

tional 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 appropriate, 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.)

**Editorial Notes**

**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.)

**Editorial Notes**

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 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.)

**Editorial Notes**

CODIFICATION

Section was formerly classified to section 15609 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

**CHAPTER 305—HATE CRIMES**

Sec.	
30501.	Findings.
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30503.	Support for criminal investigations and prosecutions by State, local, and tribal law enforcement officials.
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30507.	Jabara-Heyer NO HATE Act.

**§ 30501. Findings**

Congress makes the following findings: