

**§ 15607. Adoption and effect of national standards**

**(a) Publication of proposed standards**

**(1) Final rule**

Not later than 1 year after receiving the report specified in section 15606(d)(3) of this title, the Attorney General shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape.

**(2) Independent judgment**

The standards referred to in paragraph (1) shall be based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission under section 15606(e) of this title, and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.

**(3) Limitation**

The Attorney General shall not establish a national standard under this section that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities. The Attorney General may, however, provide a list of improvements for consideration by correctional facilities.

**(4) Transmission to States**

Within 90 days of publishing the final rule under paragraph (1), the Attorney General shall transmit the national standards adopted under such paragraph to the chief executive of each State, the head of the department of corrections of each State, and to the appropriate authorities in those units of local government who oversee operations in one or more prisons.

**(b) Applicability to Federal Bureau of Prisons**

The national standards referred to in subsection (a) shall apply to the Federal Bureau of Prisons immediately upon adoption of the final rule under subsection (a)(4).

**(c) Eligibility for Federal funds**

**(1) Covered programs**

**(A) In general**

For purposes of this subsection, a grant program is covered by this subsection if, and only if—

- (i) the program is carried out by or under the authority of the Attorney General; and
- (ii) the program may provide amounts to States for prison purposes.

**(B) List**

For each fiscal year, the Attorney General shall prepare a list identifying each program that meets the criteria of subparagraph (A) and provide that list to each State.

**(2) Adoption of national standards**

For each fiscal year, any amount that a State would otherwise receive for prison purposes for that fiscal year under a grant program covered by this subsection shall be reduced by 5 percent, unless the chief executive

of the State submits to the Attorney General—

(A) a certification that the State has adopted, and is in full compliance with, the national standards described in subsection (a); or

(B) an assurance that not less than 5 percent of such amount shall be used only for the purpose of enabling the State to adopt, and achieve full compliance with, those national standards, so as to ensure that a certification under subparagraph (A) may be submitted in future years.

**(3) Report on noncompliance**

Not later than September 30 of each year, the Attorney General shall publish a report listing each grantee that is not in compliance with the national standards adopted pursuant to subsection (a).

**(4) Cooperation with survey**

For each fiscal year, any amount that a State receives for that fiscal year under a grant program covered by this subsection shall not be used for prison purposes (and shall be returned to the grant program if no other authorized use is available), unless the chief executive of the State submits to the Attorney General a certification that neither the State, nor any political subdivision or unit of local government within the State, is listed in a report issued by the Attorney General pursuant to section 15603(c)(2)(C) of this title.

**(5) Redistribution of amounts**

Amounts under a grant program not granted by reason of a reduction under paragraph (2), or returned by reason of the prohibition in paragraph (4), shall be granted to one or more entities not subject to such reduction or such prohibition, subject to the other laws governing that program.

**(6) Implementation**

The Attorney General shall establish procedures to implement this subsection, including procedures for effectively applying this subsection to discretionary grant programs.

**(7) Effective date**

**(A) Requirement of adoption of standards**

The first grants to which paragraph (2) applies are grants for the second fiscal year beginning after the date on which the national standards under subsection (a) are finalized.

**(B) Requirement for cooperation**

The first grants to which paragraph (4) applies are grants for the fiscal year beginning after September 4, 2003.

(Pub. L. 108-79, §8, Sept. 4, 2003, 117 Stat. 985.)

**§ 15608. Requirement that accreditation organizations adopt accreditation standards**

**(a) Eligibility for Federal grants**

Notwithstanding any other provision of law, an organization responsible for the accreditation of Federal, State, local, or private prisons, jails, or other penal facilities may not receive any new Federal grants during any period in which such organization fails to meet any of the requirements of subsection (b).

**(b) Requirements**

To be eligible to receive Federal grants, an accreditation organization referred to in subsection (a) must meet the following requirements:

(1) At all times after 90 days after September 4, 2003, the organization shall have in effect, for each facility that it is responsible for accrediting, accreditation standards for the detection, prevention, reduction, and punishment of prison rape.

(2) At all times after 1 year after the date of the adoption of the final rule under section 15607(a)(4) of this title, the organization shall, in addition to any other such standards that it may promulgate relevant to the detection, prevention, reduction, and punishment of prison rape, adopt accreditation standards consistent with the national standards adopted pursuant to such final rule.

(Pub. L. 108-79, §9, Sept. 4, 2003, 117 Stat. 987.)

**§ 15609. Definitions**

In this chapter, the following definitions shall apply:

**(1) Carnal knowledge**

The term “carnal knowledge” means contact between the penis and the vulva or the penis and the anus, including penetration of any sort, however slight.

**(2) Inmate**

The term “inmate” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

**(3) Jail**

The term “jail” means a confinement facility of a Federal, State, or local law enforcement agency to hold—

- (A) persons pending adjudication of criminal charges; or
- (B) persons committed to confinement after adjudication of criminal charges for sentences of 1 year or less.

**(4) HIV**

The term “HIV” means the human immunodeficiency virus.

**(5) Oral sodomy**

The term “oral sodomy” means contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus.

**(6) Police lockup**

The term “police lockup” means a temporary holding facility of a Federal, State, or local law enforcement agency to hold—

- (A) inmates pending bail or transport to jail;
- (B) inebriates until ready for release; or
- (C) juveniles pending parental custody or shelter placement.

**(7) Prison**

The term “prison” means any confinement facility of a Federal, State, or local govern-

ment, whether administered by such government or by a private organization on behalf of such government, and includes—

- (A) any local jail or police lockup; and
- (B) any juvenile facility used for the custody or care of juvenile inmates.

**(8) Prison rape**

The term “prison rape” includes the rape of an inmate in the actual or constructive control of prison officials.

**(9) Rape**

The term “rape” means—

- (A) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person, forcibly or against that person’s will;
- (B) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person not forcibly or against the person’s will, where the victim is incapable of giving consent because of his or her youth or his or her temporary or permanent mental or physical incapacity; or
- (C) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person achieved through the exploitation of the fear or threat of physical violence or bodily injury.

**(10) Sexual assault with an object**

The term “sexual assault with an object” means the use of any hand, finger, object, or other instrument to penetrate, however slightly, the genital or anal opening of the body of another person.

**(11) Sexual fondling**

The term “sexual fondling” means the touching of the private body parts of another person (including the genitalia, anus, groin, breast, inner thigh, or buttocks) for the purpose of sexual gratification.

**(12) Exclusions**

The terms and conditions described in paragraphs (9) and (10) shall not apply to—

- (A) custodial or medical personnel gathering physical evidence, or engaged in other legitimate medical treatment, in the course of investigating prison rape;
- (B) the use of a health care provider’s hands or fingers or the use of medical devices in the course of appropriate medical treatment unrelated to prison rape; or
- (C) the use of a health care provider’s hands or fingers and the use of instruments to perform body cavity searches in order to maintain security and safety within the prison or detention facility, provided that the search is conducted in a manner consistent with constitutional requirements.

(Pub. L. 108-79, §10, Sept. 4, 2003, 117 Stat. 987.)

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