

## USING THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT TO PROTECT DETAINED AND INCARCERATED YOUTH

*The federal Civil Rights of Institutionalized Persons Act can help ensure that detained and incarcerated youth are not subject to dangerous conditions and practices in confinement. Contact the National Juvenile Defender Center to learn more about how to access CRIPA.*

The federal Civil Rights of Institutionalized Persons Act (CRIPA)<sup>1</sup> protects the rights of youth held in detention and correctional facilities. When youth are subject to dangerous conditions and practices of confinement, CRIPA can be used to require facilities to comply with constitutional and statutory standards.

Enacted in 1980, CRIPA gives the Civil Rights Division of the U.S. Department of Justice (DOJ) the power to bring actions against State or local governments for violating the civil rights of persons institutionalized in publicly operated facilities.<sup>2</sup> CRIPA does not authorize DOJ to represent individuals; it only allows DOJ to take action to remedy systemic problems. Additionally, CRIPA does not create any new substantive rights; it simply confers power on the Attorney General to bring litigation grounded in previously established constitutional or statutory rights of institutionalized persons.

CRIPA explicitly includes State and local facilities in which youth are detained or confined (for any purpose other than education). It enables DOJ to file a complaint against the State or local government when there are systemic violations of the rights of youth.<sup>3</sup> CRIPA also expressly grants the Attorney General a limited right to intervene in ongoing civil rights litigation.<sup>4</sup> CRIPA can be a powerful tool for advocates if they bring evidence of systemic institutional violations to the attention of DOJ.

The Civil Rights Division must rely on information it receives from advocates, parents, news reports, letters from prisoners, facility employees and from within DOJ.<sup>5</sup> Advocates can play a critical role in getting information about abusive conditions to the Civil Rights Division.

### *DOJ's Decision To Investigate*

After receiving information about unlawful conditions, the Civil Rights Division determines whether the facility is a public institution and

whether the allegations warrant further investigation.

For purposes of CRIPA a facility is a public institution if it: (1) is "owned, operated, or managed by, or provides services on behalf of any State or political subdivision of a State,"<sup>6</sup> and (2) it is one of five types of facilities: i.) for the mentally ill; ii.) a jail or prison; iii.) for pretrial detention; iv.) for juveniles in: pretrial, residential treatment, or any State purpose (other than education); v.) for nursing or custodial care.<sup>7</sup> Most juvenile detention and correctional facilities are plainly encompassed by the statute.

If a facility is in fact a public institution, the Civil Rights Division then reviews all the complaints to ascertain whether the allegations are serious enough to warrant further investigation. In general, allegations against publicly operated facilities result in an investigation when the Division has received sufficient evidence of potential systemic violations of federal rights—such as physical abuse or neglect, lack of adequate medical or mental health care or insufficient education.

Once DOJ decides to investigate an institution, the Attorney General must give the State or municipality at least one week's notice of the impending investigation. Then DOJ arranges for a tour of the facility or facilities under investigation and may also request that the parties produce certain facility documents. If an investigation does not uncover a pattern or practice of civil rights violations, DOJ notifies the jurisdiction and closes the investigation.

If DOJ does uncover a pattern or practice of civil rights violations, the Assistant Attorney General for Civil Rights sends the jurisdiction a formal "findings letter."<sup>8</sup> This letter sets forth the alleged violations, the evidence supporting the alleged violations, and the minimum steps necessary to correct the violations. Civil Rights Division attorneys then meet with the relevant State or local officials to discuss how best to resolve the violations.

### *Settlement and Litigation*

When enacting CRIPA, Congress built in a window for negotiations to give States the opportunity to avoid undue involvement of the federal judicial system. CRIPA requires that before filing suit, DOJ wait 49 days after issuing a findings letter to allow the State to voluntarily and informally remedy the conditions.<sup>9</sup>

Given CRIPA's emphasis on negotiation, the vast majority of CRIPA actions result in settlement. Many of the investigations culminate in consent decrees, which are court-endorsed agreements between the parties that have the effect of a court order. These consent decrees are frequently filed with the court simultaneously with a CRIPA complaint; in other situations, they are entered into after a CRIPA complaint has been filed. Once a court orders a consent decree, DOJ monitors the facility's compliance with the requirements of the decree through onsite inspections by expert consultants and reviews of periodic status reports. If the facility does not comply with the consent decree requirements or other court orders, DOJ will return to court to seek enforcement of the decree or further relief.

Before DOJ can file a CRIPA complaint, CRIPA requires that there be: 1) reasonable cause to believe that the State is engaged in a pattern or practice of violating the civil rights of individuals residing in an institution; and 2) egregious or flagrant conditions that violate the constitutional or statutory rights of individuals residing in an institution that cause grievous harm to the residents.<sup>10</sup> In addition, the Attorney General must certify that DOJ has met CRIPA's procedural requirements of notification and conciliation and that a CRIPA action is in the public interest.<sup>11</sup>

The only remedy permitted under CRIPA is equitable relief and the Attorney General may only seek the minimum corrective measures necessary to guarantee the civil rights of the institutionalized.

In summary, when DOJ first learns about violations from external sources it must determine if the facility has adequate governmental involvement and is therefore a public facility. The facility must

also fall within the facility types described in the statute. If the facility qualifies as a publicly operated facility, DOJ must then decide if the allegations warrant an investigation. If DOJ chooses to pursue an investigation, it then observes whether there is an established pattern or practice that causes grievous harm and then decides whether a complaint is warranted. DOJ must comply with the notification and waiting period requirements prior to investigating or filing a complaint. Finally, DOJ can seek only the minimum corrective measures needed to protect the civil rights of the institutionalized. Residents and advocates may wish to pursue further relief by means other than CRIPA.

### *CRIPA and Institutions for Juveniles*

Recent CRIPA consent decrees covering juvenile detention, correctional, and treatment facilities are comprehensive and address a broad range of conditions. For example, in November 1995, a Federal court in Kentucky ordered a CRIPA consent decree that required the State to take a number of steps to protect juveniles from abuse, mistreatment, and injury; to ensure sufficient medical and mental health care; and to provide adequate educational, vocational, and aftercare services. More recent investigations have been done in Louisiana and Georgia.<sup>12</sup>

The DOJ does not receive many complaints from detained or incarcerated juveniles or families of juveniles in State custody. This is not because problems do not exist in juvenile institutions, but because there is a lack of awareness about CRIPA. Informing advocacy groups and families about the effectiveness of CRIPA can be the first step to safer conditions for youth in custody. CRIPA can also be used to uphold the civil rights of disabled youth in custody. Almost half of the juveniles who are incarcerated have identifiable mental health disabilities, including mental retardation, learning disabilities, and emotional and behavioral disorders.<sup>13</sup>

### *Using CRIPA To Improve Conditions*

Advocates and parents alike should bring evidence of unlawful systemic conditions and abuses at juvenile detention and correctional facilities to the attention of the Special Litigation Section, Civil Rights Division, of DOJ (see contact information at end). Simply bringing information to the attention of the Division can have a tremendous impact.

One CRIPA success story was the result of a single advocate's efforts. The advocate had a 17-year-old client who was picked up on a burglary warrant and removed from a hospital where he was being treated. The boy's case was dismissed and he was to be returned to the hospital. Instead, the boy was inadvertently transferred to a maximum security facility. The boy's attorney protested and the local paper wrote a story about the boy's treatment at the facility, which sparked an internal agency investigation. Despite efforts to overhaul the system, the newspaper continued to reveal allegations of abuse and outbreaks of violence at juvenile facilities in the State. The information was brought to the attention of the Special Litigation Section and an investigation followed. The Attorney General entered into a consent decree with the state to improve conditions at the state's juvenile treatment facilities.

The consent decree requires that allegations of abuse at the state juvenile facilities be investigated by the Special Investigations Division in the State Office of the Inspector General. The state must also provide more treatment and aftercare services, and each child must have an up-to-date treatment plan. Youth who are taking medication for mental illness must be seen by psychiatrists, and psychiatric services must be provided onsite each week. The state also is required to offer special educational and vocational treatment. Youth are not to be placed in isolation for light punishment or staff convenience, youth who are placed in isolation must be monitored, and all isolation decisions must be reviewed to determine their appropriateness.

The state has since submitted status reports and a monitor has been appointed to oversee compliance with the agreement. These improvements that affect the well-being of all detained and incarcerated youth were sparked by the advocacy and information sharing efforts of a single advocate.

### Conclusion

Informing advocacy groups and families about the effectiveness of CRIPA is the first step to achieving safer conditions. Parents, advocates, and juvenile justice practitioners need to play a key role in bringing to DOJ's attention information about harmful or unlawful conditions. By calling and writing DOJ, the review and investigative processes

may be set in motion to determine if federal rights are being violated. Contacting local media, civic organizations, and child advocacy agencies can raise community awareness of unlawful conditions. Readers are invited to contact the National Juvenile Defender Center to get more ideas about advocacy strategies under CRIPA. Immediate concerns regarding hazardous conditions and practices of detention and confinement should be directed, preferably in writing, to:

Special Litigation Section  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 66400  
Washington, DC 20035-6400  
202-514-6255

Information from DOJ regarding CRIPA in juvenile corrections facilities can be found at <http://www.usdoj.gov/crt/split/juveniles.htm>.

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1. 42 U.S.C. §§ 1997-1997j.
  2. *See* S. Rep. No. 416, 96th Cong., 1st Sess. 16-17 (1980), *reprinted in* 1980 U.S.C.C.A.N. 783, 798.
  3. 42 U.S.C. § 1997 (1)(B)(iv).
  4. 42 U.S.C. § 1997c.
  5. *See* S. Rep. No. 416, *supra* note 2, at 29, *reprinted in* 1980 U.S.C.C.A.N. 783, 811.
  6. 42 U.S.C. § 1997 (1)(A).
  7. *Id.* § 1997 (1)(B).
  8. *Id.* § 1997b (a)(1)(this findings letter is also known as the "49-day letter").
  9. *Id.*
  10. 42 U.S.C. § 1997a(a).
  11. *Id.* § 1997b.
  12. *See* <http://www.usdoj.gov/crt/juveniles.htm> (click on "Investigative Findings Letters").
  13. Coalition for Juvenile Justice, *Handle with Care: Serving the Mental Health Needs of Young Offenders*, Washington, DC (2000).

— Prepared by Stephanie Hu for the NJDC.  
This is an edited excerpt from *Beyond the Walls: Improving Conditions of Confinement for Youth in*

<http://www.abanet.org/crimjust/jvfnj>

ensuring excellence in juvenile  
defense and promoting justice  
for all children

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# National Juvenile Defender Center

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## Statement of Beliefs

All children in the justice system must have ready and timely access to capable, well-resourced, well-trained legal counsel.

All children are entitled to legal representation that is individualized, developmentally and age appropriate, and free of racial, ethnic, gender, social, and economic bias.

All children have strengths and the potential to become productive members of society and each has the right to constitutional and statutory protections.

The juvenile defense bar must build its capacity, develop leadership and demonstrate a commitment to professionalism.

The juvenile defense bar must promote accountability and bring about reform in the juvenile justice system.

The juvenile defense bar's role in the justice system will be advanced through collaboration and partnerships.

The juvenile defense system will be enhanced by greater community involvement.