No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CALEB MCGILLVARY
Plaintiff/Appellant

v.

MICHAEL T. G. LONG ET AL.
Defendant/Appellee

On Petition for Writ of Certiorari to the United States Court of Appeals for the 3rd Circuit at Appeal Docket Number 25-1335

APPENDIX VOLUME I TO PETITION FOR WRIT OF CERTIORARI

CALEB L. MCGILLVARY
Third and Federal Street
New Jersey State Prison
Po Box 861
Trenton, NJ 08625-0861
In Propria Persona

TABLE OF APPENDIX

EXHIBIT A

ALD-203

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **25-1335**

CALEB L. MCGILLVARY, Appellant

VS.

MICHAEL T.G. LONG, ET AL.

(D.N.J. Civ. No. 1:24-cv-09507)

Present: BIBAS, PORTER, and MONTGOMERY-REEVES, Circuit Judges

Submitted are:

(1) Appellant's argument in support of the appeal;

(2) By the Clerk, the within appeal for possible dismissal under 28 U.S.C. § 1915(e)(2)(B);

(3) By the Clerk is the within appeal for possible summary action under 3rd Cir. LAR 27.4 and Chapter 10.6 of the Court's Internal Operating Procedures;

(4) Appellant's motion for injunctive relief;

(5) Appellant's motion to seal;

(6) Appellant's response to possible summary action;

(7) Appellees' response to Appellant's motion for injunctive relief;

(8) Appellant's reply to Appellees' response;

(9) Appellant's motion for an extension of time to file his reply; and

(10) Appellant's motion to Judge Bove;

(Continued)

CALEB L. MCGILLVARY, Appellant
VS.
MICHAEL T.G. LONG, ET AL.

in the above-captioned case.

Respectfully,

Clerk

ORDER

We review the denial of a motion for a preliminary injunction for an abuse of discretion but review the District Court's underlying legal conclusions de novo. Brown v. City of Pittsburgh, 586 F.3d 263, 268 (3d Cir. 2009). To obtain injunctive relief, a party must show a likelihood of success on the merits, irreparable harm if the injunction is not granted, that relief will not cause greater harm to the nonmoving party, and that relief is in the public interest. Miller v. Mitchell, 598 F.3d 139, 147 (3d Cir. 2010). The third and fourth factors merge when the Government is the opposing party. Nken v. Holder, 556 U.S. 418, 435 (2009). The District Court did not arguably abuse its discretion in denying McGillvary's motion for injunctive relief. Summary action is appropriate if there is no substantial question presented in the appeal. See 3d Cir. LAR 27.4. For essentially the reasons given by the District Court, we summarily affirm the District Court's February 13, 2025 order. See 3d Cir. I.O.P. 10.6. McGillvary's pending motions are denied.

By the Court,

s/ Tamika R. Montgomery-Reeves
Circuit Judge

Dated: August 25, 2025
Gch/cc: Caleb L. McGillvary
Emily M. Bisnauth, Esq.

EXHIBIT B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1335

CALEB L. MCGILLVARY,
Appellant

v.

MICHAEL T.G. LONG, in his Official Capacity as Director of the NJ Department of Law & Public Safety - Division of Criminal Justice; MATTHEW J. PLATKIN, in his Official Capacity as Attorney General of NJ; J. STEPHEN FERKETIC, in his Official Capacity as Chairperson of the Police Training Commission; NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY; STATE OF NEW JERSEY

(D.C. Civil Action No. 1:24-cv-09507)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge; HARDIMAN, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG and BOVE, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Tamika R. Montgomery-Reeves
Circuit Judge

Dated: October 21, 2025
Gch/cc: Caleb L. McGillvary
Emily M. Bisnauth, Esq.

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CALEB L. MCGILLVARY, Plaintiff,	:	No. 24-cv-9507-JMY
vs.	:	
MICHAEL T.G. LONG, et al., Defendants.	:	

MEMORANDUM

Younge, J. February 13, 2025

Currently before the court is a motion for preliminary injunction filed by the Plaintiff, Caleb L. McGillvary. (*Motion for Preliminary Injunction*, ECF No. 10.) The Court finds the motion for injunctive relief appropriate for resolution without oral argument. For the reasons set forth below, Plaintiff's motion for preliminary injunction will be denied.

I. FACTUAL AND PROCEDURAL HISTORY:

Plaintiff is presently incarcerated at New Jersey State Prison, where he is serving a fifty-seven-year sentence for the 2013 murder of Joseph Galfy, Jr. *See State v. MCgillvary*, No. A-4519-18, 2021 N.J. Super. Unpub. LEXIS 1651, at *1-2 (App. Div. May 12, 2021). Plaintiff previously filed a separate lawsuit, *McGillvary v. Scutari*, No. 23-cv-22605-JMY (D.N.J.), which was assigned to this Court. The Court filed a series of Memorandums in connection with its decision to deny Plaintiff's request for injunctive relief in that matter, and in connection with the Court's decision to grant motions to dismiss. *McGillvary v. Scutari*, No. 23-cv-22605-JMY, 2024 U.S. Dist. LEXIS 143034 (D.N.J. August 12, 2024) (Memorandum found at electronic filing number 81 in that case.); *McGillvary v. Scutari*, No. 23-cv-22605-JMY, 2024 U.S. Dist. LEXIS 231615 (D.N.J. December 23, 2024) (Memorandum found at electronic filing number 309 in that case.). The Memorandums that were previously entered by this Court set forth the

relevant factual and procedural history related to Plaintiff's criminal conviction. Therefore, it would be redundant to reiterate herein again the factual and procedural history associated with Plaintiff's criminal conviction, and the Court will refer the reader to these previous Memorandums for a discussion on those topics.

Plaintiff filed his Complaint in this matter on September 27, 2024. Plaintiff asserts claims under the Rehabilitation Act, 29 U.S.C. § 794 and the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 to 12213 in connection with Defendants' August 5, 2024, rejection of his petition for rulemaking. (*Complaint* ¶¶ 7, 24.) In his petition for rulemaking, Plaintiff proposed a regulation that would require, among other things, that potential New Jersey Department of Corrections (NJDOC) employees undergo pre-employment polygraph (lie detector) tests. (*Id.* at 20, 28, *Complaint*, Exhibit A, ECF No. 7.) Plaintiff argues that enhanced screening, which would include polygraph testing, is necessary to prevent non-convicted sexual predators from becoming correctional officers in the NJDOC. (*Id.*) In this litigation, Plaintiff contends that the denial of his proposed regulation was arbitrary, capricious, and contrary to establish law. (*Id.* at 20, 28.)

Plaintiff has now filed a motion for preliminary injunction in which he seeks immediate implementation of the proposed polygraph regulation for screening candidates who apply to become correctional officers in the NJDOC. (*Motion for Preliminary Injunction.*)

II. LEGAL STANDARD:

Before granting a preliminary injunction, a district court must find that Plaintiff has established four factors:

> (1) the likelihood that the plaintiff will prevail on the merits at final hearing; (2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of; (3) the extent to which the defendant will suffer irreparable harm if the

> preliminary injunction is issued; and (4) [that] the public interest [weighs in favor of granting the injunction].

Greater Phila. Chamber of Commerce v. City of Phila., 949 F.3d 116, 133 (3d Cir. 2020) (alterations in original) (quoting *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 (3d Cir. 1994)); *see also Winter v. NRDC*, 555 U.S. 7, 20 (2008). The first two factors are the "most critical," and "[i]f these gateway factors are met, a court then considers the remaining two factors and determines in its sound discretion if all four factors, taken together, balance in favor of granting the requested preliminary relief." *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017); *accord Fulton v. City of Phila.*, 922 F.3d 140, 152 (3d Cir. 2019).

Only when all four (4) factors are met should a court consider granting a plaintiff's motion for preliminary relief. *American Tel. and Tel. Co. v. Winback and Conserve Program, Inc.*, 42 F.3d 1421, 1427 (3rd Cir. 1994). The failure to establish any of the four (4) elements makes the granting of a preliminary injunction inappropriate. *NutraSweet Company v. Vit–Mar Enterprises, Inc.*, 176 F.3d 151, 153 (3d Cir.1999).

Insofar as Plaintiff seeks an order that would require correctional officers with NJDOC to undergo polygraph (lie detector) tests, he is requesting a mandatory injunction that would alter the status quo. In this regard, Plaintiff faces a "particularly heavy" burden. *Feering Pharm., Inc. v. Watson Pharm., Inc.*, 765 F.3d 205, 219 n.13 (3d Cir. 2014); *see also Acierno v. New Castle Cty.*, 40 F.3d 645, 653 (3d Cir. 1994) ("A party seeking a mandatory preliminary injunction that will alter the status quo bears a particularly heavy burden in demonstrating its necessity."). Furthermore, "A request for injunctive relief in the prison context must be viewed with great caution because of the intractable problems of prison administration." *Wesley v. Sec'y Pennsylvania Dep't of Corr.*, 569 F. App'x 123, 125 (citing *Goff v. Harper*, 60 F.3d 518, 520 (8th Cir. 1995).

III. DISCUSSION:

The Court will deny Plaintiff's request for injunctive relief because he fails to meet the requirements of the four-factor test necessary for the award of injunctive relief. In his motion, Plaintiff seeks immediate implementation of enhanced screening measures to ensure that he does not come in contact with correctional officers who are non-convicted sexual predators. (*Plaintiff's Reply Brief* pages 8, 11-12, ECF No. 24.) Specifically, Plaintiff requests immediate implementation of polygraph (lie detector) testing to determine the sex offender status of correctional officers and applicants who are seeking to become correctional officers. (*Id.*) Plaintiff avers that "[He] doesn't challenge any [NJDOC] procedures whatsoever, pat-downs or otherwise. He only challenges the [New Jersey Department of Law & Public Safety] (DLPS) licensing process with a request for reasonable accommodations." (*Id.* page 6.) Plaintiff further avers that "[He] requests that the [correctional officers] who conduct the [pat-down searches] be better screened by DLPS for non-convicted sexual predators." (*Id.* page 8.) Plaintiff argues that injunctive relief is necessary because the NJDOC's purported failure to protect him from non-convicted sexual predators has limited his access to prison services, i.e., use of the prison law library and mailroom. (*Id.* page 7.)

A. Plaintiff Fails to Demonstrate a Likelihood of Success on the Merits:

Plaintiff fails to establish that he will successfully prevail on the underlying claims that he advances in this lawsuit. Therefore, he has failed to satisfy the first element of the four-part test used by the court when evaluating whether to issue a preliminary injunction. In this lawsuit, Plaintiff seeks implementation of enhanced screening measures to provide protection from correctional officers who are purported sexual predators. Plaintiff avers that he is being subject to pat-down searches by correctional officers who are sexual predators when he attempts to use

the prison law library and mailroom. He then implicates his First Amendment Constitutional rights by arguing that he is being denied access to the prison law library, the mailroom where his mailbox is located, and other programs or services necessary to represent himself in ongoing litigation. (*Plaintiff's Reply Brief* page 7.)

Where a prison regulation or practice impinges on a prisoner's constitutional right, the regulation or practice is valid if it is "reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987), cited in *DeHart v. Horn*, 227 F.3d 47, 51 (3d Cir. 2000). In *Turner*, the Supreme Court set forth a four-factor analysis to assess the overall reasonableness of such regulations and practices. *Turner*, 482 U.S. at 89-91. The reasonableness standard involves the examination of the following four-factors: (1) whether the regulation or practice in question furthers a legitimate governmental interest unrelated to the suppression of expression; (2) whether there are alternative means of exercising First Amendment rights that remain open to prison inmates; (3) whether the right can be exercised only at the cost of less liberty and safety for guards and other prisoners; and (4) whether an alternative exists which would fully accommodate the prisoners' rights at *de minimis* cost to valid penological interests. *Thornburgh v. Abbott*, 490 U.S. 401, 415-18 (1989); *Turner*, 482 U.S. at 89-91. However, prison administrators need not choose the least restrictive means possible in trying to further legitimate penological interests. *Thornburgh*, 490 U.S. at 411.

In this instance, the policy of not employing polygraph testing is in accordance with the goals established by the New Jersey State Legislature when it enacted N.J.S.A. § 2c:40A-1 (Employer Requiring Lie Detector Test). In most instances, with some general exceptions, it is a crime in the state of New Jersey to require employees or potential employees – like correctional officers – to undergo routine polygraph testing. N.J.S.A. § 2c:40A-1. Plaintiff's reliance on

federal law in support of his motion for injunctive relief is also misplaced. (*Plaintiff's Reply Brief*.) Plaintiff cites to a federal statute entitled, Employee Polygraph Protection, 29 U.S.C. §§ 2001-2009, which in actuality restricts the use of polygraph testing in employment settings. Furthermore, the federal law that Plaintiff relies upon explicitly exempts states and local governmental entities from its application. 29 U.S.C.S. § 2006. Section 2006 reads in relevant part, "This Act [29 USCS §§ 2001, *et seq.*] shall not apply with respect to the United States Government, any State or local government, or any political subdivision of a State or local government."

It is also very unlikely that Plaintiff will be able to prevail and obtain the relief sought in this lawsuit because district courts located within the Third Circuit have traditionally been very reluctant to interfere with the day-to-day operations of prison administration. *Wesley v. Sec'y Pennsylvania Dep't of Corr.*, 569 F. App'x at 125; *Robertson v. Samuels*, 593 F. App'x 91, 93 (3d Cir. 2014) (citing *Sandin v. Conner*, 515 U.S. 472, 482 (1995)); *Thorn v. Smith*, 207 F. App'x 240, 242 (3d Cir. 2006). In this instance, the NJDOC has a legitimate penological interests in hiring correctional officers to adequately staff its prisons so that the NJDOC can operate an orderly and safe prison system. In the initial stages of this litigation, many questions about the potential implications of polygraph testing remain unanswered. For example, the Court has concerns about the potential staffing shortages that could be caused by entering an injunction requiring blanket polygraph testing and the costs associated with such a program. The Court also has concerns about the reliability of polygraph testing in general juxtaposed to other measures that are already in place to screen correctional officers. These issues would need to be fully vetted before the Court could enter a mandatory injunction requiring NJDOC correctional officers to undergo polygraph testing.

B. Plaintiff Will Not Be Irreparably Harmed by Denial of Injunctive Relief:

Plaintiff has failed to demonstrate that he will be irreparably harmed in the absence of a preliminary injunction. To establish irreparable harm, Plaintiff must establish harm that is "actual and imminent, not merely speculative." *Eaton Corp. v. Geisenberger*, 486 F. Supp. 3d 770, 798 (D. Del. 2020) (quoting *Siemens USA Holdings, Inc., v. Geisenberger*, 17 F.4th 393 (3d Cir. 2021)). In this instance, Plaintiff seeks a mandatory injunction which means he must meet a heightened standard. *Feering Pharm., Inc. v. Watson Pharm., Inc.*, 765 F.3d 205, 219 n.13 (3d Cir. 2014); *see also Acierno v. New Castle Cty.*, 40 F.3d 645, 653 (3d Cir. 1994) ("A party seeking a mandatory preliminary injunction that will alter the status quo bears a particularly heavy burden in demonstrating its necessity.").

In an attempt to establish irreparable harm, Plaintiff argues that he is being denied access to the prison law library and his prison mailbox which he avers are both necessary to pursue pending litigation. However, the record in this lawsuit, and other lawsuits that he has filed, contradicts his claim that he has been denied access to the court. In addition to the case *sub judice*, Plaintiff is actively litigating, or has litigated, at least a dozen lawsuits in various federal district courts across the nation as follows: *McGillvary v. Scutari*, No. 23-cv-22605-JMY (D.N.J.) (asserting claims against more than 80 named defendants); *McGillvary v. Hagan*, No. 22-cv-7702-RFL (N.D. Cal.); *McGillvary v. Union County New Jersey, et al.*, No. 15-cv-8840-MCA-MAH (D.N.J.); *McGillvary v. Holom, et al.*, No. 18-cv-17487-MCA-LDW (D.N.J.); *McGillvary v. Dorsey*, No. 22-cv-5883-JNW (W.D. Wash); *McGillvary v. Kurnatowski*, No. 22-cv-8587-FLA-AGR (C.D. Cal.); *Caleb McGillvary et al., v. Netflix, et al.*, No. 23-cv-1195-JLS-SK (C.D. Cal.) (asserting claims against more that 18 named defendants); *McGillvary v. Grande*, No. 22-cv-1342-JLH (D. Del.); *McGillvary v. Galfy*, No. 21-cv-17121-MCA-CLW (D.N.J.);

McGillvary v. Riez, et al. 22-cv-6430-MAS-JBD (D.N.J.); *McGillvary v. Davis*, No. 22-cv-4185-MRH (D.N.J.); *McGillvary v. State of New Jersey*, No. 17-cv-10215-MCA (D.N.J.); and *McGillvary v. Rolling Stones, LLC, et al.*, No. 23-cv-10428-DEH, 2024 U.S. Dist. LEXIS 105572 (S.D.N.Y. 2024). Plaintiff has also pursued claims in the Third Circuit Court of Appeals. *Caleb McGillvary In re: Caleb McGillvary*, No. 22-op-3068 (3d Cir. 2023) (Petition for Writ of Mandamus), *In re: Caleb L. McGillvary v. et al.*, 2023-op-1773 (3d Cir. 2023) (Petition for Writ of Mandamus).

Therefore, Plaintiff has failed to establish the purported irreparable harm of being denied access to the court through an inability to access the prison law library or mail system.

C. Balance of the Equities and the Public Interest:[1]

The first two factors for evaluating whether to enter a preliminary injunction weigh in favor of denying Plaintiff's request for relief. Therefore, the Court can stop its analysis at this point, and it does not need to evaluate the equities and public interest factors. However, the correctional officers and inmates in the NJDOC have an interest in physical safety that is created by adequately staffed and well-maintained facilities. Entry of a mandatory injunction requiring polygraph testing could interfere with the ability of the NJDOC to staff its facilities and meet budgetary requirements. As previously mentioned, polygraph testing is contrary to public policy as set forth in New Jersey state statute. Therefore, the equities and public interests weigh against injunctive relief.

[1] The Court consolidates its analysis of the last two factors because "[w]here the government is a party, the last two factors in the preliminary injunction analysis, namely the balance of the equities and the public interest, merge." *City of Phila. v. Sessions*, 28 F. Supp. 3d 579, 657 (E.D. Pa. 2017); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009).

IV. CONCLUSION:

For these reasons, Plaintiff's motion for preliminary injunction will be denied.

BY THE COURT:

/s/ John Milton Younge
Judge John Milton Younge

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CALEB L. MCGILLVARY, Plaintiff,	:	No. 24-cv-9507-JMY
vs.	:	
MICHAEL T.G. LONG, et al., Defendants.	:	

ORDER

AND NOW, this 13th day of February, 2025, upon consideration of the *Motion for Preliminary Injunction* (ECF No. 10) filed by Plaintiff, all papers filed in support thereof and in opposition thereto, and for the reasons set forth in the accompanying Memorandum, it is hereby **ORDERED** that said motion for injunctive relief will be **DENIED**.

It is further **ORDERED** that the *Motion to Seal* (ECF No. 11) filed by Plaintiff is **GRANTED** in part and **DENIED** in part as follows: Plaintiff's *Motion to Seal* is granted to the extent that Plaintiff has filed mental health records and exhibits under seal at electronic filing number 12 and those records and exhibits may remain under seal; Plaintiff's Motion to Seal is **DENIED** in all other regards.

BY THE COURT:

/s/ John Milton Younge
Judge John Milton Younge

EXHIBIT E

Text of Controlling Statutes

28 C.F.R. 0.85

0.85 General functions.

The Director of the Federal Bureau of Investigation shall:

(a) Investigate violations of the laws, including the criminal drug laws, of the United States and collect evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise exclusively assigned to another investigative agency. The Directors authority to investigate violations of and collect evidence in cases involving the criminal drug laws of the United States is concurrent with such authority of the Administrator of the Drug Enforcement Administration under 0.100 of this part. In investigating violations of such laws and in collecting evidence in such cases, the Director may exercise so much of the authority vested in the Attorney General by sections 1 and 2 of Reorganization Plan No. 1 of 1968, section 1 of Reorganization Plan No. 2 of 1973 and the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, as he determines is necessary. He may also release FBI information on the same terms and for the same purposes that the Administrator of the Drug Enforcement Administration may disclose DEA information under 0.103 of this part. The Director and his authorized delegates may seize, forfeit and remit or mitigate the forfeiture of property in accordance with 21 U.S.C. 881, 21 CFR 1316.71 through 1316.81, and 28 CFR 9.1 through 9.7.

(b) Conduct the acquisition, collection, exchange, classification and preservation of fingerprints and identification records from criminal justice and other governmental agencies, including fingerprints voluntarily submitted by individuals for personal identification purposes; provide expert testimony in Federal, State and local courts as to fingerprint examinations; and provide fingerprint training and provide identification assistance in disasters and for other humanitarian purposes.

(c) Conduct personnel investigations requisite to the work of the Department of Justice and whenever required by statute or otherwise.

(d) Carry out the Presidential directive of September 6, 1939, as reaffirmed by Presidential directives of January 8, 1943, July 24, 1950, and December 15, 1953, designating the Federal Bureau of Investigation to take charge of investigative work in matters relating to espionage, sabotage, subversive activities, and related matters, including investigating any potential violations of the Arms Export Control Act, the Export Administration Act, the Trading with the Enemy Act, or the International Emergency Economic Powers Act, relating to any foreign counterintelligence matter.

(e) Establish and conduct law enforcement training programs to provide training for State and local law enforcement personnel; operate the Federal Bureau of Investigation National Academy; develop new approaches, techniques, systems, equipment, and devices to improve and strengthen law enforcement and assist in conducting State and local training programs, pursuant to section 404 of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 204.

(f) Operate a central clearinghouse for police statistics under the Uniform Crime Reporting Program, and a computerized nationwide index of law enforcement information under the National Crime Information Center.

(g) Operate the Federal Bureau of Investigation Laboratory to serve not only the Federal Bureau of Investigation, but also to provide, without cost, technical and scientific assistance, including expert testimony in Federal or local courts, for all duly constituted law enforcement agencies, other organizational units of the Department of Justice, and other Federal agencies, which may desire to avail themselves of the service. As provided for in procedures agreed upon between the Secretary of State and the Attorney General, the services of the Federal Bureau of Investigation Laboratory may also be made available to foreign law enforcement agencies and courts.

(h) Make recommendations to the Office of Personnel Management in connection with applications for retirement under 5 U.S.C. 8336(c).

(i) Investigate alleged fraudulent conduct in connection with operations of the Department of Housing and Urban Development and other alleged violations of the criminal provisions of the National Housing Act, including 18 U.S.C. 1010.

(j) Exercise the power and authority vested in the Attorney General to approve and conduct the exchanges of identification records enumerated at 50.12(a) of this chapter.

(k) Payment of awards (including those over $ 10,000) under 28 U.S.C. 524(c)(2), and purchase of evidence (including the authority to pay more than $ 100,000) under 28 U.S.C. 524(c)(1)(F).

(l) Exercise Lead Agency responsibility in investigating all crimes for which it has primary or concurrent jurisdiction and which involve terrorist activities or acts in preparation of terrorist activities within the statutory jurisdiction of the United States. Within the United States, this would include the collection, coordination, analysis, management and dissemination of intelligence and criminal information as appropriate. If another Federal agency identifies an individual who is engaged in terrorist activities or in acts in preparation of terrorist activities, that agency is requested to promptly notify the FBI. Terrorism includes the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

(m) Carry out the Departments responsibilities under the Hate Crime Statistics Act.

(n) Exercise the authority vested in the Attorney General under section 528(a), Public Law 101-509, to accept from federal departments and agencies the services of law enforcement personnel to assist the Department of Justice in the investigation and prosecution of fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation, and to coordinate the activities of such law enforcement personnel in the conduct of such investigations and prosecutions.

(o) Carry out the responsibilities conferred upon the Attorney General under the Communications Assistance for Law Enforcement Act, Title I of Pub. L. 103-414 (108 Stat. 4279), subject to the general supervision and direction of the Attorney General.

28 C.F.R. 35.152

35.152 Jails, detention and correctional facilities, and community correctional facilities.

(a) General. This section applies to public entities that are responsible for the operation or management of adult and juvenile justice jails, detention and correctional facilities, and community correctional facilities, either directly or through contractual, licensing, or other arrangements with public or private entities, in whole or in part, including private correctional facilities.

(b) Discrimination prohibited.

(1) Public entities shall ensure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(2) Public entities shall ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals. Unless it is appropriate to make an exception, a public entity

(i) Shall not place inmates or detainees with disabilities in inappropriate security classifications because no accessible cells or beds are available;

(ii) Shall not place inmates or detainees with disabilities in designated medical areas unless they are actually receiving medical care or treatment;

(iii) Shall not place inmates or detainees with disabilities in facilities that do not offer the same programs as the facilities where they would otherwise be housed; and

(iv) Shall not deprive inmates or detainees with disabilities of visitation with family members by placing them in distant facilities where they would not otherwise be housed.

(3) Public entities shall implement reasonable policies, including physical modifications to additional cells in accordance with the 2010 Standards, so as to ensure that each inmate with a disability is housed in a cell with the accessible elements necessary to afford the inmate access to safe, appropriate housing.

28 C.F.R. 35.190(b)(6)

35.190 Designated agencies.

(a) The Assistant Attorney General shall coordinate the compliance activities of Federal agencies with respect to State and local government components, and shall provide policy guidance and interpretations to designated agencies to ensure the consistent and effective implementation of the requirements of this part.

(b) The Federal agencies listed in paragraph (b) (1) through (8) of this section shall have responsibility for the implementation of subpart F of this part for components of State and local

governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas.

(1) Department of Agriculture: All programs, services, and regulatory activities relating to farming and the raising of livestock, including extension services.

(2) Department of Education: All programs, services, and regulatory activities relating to the operation of elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.

(3) Department of Health and Human Services: All programs, services, and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health-related schools, the operation of health care and social service providers and institutions, including grass-roots and community services organizations and programs, and preschool and daycare programs.

(4) Department of Housing and Urban Development: All programs, services, and regulatory activities relating to state and local public housing, and housing assistance and referral.

(5) Department of Interior: All programs, services, and regulatory activities relating to lands and natural resources, including parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums.

(6) Department of Justice: All programs, services, and regulatory activities relating to law enforcement, public safety, and the administration of justice, including courts and correctional institutions; commerce and industry, including general economic development, banking and finance, consumer protection, insurance, and small business; planning, development, and regulation (unless assigned to other designated agencies); state and local government support services (e.g., audit, personnel, comptroller, administrative services); all other government functions not assigned to other designated agencies.

(7) Department of Labor: All programs, services, and regulatory activities relating to labor and the work force.

(8) Department of Transportation: All programs, services, and regulatory activities relating to transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing.

(c) Responsibility for the implementation of subpart F of this part for components of State or local governments that exercise responsibilities, regulate, or administer services, programs, or activities relating to functions not assigned to specific designated agencies by paragraph (b) of this section may be assigned to other specific agencies by the Department of Justice.

(d) If two or more agencies have apparent responsibility over a complaint, the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.

(e) When the Department receives a complaint directed to the Attorney General alleging a violation of this part that may fall within the jurisdiction of a designated agency or another

Federal agency that may have jurisdiction under section 504, the Department may exercise its discretion to retain the complaint for investigation under this part.

28 U.S.C. 1331

1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. 1254(1)

1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. 1291

1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title [28 USCS 1292(c) and (d) and 1295].

28 U.S.C. 1292(a)(1)

1292. Interlocutory decisions

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however,* That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction

(1) of an appeal from an interlocutory order or decree described in subsection (a) or (b) of this section in any case over which the court would have jurisdiction of an appeal under section 1295 of this title [28 USCS 1295]; and

(2) of an appeal from a judgment in a civil action for patent infringement which would otherwise be appealable to the United States Court of Appeals for the Federal Circuit and is final except for an accounting.

(d) (1) When the chief judge of the Court of International Trade issues an order under the provisions of section 256(b) of this title [28 USCS 256(b)], or when any judge of the Court of International Trade, in issuing any other interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(2) When the chief judge of the United States Court of Federal Claims issues an order under section 798(b) of this title [28 USCS 798(b)], or when any judge of the United States Claims Court [United States Court of Federal Claims], in issuing an interlocutory order, includes

in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(3) Neither the application for nor the granting of an appeal under this subsection shall stay proceedings in the Court of International Trade or in the Claims Court [Court of Federal Claims], as the case may be, unless a stay is ordered by a judge of the Court of International Trade or of the Claims Court [Court of Federal Claims] or by the United States Court of Appeals for the Federal Circuit or a judge of that court.

(4) (A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States Claims Court [United States Court of Federal Claims] under section 1631 of this title [28 USCS 1631].

(B) When a motion to transfer an action to the Claims Court [Court of Federal Claims] is filed in a district court, no further proceedings shall be taken in the district court until 60 days after the court has ruled upon the motion. If an appeal is taken from the district courts grant or denial of the motion, proceedings shall be further stayed until the appeal has been decided by the Court of Appeals for the Federal Circuit. The stay of proceedings in the district court shall not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary. However, during the period in which proceedings are stayed as provided in this subparagraph, no transfer to the Claims Court [Court of Federal Claims] pursuant to the motion shall be carried out.

(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title [28 USCS 2072], to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).

28 U.S.C. 2072

2072. Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates [magistrate judges] thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title [28 USCS 1291].

28 U.S.C. 2075

2075. Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11 [11 USCS 1 et seq.].

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.

The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 [11 USCS 707(b)(2)(C)] and may provide general rules on the content of such statement.

29 U.S.C. 794

794. Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations. No otherwise qualified individual with a disability in the United States, as defined in section 7(20) [29 USCS 705(20)], shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) Program or activity defined. For the purposes of this section, the term program or activity means all of the operations of

(1) (A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2) (A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 8101 of the Elementary and Secondary Education Act of 1965 [20 USCS 7801]), system of career and technical education, or other school system;

(3) (A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers. Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on the date of the enactment of this subsection [enacted March 22, 1988].

(d) Standards used in determining violation of section. The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 1220112204 and 12210), as such sections relate to employment.

2001. Definitions

As used in this Act [29 USCS 2001 et seq.]:

(1) Commerce. The term commerce has the meaning provided by section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)).

(2) Employer. The term employer includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.

(3) Lie detector. The term lie detector includes a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(4) Polygraph. The term polygraph means an instrument that

(A) records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards; and

(B) is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(5) Secretary. The term Secretary means the Secretary of Labor.

29 U.S.C. 2002

2002. Prohibitions on lie detector use

Except as provided in sections 7 and 8 [29 USCS 2006, 2007], it shall be unlawful for any employer engaged in or affecting commerce or in the production of goods for commerce

(1) directly or indirectly, to require, request, suggest, or cause any employee or prospective employee to take or submit to any lie detector test;

(2) to use, accept, refer to, or inquire concerning the results of any lie detector test of any employee or prospective employee;

(3) to discharge, discipline, discriminate against in any manner, or deny employment or promotion to, or threaten to take any such action against

(A) any employee or prospective employee who refuses, declines, or fails to take or submit to any lie detector test, or

(B) any employee or prospective employee on the basis of the results of any lie detector test; or

(4) to discharge, discipline, discriminate against in any manner, or deny employment or promotion to, or threaten to take any such action against, any employee or prospective employee because

(A) such employee or prospective employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act [29 USCS 2001 et seq.],

(B) such employee or prospective employee has testified or is about to testify in any such proceeding, or

(C) of the exercise by such employee or prospective employee, on behalf of such employee or another person, of any right afforded by this Act [29 USCS 2001 et seq.].

29 U.S.C. 2003

2003. Notice of protection

The Secretary shall prepare, have printed, and distribute a notice setting forth excerpts from, or summaries of, the pertinent provisions of this Act [29 USCS 2001 et seq.]. Each employer shall post and maintain such notice in conspicuous places on its premises where notices to employees and applicants to employment are customarily posted.

29 U.S.C. 2004

2004. Authority of the Secretary

(a) In general. The Secretary shall

(1) issue such rules and regulations as may be necessary or appropriate to carry out this Act [29 USCS 2001 et seq.];

(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act [29 USCS 2001 et seq.]; and

(3) make investigations and inspections and require the keeping of records necessary or appropriate for the administration of this Act [29 USCS 2001 et seq.].

(b) Subpoena authority. For the purpose of any hearing or investigation under this Act [29 USCS 2001 et seq.], the Secretary shall have the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50).

29 U.S.C. 2005

2005. Enforcement provisions

(a) Civil penalties.

(1) In general. Subject to paragraph (2), any employer who violates any provision of this Act [29 USCS 2001 et seq.] may be assessed a civil penalty of not more than $10,000.

(2) Determination of amount. In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this Act [29 USCS 2001 et seq.] and the gravity of the violation.

(3) Collection. Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (e) of section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853) with respect to civil penalties assessed under subsection (a) of such section.

(b) Injunctive actions by the Secretary. The Secretary may bring an action under this section to restrain violations of this Act [29 USCS 2001 et seq.]. The Solicitor of Labor may appear for and represent the Secretary in any litigation brought under this Act [29 USCS 2001 et seq.]. In any action brought under this section, the district courts of the United States shall have jurisdiction, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this Act [29 USCS 2001 et seq.], including such legal or equitable relief incident thereto as may be appropriate, including, but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits.

(c) Private civil actions.

(1) Liability. An employer who violates this Act [29 USCS 2001 et seq.] shall be liable to the employee or prospective employee affected by such violation. Such employer shall be liable for such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits.

(2) Court. An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by an employee or prospective employee for or on behalf of such employee, prospective employee, and other employees or prospective employees similarly situated. No such action may be commenced more than 3 years after the date of the alleged violation.

(3) Costs. The court, in its discretion, may allow the prevailing party (other than the United States) reasonable costs, including attorneys fees.

(d) Waiver of rights prohibited. The rights and procedures provided by this Act [29 USCS 2001 et seq.] may not be waived by contract or otherwise, unless such waiver is part of a written settlement agreed to and signed by the parties to the pending action or complaint under this Act [29 USCS 2001 et seq.].

29 U.S.C. 2006

2006. Exemptions

(a) No application to governmental employers. This Act [29 USCS 2001 et seq.] shall not apply with respect to the United States Government, any State or local government, or any political subdivision of a State or local government.

(b) National defense and security exemption.

(1) National defense. Nothing in this Act [29 USCS 2001 et seq.] shall be construed to prohibit the administration, by the Federal Government, in the performance of any counterintelligence function, of any lie detector test to

(A) any expert or consultant under contract to the Department of Defense or any employee of any contractor of such Department; or

(B) any expert or consultant under contract with the Department of Energy in connection with the atomic energy defense activities of such Department or any employee of any contractor of such Department in connection with such activities.

(2) Security. Nothing in this Act [29 USCS 2001 et seq.] shall be construed to prohibit the administration, by the Federal Government, in the performance of any intelligence or counterintelligence function, of any lie detector test to

(A) (i) any individual employed by, assigned to, or detailed to, the National Security Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, or the Central Intelligence Agency,

(ii) any expert or consultant under contract to any such agency,

(iii) any employee of a contractor to any such agency,

(iv) any individual applying for a position in any such agency, or

(v) any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for any such agency; or

(B) any expert, or consultant (or employee of such expert or consultant) under contract with any Federal Government department, agency, or program whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2(a) of Executive Order 12356 (or a successor Executive order).

(c) FBI contractors exemption. Nothing in this Act [29 USCS 2001 et seq.] shall be construed to prohibit the administration, by the Federal Government, in the performance of any counterintelligence function, of any lie detector test to an employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under the contract with such Bureau.

(d) Limited exemption for ongoing investigations. Subject to sections 8 and 10 [29 USCS 2007 and 2009], this Act [29 USCS 2001 et seq.] shall not prohibit an employer from requesting an employee to submit to a polygraph test if

(1) the test is administered in connection with an ongoing investigation involving economic loss or injury to the employers business, such as theft, embezzlement, misappropriation, or an act of unlawful industrial espionage or sabotage;

(2) the employee had access to the property that is the subject of the investigation;

(3) the employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(4) the employer executes a statement, provided to the examinee before the test, that

(A) sets forth with particularity the specific incident or activity being investigated and the basis for testing particular employees,

(B) is signed by a person (other than a polygraph examiner) authorized to legally bind the employer,

(C) is retained by the employer for at least 3 years, and

(D) contains at a minimum

(i) an identification of the specific economic loss or injury to the business of the employer,

(ii) a statement indicating that the employee had access to the property that is the subject of the investigation, and

(iii) a statement describing the basis of the employers reasonable suspicion that the employee was involved in the incident or activity under investigation.

(e) Exemption for security services.

(1) In general. Subject to paragraph (2) and sections 8 and 10 [29 USCS 2007 and 2009], this Act [29 USCS 2001 et seq.] shall not prohibit the use of polygraph tests on prospective employees by any private employer whose primary business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel and whose function includes protection of

(A) facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States, as determined under rules and regulations issued by the Secretary within 90 days after the date of the enactment of this Act [June 27, 1988], including

(i) facilities engaged in the production, transmission, or distribution of electric or nuclear power,

(ii) public water supply facilities,

(iii) shipments or storage of radioactive or other toxic waste materials, and

(iv) public transportation, or

(B) currency, negotiable securities, precious commodities or instruments, or proprietary information.

(2) Access. The exemption provided under this subsection shall not apply if the test is administered to a prospective employee who would not be employed to protect facilities, materials, operations, or assets referred to in paragraph (1).

(f) Exemption for drug security, drug theft, or drug diversion investigations.

(1) In general. Subject to paragraph (2) and sections 8 and 10 [29 USCS 2007 and 2009], this Act [29 USCS 2001 et seq.] shall not prohibit the use of a polygraph test by any employer authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, II, III, or IV of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(2) Access. The exemption provided under this subsection shall apply

(A) if the test is administered to a prospective employee who would have direct access to the manufacture, storage, distribution, or sale of any such controlled substance; or

(B) in the case of a test administered to a current employee, if

(i) the test is administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employer, and

(ii) the employee had access to the person or property that is the subject of the investigation.

29 U.S.C. 2007

2007. Restrictions on use of exemptions

(a) Test as basis for adverse employment action.

(1) Under ongoing investigations exemption. Except as provided in paragraph (2), the exemption under subsection (d) of section 7 [29 USCS 2006(d)] shall not apply if an employee is discharged, disciplined, denied employment or promotion, or otherwise discriminated against in any manner on the basis of the analysis of a polygraph test chart or the refusal to take a polygraph test, without additional supporting evidence. The evidence required by such subsection may serve as additional supporting evidence.

(2) Under other exemptions. In the case of an exemption described in subsection (e) or (f) of such section [29 USCS 2006(e) or (f)], the exemption shall not apply if the results of an analysis of a polygraph test chart are used, or the refusal to take a polygraph test is used, as the sole basis upon which an adverse employment action described in paragraph (1) is taken against an employee or prospective employee.

(b) Rights of examinee. The exemptions provided under subsections (d), (e), and (f) of section 7 [29 USCS 2006(d)(f)] shall not apply unless the requirements described in the following paragraphs are met:

(1) All phases. Throughout all phases of the test

(A) the examinee shall be permitted to terminate the test at any time;

(B) the examinee is not asked questions in a manner designed to degrade, or needlessly intrude on, such examinee;

(C) the examinee is not asked any question concerning

(i) religious beliefs or affiliations,

(ii) beliefs or opinions regarding racial matters,

(iii) political beliefs or affiliations,

(iv) any matter relating to sexual behavior; and

(v) beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations; and

(D) the examiner does not conduct the test if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the actual testing phase.

(2) Pretest phase. During the pretest phase, the prospective examinee

(A) is provided with reasonable written notice of the date, time, and location of the test, and of such examinees right to obtain and consult with legal counsel or an employee representative before each phase of the test;

(B) is informed in writing of the nature and characteristics of the tests and of the instruments involved;

(C) is informed, in writing

(i) whether the testing area contains a two-way mirror, a camera, or any other device through which the test can be observed,

(ii) whether any other device, including any device for recording or monitoring the test, will be used, or

(iii) that the employer or the examinee may (with mutual knowledge) make a recording of the test;

(D) is read and signs a written notice informing such examinee

(i) that the examinee cannot be required to take the test as a condition of employment,

(ii) that any statement made during the test may constitute additional supporting evidence for the purposes of an adverse employment action described in subsection (a),

(iii) of the limitations imposed under this section,

(iv) of the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this Act [29 USCS 2001 et seq.], and

(v) of the legal rights and remedies of the employer under this Act [29 USCS 2001 et seq.] (including the rights of the employer under section 9(c)(2) [29 USCS 2008(c)(2)]); and

(E) is provided an opportunity to review all questions to be asked during the test and is informed of the right to terminate the test at any time.

(3) Actual testing phase. During the actual testing phase, the examiner does not ask such examinee any question relevant during the test that was not presented in writing for review to such examinee before the test.

(4) Post-test phase. Before any adverse employment action, the employer shall

(A) further interview the examinee on the basis of the results of the test; and

(B) provide the examinee with

(i) a written copy of any opinion or conclusion rendered as a result of the test, and

(ii) a copy of the questions asked during the test along with the corresponding charted responses.

(5) Maximum number and minimum duration of tests. The examiner shall not conduct and complete more than five polygraph tests on a calendar day on which the test is given, and shall not conduct any such test for less than a 90-minute duration.

(c) Qualifications and requirements of examiners. The exemptions provided under subsections (d), (e), and (f) of section 7 [29 USCS 2006(d)(f)] shall not apply unless the individual who conducts the polygraph test satisfies the requirements under the following paragraphs:

(1) Qualifications. The examiner

(A) has a valid and current license granted by licensing and regulatory authorities in the State in which the test is to be conducted, if so required by the State; and

(B) maintains a minimum of a $50,000 bond or an equivalent amount of professional liability coverage.

(2) Requirements. The examiner

(A) renders any opinion or conclusion regarding the test

(i) in writing and solely on the basis of an analysis of polygraph test charts,

(ii) that does not contain information other than admissions, information, case facts, and interpretation of the charts relevant to the purpose and stated objectives of the test, and

(iii) that does not include any recommendation concerning the employment of the examinee; and

(B) maintains all opinions, reports, charts, written questions, lists, and other records relating to the test for a minimum period of 3 years after administration of the test.

29 U.S.C. 2008

2008. Disclosure of information

(a) In general. A person, other than the examinee, may not disclose information obtained during a polygraph test, except as provided in this section.

(b) Permitted disclosures. A polygraph examiner may disclose information acquired from a polygraph test only to

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the employer that requested the test; or

(3) any court, governmental agency, arbitrator, or mediator, in accordance with due process of law, pursuant to an order from a court of competent jurisdiction.

(c) Disclosure by employer. An employer (other than an employer described in subsection (a), (b), and (c) of section 7 [29 USCS 2006(a)(c)]) for whom a polygraph test is conducted may disclose information from the test only to

(1) a person in accordance with subsection (b); or

(2) a governmental agency, but only insofar as the disclosed information is an admission of criminal conduct.

29 U.S.C. 2009

2009. Effect on other law and agreements

Except as provided in subsections (a), (b), and (c) of section 7 [29 USCS 2006(a)(c)], this Act [29 USCS 2001 et seq.] shall not preempt any provision of any State or local law or of any negotiated collective bargaining agreement that prohibits lie detector tests or is more restrictive with respect to lie detector tests than any provision of this Act [29 USCS 2001 et seq.].

34 U.S.C. 10226(b)

10226. Personnel and administrative authority

(a) Officers and employees of certain Federal agencies; employment; compensation. The Assistant Attorney General, the Director of the Bureau of Justice Assistance, the Director of the Institute, and the Director of the Bureau of Justice Statistics are authorized to select, appoint, employ, and fix compensation of such officers and employees as shall be necessary to

carry out the powers and duties of the Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics, respectively, under this title.

(b) Use of available services; reimbursement. The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics are authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of Federal, State, and local agencies to the extent deemed appropriate after giving due consideration to the effectiveness of such existing services, equipment, personnel, and facilities.

(c) Other Federal agency performance of functions under this chapter; reimbursement. The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics may arrange with and reimburse the heads of other Federal departments and agencies for the performance of any of the functions under this title.

(d) Experts and consultants; compensation. The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code relating to appointments in the Federal service, at rates of compensation for individuals not to exceed the daily equivalent of the rate of pay payable from time to time for GS-18 of the General Schedule under section 5332 of title 5, United States Code [5 USCS 5332].

(e) Advisory committees; compensation and travel expenses of committee members. The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics are authorized to appoint, without regard to the provisions of title 5, United States Code, advisory committees to advise them with respect to the administration of this title as they deem necessary. Such committees shall be subject to chapter 10 of title 5, United States Code [5 USCS 1001 et seq.]. Members of such committees not otherwise in the employ of the United States, while engaged in advising or attending meetings of such committees, shall be compensated at rates to be fixed by the Office but not exceed the daily equivalent of the rate of pay payable from time to time for GS-18 of the General Schedule under section 5332 of title 5 of the United States Code, and while away from home or regular place of business they may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as authorized by section 5703 of such title 5 [5 USCS 5703] for persons in the Government service employed intermittently.

(f) Payments; installments; advances or reimbursement; transportation and subsistence expenses for attendance at conferences or other assemblages. Payments under this title may be made in installments, and in advance or by way of reimbursement, as may be determined by the Office, the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics, and may be used to pay the transportation and subsistence expenses of persons attending conferences or other assemblages notwithstanding section 1345 of title 31, United States Code.

(g) Voluntary services; status as Federal employee; exceptions. The Office, the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics are authorized to accept and employ, in carrying out the provisions of this title, voluntary and uncompensated services notwithstanding section 1342 of title 31, United States Code. Such individuals shall not be considered Federal employees except for purposes of chapter 81 of title

5, United States Code [5 USCS 8101 et seq.], with respect to job-incurred disability and title 28, United States Code with respect to tort claims.

42 U.S.C. 1983

1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officers judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. 2000e-5

2000e-5. Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices. The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title [42 USCS 2000e-2 or 2000e-3].

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause. Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the respondent) within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such

information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings. In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) [(b)] by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission. In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system.

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title [42 USCS 2000e et seq.] (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(3) (A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title [42 USCS 2000e et seq.], when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(B) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master.

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the

Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of this Act [title], the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title [42 USCS 2000e et seq.]. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such

an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders.

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2) (A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a) [42 USCS 2000e-3(a)].

(B) On a claim in which an individual proves a violation under section 703(m) [42 USCS 2000e-2(m)] and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorneys fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 703(m) 42 USCS 2000e-2(m)]; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of 29 USCS 101 et seq. not applicable to civil actions for prevention of unlawful practices. The provisions of the Act entitled An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes, approved March 23, 1932 (29 U. S. C. 101115), shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders. In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals. Any civil action brought under this section and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

(k) Attorneys fee, liability of Commission and United States for costs. In any action or proceeding under this title [42 USCS 2000e et seq.] the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorneys fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

42 U.S.C. 12132

12132. Discrimination

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. 12133

12133. Enforcement

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202 [42 USCS 12132].

42 U.S.C. 12203

12203. Prohibition against retaliation and coercion

(a) Retaliation. No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) Interference, coercion, or intimidation. It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

(c) Remedies and procedures. The remedies and procedures available under sections 107, 203, and 308 of this Act [42 USCS 12117, 12133, 12188] shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to title I, title II and title III [42 USCS 12111 et seq., 12131 et seq., 12181 et seq.], respectively.

N.J.A.C. 10A:1-4.1 et seq.

10A:1-4.1 Purpose

(a) The purpose of this subchapter is to establish:

1. The comprehensive Inmate Remedy System in which inmates may formally communicate with correctional facility staff to request information from, and present issues, concerns, and/or complaints to the correctional facility staff. The Inmate Remedy System also includes an "Administrative Appeal" through which inmates are encouraged to formally appeal to the Administrator or designee the decision or finding rendered by correctional facility staff in regard to the "Inmate Inquiry Form" or "Inmate Grievance Form" that was previously presented by the inmate. The Inmate Remedy System consists of:

i. An "Inmate Inquiry Form";

ii. An "Inmate Grievance Form"; and

iii. An "Administrative Appeal"; and

2. Provisions for the designation of correctional facility staff to manage and coordinate the Inmate Remedy System.

N.J.A.C. 10A:1-4.5

10A:1-4.5 Submitting and handling an "Inmate Inquiry Form" or an "Inmate Grievance Form"

(a) Form IRSF-100 and IRSF-101 Inmate Remedy System Forms shall be used by an inmate who wishes to formally communicate with correctional facility staff by submitting an "Inmate Inquiry Form" or an "Inmate Grievance Form" in writing in order to:

1. Obtain information, present an issue, concern, complaint, or problem to correctional facility staff; and/or

2. Request an interview with a correctional facility staff member regarding an issue, concern, complaint, or problem.

(b) When initially submitting the IRSF-100, the inmate shall check only one box in PART 1 on the form to indicate that the request is a "Routine Inmate Request" or an "Interview Request."

(c) The inmate shall choose either an "Inmate Inquiry Form" or an "Inmate Grievance Form" to fully exhaust the initial and second steps of the Inmate Remedy System prior to submitting an "Administrative Appeal." The "Inmate Inquiry Form" is to be utilized to obtain information or make routine inquiries. The "Inmate Grievance Form" is to be utilized to address complaints and/or grievances, as may also be used as a second step to a previously submitted "Inmate Inquiry Form."

(d) Correctional facility staff shall review and respond to a request for information, issue, or concern presented by the inmate in an "Inmate Inquiry Form" within 15 calendar days unless the request is determined to be an urgent request or a request is determined to require further deliberation. The Coordinator will determine if the matter warrants an interview with a staff member. Correctional facility staff shall review and respond to a complaint or grievance presented by the inmate in an "Inmate Grievance Form" within 30 calendar days unless the request is determined to be an urgent request or a request is determined to require further deliberation.

N.J.A.C. 10A:3-5.6

10A:3-5.6 Pat search

(a) A pat search shall be conducted while the inmate is fully clothed. A pat search includes both the touching of the inmate's body through clothing, including hair, dentures, etc., and a thorough examination into pockets, cuffs, seams, etc., and all personal property in the inmate's possession.

(b) Pat searches of inmates may be conducted at any time in the following circumstances:

1. Prior to the departure or return of the inmate to or from any area where the inmate has had access to dangerous or valuable items;

2. Prior to entering or departing the visiting area; or

3. Under any other circumstances where conditions indicate a need for such searches, such as, but not limited to, upon departure of inmates from kitchen or dining areas.

(c) In addition to the foregoing routine searches, a pat search may be conducted at any time when there is a reasonable suspicion that the inmate is carrying contraband. Factors which may form the basis for such search may include, but not be limited to:

1. Personal observations of activities or conditions which may be interpreted in light of the custody staff member's experience and knowledge of the inmate as indicating the possession of contraband; or

2. Information received from a third party who is believed to be reliable.

(d) Pat searches may be conducted by either male or female custody staff members upon male inmates. Except in emergent circumstances, pat searches shall only be conducted by female custody staff members upon female inmates.

N.J.A.C. 13:1D-1.2

13:1D-1.2 Procedure for petitions

(a) Any interested person may petition the Attorney General, or any agency within the Department of Law and Public Safety subject to the supervision of the Attorney General, to adopt a new rule, or amend or repeal any existing rule within the authority of the Attorney General or agency. The petition must be in writing, signed by the petitioner, and must state clearly and concisely:

1. The full name and address of the petitioner;

2. The substance or nature of the rulemaking which is requested;

3. The problem or purpose which is the subject of the request;

4. The petitioner's interest in the request, including any relevant organization affiliation or economic interest;

5. The statutory authority under which the Attorney General, or agency within the Department of Law and Public Safety which is petitioned, may take the requested action; and

6. Existing Federal or State statutes and rules which the petitioner believes may be pertinent to the request.

(b) The petition may include the text of the proposed new rule, amended rule or repealed rule.

(c) Petitions shall be addressed to the Attorney General or to the head of the agency responsible for administering the program or function that is the subject of the rule. Petitions may be submitted through mail to the address below, or to the head of the relevant agency, email, or, if designated to receive messages, an electronic mailing list, or through any other means.

Administrative Practice Officer

Office of the Attorney General

Hughes Justice Complex

25 W. Market Street

PO Box 081

Trenton, NJ 08625-0081

LPSRules@njoag.gov

(d) Any document submitted to the Department of Law and Public Safety which is not in substantial compliance with this section shall not be deemed to be a petition for rulemaking requiring further agency action.

N.J.S.A. 2C:40A-1

2C:40A-1. Employer requiring lie detector test

Any person who as an employer shall influence, request or require an employee or prospective employee to take or submit to a lie detector test as a condition of employment or continued employment, commits a disorderly persons offense. The provisions of this section shall not apply if: (1) the employer is authorized to manufacture, distribute or dispense controlled dangerous substances pursuant to the provisions of the New Jersey Controlled Dangerous Substances Act, P.L.1970, c. 226 (C. 24:21-1 et seq.); (2) the employee or prospective employee is or will be directly involved in the manufacture, distribution, or dispensing of, or has or will have access to, legally distributed controlled dangerous substances; and (3) the test, which shall cover a period of time no greater than five years preceding the test, and except as provided in this section, shall be limited to the work of the employee or prospective employee and the individuals improper handling, use or illegal sale of legally distributed controlled dangerous substances. The test may include standard baseline questions necessary and for the sole purpose of establishing a normal test pattern. Any employee or prospective employee who is required to take a lie detector test as a precondition of employment or continued employment shall have the right to be represented by legal counsel. A copy of the report containing the results of a lie detector test shall be in writing and be provided, upon request, to the individual who has taken the test. Information obtained from the test shall not be released to any other employer or person. The employee or prospective employee shall be informed of his right to present to the employer the results of an independently administered second lie detector examination prior to any personnel decision being made in his behalf by the employer.

N.J.S.A. 52:14B-4(f)

52:14B-4. Adoption, amendment, repeal of rules

(a) Prior to the adoption, amendment, or repeal of any rule, except as may be otherwise provided, the agency shall:

(1) Give at least 30 days notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the agency for advance notice of its rule-making proceedings and, in addition to any

other public notice required by law, shall be published in the New Jersey Register. Notice shall also be distributed to the news media maintaining a press office to cover the State House Complex, and made available for public viewing through publication on the agencys Internet website. Each agency shall additionally publicize the intended action and shall adopt rules to prescribe the manner in which it will do so. In order to inform those persons most likely to be affected by or interested in the intended action, each agency shall distribute notice of its intended action to interested persons, and shall publicize the same, through the use of an electronic mailing list or similar type of subscription-based e-mail service. Additional publicity methods that may be employed include publication of the notice in newspapers of general circulation or in trade, industry, governmental or professional publications, distribution of press releases to the news media and posting of notices in appropriate locations, including the agencys Internet website. The rules shall prescribe the circumstances under which each additional method shall be employed;

(2) Prepare for public distribution at the time the notice appears in the Register, and make available for public viewing through publication on the agencys Internet website, a statement setting forth a summary of the proposed rule, as well as a clear and concise explanation of the purpose and effect of the rule, the specific legal authority under which its adoption is authorized, a description of the expected socio-economic impact of the rule, a regulatory flexibility analysis, or the statement of finding that a regulatory flexibility analysis is not required, as provided in section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect, an agriculture industry impact statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3), a housing affordability impact statement, a smart growth development impact statement, as provided in section 31 of P.L.2008, c.46 (C.52:14B-4.1b), and a racial and ethnic community criminal justice and public safety impact statement as required in section 3 of P.L.2017, c.286 (C.2C:48B-2);

(3) Afford all interested persons a reasonable opportunity to submit data, views, comments, or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule, including any written submissions that are received by the agency through its e-mail systems or electronic mailing lists. If within 30 days of the publication of the proposed rule sufficient public interest is demonstrated in an extension of the time for submissions, the agency shall provide an additional 30-day period for the receipt of submissions by interested parties. The agency shall not adopt the proposed rule until after the end of that 30-day extension.

The agency shall conduct a public hearing on the proposed rule at the request of a committee of the Legislature, or a governmental agency or subdivision, or if sufficient public interest is shown, provided such request is made to the agency within 30 days following publication of the proposed rule in the Register. The agency shall provide at least 15 days notice of such hearing, shall publish such hearing notice on its Internet website, and shall conduct the hearing in accordance with the provisions of subsection (g) of this section.

The head of each agency shall adopt as part of its rules of practice adopted pursuant to section 3 of P.L.1968, c.410 (C.52:14B-3) definite standards of what constitutes sufficient public interest for conducting a public hearing and for granting an extension pursuant to this paragraph; and

(4) Prepare for public distribution, and make available for public viewing through publication on the agencys Internet website, a report listing all parties offering written or oral submissions concerning the rule, summarizing the content of the submissions and providing the agencys response to the data, views, comments, and arguments contained in the submissions.

(b) A rule prescribing the organization of an agency may be adopted at any time without prior notice or hearing. Such rules shall be effective upon filing in accordance with section 5 of P.L.1968, c.410 (C.52:14B-5) or upon any later date specified by the agency.

(c) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days notice and states in writing its reasons for that finding, and the Governor concurs in writing that an imminent peril exists, the agency may proceed to adopt the rule without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable. The agency shall publish, on its Internet website, a summary of any rule adopted pursuant to this subsection, and the statement of reasons for the agencys finding that an imminent peril exists. Any rule adopted pursuant to this subsection shall be effective for a period of not more than 60 days, unless each house of the Legislature passes a resolution concurring in its extension for a period of not more than 60 additional days. The rule shall not be effective for more than 120 days unless repromulgated in accordance with normal rule-making procedures.

(d) No rule hereafter adopted is valid unless adopted in substantial compliance with P.L.1968, c.410 (C.52:14B-1 et seq.). A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of P.L.1968, c.410 (C.52:14B-1 et seq.) shall be commenced within one year from the effective date of the rule.

(e) An agency may file a notice of intent with respect to a proposed rule-making proceeding with the Office of Administrative Law, for publication in the New Jersey Register at any time prior to the formal notice of action required in subsection (a) of this section. The notice shall be for the purpose of eliciting the views of interested parties on an action prior to the filing of a formal rule proposal. Such notice shall be distributed to interested persons through the use of an electronic mailing list or similar type of subscription-based e-mail service, and made available for public viewing through publication on the agencys Internet website. The agency shall afford all interested persons a reasonable opportunity to submit data, views, comments, or arguments, orally or in writing, on the proposed action, and shall fully consider all written and oral submissions, including any written submissions received by the agency through its e-mail systems or electronic mailing lists. An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule-making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule-making.

(f) An interested person may petition an agency to adopt a new rule, or amend or repeal any existing rule. Such petition may be submitted to the agency through mail, e-mail, electronic mailing list, or through any other means. Each agency shall prescribe by rule the form for the petition and the procedure for the consideration and disposition of the petition. The petition shall state clearly and concisely:

(1) The substance or nature of the rule-making which is requested;

(2) The reasons for the request and the petitioners interest in the request;

(3) References to the authority of the agency to take the requested action.

The petitioner may provide the text of the proposed new rule, amended rule or repealed rule.

Within 60 days following receipt by an agency of any such petition, the agency shall either: (i) deny the petition, giving a written statement of its reasons; (ii) grant the petition and initiate a rule-making proceeding within 90 days of granting the petition; or (iii) refer the matter for further deliberations which shall be concluded within 90 days of referring the matter for further deliberations. Upon conclusion of such further deliberations, the agency shall either deny the petition and provide a written statement of its reasons or grant the petition and initiate a rule-making proceeding within 90 days. Upon the receipt of the petition, the agency shall file a notice stating the name of the petitioner and the nature of the request with the Office of Administrative Law for publication in the New Jersey Register. Notice of formal agency action on such petition shall also be filed with the Office of Administrative Law for publication in the Register, and shall be made available for public viewing through publication on the agencys Internet website.

If an agency fails to act in accordance with the time frame set forth in the preceding paragraph, upon written request by the petitioner, the Director of the Office of Administrative Law shall order a public hearing on the rule-making petition and shall provide the agency with a notice of the directors intent to hold the public hearing if the agency does not. If the agency does not provide notice of a hearing within 15 days of the directors notice, the director shall schedule, and provide the public with a notice of, that hearing at least 15 days prior thereto. Hearing notice shall also be made available for public viewing through publication on the agencys Internet website. If the public hearing is held by the Office of Administrative Law, it shall be conducted by an administrative law judge, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-5), or an independent contractor assigned by the director. The petitioner and the agency shall participate in the public hearing and shall present a summary of their positions on the petition, a summary of the factual information on which their positions on the petition are based and shall respond to questions posed by any interested party. The hearing procedure shall otherwise be consistent with the requirements for the conduct of a public hearing as prescribed in subsection (g) of section 4 of P.L.1968, c.410 (C.52:14B-4), except that the person assigned to conduct the hearing shall make a report summarizing the factual record presented and the arguments for and against proceeding with a rule proposal based upon the petition. This report shall be filed with the agency and delivered or mailed to the petitioner. A copy of the report shall be filed with the Legislature along with the petition for rule-making.

(g) All public hearings shall be conducted by a hearing officer, who may be an official of the agency, a member of its staff, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent contractor. The hearing officer shall have the responsibility to make recommendations to the agency regarding the adoption, amendment or repeal of a rule. These recommendations shall be made public. At the beginning of each hearing, or series of hearings, the agency, if it has made a proposal, shall present a summary of the factual information on which its proposal is based, and shall respond to questions posed by any interested party. Hearings shall be conducted at such times and in locations which shall afford

interested parties the opportunity to attend. A verbatim record of each hearing shall be maintained, and copies of the record shall be available to the public at no more than the actual cost, which shall be that of the agency where the petition for rule-making originated.

N.J.S.A. 52:17B-70

52:17B-70. Police training commission established; members; terms

There is hereby established in the Division of Criminal Justice in the Department of Law and Public Safety a Police Training Commission whose membership shall consist of the following persons:

a. Four citizens of this State who shall be appointed by the Governor with the advice and consent of the Senate for terms of three years.

b. The president or other representative designated in accordance with the bylaws of each of the following organizations: the New Jersey State Association of Chiefs of Police; the New Jersey State Policemens Benevolent Association, Inc.; the New Jersey State League of Municipalities; the New Jersey State Lodge, Fraternal Order of Police; the State Troopers Fraternal Association of New Jersey; the County Prosecutors Association of New Jersey; the Sheriffs Association of New Jersey; the Police Academy Directors Association; the New Jersey County Jail Wardens Association; the New Jersey Juvenile Detention Association; and the National Organization of Black Law Enforcement Executives.

c. The Attorney General, the Superintendent of State Police, the Commissioner of Education, the Commissioner of Corrections, and the Chairman of the State Parole Board, ex officio, or their designees.

d. The Special Agent in Charge of the State of New Jersey for the Federal Bureau of Investigation or a designated representative.

e. The Police Training Commission shall ensure that all commission members, during their tenure as commissioners, annually complete confidentiality, ethics, and other training as required by the Attorney Generals Office. The commission shall also ensure that all newly appointed public members of the commission complete a course designed to familiarize the members with relevant law enforcement training concepts, including but not limited to the use of force policy and internal affairs policy and procedures to help the members carry out their duties under P.L.2022, c.65 (C.52:17B-71a et al.).

N.J.S.A. 52:17B-71

52:17B-71. Powers, responsibilities, duties of commission [Effective on dates stated in L. 2022, c. 65, 24]

The commission shall establish requisite standards for the training of law enforcement officers and oversee the implementation of those standards.

The commission shall have the authority:

a. To prescribe standards for the approval and continuation of approval of schools at which police training courses authorized by this act and in-service police training courses shall be conducted, including but not limited to currently existing regional, county, municipal, and police chief association police training schools or at which basic training courses and in-service training courses shall be conducted for State and county juvenile and adult correctional police officers and juvenile detention officers;

b. To approve and issue certificates of approval to these schools, to inspect the schools from time to time, and to revoke any approval or certificate issued to the schools;

c. To prescribe the curriculum, the minimum courses of study, attendance requirements, equipment and facilities, and standards of operation for these schools and prescribe psychological and psychiatric examinations for police recruits;

d. To prescribe minimum qualifications for instructors at these schools and to certify, as qualified, instructors for approved police training schools and to issue appropriate certificates to the instructors;

e. To certify law enforcement officers who have satisfactorily completed training programs and to issue appropriate certificates to the officers;

f. To advise and consent in the appointment of an administrator of police services by the Attorney General pursuant to section 8 of P.L.1961, c.56 (C.52:17B-73);

g. (Deleted by amendment, P.L.1985, c.491)

h. To make rules and regulations as may be reasonably necessary or appropriate to accomplish the purposes and objectives of this act;

i. To make a continuous study of police training methods and training methods for law enforcement officers and to consult and accept the cooperation of any recognized federal or State law enforcement agency or educational institution;

j. To consult and cooperate with universities, colleges, and institutes in the State for the development of specialized courses of study for law enforcement officers in police science and police administration;

k. To consult and cooperate with other departments and agencies of the State concerned with police training or the training of law enforcement officers;

l. To participate in unified programs and projects relating to police training and the training of law enforcement officers sponsored by any federal, State, or other public or private agency;

m. To perform other acts as may be necessary or appropriate to carry out its functions and duties as set forth in this act;

n. To extend the time limit for satisfactory completion of police training programs or programs for the training of law enforcement officers upon a finding that health, extraordinary workload, or other factors have, singly or in combination, effected a delay in the satisfactory completion of the training program;

o. (1) To furnish approved schools, for inclusion in their regular police training courses and curriculum, with information concerning the advisability of high-speed chases, the risk caused by them, and the benefits resulting from them, and to include any other relevant police training courses that will assist the commission in providing efficient training;

(2) [*Effective July 21, 2022*] To consult the New Jersey State Police with respect to its administration of police training courses or programs for the training of law enforcement officers to be certified as a Drug Recognition Expert for detecting, identifying, and apprehending drug-impaired motor vehicle operators, and to consult with the Cannabis Regulatory Commission established by 31 of P.L.2019, c.153 (C.24:6I-24) with respect to any aspects of the course curricula that focus on impairment from the use of cannabis items as defined by section 3 of P.L.2021, c.16 (C.24:6I-33) or marijuana.

p. (Deleted by amendment, P.L.2022, c.65)

q. To administer and distribute the monies in the Law Enforcement Officers Training and Equipment Fund established by section 9 of P.L.1996, c.115 (C.2C:43-3.3) and make rules and regulations for the administration and distribution of the monies as may be necessary or appropriate to accomplish the purpose for which the fund was established.

N.J.S.A. 52:17B-71a

52:17B-71a. Licensing process established; powers, responsibilities, duties

The commission shall establish the process by which law enforcement officers shall be licensed and the implementation of that process. The commission is vested with the power, responsibility, and duty:

a. to prescribe minimum standards and requirements for the licensure for law enforcement officers and to maintain the status as a licensed law enforcement officer for the purpose of promoting and assuring integrity, competence, professionalism, and fitness for duty. The minimum standards shall include, but not be limited to:

(1) minimum pre-employment qualifications for law enforcement officer applicants, including but not limited to, age requirements, residency requirements, background investigations, psychological examinations, and educational requirements;

(2) minimum post-academy training and educational requirements, including but not limited to required field training hours for recent academy graduates and required continuing educational courses for law enforcement officers; and

(3) minimum standards of professional conduct;

b. to establish a licensure process and applicable criteria for license issuance, renewal, suspension, revocation, or denial; and

c. to perform or cause to be performed through the licensing committee the following activities related to law enforcement officer licensing:

(1) review applications for and, if warranted, issue initial law enforcement officer licenses to qualified applicants;

(2) review and act upon matters related to law enforcement officer license renewal, suspension, revocation, or denial;

(3) conduct license renewal, suspension, revocation, or denial hearings; and

(4) suspend, revoke, place conditions upon, or deny a license in the event an individual does not meet any standard or requirement prescribed by the commission.

d. The commission shall establish a licensing committee to assist it in exercising the authority provided under this act [C.52:17B-71a et al.], including duties with respect to law enforcement officer licensing as set forth in subsection c. of this section and section 19 of P.L.2022, c.65 (C.52:17B-71f), and including, but not limited to, making recommendations for licensure to be considered by the full commission.

The composition, membership, terms of membership, and procedures applicable to the function and operations of the licensing committee shall be determined by the commission, provided that the membership of the licensing committee shall include the Attorney Generals designee and no less than one public member.

N.J.S.A. 52:17B-75

52:17B-75. Reimbursement for expenses

The members of the commission shall receive no salary but all members except those designated in subsection c. of section 5 of this act shall be reimbursed for their reasonable expenses lawfully incurred in the performance of their official functions. The members of the commission who are employed by the State, a county, a municipality or any State, county, or local governmental entity shall not be subject to loss of pay or accrued time due to attending commission meetings or otherwise performing the official commission functions.

U.S. Const. Amdt. I

Amendment 1 Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Art. VI, cl.2

Clause 2. Supreme Law.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States,

shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.