

**Department of Justice Activities
Under the
Civil Rights of Institutionalized Persons Act
Fiscal Year 2016**

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I. Introduction and Overview

Congress passed the Civil Rights of Institutionalized Persons Act (CRIPA) in 1980 to protect the rights of individuals confined in residential institutions, who are often among the most vulnerable in our society. CRIPA authorizes the Attorney General to investigate conditions at certain residential institutions operated by or on behalf of state or local governments to determine whether violations of the Constitution or federal law exist. The institutions include juvenile justice facilities, adult jails and prisons, nursing facilities, and facilities for individuals with psychiatric or intellectual and developmental disabilities. The Department of Justice's Special Litigation Section of the Civil Rights Division is charged with CRIPA enforcement.

The Division is authorized to commence an investigation upon reasonable belief that individuals confined in an institution may be subjected to a pattern or practice of unlawful conditions that deprives them of their constitutional or federal statutory rights. If a pattern or practice of such deprivations is determined to exist, the Division informs the jurisdiction of its findings, and then engages in negotiation and conciliation efforts and provides technical assistance to help jurisdictions correct deficient conditions. If these efforts fail, the Division may institute a civil action for equitable relief necessary to correct the violations of rights.

The Division achieved important successes under its CRIPA authority during Fiscal Year 2016. The Division entered into three settlement agreements or consent decrees to address institutional constitutional deficiencies, and issued one findings letter to address juveniles' access to special education services in a juvenile detention facility.¹ The Division also initiated two new CRIPA investigations. At the end of Fiscal Year 2016, the Division had active CRIPA matters and cases involving 160 facilities in 27 states, the District of Columbia, the

¹ The full text of these agreements and the findings letter can be found at the Division's website at <http://www.usdoj.gov/crt/split/index.html>.

Commonwealth of Puerto Rico, and the Territories of Guam 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 institutions are attached.

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

A. Complaints Filed

1. United States v. Hinds County Board of Supervisors (S.D. Miss.)

On June 23, 2016, the Division filed a complaint and settlement agreement in United States v. Hinds County Board of Supervisors to protect prisoners at the Hinds County Adult Detention Center and the Jackson City Detention Center from violence and excessive force, and from being held past their court-ordered release dates. The settlement agreement, which the court entered as an order of the court on July 19, 2016, includes remedies to address staff training, understaffing, and the lack of security procedures. The agreement is also the first of its kind to incorporate broader criminal justice system reform through diversion before incarceration and reentry to the community after incarceration to address allegations in the complaint that unlawful detention, denial of access to counsel, and violations of due process rights contribute to constitutional violations. Accordingly, the agreement creates a criminal justice coordinating committee that will help ensure that the county's systems operate effectively and efficiently; develop interventions to divert individuals in appropriate cases from arrest, detention and incarceration; and engage in community outreach. To promote successful reentry, the agreement includes mechanisms for notifying community health providers when a person with serious mental illness is released to help the person transition safely back to the community. The

agreement also addresses unlawful enforcement of court-ordered fines and fees.

B. Resolution of Investigations and Lawsuits

1. Nunez v. City of New York (S.D.N.Y) (Rikers Island)

On October 22, 2015, the United States District Court entered a Consent Decree to resolve claims of unconstitutional conditions of confinement in New York City jails on Rikers Island. In December 2014, the Division and the United States Attorney for the Southern District of New York filed a complaint-in-intervention in Nunez v. City of New York, which alleged that the city had engaged in a pattern or practice of violating the constitutional rights of young prisoners, and that the city's deliberate indifference to these constitutional rights had caused these prisoners serious physical, psychological, and emotional harm. The settlement is designed to keep young prisoners safe through direct supervision and enhanced staff training, and prohibits the use of isolation as a method of discipline for incarcerated minors.

2. Westchester County Jail

On November 24, 2015, the parties entered into an agreement resolving an investigation into conditions of confinement at the Westchester County Jail in Westchester, New York. The agreement protects prisoners from excessive or unnecessary use of force, prohibits the use of isolation as a method of discipline for incarcerated minors, and requires adequate medical and mental health screening, evaluation and treatment.

III. Prison Litigation Reform Act

The Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626, enacted on April 26, 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

During Fiscal Year 2016, 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. Commonwealth of Puerto Rico, 99-1435</u>	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 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	<u>United States v. Texas, A-09-CA-490</u>	E.D. Tex. 2009

B. Facilities for persons with mental illness:

Facility or Facilities	Case or Agreement	Court/Date
Kings County Hospital Center	<u>United States v. Kings County, New York, CV-10-0060</u>	E.D.N.Y. 2010
Delaware Psychiatric Center	<u>United States v. Delaware, 1-11-CV-00591</u>	D. Del. 2011

C. 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; Centro Tratamiento Social Guayama; Guali Group Home; and Ponce Detention and Social Treatment Center for Girls	<u>United States v. Commonwealth of Puerto Rico</u> , 9 4-2080 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

D. Jails:

Facility or Facilities	Case or Agreement	Court/Date
Hagatna Detention Center and Fibrebond Detention Facility	<u>United States v. Territory of Guam</u> , 91-00-20	D. Guam 1991
Coffee County Jail, Georgia	1997 Settlement Agreement	N/A
Muscogee County Jail	<u>United States v. Columbus Consolidated City/County Gov't, Georgia</u> , 4-99-CV-132	M.D. Ga. 1999
Dallas County Jail	2012 Settlement Agreement (converted from consent decree in <u>United States v. Dallas County, TX</u> , 307 CV 1559-N)	N/A
Baltimore City Detention Center, Maryland	2007 Agreement	N/A
Orleans Parish Prison	<u>Jones & U.S. v. Gusman</u> , 2:12-cv-00859	E.D. La. 2008
Sebastian County Detention Center, Arkansas	2008 Settlement Agreement	N/A
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
Cook County Jail	<u>United States v. Cook County, Illinois</u> , 10-cv-2946	N.D. Ill. 2010
Lake County Jail	<u>United States v. Lake County, Indiana</u> , 2:10-CV-476	N.D. Ind. 2010
Robertson County Jail	<u>United States v. Robertson County</u> , 3:13-CV-00392	M.D. Tenn. 2013
Miami-Dade County Detention	<u>United States v. Miami-Dade County</u> , 1:13-CV-21570	S.D. Fla. 2013
St. Tammany Parish Jail	2013 Settlement Agreement	N/A
Piedmont Regional Jail Authority, Virginia	<u>United States v. Piedmont Regional Jail Authority</u> , 3:13-CV-646	E.D. Va. 2013

Facility or Facilities	Case or Agreement	Court/Date
Los Angeles County Jails	<u>United States v. County of Los Angeles and Los Angeles County Sheriff</u> , 2:15-cv-05903	C.D. Cal. 2015

F. Prisons:

Facility or Facilities	Case or Agreement	Court/Date
Golden Grove Correctional and Adult Detention Facility	<u>United States v. Territory of the Virgin Islands</u> , 86-265	D.V.I. 1986
Guam Adult Correctional Facility	<u>United States v. Territory of Guam</u> , 91-00-20	D. Guam 1991
Topeka Correctional Facility	2014 Settlement Agreement	N/A
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 2016, the Division terminated two CRIPA cases. In December 2015, the state of Ohio's Department of Youth Services came into compliance with a May 2014 consent decree to eliminate disciplinary solitary confinement of youth in its juvenile facilities in United States v. Ohio (S.D. Ohio). The state achieved compliance by providing individualized mental health treatment to prevent and address the conditions and behaviors that led to solitary confinement. Ohio also reduced the potential harms caused by solitary confinement by increasing access to therapeutic, educational and recreational services while a juvenile was in solitary confinement and addressing the behavior that led to acts of violence. On December 9, 2015, the court granted the parties' joint motion to dismiss the case.

In April 2016, the Marion County Nursing Home District in Missouri had maintained substantial compliance for two years with a settlement agreement in United States v. Marion County Nursing Home District (E.D. Mo.), which protects the constitutional rights of residents in its long-term care facility, and the parties jointly moved for dismissal pursuant to the terms of the agreement. On April 18, 2016, the court granted the joint motion for dismissal.

VI. New CRIPA Investigations

The Division opened two new CRIPA investigations during Fiscal Year 2016.

In February 2016, the Division opened a statewide investigation of the Georgia Department of Corrections. The investigation focuses on whether Georgia fails to protect transgender and gay prisoners from sexual harassment, sexual abuse, and assault by both staff and other prisoners. In April 2016, the Division and the United States Attorney's Office for the Southern District of New York opened an investigation of the Fishkill Correctional Facility in New York. The investigation focuses on allegations that Fishkill fails to adequately protect prisoners from harm, including excessive use of force by staff.²

VII. Findings Letters

During the Fiscal Year, the Division issued one findings letter pursuant to Section 4 of CRIPA, 42 U.S.C. § 1997b. On January 12, 2016, the United States issued a findings letter regarding its investigation of the special education services at the Leflore County Juvenile Detention Center in Greenwood, Mississippi. The Division concluded that the state of Mississippi violates the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1482 in three ways. First, the Detention Center School does not implement appropriate policies and procedures to identify, locate, and evaluate children with disabilities for special education services. Second, when children enter the Detention Center already identified as requiring special education services, the Detention Center School does not obtain the student's individualized education program (IEP) promptly. Third, because children with disabilities are either unidentified or their IEPs are not obtained promptly, the Detention Center School fails to provide them a free appropriate public education.

² Three investigations have been opened in the first quarter of FY 17: Alabama Prisons for Men (October 6, 2016); Boyd County (KY) Detention Center (November 1, 2016); and Hampton Roads (VA) Regional Jail (December 8, 2016).

VIII. Investigation Closures

In Fiscal Year 2016, the Division closed its investigation into the Pennsylvania Department of Corrections' use of solitary confinement for prisoners with serious mental illness or intellectual disabilities. Pennsylvania has achieved significant improvements in both policy and practice regarding solitary confinement for these vulnerable populations. The Division closed this investigation two years after issuing findings that the state subjected these prisoners to solitary confinement under conditions that violated their constitutional rights.³

The Division also closed its investigation into the Los Angeles Juvenile Camps in May 2016. The County had complied with the provisions of a 2008 agreement and a 2012 amendment to the original agreement. The County remedied unconstitutional conditions relating to protection of youth from harm, suicide prevention, and mental health services. The County has also increased community-based placements as alternatives to incarceration.

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 findings letter issues.

³ The Section also participated in the Department-wide Restrictive Housing Working Group, which drafted and issued the U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing in January 2016.

To ensure timely and efficient compliance with settlement agreements, the Division has also issued numerous post-tour compliance assessment letters (and in some cases, emergency letters identifying emergent conditions) to apprise jurisdictions of their compliance status. In addition, these letters also routinely contain technical assistance and best practices recommendations.

X. Responsiveness to Allegations of Illegal Conditions

During Fiscal Year 2016, the Division reviewed allegations of unlawful conditions of confinement in public 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 5,654 CRIPA-related citizen complaint letters and 302 CRIPA-related emails during the Fiscal Year. In addition, the Division responded to 1,435 CRIPA-related inquiries from Congress and the White House.

XI. Conclusion

In Fiscal Year 2016 and beyond, the Division intends to continue aggressive investigation and enforcement under CRIPA, ensuring that settlements resulting from its enforcement efforts are strong enough to adequately address unlawful deficiencies.




U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

November 3, 2016

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

FROM:  Steve Mora, Assistant Director
Program Review Division, BOP

SUBJECT: Response for the Attorney General's Report to
Congress for FY 2016 Pursuant to the Civil Rights of
Institutionalized Persons Act of 1997

The Bureau of Prisons appreciates the opportunity to report our actions during FY 2016 as related to the Attorney General's Report to Congress for FY 2016 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 2016, there were 547 separate program reviews conducted by Bureau examiners which included a review of ACA standards.

PREA audits for federal institutions began on August 20, 2013, with 33 audits conducted at stand-alone institutions or complexes in PREA Year (PY) 2014, 35 audits conducted in PY 2015, and 29 audits conducted in PY 2016. 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 three year PREA cycle (August 20, 2013, to August 19, 2016) was met. The second three year PREA cycle began on August 20, 2016, and will end on August 19, 2019.

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. All Care Level 2, 3, and 4 institutions are required to be accredited by The Joint Commission on Accreditation of Healthcare Organizations. Currently, all 79 sites are accredited by The Joint Commission.

If you require additional information, please contact Kevin Pistro in my office at (202)598-0910.



DEPARTMENT OF VETERANS AFFAIRS
Office of the General Counsel
Washington DC 20420

DEC 30 2016

In Reply Refer To:

Steve Rosenbaum
Chief, Special Litigation Section Civil Rights Branch
U. S. Department of Justice
601 D Street, N.W.
Washington, D.C. 20004

RE: Information for inclusion in the Attorney General Report to Congress
on the Civil Rights of Institutional Persons Act (42 USC 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
Acting 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. 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. *Id.* at 17.33(h).

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), and establish grievance procedures for patients to follow for any perceived infringement of 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, genetic information, harassment or 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 purpose of VA's Patient Advocacy Program is "to ensure that all Veterans and their families, who are served in VHA facilities and clinics, have their complaints addressed in a convenient and timely manner." VHA Handbook 1003.4, *VHA Patient Advocacy Program*, paragraph 3 (September 2, 2005). 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 8.

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 the 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).