



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 23 2019

The Honorable Michael R. Pence
President
United States Senate
Washington, D.C. 20510

Dear Mr. President:

Enclosed please find a report to Congress about the Department's activities during Fiscal Year 2018 pursuant to the Civil Rights of Institutionalized Persons Act, as required by 42 U.S.C. § 1997f.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink that reads "Steve Escalona / for".

Stephen E. Boyd
Assistant Attorney General

Enclosure



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Office of Legislative Affairs

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Washington, D.C. 20530

APR 23 2019

The Honorable Charles E. Grassley
President Pro Tempore
United States Senate
Washington, D.C. 20510

Dear Mr. Leader:

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Stephen E. Boyd
Assistant Attorney General

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Washington, D.C. 20530

APR 23 2019

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

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Stephen E. Boyd
Assistant Attorney General

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APR 23 2019

The Honorable Charles E. Schumer
Minority Leader
United States Senate
Washington, D.C. 20510

Dear Mr. Leader:

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Assistant Attorney General

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APR 23 2019

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Speaker:

Enclosed please find a report to Congress about the Department's activities during Fiscal Year 2018 pursuant to the Civil Rights of Institutionalized Persons Act, as required by 42 U.S.C. § 1997f.

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Assistant Attorney General

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Washington, D.C. 20530

APR 23 2019

The Honorable Steny Hoyer
Majority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Leader:

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Sincerely,

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Stephen E. Boyd
Assistant Attorney General

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APR 23 2019

The Honorable Kevin O. McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Leader:

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Stephen E. Boyd
Assistant Attorney General

Enclosure

**Department of Justice Activities
Under the
Civil Rights of Institutionalized Persons Act
Fiscal Year 2018**

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I. Introduction and Overview

The Civil Rights of Institutionalized Persons Act (CRIPA), enacted in 1980, protects the constitutional and federal statutory rights of people confined to residential institutions, including facilities for persons with mental illness or intellectual and developmental disabilities, nursing facilities, prisons, jails, and juvenile facilities, run by or on behalf of state or local governmental entities. The Department of Justice's Civil Rights Division (Division), Special Litigation Section is charged with CRIPA enforcement.

The Division is authorized to open an investigation upon reasonable belief that individuals confined in a covered residential institution may be subjected to a pattern or practice that deprives them of their constitutional or federal statutory rights.¹ When the investigation has concluded, the Division informs the jurisdiction, in writing, of the results of its investigation. If an investigation reveals evidence of a pattern or practice that deprives individuals of their constitutional or federal statutory rights, the Division will identify the conditions that cause the deprivations, the facts that support its assessment, and the minimum remedial measures that may remedy the deprivations. The Division then engages in negotiation and conciliation efforts and provides technical assistance to help jurisdictions correct the identified unconstitutional conditions. Only if these efforts fail may the Division institute a civil action for equitable relief necessary to correct the violations of rights.

The Division achieved important successes pursuant to its CRIPA authority to protect the rights of vulnerable people in residential institutions during Fiscal Year 2018. The Division opened three new CRIPA investigations, terminated three CRIPA cases, and closed two CRIPA investigations. At the end of Fiscal Year 2018, the Division had active CRIPA matters and

¹ CRIPA protects only constitutional rights in jails and prisons.

cases involving 106 facilities in 17 states, the Commonwealth of Puerto Rico, and the Virgin Islands.

The Division is also charged with providing information regarding the progress made by the Bureau of Prisons and the Department of Veterans Affairs toward meeting existing standards and constitutionally guaranteed minimums for such institutions pursuant to Section f(5) of CRIPA. Statements from both of these federal agencies are attached.

II. Filing of CRIPA Complaints and Resolution of Investigations and Lawsuits

The Division did not file a CRIPA complaint or enter a settlement to resolve a CRIPA investigation or lawsuit in Fiscal Year 2018.

III. Prison Litigation Reform Act

The Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626, enacted in 1996, covers prospective relief in prisons, jails, and juvenile justice facilities. The Division has defended the constitutionality of the PLRA and has incorporated the PLRA’s requirements in the remedies it seeks regarding improvements in correctional and juvenile justice facilities.

IV. Compliance Evaluations

By the end of Fiscal Year 2018, the Division monitored compliance with CRIPA consent decrees, settlement agreements, and court orders designed to remedy unlawful conditions in numerous facilities throughout the United States. These facilities are:

A. Facilities for persons with developmental disabilities:

| Facility or Facilities | Case or Agreement | Court/Date |
|--|--|----------------|
| Centro de Servicios Múltiples Rosario Bellber | <u>United States v. Puerto Rico</u> , 99-1435 | D.P.R. 1999 |
| Abilene State Supported Living Center; Austin State Supported Living Center; Brenham State Supported Living Center; Corpus Christi State Supported Living Center; Denton State Supported Living Center; El Paso State Supported Living Center; Lubbock State | <u>United States v. Texas</u> , A-09-CA-490 | E.D. Tex. 2009 |

| Facility or Facilities | Case or Agreement | Court/Date |
|---|-------------------|------------|
| Supported Living Center; Lufkin State Supported Living Center; Mexia State Supported Living Center; Richmond State Supported Living Center; Rio Grande State Supported Living Center; San Angelo State Supported Living Center; and San Antonio State Supported Living Center | | |

B. Juvenile justice facilities:

| Facility or Facilities | Case or Agreement | Court/Date |
|---|---|-----------------|
| Bayamon Detention Center; Centro Tratamiento Social Bayamon; Centro Tratamiento Social Humacao; Centro Tratamiento Social Villalba; and CTS Ponce | <u>United States v. Puerto Rico</u> , 94-2080 CCC | D.P.R. 1994 |
| Leflore County Juvenile Detention Center | <u>United States v. Leflore County, Mississippi</u> , 4:15-cv-00059 | N.D. Miss. 2015 |

C. Jails:

| Facility or Facilities | Case or Agreement | Court/Date |
|---|--|-----------------|
| Muscogee County Jail | <u>United States v. Columbus Consolidated City/County Gov't, Georgia</u> , 4-99-CV-132 | M.D. Ga. 1999 |
| Orleans Parish Prison | <u>Jones & United States v. Gusman</u> , 2:12-cv-00859 | E.D. La. 2008 |
| Grant County Detention Center, Kentucky | 2009 Settlement Agreement | N/A |
| Oklahoma County Jail and Jail Annex, Oklahoma | 2009 Settlement Agreement | N/A |
| Erie County Detention Center and Holding Facility | <u>United States v. Erie County, New York</u> , 09-CV-0849 | W.D.N.Y. 2009 |
| Lake County Jail | <u>United States v. Lake County, Indiana</u> , 2:10-CV-476 | N.D. Ind. 2010 |
| Miami-Dade County Detention | <u>United States v. Miami-Dade County, Florida</u> , 1:13-CV-21570 | S.D. Fla. 2013 |
| Piedmont Regional Jail Authority, Virginia | <u>United States v. Piedmont Regional Jail Authority</u> , 3:13-CV-646 | E.D. Va. 2013 |
| Los Angeles County Jails | <u>United States v. County of Los Angeles, California and Los Angeles County Sheriff</u> , 2:15-cv-05903 | C.D. Cal. 2015 |
| Westchester County Jail | 2015 Settlement Agreement | N/A |
| Hinds County Adult Detention Center and Jackson City Detention Center | <u>United States v. Hinds County, Mississippi Board of Supervisors</u> , 3:16-cv-00489 | S.D. Miss. 2016 |

D. Prisons:

| Facility or Facilities | Case or Agreement | Court/Date |
|--|---|----------------|
| Golden Grove Correctional and Adult Detention Facility | <u>United States v. Virgin Islands</u> , 86-265 | D.V.I. 1986 |
| Julia Tutwiler Prison for Women Correctional Facility | <u>United States v. Alabama</u> , 2:15cv368 | M.D. Ala. 2015 |

V. Termination of CRIPA Cases

In Fiscal Year 2018, the three CRIPA cases terminated. On October 16, 2017, in United States v. State of New York (N.D.N.Y.), the United States and the State of New York informed the court that the State had satisfied all remaining provisions of a 2010 consent decree concerning conditions in several juvenile justice facilities, and jointly moved that the case be dismissed. At the time of the joint motion to dismiss, one facility was subject to monitoring under the consent decree.² The parties informed the court that the State had maintained substantial compliance at that facility for 12 consecutive months, and that the State had also implemented key reforms across its system, including in rehabilitative services, abuse investigations, and improved staffing. The court granted the motion to dismiss on October 20, 2017.

On May 25, 2018, in United States v. Robertson County (M.D. Tenn.), the United States and Robertson County, Tennessee filed a joint motion seeking dismissal of this case, which concerned mental health care at the Robertson County Detention Facility in Springfield, TN. The motion to dismiss was based on the jail having come into and sustained compliance with the requirements of a 2013 consent decree. The court granted the motion on May 30, 2018.

² Two other facilities had previously maintained substantial compliance with the decree and were dismissed from the litigation in 2014 and 2015, respectively. The State closed a fourth facility in 2013.

On June 12, 2018, in United States v. Cook County, Ill. (N.D. Ill. 2010), the United States and Cook County informed the court that the County had come into and maintained substantial compliance with all remaining provisions of a 2010 consent decree governing conditions at the Cook County Jail, and moved to dismiss this case. The parties' recommendation was based on court monitors' reports that documented the County's compliance with consent decree provisions regarding medical care, mental health care, and suicide prevention at the Jail. The court granted the request for dismissal on June 26, 2018.³

VI. New CRIPA Investigations

The Division opened three CRIPA investigations during Fiscal Year 2018. In April 2018, the Division opened an investigation of the conditions of confinement at the Lowell Correctional Institution and the Lowell Annex ("Lowell"), a women's prison complex in Ocala, Florida. The investigation focuses on Lowell's ability to protect prisoners from sexual abuse.

In April 2018, the Division opened an investigation of the conditions of confinement at the Edna Mahan Correctional Facility for Women in Clinton, New Jersey. The investigation focuses on Edna Mahan's ability to protect prisoners from sexual abuse.

In June 2018, the Division opened an investigation of the conditions of confinement at the Cumberland County Jail in Bridgeton, New Jersey. The investigation focuses on whether the Cumberland County Jail provides adequate mental health care and takes reasonable measures to prevent suicides.

VII. CRIPA Notice Letters Pursuant to 42 U.S.C. § 1997b(a)(1)

The Division did not issue a CRIPA notice letter pursuant to 42 U.S.C. § 1997b(a)(1) during Fiscal Year 2018.

³ In Fiscal Year 2017, the court approved the parties' request to release Cook County Sheriff Thomas Dart from this litigation, based on the Sheriff's substantial compliance with all of his obligations under the consent decree to ensure constitutional conditions of confinement at the Jail.

VIII. Investigation Closures

In Fiscal Year 2018, the Division closed two CRIPA investigations. In October 2017, the Division closed its investigation of the Pendleton Juvenile Facility in Pendleton, Indiana. The Division recognized Indiana's significant reforms to reduce juvenile isolation, to implement suicide precautions, and to curtail the use of a restraint chair and concluded that continuation of the Division's investigation was no longer warranted.

In June 2018, the Division closed its investigation of the Coffee County Jail in Douglas, Georgia. During the Division's investigation, Coffee County implemented a number of reforms, including replacing a badly outdated facility with a more modern jail, retaining a medical contractor that made numerous improvements, increasing pay and staffing levels for correctional officers, and adopting new classification policies and supervision practices.

IX. Technical Assistance

Where federal financial, technical, or other assistance is available to help jurisdictions correct deficiencies, the Division advises responsible public officials of the availability of such aid and arranges for assistance when appropriate. The Division also provides technical assistance through the information provided to jurisdictions by the Division's expert consultants at no cost to state or local governments. During the course (and at the conclusion) of investigatory tours, the Division's expert consultants often meet with officials from the subject jurisdiction and provide helpful information regarding specific aspects of their programs. These oral reports permit early intervention by local jurisdictions to remedy highlighted issues before a notice letter issues.

To ensure timely and efficient compliance with settlement agreements, the Division has also issued post-tour compliance assessment letters to apprise jurisdictions of their compliance status. These letters also routinely contain technical assistance and remedial recommendations.

X. Responsiveness to Allegations of Illegal Conditions

During Fiscal Year 2018, the Division reviewed allegations of unlawful conditions of confinement in public residential facilities from a number of sources, including individuals who live in the facilities, relatives of persons living in facilities, former staff of facilities, advocates, concerned citizens, media reports, and referrals from within the Division and other federal agencies. The Division received 3,986 CRIPA-related citizen complaint letters, 128 CRIPA-related emails, and 469 CRIPA-related phone calls during the fiscal year. In addition, the Division responded to 165 CRIPA-related inquiries from Congress and from writers directing their inquiries to the President.

XI. Conclusion

In Fiscal Year 2019 and beyond, the Division intends to continue to enforce CRIPA to identify and remedy unlawful conditions that harm individuals in residential institutions run by or on behalf of state or local governmental entities.



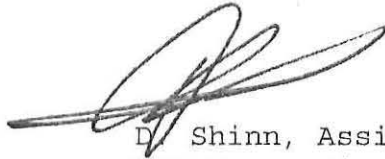
U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

October 2, 2018

MEMORANDUM FOR STEVE ROSENBAUM, CHIEF
SPECIAL LITIGATION SECTION
CIVIL RIGHTS DIVISION, DOJ

FROM:  D. Shinn, Assistant Director
Program Review Division, BOP

SUBJECT: Response for the Attorney General's Report to
Congress for FY 2018 Pursuant to the Civil Rights of
Institutionalized Persons Act of 1997

The Bureau of Prisons appreciates the opportunity to report our actions during FY 2018 as related to the Attorney General's Report to Congress for FY 2017 Pursuant to the Civil Rights of Institutionalized Persons Act of 1997.

The following is provided for insertion into the report:

FEDERAL BUREAU OF PRISONS

The Federal Bureau of Prisons (Bureau) adheres to the correctional standards developed by the American Correctional Association (ACA), the Prison Rape Elimination Act (PREA) of 2003 (Public Law 108-79; September 4, 2003), and 28 CFR Part 115, Prison Rape Elimination Act National Standards. These standards cover all facets of correctional management and operation, including the basic requirements related to life/safety and constitutional minima, which includes provisions for an adequate inmate grievance procedure, and a zero tolerance toward all forms of sexual activity, including

sexual abuse and sexual harassment.

ACA standards have been incorporated into the Bureau's national policy, as well as the program review guidelines. Currently, the Bureau's 122 institutions, the agency's two training centers (Staff Training Academy and Management and Specialty Training Center), and the Bureau's Headquarters are accredited by the Commission on Accreditation for Corrections.

ACA accredited institutions are subject to interim audits by the ACA Commission to monitor standards compliance. Particular attention is given in the vital areas of inmate rights, healthcare, security, safety, and sanitation. The standards are reviewed at least annually for continued compliance, by institutional staff, through the operational review process. In addition to operational reviews, program reviews are conducted at all federal prisons in each discipline at least once every three years to monitor policy compliance. In FY 2018, there were 567 separate program reviews conducted by Bureau examiners which included a review of ACA standards.

PREA audits for federal institutions began on August 20, 2013. As such, the PREA requirement to ensure at least 1/3 of the Bureau's federal institutions were audited at least once each year for the first 3-year PREA cycle (August 20, 2013, to August 19, 2016) was met. The second 3-year PREA cycle began on August 20, 2016, and will end on August 19, 2019. For PREA Year 2018, 33 audits were conducted.

The Bureau utilizes a medical classification system that identifies each inmate's medical and mental health needs, along with the forensic needs of the court. Additionally, the Bureau assigns inmates to facilities (identified as Care Levels 1 through 4) with appropriate in-house and community health care resources. Effective June 2017, Accreditation Association Ambulatory Health Care (AAAHC) will survey all Care Level 2 & 3 institutions. The accreditation process is a thorough, organization specific, on-site review by surveyors experienced in healthcare provided in a correctional setting. Currently, 45 sites have been accredited using AAAHC as of September 30, 2018. Additionally, the Joint Commission (formally the Joint Commission Accreditation for Hospital Organizations) will continue to survey all Bureau of Prisons Medical Centers. Currently, seven of seven Medical Center sites are accredited by the Joint Commission.

If you require additional information, please contact the Bureau's External Auditing Branch Administrator Joseph Pecoraio, who may be reached at (202)307-0281.

VA



U.S. Department
of Veterans Affairs

Office of the General Counsel
Washington DC 20420

In Reply Refer To:

FEB 11 2019

Steve Rosenbaum
Chief, Special Litigation Section Civil Rights Division
U.S. Department of Justice
601 D Street, N.W.
Washington, D.C. 20530

RE: Information for Inclusion in the Attorney General's Report to Congress
on the Civil Rights of Institutional Persons Act (42 U.S.C. § 1997f)

Dear Mr. Rosenbaum:

Thank you for the opportunity to submit a contribution to the Attorney General's Report to Congress pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA). The Department of Veterans Affairs believes we meet all existing promulgated standards for CRIPA and, in so doing, ensure the constitutionally guaranteed rights of our patients and residents. The enclosed information is provided for inclusion in your report.

Sincerely yours,

A handwritten signature in cursive script that reads "Richard J. Hipolit".

Richard J. Hipolit
Principal Deputy General Counsel

Enclosure

DEPARTMENT OF VETERANS AFFAIRS

The Department of Veterans Affairs (VA) has multiple ongoing programs to protect the civil rights of patients in its facilities. VA regulations published at 38 C.F.R. § 17.33 identify the rights of patients. All patients or their representatives are advised of these rights on their admission to a facility and provided a copy of a statement of those rights. *Id.* at § 17.33(h). The statement of patients' rights is required to be posted at each nursing station, and all VA staff working with patients receive training regarding these rights.

The applicable regulations establish that the specified patients' rights "are in addition to and not in derogation of any statutory, constitutional or other legal rights." *Id.* at § 17.33(i). The regulations set forth specific procedures for VA to follow when restricting any rights. *Id.* at § 17.33(c). The regulation also recognizes the right of patients to present grievances for any perceived infringement of patients' rights. *Id.* at § 17.33(g). In addition to the regulations, the Veterans Health Administration (VHA) has issued a directive prohibiting discrimination based on race, color, religion, national origin, Limited English Proficiency(LEP), age, sex (includes gender identity and transgender status), sexual orientation, pregnancy, marital and parental status, political affiliation, disability, and genetic information, and prohibiting harassment and retaliation. VHA Directive 1019, *Nondiscrimination in Federally Conducted and Federally-Assisted (External) Programs* (May 23, 2013).

VA further protects patients' civil rights through its program of hiring individuals to serve as Patient Advocates. The VA Patient Advocacy Program promotes a positive Veteran experience. "Needs, preferences, priorities, and values of Veterans are considered in a proactive, convenient, and timely manner consistent with law, professional standards, and VA policy." VHA Directive 1003.4, *VHA Patient Advocacy Program*, paragraph 4 (February 7, 2018). The advocates assist patients in understanding their rights and by presenting the patient's perspective of the problem and desired resolution. VA also facilitates the representation of patients by external stakeholders, including, but not limited to, Veterans Service Organizations and state protection and advocacy systems, which seek to represent patients in VA facilities. *Id.* at paragraph 5c(7).

In addition, patients are also protected by VA regulations requiring the full informed consent of patients or, where applicable, their surrogates before any proposed diagnostic or therapeutic procedure or course of treatment is undertaken. 38 C.F.R. § 17.32.

VA believes the receipt of high-quality medical care is the right of all patients and takes action to achieve its provision through a number of internal mechanisms. VA operates ongoing active peer review programs designed to discover and correct problems in the provision of care. Additionally, pursuant to Presidential Executive Order

12862 (1993), which requires patient surveys and use of the resultant feedback to manage agency operations, patients are periodically surveyed to determine their satisfaction with the health care provided to them. Also, the VA Office of the Inspector General and the VA Office of the Medical Inspector conduct investigations of complaints concerning the quality of health care. All of these mechanisms serve to protect the civil rights of patients in facilities operated by VA.

(VA participates in two grant-in-aid programs with states to provide construction and renovation funds and to provide per diem payments for care of eligible Veterans in State homes; however, these homes are not Federal facilities.)