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October 23, 2023

The Honorable Dick Durbin
Chairman
The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jim Jordan
Chairman
The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
House of Representatives

FEDERAL LAW ENFORCEMENT OFFICERS: Criminal Sexual Acts while Acting in Official Capacity

The Consolidated Appropriations Act, 2022, enacted a provision of law making it unlawful for someone, while acting in their capacity as a federal law enforcement officer, to knowingly engage in a sexual act with an individual who is under arrest, under supervision, in detention, or in federal custody.¹ According to an official from the U.S. Department of Justice (DOJ), consent is not a defense to a violation of 18 U.S.C. § 2243(c) and therefore federal law enforcement officers are automatically liable if they engage in the prohibited conduct. Generally, DOJ’s Civil Rights Division and/or the 94 U.S. Attorneys’ Offices throughout the country prosecute sexual offenses committed by federal law enforcement officers.² DOJ’s Executive Office for United States Attorneys (EOUSA) provides executive and administrative support for U.S. Attorneys and maintains data on federal prosecutions in its case management information system.³

¹Pub. L. No. 117-103, § 1202, 136 Stat. 49, 923-25 (codified as amended at 18 U.S.C. § 2243(c)). Under 18 U.S.C. § 2246 (which references 18 U.S.C. § 115), a “[f]ederal law enforcement officer” means any officer, agent, or employee of the United States authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law.”

²The President appoints a U.S. Attorney to each of the 94 federal districts. There are 93 U.S. Attorneys (Guam and the Northern Mariana Islands are separate districts but share a U.S. Attorney). The U.S. Attorney is the chief federal law enforcement officer in each district.

³The Civil Rights Division also has a case management system. However, according to Division officials, cases pursuant to 18 U.S.C. § 2243 would be prosecuted in conjunction with a U.S. Attorney’s office.

The Consolidated Appropriations Act, 2022, includes a provision for us to report on violations of 18 U.S.C. § 2243(c) committed between October 1, 2022, and September 30, 2023, and then to report annually thereafter.⁴ To address our objective, we collected information from EOUSA officials responsible for maintaining data on charges and convictions pursuant to federal statutes. For the purposes of this report, we refer to violations as convictions, and to cases filed as charges under 18 U.S.C. § 2243(c), consistent with DOJ’s definitions.

We requested data from EOUSA’s CaseView system on violations and cases filed from October 1, 2022 through September 30, 2023, pursuant to 18 U.S.C. § 2243(c). This system provides information by federal statute pertaining to the number of cases filed and the number of defendants charged. EOUSA indicated that CaseView did not identify and record data specifically for 18 U.S.C. § 2243(c) until April 14, 2023. As a result, we reviewed supporting case information for all cases filed under 18 U.S.C. § 2243 from October 1, 2022, through May 31, 2023, to ensure we had identified all cases charging a violation of subsection (c). We also interviewed DOJ and EOUSA officials to understand how they report cases filed and violations in their data system, and we assessed the reliability of that data. We found the data sufficiently reliable for the purpose of reporting the number of cases and violations during this time period.

We conducted this performance audit from March 2023 to October 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

DOJ Did Not Report Any Violations of 18 U.S.C. § 2243(c), Criminal Sexual Acts by a Federal Law Enforcement Officer Against Individuals in Custody, in Fiscal Year 2023

Based on our analysis of EOUSA data and review of supporting case file documentation, there were no cases filed and no violations pursuant to 18 U.S.C. § 2243(c) in fiscal year 2023.⁵ Individuals cannot be charged for prohibited conduct that occurred prior to the provision’s effective date of October 1, 2022, which may explain why there have been no violations and no cases filed. Additionally, according to an official from DOJ’s Office on Violence Against Women, many victims do not report sexual abuse immediately due to a variety of factors, including fear of retaliation. The official noted that there is a high rate of underreporting of sex offenses in general, particularly when it involves victims in custody or detention, where victims are reluctant to report “the police to the police.” Also, it can take several years from the time of an alleged incident to the filing of a criminal case to a disposition of the criminal case.

Agency Comments

We provided a draft of this report to DOJ for review and comment. DOJ provided technical comments, which we incorporated as appropriate.

⁴Pub. L. No. 117-103, § 1204, 136 Stat. at 926-27. The Consolidated Appropriations Act, 2022 was enacted on March 15, 2022; however, section 4 of the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, 136 Stat. 840, 846 (Division W of the Consolidated Appropriations Act, 2022), generally made the amendments of the Act, including the amendment to 18 U.S.C. § 2243, effective October 1, 2022. We use the October 1, 2022 effective date of the provision to provide Congress a report of a full 1-year period of 18 U.S.C. § 2243(c) being in effect.

⁵Prior to the new provision, federal law enforcement officers committing criminal sexual acts against individuals under arrest, under supervision, in detention, or in federal custody may have been prosecuted under other criminal statutes.

We are sending copies of this report to the appropriate congressional committees, the Attorney General, and other interested parties. The report will also be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-8777 or CollinsD@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this correspondence. Other key contributors to this report include Adam Hoffman, Assistant Director; Willie (Billy) Commons III; Elizabeth Dretsch; Kevin Reeves; and Mike Tropauer.

Derrick Collins

A handwritten signature in black ink that reads "Derrick Collins". The signature is written in a cursive, flowing style.

Acting Director, Homeland Security and Justice