



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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

Dear Mr. Leader:

Enclosed please find a report to Congress about the Department's activities during Fiscal Year 2020 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,

Helaine A. Greenfeld
Acting Assistant Attorney General

Enclosure



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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

Dear Mr. Leader:

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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 2020 pursuant to the Civil Rights of Institutionalized Persons Act, as required by 42 U.S.C. § 1997f.

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The Honorable Kamala Harris
President
United States Senate
Washington, D.C. 20510

Dear Madam President:

Enclosed please find a report to Congress about the Department's activities during Fiscal Year 2020 pursuant to the Civil Rights of Institutionalized Persons Act, as required by 42 U.S.C. § 1997f.

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Washington, D.C. 20530

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

Dear Mr. Leader:

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Washington, D.C. 20530

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

Dear Mr. Leader:

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Washington, D.C. 20530

The Honorable Patrick Leahy
President Pro Tempore
United States Senate
Washington, D.C. 20510

Dear Mr. President Pro Tempore:

Enclosed please find a report to Congress about the Department's activities during Fiscal Year 2020 pursuant to the Civil Rights of Institutionalized Persons Act, as required by 42 U.S.C. § 1997f.

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**Department of Justice Activities
Under the
Civil Rights of Institutionalized Persons Act
Fiscal Year 2020**



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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 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 2020. Three new CRIPA investigations opened. In addition, the Division terminated one CRIPA case, and closed one CRIPA investigation. At the end of Fiscal Year 2020, the Department had active CRIPA

¹ CRIPA protects only constitutional rights in jails and prisons.

matters and cases involving 156 facilities in 16 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 filed one CRIPA complaint and consent decree to resolve a CRIPA investigation in Fiscal Year 2020. In August 2020, the Division filed a Complaint and Consent Decree to resolve the Division's investigation of conditions in the Hampton Roads Regional Jail in Portsmouth, Virginia. The Division had found reasonable cause to believe that the Jail engaged in a pattern or practice of constitutional rights violations involving prisoner medical care, mental health care, and restrictive housing of prisoners with serious mental illness and Americans with Disabilities Act (ADA) violations regarding restrictive housing of prisoners with mental health disabilities. The court entered the consent decree on August 31, 2020. United States v. Hampton Roads Regional Jail Authority, 2:20-cv-410, ECF No. 5 (E.D. Va. Aug. 31, 2020).

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 incorporated the PLRA's requirements in the remedies it seeks regarding improvements in correctional and juvenile justice facilities.

IV. Compliance Evaluations

At the end of Fiscal Year 2020, the Division was monitoring 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 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</u> , A-09-CA-490	E.D. Tex. 2009

B. Juvenile justice facilities:

Facility or Facilities	Case or Agreement	Court/Date
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
Orleans Parish Jail	<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

Facility or Facilities	Case or Agreement	Court/Date
Miami-Dade County Detention	<u>United States v. Miami-Dade County, Florida</u> , 1:13-CV-21570	S.D. Fla. 2013
Miami-Dade County Detention	<u>2013 Settlement Agreement</u>	N/A
New York City Jails	<u>Nunez & United States v. City of New York</u> , 1:11-cv-05845	S.D.N.Y 2015
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	<u>2015 Settlement Agreement</u>	N/A
Hinds County Adult Detention Center; Jackson City Detention Center; the Work Center; Henley-Young Juvenile Justice Center	<u>United States v. Hinds County, Mississippi Board of Supervisors</u> , 3:16-cv-00489	S.D. Miss. 2016
Hampton Roads Regional Jail	<u>United States v. Hampton Roads Regional Jail Authority</u> , 2:20-cv-410	E.D. Va. 2020

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 2020, one CRIPA case terminated. On December 18, 2019, in United States v. Lake County, Indiana, et al. (N.D. Ind.), the court entered an order of dismissal based on the parties’ joint motion representing that Lake County had come into and maintained compliance with all provisions of a 2010 Consent Decree, which concerned medical care, mental health care, suicide prevention, staff use of force, and fire and life safety at the Lake County Jail in Crown Point, Indiana.

VI. New CRIPA Investigations

Three CRIPA investigations opened during Fiscal Year 2020. In November 2019, the Division opened an investigation into whether the State of Iowa engages in a pattern or practice

of violating the federal rights of residents of Glenwood Resource Center (“Glenwood”), by placing them at serious risk of harm by subjecting them to: harmful and uncontrolled human subject experiments; inadequate medical and nursing care, physical and nutritional management, and behavioral health care; needless and harmful restraint practices; and incidents causing needless physical injury; and whether the State of Iowa violates the rights of Glenwood’s residents, and also residents of Woodward Resource Center, by not providing services to them in the most integrated setting appropriate, under Title II of the Americans with Disabilities Act, 42 U.S.C. 12101, *et seq.*

In February 2020, the Division, with the support from the United States Attorney’s Offices for the Northern and Southern Districts of Mississippi opened an investigation of the conditions of confinement in four prisons under the authority of the Mississippi Department of Corrections (MDOC): Mississippi State Penitentiary (Parchman), Southern Mississippi Correctional Institute, Central Mississippi Correctional Facility, and the Wilkinson County Correctional Facility. The investigation focuses on whether MDOC adequately protects prisoners from physical harm at the hands of other prisoners at all of the Prisons; and also whether MDOC violates the constitutional rights of prisoners through inadequate suicide prevention, including inadequate mental health care and prolonged exposure to isolation, at Parchman.

In April 2020, the Division, working jointly with the United States Attorney’s Office in Massachusetts, opened an investigation of the Soldiers Home in Holyoke, MA. The investigation focuses on whether the Soldiers’ Home engages in a pattern or practice of violating the rights of veteran residents under the U.S. Constitution by failing to provide them adequate medical care generally, and during the coronavirus pandemic in particular.

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

In April 2020, the Division issued a CRIPA notice report about conditions at the Edna Mahan Correctional Facility for Women in Clinton, New Jersey. The Division concluded that there is reasonable cause to believe that the prison fails to keep women prisoners reasonably safe from staff sexual abuse, in violation of the Eighth Amendment to the Constitution.

In July 2020, the Division issued a CRIPA notice report about conditions with respect to staff use of force in Alabama's 13 prisons for men. The Division concluded that there is reasonable cause to believe that the Alabama Department of Corrections subjects male prisoners to excessive force in violation of the Eighth Amendment to the Constitution.²

VIII. Investigation Closures

In Fiscal Year 2020, the Division closed one CRIPA investigation. In December 2019, the Division closed its investigation of the Orange County Jail in Santa Ana, California. The Division recognized the completed, ongoing, and planned improvements to the Orange County Jail in its closure letter.

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

² On April 2, 2019, the Division had issued initial findings report informing the State of Alabama that there is reasonable cause to believe that these prisons fail to protect prisoners from prisoner-on-prisoner violence and prisoner-on-prisoner sexual abuse, and fail to provide prisoners with safe conditions.

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 the conclusion of the investigation.

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 2020, 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 responded to 2,679 CRIPA-related citizen complaint letters and over 390 CRIPA-related emails during the fiscal year. In addition, the Division responded to 128 CRIPA-related inquiries from Congress and from writers directing their inquiries to the President.

XI. Conclusion

In Fiscal Year 2021 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

September 22, 2020

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

FROM:


L.J. Milusnic, Assistant Director
Program Review Division

SUBJECT:

Response for the Attorney General's Report to
Congress for FY 2020 Pursuant to the Civil Rights of
Institutionalized Persons Act of 1997

The Bureau of Prisons appreciates the opportunity to report our actions during FY 2020 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 2020, there were 274 separate program reviews conducted by Bureau examiners which included a review of ACA standards. The decrease in program reviews is a result of COVID-19.

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) and the second 3-year PREA cycle (August 20, 2016, to August 19, 2019) were met. The third 3-year PREA cycle began on August 20, 2019, and will end on August 19, 2022. For PREA Year 2020, 13 audits were conducted. The decrease in PREA audits is a result of COVID-19.

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 (AAHC) initiated surveying 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, 68 institutions have been accredited utilizing AAHC. Three institutions', Aliceville, Williamsburg and Thomson, accreditation has been delayed due to travel restrictions of COVID-19. Marianna's accreditation was delayed due to hurricane damage and is now delayed due to travel restrictions of COVID-19. Additionally, The Joint Commission will continue to survey all Bureau of Prisons Medical Centers. Currently, seven of the seven Medical Center sites are accredited.

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

VAI



U.S. Department
of Veterans Affairs

General Counsel

Washington, DC 20420

January 29, 2021

Steven H. Rosenbaum
Chief, Special Litigation Section Civil Rights Division
U.S. Department of Justice
4 Constitution Square
150 M St. N.E.
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 black ink that reads "Richard J. Hipolit".

Richard J. Hipolit
Deputy General Counsel, Veterans Programs,
Performing the Delegable Duties of the
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 including patients and residents in VA hospitals, domiciliaries, and nursing homes. 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. *Id.*

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 5d (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.)