division to ensure that cross references to the new statutes are inserted and explained in appropriate places.