

(k) Subpoenas**(1) Issuance**

The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter.

(2) Enforcement

In the case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(3) Confidentiality of documentary evidence

Documents provided to the Commission pursuant to a subpoena issued under this subsection shall not be released publicly without the affirmative vote of $\frac{2}{3}$ of the Commission.

(l) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(m) Termination

The Commission shall terminate on the date that is 60 days after the date on which the Commission submits the reports required by this section.

(n) Exemption

The Commission shall be exempt from the Federal Advisory Committee Act.

(Pub. L. 108-79, §7, Sept. 4, 2003, 117 Stat. 980; Pub. L. 108-447, div. B, title I, §123(1), Dec. 8, 2004, 118 Stat. 2871; Pub. L. 109-108, title I, §113(b), Nov. 22, 2005, 119 Stat. 2305; Pub. L. 109-162, title XI, §1181, Jan. 5, 2006, 119 Stat. 3126; Pub. L. 110-199, title II, §261, Apr. 9, 2008, 122 Stat. 694.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (n), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was formerly classified to section 15606 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2008—Subsec. (d)(3)(A). Pub. L. 110-199 substituted “5 years” for “3 years” in introductory provisions.

2006—Subsec. (d)(3)(A). Pub. L. 109-162 made amendment identical to that made by Pub. L. 109-108. See 2005 Amendment note below.

2005—Subsec. (d)(3)(A). Pub. L. 109-108 substituted “3 years” for “2 years”.

2004—Pub. L. 108-447 substituted “Elimination” for “Reduction” in section catchline and in text of subsec. (a).

CONSTRUCTION OF 2008 AMENDMENT

For construction of amendments by Pub. L. 110-199 and requirements for grants made under such amendments, see section 60504 of this title.

§ 30307. 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 30306(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 30306(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) Applicability to detention facilities operated by the Department of Homeland Security**(1) In general**

Not later than 180 days after March 7, 2013, the Secretary of Homeland Security shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody of aliens detained for a violation of the immigrations laws of the United States.

(2) Applicability

The standards adopted under paragraph (1) shall apply to detention facilities operated by the Department of Homeland Security and to detention facilities operated under contract with the Department.

(3) Compliance

The Secretary of Homeland Security shall—

(A) assess compliance with the standards adopted under paragraph (1) on a regular basis; and

(B) include the results of the assessments in performance evaluations of facilities completed by the Department of Homeland Security.

(4) Considerations

In adopting standards under paragraph (1), the Secretary of Homeland Security shall give

due consideration to the recommended national standards provided by the Commission under section 30306(e) of this title.

(5) Definition

As used in this section, the term “detention facilities operated under contract with the Department” includes, but is not limited to contract detention facilities and detention facilities operated through an intergovernmental service agreement with the Department of Homeland Security.

(d) Applicability to custodial facilities operated by the Department of Health and Human Services

(1) In general

Not later than 180 days after March 7, 2013, the Secretary of Health and Human Services shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody of unaccompanied alien children (as defined in section 279(g) of title 6).

(2) Applicability

The standards adopted under paragraph (1) shall apply to facilities operated by the Department of Health and Human Services and to facilities operated under contract with the Department.

(3) Compliance

The Secretary of Health and Human Services shall—

(A) assess compliance with the standards adopted under paragraph (1) on a regular basis; and

(B) include the results of the assessments in performance evaluations of facilities completed by the Department of Health and Human Services.

(4) Considerations

In adopting standards under paragraph (1), the Secretary of Health and Human Services shall give due consideration to the recommended national standards provided by the Commission under section 30306(e) of this title.

(e) 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;

(ii) the program may provide amounts to States for prison purposes; and

(iii) the program is not administered by the Office on Violence Against Women of the Department of Justice.

(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

(A) In general

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 officer of the State submits to the Attorney General proof of compliance with this chapter through—

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

(ii) an assurance that the State intends to adopt and achieve full compliance with those national standards so as to ensure that a certification under clause (i) may be submitted in future years, which includes—

(I) a commitment that not less than 5 percent of such amount shall be used for this purpose; or

(II) a request that the Attorney General hold 5 percent of such amount in abeyance pursuant to the requirements of subparagraph (E).

(B) Rules for certification

(i) In general

A chief executive officer of a State who submits a certification under this paragraph shall also provide the Attorney General with—

(I) a list of the prisons under the operational control of the executive branch of the State;

(II) a list of the prisons listed under subclause (I) that were audited during the most recently concluded audit year;

(III) all final audit reports for prisons listed under subclause (I) that were completed during the most recently concluded audit year; and

(IV) a proposed schedule for completing an audit of all the prisons listed under subclause (I) during the following 3 audit years.

(ii) Audit appeal exception

Beginning on the date that is 3 years after December 16, 2016, a chief executive officer of a State may submit a certification that the State is in full compliance pursuant to subparagraph (A)(i) even if a prison under the operational control of the executive branch of the State has an audit appeal pending.

(C) Rules for assurances

(i) In general

A chief executive officer of a State who submits an assurance under subparagraph (A)(ii) shall also provide the Attorney General with—

(I) a list of the prisons under the operational control of the executive branch of the State;

(II) a list of the prisons listed under subclause (I) that were audited during the most recently concluded audit year;

(III) an explanation of any barriers the State faces to completing required audits;

(IV) all final audit reports for prisons listed under subclause (I) that were com-

pleted during the most recently concluded audit year;

(V) a proposed schedule for completing an audit of all prisons under the operational control of the executive branch of the State during the following 3 audit years; and

(VI) an explanation of the State's current degree of implementation of the national standards.

(ii) Additional requirement

A chief executive officer of a State who submits an assurance under subparagraph (A)(ii)(I) shall, before receiving the applicable funds described in subparagraph (A)(ii)(I), also provide the Attorney General with a proposed plan for the expenditure of the funds during the applicable grant period.

(iii) Accounting of funds

A chief executive officer of a State who submits an assurance under subparagraph (A)(ii)(I) shall, in a manner consistent with the applicable grant reporting requirements, submit to the Attorney General a detailed accounting of how the funds described in subparagraph (A) were used.

(D) Sunset of assurance option

(i) In general

On the date that is 3 years after December 16, 2016, subclause (II) of subparagraph (A)(ii) shall cease to have effect.

(ii) Additional sunset

On the date that is 6 years after December 16, 2016, clause (ii) of subparagraph (A) shall cease to have effect.

(iii) Emergency assurances

(I) Request

Notwithstanding clause (ii), during the 2-year period beginning 6 years after December 16, 2016, a chief executive officer of a State who certifies that the State has audited not less than 90 percent of prisons under the operational control of the executive branch of the State may request that the Attorney General allow the chief executive officer to submit an emergency assurance in accordance with subparagraph (A)(ii) as in effect on the day before the date on which that subparagraph ceased to have effect under clause (ii) of this subparagraph.

(II) Grant of request

The Attorney General shall grant a request submitted under subclause (I) within 60 days upon a showing of good cause.

(E) Disposition of funds held in abeyance

(i) In general

If the chief executive officer of a State who has submitted an assurance under subparagraph (A)(ii)(II) subsequently submits a certification under subparagraph (A)(i) during the 3-year period beginning on December 16, 2016, the Attorney General

will release all funds held in abeyance under subparagraph (A)(ii)(II) to be used by the State in accordance with the conditions of the grant program for which the funds were provided.

(ii) Release of funds

If the chief executive officer of a State who has submitted an assurance under subparagraph (A)(ii)(II) is unable to submit a certification during the 3-year period beginning on December 16, 2016, but does assure the Attorney General that $\frac{2}{3}$ of prisons under the operational control of the executive branch of the State have been audited at least once, the Attorney General shall release all of the funds of the State held in abeyance to be used in adopting and achieving full compliance with the national standards, if the State agrees to comply with the applicable requirements in clauses (ii) and (iii) of subparagraph (C).

(iii) Redistribution of funds

If the chief executive officer of a State who has submitted an assurance under subparagraph (A)(ii)(II) is unable to submit a certification during the 3-year period beginning on December 16, 2016, and does not assure the Attorney General that $\frac{2}{3}$ of prisons under the operational control of the executive branch of the State have been audited at least once, the Attorney General shall redistribute the funds of the State held in abeyance to other States to be used in accordance with the conditions of the grant program for which the funds were provided.

(F) Publication of audit results

Not later than 1 year after December 16, 2016, the Attorney General shall request from each State, and make available on an appropriate Internet website, all final audit reports completed to date for prisons under the operational control of the executive branch of each State. The Attorney General shall update such website annually with reports received from States under subparagraphs (B)(i) and (C)(i).

(G) Report on implementation of national standards

Not later than 2 years after December 16, 2016, the Attorney General shall issue a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the status of implementation of the national standards and the steps the Department, in conjunction with the States and other key stakeholders, is taking to address any unresolved implementation issues.

(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 30303(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.

(8) Standards for auditors

(A) In general

(i) Background checks for auditors

An individual seeking certification by the Department of Justice to serve as an auditor of prison compliance with the national standards described in subsection (a) shall, upon request, submit fingerprints in the manner determined by the Attorney General for criminal history record checks of the applicable State and Federal Bureau of Investigation repositories.

(ii) Certification agreements

Each auditor certified under this paragraph shall sign a certification agreement that includes the provisions of, or provisions that are substantially similar to, the Bureau of Justice Assistance's Auditor Certification Agreement in use in April 2018.

(iii) Auditor evaluation

The PREA Management Office of the Bureau of Justice Assistance shall evaluate all auditors based on the criteria contained in the certification agreement. In the case that an auditor fails to comply with a certification agreement or to conduct audits in accordance with the PREA Auditor Handbook, audit methodology, and instrument approved by the PREA Management Office, the Office may take remedial or disciplinary action, as appro-

priate, including decertifying the auditor in accordance with subparagraph (B).

(B) Auditor decertification

(i) In general

The PREA Management Office may suspend an auditor's certification during an evaluation of an auditor's performance under subparagraph (A)(iii). The PREA Management Office shall promptly publish the names of auditors who have been decertified, and the reason for decertification. Auditors who have been decertified or are on suspension may not participate in audits described in subsection (a), including as an agent of a certified auditor.

(ii) Notification

In the case that an auditor is decertified, the PREA Management Office shall inform each facility or agency at which the auditor performed an audit during the relevant 3-year audit cycle, and may recommend that the agency repeat any affected audits, if appropriate.

(C) Audit assignments

The PREA Management Office shall establish a system, to be administered by the Office, for assigning certified auditors to Federal, State, and local facilities.

(D) Disclosure of documentation

The Director of the Bureau of Prisons shall comply with each request for documentation necessary to conduct an audit under subsection (a), which is made by a certified auditor in accordance with the provisions of the certification agreement described in subparagraph (A)(ii). The Director of the Bureau of Prisons may require an auditor to sign a confidentiality agreement or other agreement designed to address the auditor's use of personally identifiable information, except that such an agreement may not limit an auditor's ability to provide all such documentation to the Department of Justice, as required under section 115.401(j) of title 28, Code of Federal Regulations.

(Pub. L. 108-79, §8, Sept. 4, 2003, 117 Stat. 985; Pub. L. 113-4, title XI, §1101(c), Mar. 7, 2013, 127 Stat. 134; Pub. L. 114-324, §§5, 7(2), Dec. 16, 2016, 130 Stat. 1950, 1951; Pub. L. 115-274, §4, Oct. 31, 2018, 132 Stat. 4161.)

CODIFICATION

Section was formerly classified to section 15607 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2018—Subsec. (e)(8). Pub. L. 115-274 amended par. (8) generally. Prior to amendment, text read as follows: "An individual seeking certification by the Department of Justice to serve as an auditor of prison compliance with the national standards described in subsection (a) shall, upon request, submit fingerprints in the manner determined by the Attorney General for criminal history record checks of the applicable State and Federal Bureau of Investigation repositories."

2016—Subsec. (e)(1)(A)(iii). Pub. L. 114-324, §5, added cl. (iii).

Subsec. (e)(2). Pub. L. 114-324, §7(2)(A), added par. (2) and struck out former par. (2) which read as follows:

“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.”

Subsec. (e)(8). Pub. L. 114-324, §7(2)(B), added par. (8). 2013—Subsecs. (c) to (e). Pub. L. 113-4 added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

§ 30308. 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 30307(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.)

CODIFICATION

Section was formerly classified to section 15608 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 30309. 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 government, 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