

Office of the Inspector General, DoD

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EVALUATION OF
DoD CORRECTIONAL FACILITY COMPLIANCE WITH
MILITARY SEX OFFENDER NOTIFICATION REQUIREMENTS

Executive Summary

Introduction. In 1994, the Congress enacted the *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act* (the Wetterling Act)¹ requiring certain sex offender registrations and notifications to State and local law enforcement officials in the State where the sex offender resides, is employed, carries on a vocation, or is a student. (See Appendix A for background information.) The Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1998 (CJSA)² included military sex offenders under the Wetterling Act coverage and required notifications beginning 1 year after enactment. In addition, under the *Victim and Witness Protection Act of 1982* (VWPA),³ when an offender is sentenced to confinement, the victim and certain witnesses of the crime are entitled to information concerning the confinement process and changes in confinement status. The custodial agency must provide each victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each. After trial, and at the request of the victim or witness, the custodial official responsible for the actions must notify each requesting victim and witness, at the earliest possible date, of (a) the date on which the offender will be eligible for parole and any scheduled release hearing, (b) any escape, work release, furlough, or other form of release from custody, and (c) death of the offender while in custody.⁴

Objectives. Our primary objective for this evaluation was to determine whether the Department of Defense (DoD) satisfies its notification requirements for military sex offenders, including whether DoD and/or individual Service:

- regulatory guidance adequately address the legal requirement to notify State and local law enforcement and registration officials when a convicted military sex offender is released from confinement or is convicted but not confined;
- processes are effective in notifying State and local authorities when a convicted military sex offender will reside in their jurisdiction; and
- processes are effective for notifying victims and witnesses regarding convicted military sex offenders.

¹ Pub. L. 103-322, Title XVII, § 170101, 108 Stat. 2038, codified, as amended at 42 U.S.C. §14071.

² Pub. L. 105-119, Title I, §115(a)(8(C)(i), 111 Stat. 2466.

³ Pub. L. 97-291, 96 Stat. 1248, codified, as amended, at various sections of Title 18.

⁴ 42 U.S.C. §10607(c)(5).

We announced our evaluation on July 26, 2001, and conducted our fieldwork during August through December 2001. The organizations/activities that we visited or contacted during the evaluation are listed in Appendix H.

Results. DoD published guidance providing for sex offender notifications in accordance with statutory requirements. The Services, however, did not fully implement the guidance and generally do not meet the notification requirements. In addition, military confinement facilities frequently do not receive documentation alerting them to victim and witness notification requirements, and they do not always satisfy the requirements even when they receive the documentation. As a result, some victims and witnesses did not receive notifications from military confinement facilities when an inmate was released from confinement.

Summary of Recommendations. We recommend that the Military Departments revise and reissue their policies on military sex offender notifications, ensuring the policies are consistent with DoD policy and specifically addressing notification requirements for:

- military sex offenders who are convicted by courts-martial and not sentenced to confinement;
- military offenders with prior sex offender convictions who are currently being released from confinement for non-covered offenses; and
- military sex offenders convicted outside the United States, and either confined outside the United States or not confined as a result of the conviction.

We also recommend that the Military Departments:

- establish a time requirement and responsibility for completing notifications involving military sex offenders convicted by courts-martial, but not sentenced to confinement;
- adopt systems, with appropriate management oversight mechanisms, to track their sex offender notifications and ensure compliance with Federal laws requiring notifications for military sex offenders;
- revise their current Reports of the Results of Trial to specifically indicate whether sex offender notifications are required; and
- complete statutorily required notifications for all convicted military sex offenders released from confinement or sentenced to other than confinement on or after November 25, 1998, where notifications have not yet been completed.

We further recommend the Under Secretary of Defense (Personnel and Readiness) (USD(P&R)), in coordination with the Office of the General Counsel, DoD, issue guidance on whether a person sentenced by a Summary Court-Martial for a covered offense requires sex offender notifications.

With respect to victim and witness notification, we recommend that the Military Departments take action to ensure that military confinement facilities receive a DD Form 2704, "Victim/Witness Certification and Election Concerning Inmate Status," for each adjudged inmate entering the confinement facility. Requirements should include:

- routine confinement facility reporting that identifies (by name and confinement date) those inmates who were received without a DD Form 2704; and
- procedures for confinement facilities to receive missing DD Forms 2704 immediately after reporting a missing form.

Finally, we recommend that the Air Force revise its current policies and procedures to require (a) confinement facilities to retain victim and witness data both during and after inmate confinement, and (b) restrict victim and witness data access to individuals with a strict need-to-know.

Management Comments. On March 27, 2001, we issued this report in draft form for management comments. Between April 19 and June 17, 2002, we received comments from USD(P&R) and each Military Department. Generally, they all concurred with the report. In response to our recommendations, USD(P&R) agreed to revise DoD policy making it clear that covered sex offenses arise from general and special, not summary, courts-martial. The Services all agreed to issue revised policy that complies with DoD criteria and specifically addresses military sex offenders who are (1) convicted but not confined; (2) being released from confinement for a non-covered offense, but have prior sex offender convictions; and (3) convicted at courts-martial outside the United States. They also agreed that they should have time requirements for notifications when a sex offender is convicted and not confined. The Navy advised that it already requires the Naval Criminal Investigative Service (NCIS) to complete these notifications within 15 days. The Air Force, on the other hand, advised that it would require the Air Force Security Police to complete these notifications within 24 hours. Neither the Navy nor the Air Force, however, proposed a time requirement for their legal offices to forward the information required to initiate the notifications. Without these time requirements, time requirements for the actual notifications are not particularly meaningful. Furthermore, we believe the 15 days allotted for NCIS to complete the Navy notifications is excessive, given the sense of urgency generally involved in the sex offender notification program.

The Services also agreed to adopt management oversight mechanisms to track sex offender notifications, and to revise their Reports of Results of Trial to specify whether sex offender notifications are required. They also agreed to initiate actions to satisfy sex offender notifications that they have not yet completed and that were required after the statute became effective. The Army, however, will only make “good-faith” efforts based on the last known or reported address for the sex offender who is no longer under military jurisdiction. This approach may not satisfy the statutory notification requirements. Further, we do not believe that locating and notifying sex offenders no longer under military service jurisdiction will be so difficult as to warrant excusing the statutory requirements. The Navy and Air Force will encounter the same situations and intend to meet their notification requirements.

In commenting on our recommendations concerning the victim and witness program, the Services agreed to adopt oversight regulatory practices to ensure that a DD Form 2704 accompanies each offender sent to a military confinement facility. Finally, in response to our concerns about security of records identifying victims and witnesses, the Air Force responded that its current regulatory guidance addresses this matter. As discussed in the report text, we do not agree that the current Air Force policy is adequate.