POLICIES AND PROCEDURES FOR

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT COMPLIANCE MONITORING

REVISED

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

JUSTICE CENTER
UNIVERSITY OF ALASKA ANCHORAGE

MAY 1995

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STATE OF ALASKA

Department of Health and Social Services

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PART 1:
MONITORING GUIDELINES

I. INTRODUCTION

The Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA) provides for annual distribution of federal Formula Grant funds among states which comply with the eligibility requirements specified in the Act. To be eligible to receive formula grants, each state must submit a plan for carrying out the purposes of the Act. As described in Section 223(a) of the JJDPA, the plan submitted by each state must provide for a system of monitoring jails, detention facilities, correctional facilities and nonsecure facilities to ensure that (1) juveniles who are status offenders or nonoffenders are not placed in secure detention or correctional facilities (deinstitutionalization), (2) juveniles alleged to be or found to be delinquent and juveniles who are status offenders or nonoffenders are not detained in facilities in which they have regular contact with incarcerated adults (separation) and (3) no juveniles are detained in any jail or lockup for adults (jail removal):

> Sec. 223. (a) In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs, and the state shall submit annual performance reports to the administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall–
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> …
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> (12)(A) provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities; and
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> (B) provide that the State shall submit annual reports to the Administrator containing a review of the progress made by the State to achieve the deinstitutionalization of juveniles described in subparagraph (A) and a review of the progress made by the State to provide that such juveniles, if placed in facilities, are placed in facilities which (i) are the least restrictive alternatives appropriate to the needs of the child and the community; (ii) are in reasonable proximity to the family and the home communities of such juveniles; and (iii) provide the services described in section 103(1);
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> (13) provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges;
>
> (14) provide that, beginning after the five-year period following December 8, 1980, no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall, through 1993, promulgate regulations which make exceptions with regard to the detention of juveniles accused of non-status offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within twenty-four hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which–
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> (A) are outside a Standard Metropolitan Statistical Area,
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> (B) have no existing acceptable alternative placement available, and
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> (C) are in compliance with the provisions of paragraph (13);
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> (15) provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraph (12)(A), paragraph (13), and paragraph (14) are met, and for annual reporting of the results of such monitoring to the Administrator, except that such reporting requirements shall not apply in the case of a State which is in compliance with the other requirements of this paragraph, which is in compliance with the requirements in paragraph (12)(A) and paragraph (13), and which has enacted legislation which conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively.
>
> –Juvenile Justice and Delinquency Prevention Act, *Section 223(a)(12), (13), (14) and (15)*

The Office of Juvenile Justice and Delinquency Prevention (OJJDP), established within the United States Department of Justice by the JJDP Act, is authorized to prescribe regulations consistent

with the Act and to award or deny formula grants. The Formula Grant regulation promulgated by OJJDP requires each state to submit a plan for annually monitoring jails, lockups, detention facilities, correctional facilities and nonsecure facilities and identifies four basic tasks which are central to the monitoring process:

> 28 CFR Part 31.303
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> (f) **Monitoring of Jails, Detention Facilities and Correctional Facilities**. (1) Pursuant to section 223(a)(15) of the JJDP Act, and except as provided by paragraph (f)(7) of this section, the State shall:
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> (i) Describe its plan, procedure and timetable for annually monitoring jails, lockups, detention facilities, correctional facilities and non-secure facilities. The plan must at a minimum describe in detail each of the following tasks including the identification of the specific agency(s) responsible for each task.
>
> (A) **Identification of the Monitoring Universe**. This refers to the identification of all residential facilities which might hold juveniles pursuant to public authority and thus must be classified to determine if it should be included in the monitoring effort. This includes those facilities owned or operated by public and private agencies.
>
> (B) **Classification of the Monitoring Universe**. This is the classification of all facilities to determine which ones should be considered as a secure detention or correctional facility, adult correctional institution, jail, lockup, or other type of secure or nonsecure facility.
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> (C) **Inspection of Facilities**. Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and record keeping. The inspection must include: (1) A review of the physical accommodations to determine whether it is a secure or nonsecure facility or whether adequate sight and sound separation between juvenile and adult offenders exists and (2) a review of the record keeping system to determine whether sufficient data are maintained to determine compliance with section 223(a)(12), (13) and/or (14).
>
> (D) **Data Collection and Data Verification**. This is the actual collection and reporting of data to determine whether the facility is in compliance with the applicable requirement(s) of section 223(a)(12), (13) and/or (14). The length of the reporting period should be 12 months of data, but in no case less than 6 months. If the data is self-reported by the facility or is collected and reported by an agency other than the State agency designated pursuant to section 223(a)(1) of the JJDP Act, the plan must describe a statistically valid procedure used to verify the reported data.
>
> ***–28 CFR Part 31.303(f)(1)(i)***

A plan for monitoring compliance with the JJDP Act was developed by the Justice Center at the University of Alaska Anchorage, working in conjunction with the State of Alaska, Department of Health and Social Services, Division of Family and Youth Services in 1989. The plan was revised in 1994. The revised monitoring plan–described elsewhere in this volume under the title "Alaska's System for Monitoring Compliance With the Juvenile Justice and Delinquency Prevention Act"–outlines the general method which has been devised for completion of each of the monitoring tasks referenced above, identifies the principle barriers to implementation of the monitoring plan and summarizes violation procedures. The monitoring plan provides for annual updating of the monitoring universe and classification of facilities, inspection of one-third of all facilities each year, and a data collection and verification process which includes verification of self-report data and data analysis. The JJDP Act, the Formula Grant regulation and the monitoring plan should all be studied carefully prior to initiation of the annual monitoring process and they should be referenced whenever questions arise regarding monitoring policies and procedures.

The monitoring guidelines which follow provide step-by-step instructions for completion of all monitoring tasks. They are intended to help you understand each of the activities which comprise JJDPA monitoring and to give you a detailed outline of procedures to follow. They do not supersede

any regulation promulgated by OJJDP, however, and procedures should be altered as necessary in order to comply with regulations or legal opinions promulgated subsequent to preparation of this manual.

A checklist of monitoring activities may be found in Appendix A. Normally, activities should be undertaken in the order in which they are described, but for monitoring purposes a number of activities can be carried out concurrently, in particular on-site classification of facilities in the universe, site inspection for sight and sound separation of adults and juveniles, and on-site verification of records.

II. STARTUP/INITIAL CONTACTS

Prior to beginning any other activity, it will be necessary to document your authorization to inspect facilities and examine records and to make initial contacts with key individuals. You will need to obtain written authorization from the Director of the Division of Family and Youth Services (DFYS) to examine confidential records pertaining to juveniles and to inspect facilities under the authority granted to the Department of Health and Social Services (DHSS) under AS 47.10.150, AS 47.10.160 and AS 47.10.180.

This request should be made through the Associate Coordinator for Juvenile Justice and Delinquency Prevention of DFYS. The Director should also be requested to notify regional administrators that the monitoring process is underway and that the superintendents of the corrections/ detention facilities in their regions should be reminded about the project.

Once the letter of authorization is received, all relevant state-level Commissioners and Administrators (Public Safety, Corrections) should be sent a letter informing them about the project and thanking them for the previous cooperation of their agencies. This is an information letter only and should indicate that any needed data will be sought from the appropriate division head or unit administrator.

Copies of the letter of authorization from the Director should be enclosed with letters you will send to the following requesting assistance in establishing the monitoring universe, collecting data, and authorizing inspection:

- Rural/Village Public Safety Officer Enforcement Unit Administrator, Alaska State Troopers
- Contract Jail Administrator, Department of Public Safety
- Director of Institutions, Department of Corrections
- Administrative Director, Alaska Court System
- Director, North Slope Borough Department of Public Safety
- Regional Administrators, Division of Family and Youth Services
- Superintendents, Juvenile Detention Centers

The VPSO coordinator for each of the 13 regional nonprofit Native associations established by the Alaska Native Claims Settlement Act should also be contacted in order to notify him or her

of your plans to inspect facilities in each region and to solicit their cooperation. It is probably politic, though it is not required, to write to leaders of these corporations explaining the project.

Functionally, these activities will also initiate the process of identifying and classifying the monitoring universe, collecting data and inspecting facilities.

A. Rural/Village Public Safety Officer Enforcement Unit Administrator, Alaska State Troopers

The rural law enforcement administrator of the Alaska State Troopers should be asked to write a letter of authorization which can be sent to each trooper having village oversight responsibilities. Offer to draft this letter for his signature. The letter should explain the monitoring process, verify the monitoring agency's authorization to inspect village lockups and examine booking records, and direct troopers and Village Public Safety Officers (VPSOs) to cooperate in the monitoring effort by mailing booking records.

The Rural/VPSO Enforcement Unit Administrator should also be asked to provide a current list of each of the following:

- Village Oversight Troopers
- Village Public Safety Officers (VPSOs)

B. Contract Jail Administrator, Department of Public Safety[1]

A request should be made to the Contract Jail Administrator to write to the superintendents of each municipal jail with which the Department of Public Safety contracts for detention services. The letter should briefly explain the monitoring process, verify the monitoring agency's authorization to inspect facilities and examine booking records, and request cooperation with the project.

Offer to prepare the letter for his/her signature and send him/her copies of previous authorization letters as a reminder.

At this time, the Contract Jail Administrator should also be requested to provide a comprehensive list of state-contracted jails for use in identification of the monitoring universe, as described in Section III(B) of these guidelines.

This is also the appropriate time to arrange with the Contract Jail Administrator to photocopy Client Billing Sheets (the detention records forwarded to DPS by each contract jail) at the Department of Public Safety for use in data collection, as described in Section V(C) of these guidelines.

C. Director of Institutions, Department of Corrections

A letter should be sent to the Director of Institutions explaining the monitoring process and requesting information and a letter of cooperation. The Department of Corrections is revising its

[1] The responsibility for administration of contract jails is to be transferred to the Department of Corrections in 1995.

policies to prohibit detention of juveniles in all DOC facilities. Mat-Su Pretrial was the only DOC facility used for detention in 1994, and policies prohibiting such use in the future were being drafted.

The Director of Institutions should be asked to supply a computer printout of pertinent monitoring data, including every detainee whose birthdate indicates he/she was eighteen or younger during the year monitored and to provide official notice to you specifying which Department of Corrections facility, if any, is permitted to detain juveniles.

Offer to prepare a letter for his/her signature to be sent to the Superintendent of any DOC facility authorized to hold juveniles. The letter should explain the project, verify your authorization to inspect the facility and examine booking records, and request cooperation.

D. Administrative Director, Alaska Court System

A letter should be sent to the Administrative Director of the Alaska Court System. The letter should remind the Administrator about the project, thank him/her for previous efforts, and request verification that no new holding facilities have been established that meet the definition of a lockup. (See Section III(D) of these guidelines for a discussion of this procedure).

Note: Only one court currently maintains a holding area meeting the definition of a lockup, and access to this facility for both data collection and inspections is provided by the Alaska State Troopers. The procedures described in this section may therefore be omitted unless the Administrative Director indicates that holding areas in one or more additional facilities meet the definition of a lockup.

E. Director, North Slope Borough Department of Public Safety

A letter should be sent to the Director of the North Slope Borough Department of Public Safety reminding him of the project, describing it briefly, and requesting that he reiterate the department's policy of not securely detaining juveniles and that he send copies of booking logs from each village in the North Slope Borough with a lockup. In years when the North Slope Borough should be scheduled for inspection and data-verification, request that he notify the Public Safety Officers in the relevant villages of your authorization to inspect the facilities and examine booking logs.

At this time the Director should also be requested to provide a comprehensive list of lockups operated by the North Slope Borough Department of Public Safety for use in identification of the monitoring universe, as described in Section III(E) of these guidelines.

F. VPSO Coordinators, Regional Nonprofit Native Associations

Representatives of each regional Native nonprofit association should be notified by telephone and/or by mail that the annual monitoring effort is proceeding and that village lockups in the region

will be contacted regarding data collection and inspection of facilities. Notification of the VPSO coordinators for regional Native nonprofit associations is a recommended courtesy whenever village research is conducted, and VPSO coordinators who are aware that the monitoring is taking place can be of assistance if they are contacted by Village Public Safety Officers (VPSOs) or municipal police officers who have questions regarding authorization to release data or permit inspection of village lockups. (Note: As explained in Section III(A) of these guidelines, it is also advisable–as a complement to the survey of village oversight Troopers used in identification of the monitoring universe–to ask the VPSO coordinator for each regional Native nonprofit association to identify lockups with which he or she is familiar. Since some VPSO coordinators may be aware of facilities which are not known to oversight Troopers, this procedure can help identify additional facilities which should be added to the monitoring universe).

As a courtesy, leaders of nonprofit Native corporations should receive an information letter and reminder about the project. The *Alaska Native Directory* is a helpful tool for this task.

III. IDENTIFICATION OF THE MONITORING UNIVERSE

A list of all facilities currently included in the monitoring universe is contained in Appendix B. Facilities are divided into juvenile detention centers, juvenile holdover facilities, adult jails, adult correctional facilities and adult lockups. The year in which each facility was last inspected for compliance with the JJDP Act is noted, as is the most recent assessment of the presence or absence of sight and sound separation of juvenile and adult inmates.

A systematic effort to update the monitoring universe by identifying any newly opened facilities which might hold juveniles and any facilities which are no longer in operation must be conducted each year. (Note: Much of the universe identification is integrated with the primary contacts described in Section II above.) The following procedure should be used to identify facilities to be added to or deleted from the monitoring universe:

A. Village Oversight Troopers, Alaska State Troopers

All village oversight Troopers statewide from the list received from the Director of Rural Law Enforcement (AST) should be surveyed by telephone to verify the location of all municipal jails and lockups in each region. Each oversight Trooper should be asked to list all communities within his or her jurisdiction and to indicate the presence or absence of an adult lockup (as defined in Section IV of these guidelines) or any other resource for secure confinement of either adults or juveniles in each community. Where the oversight Trooper is unable to indicate the presence or absence of a jail or lockup in each community named (this is most likely to occur with respect to very small villages in which law enforcement services are provided by a small municipal police

department, rather than by a Village Public Safety Officer), the respondent should be asked to provide the name of a person within the detachment or in the community itself who may be able to provide the requested information and the individual named should then be contacted and requested to provide the information. This process should be repeated until the presence or absence of a jail or lockup is indicated for all communities. (Note: It is also advisable to ask the VPSO coordinator for each regional Native nonprofit association to identify lockups with which he or she is familiar. It is possible that some VPSO coordinators may be aware of facilities which are not known to oversight Troopers).

B. Contract Jail Administrator, Department of Public Safety

A current list of municipal jails with which the Department of Public Safety contracts for detention services should be obtained from the Contract Jail Administrator, Department of Public Safety. This list should be compared with the listing of adult jails in the monitoring universe (Appendix B). Each facility identified as currently providing contract jail services for adults, but which is not already in the monitoring universe, should be added to the monitoring universe. Each facility which is not included in the current list of contract jails should be removed from the monitoring universe if it is no longer in operation or if it has been reclassified as another type of facility (see Section IV of these guidelines for classification procedures and definitions of facility types) if it continues to be used for detention purposes. (*Note:* Responsibility for contract jail administration is expected to rest with the Department of Corrections beginning in 1995.)

C. Department of Corrections

The Director of Institutions of the Alaska Department of Corrections (DOC) should be asked to verify whether or not Mat-Su Pretrial Facility continues to be the only DOC facility permitted by departmental policy to detain juveniles. Any changes in department policy vis-a-vis juvenile detention should be noted in the universe listing in Appendix B.

D. Administrative Director, Alaska Court System

The Administrative Director of the Alaska Court System should be requested to identify any court holding facility which meets the definition of a lockup as provided in the Formula Grant regulation (see Section IV of these guidelines for definitions of facility types) and/or to verify that information from the previous year's monitoring activities continues to be current. (Note: Only one court currently maintains such a facility and access to this facility is provided by the Alaska State Troopers.)

E. Director, North Slope Borough Department of Public Safety

The Director of the North Slope Borough Department of Public Safety should be asked to provide a current list of lockups maintained by the North Slope Borough Department of Public Safety. Each facility which is not already in the monitoring universe should be added to the monitoring universe and each facility which is no longer in operation should be removed from the monitoring universe. Each North Slope Borough facility (except the contract jail at Barrow) which is not included on the current list of adult lockups but which continues to provide detention services should be reclassified appropriately. (See Section IV of these guidelines for classification procedures and definitions of facility types).

Arrangements should also be made at this time to have booking records for each lockup operated by the North Slope Borough Department of Public Safety mailed to you and/or to schedule site visits to conduct inspections and collect data. (See Section V(E) and Section VI(A) of these guidelines).

F. Division of Family and Youth Services

A current list of all juvenile detention centers, juvenile correctional facilities, and juvenile holdover facilities should be obtained from the Associate Coordinator of Juvenile Justice and Delinquency Prevention. Each regional administrator of the Division of Family and Youth Services should be asked to verify that all child residential care facilities licensed by the division are non-secure, except for any facilities which have been granted permission to operate a locked room under the provisions of 7 AAC 50.053(e). A current list of facilities in each region which have been given permission to operate a locked room should be obtained from each regional director.

IV. CLASSIFICATION OF THE MONITORING UNIVERSE

Facilities added to the monitoring universe each year should be provisionally classified based on comparison of usages with appropriate federal definitions wherever possible. Facilities which are not already classified by one or more state agencies in a manner which is amenable to comparison with federal definitions should be provisionally classified according to an assessment of the appropriate classification based upon all available information.

The following definitions relevant to classification of facilities are included in Section 103 of the JJDP Act:

> Sec. 103. For purposes of this Act–
>
> (10) the term "construction" means acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees but not the cost of acquisition of land for buildings);
>
> …

(12) the term "secure detention facility" means any public or private residential facility which
(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and
(B) is used for the temporary placement of any juvenile who is accused of having committed an offense, of any nonoffender, or of any other individual accused of having committed a criminal offense;
(13) the term "secure correctional facility" means any public or private residential facility which–
(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and
(B) is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense, any nonoffender, or any other individual convicted of a criminal offense.

–Juvenile Justice and Delinquency Prevention Act, *Section 103(10), (12) and (13)*

The Formula Grant regulation provides the following definitions relevant to classification of facilities:

28 CFR Part 31.303(f)
(2) For the purpose of monitoring for compliance with section 223(a)(12)(A) of the Act a secure detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or non-offenders, **or** used for the lawful custody of accused or convicted adult criminal offenders.

–28 CFR Part 31.303(f)(2)

28 CFR Part 31.304
(b) **Secure**. As used to define a detention or correctional facility this term includes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.
(c) **Facility**. A place, an institution, a building or part thereof, set of buildings or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.
…
(m) **Adult Jail**. A locked facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.
(n) **Adult Lockup**. Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

–28 CFR Part 31.304(b), (c), (m) and (n)

In practice, a secure facility is defined as a residential facility which provides a place where a person's movements can be restricted by closing and locking, blocking or barring a door or other construction fixture in such a fashion that the person may not leave the room. A facility should be classified as nonsecure only where there is no room or other place in the facility–as described by facility staff (for provisional classification) or as observed during on-site inspection–which is designated for confinement and which can be locked, blocked or barred so that a person inside cannot leave. All other facilities should be classified as secure.

Municipal jails which provide detention services under contract with the state are authorized to detain adult inmates pending trial and should therefore be provisionally classified as adult jails pending inspection. Rural holding facilities which do not operate under contract with the state are not authorized "to detain adults charged with violating criminal law, pending trial" or "to hold convicted adult criminal offenders sentenced for less than one year" and therefore do not meet the

definition of adult jail contained in 28 CFR Part 31.304(m). Thus, such facilities should be provisionally classified (pending on-site inspection) as adult lockups. (*Note:* Review of contract jail billing sheets provides a continuous check on rural jails and lockups in case reclassification is necessary.)

All facilities operated by the Department of Corrections are designated by the state as adult correctional facilities. Those DOC facilities which have been permitted to detain juveniles have been primarily pre-trial/misdemeanor institutions which would meet the definition of adult jail contained in 28 CFR Part 31.303(m). However, Alaska contains both municipal and state-operated jails. In order to distinguish one from the other in the monitoring universe, DOC facilities have been designated adult correctional facilities. Any new Department of Corrections facility added to the monitoring universe should therefore be provisionally classified as such pending on-site inspection. (Note: At the present time only one DOC facility is authorized by department policy to detain juveniles).

Each secure facility must be inspected at least once every three years to ensure that its classification remains adequate. This inspection will be conducted in conjunction with other aspects of the inspection of facilities, as discussed below.

V. DATA COLLECTION

Monitoring for jail removal, deinstitutionalization and separation will normally entail collection of data directly from original admission/release records or certified reproductions of original records. Note that all photocopied booking records submitted by mail must be accompanied by a signed certificate that the records submitted represent a complete and accurate record of all persons detained at the facility during the monitoring period. The certificate form used for this purpose may be found in Appendix E. Where centralized or computerized records exist (e.g., Department of Public Safety, Department of Corrections, DFYS), printouts are accepted as authentic.

The data collection process will be initiated contemporaneously with identification of the monitoring universe. In many instances, persons contacted regarding the monitoring universe will be requested at the same time to arrange to have facility booking records photocopied and mailed to you.

A. Juvenile Detention Centers

The superintendent of each juvenile detention center operated by the Division of Family and Youth Services should be requested to provide a copy of the facility's admission log covering the monitoring period. Some facilities submit data on a log-type form which is not an admission log; data submitted in this fashion constitute self-report data and must be verified as described in Section

VI(B) of these guidelines. Computer-generated admission information is accepted, though verification is conducted every three years (see VIB). (Note: Although some facilities operated by the Division of Family and Youth Services contain treatment units which are separate from the detention units, it is not necessary to obtain admission data from treatment units because all juveniles entering these facilities (including those placed in treatment units) are admitted through the detention units, which maintain admission data for all juveniles housed in the facility.

B. Juvenile Holdover Facilities

The associate coordinator for Juvenile Justice and Delinquency Prevention will provide juvenile confinement forms for all juveniles detained in juvenile holdover facilities during the year being monitored.

C. Adult Jails

The office of the Contract Jail Administrator maintains Contract Jail Client Billing sheets which were originally used to reimburse municipal police departments for each prisoner detained. They are now used to monitor utilization. These records are accurate and complete and contain all of the information required for monitoring purposes–date in, time in, name, date of birth, race, gender, charge, date out, time out.

The Contract Jail Administrator should be requested to make photocopies of the billing sheets available to you. Offer to photocopy them on-site or to reimburse the Department of Public Safety for copy costs if he/she prefers to provide a photocopy. (*Note:* This request will be included in the initial letter. See II, B above.)

D. Adult Correctional Facilities

The Alaska Department of Corrections maintains computerized records of all prisoners including those detained prior to trial in state-operated jails. The Director of Institutions should be asked to provide a computer printout of all detainees whose birthdates show them to have been under eighteen during the year being monitored. The printout should include name, charge, date of birth, race, gender, date and time of admission, and date and time of release. Only one state-operated jail is permitted by Department policy to detain juveniles and all juveniles detained there will appear on the list. (*Note:* A change in DOC policy vis-a-vis the detention of juveniles by *any* DOC facility is expected.) All other DOC facilities are exempt from monitoring. However, juveniles who have been waived to adult court will also appear on this list and each should be checked for evidence of court/prosecutor waiver.

E. Adult Lockups

Each Alaska State Trooper (AST) post, each VPSO, and each municipal police department which maintains a lockup should be telephoned and asked to provide photocopies of booking records for the year monitored. In addition, the Director of the North Slope Borough Department of Public Safety should be requested to designate a person to collect copies of booking records for the monitoring period from the adult lockups in **Anaktuvuk Pass**, **Atqasuk**, **Kaktovik**, **Nuiqsut**, **Point Hope**, **Point Lay, and Wainwright** and to mail them to you along with a signed certification of authenticity for each facility. Rural Alaska State Troopers (AST) posts should be contacted regarding data collection and inspection of adult lockups in **Cantwell**, **Delta Junction**, **Fort Yukon**, **Glennallen**, **Tok** and any other community where the AST post is determined to be responsible for operation of the facility. Village Public Safety Officers should be contacted regarding data collection and inspection of adult lockups in all other communities for which a current VPSO is listed in the printout obtained from the Rural/Village Public Safety Officer Enforcement Unit Administrator, Alaska State Troopers. (See Section II(B) of these guidelines). For all remaining adult lockups, the village police chief or, if necessary, another municipal official (e.g. city manager) should be contacted regarding data collection and inspection, except where it is determined that another agency is responsible for operation of the facility. Oversight troopers and VPSO coordinators should be consulted about the responsible officials. (See III-A.)

The mailing lists in Appendix D do not contain lock-ups currently in the monitoring universe because of high turnover among personnel and shifting supervisory responsibility at most adult lockups. Current listings (including names, addresses and telephone numbers) for rural Alaska State Troopers (AST) posts and municipal police departments are contained in the latest edition of the *Journal of the Alaska Peace Officers Association*, which may be obtained from the Alaska Peace Officers Association (see Mailing List). Listings for municipal officials (including law enforcement personnel) may also be found in the latest edition of the *Alaska Municipal Officials Directory*, published by the State of Alaska, Department of Community and Regional Affairs.

Records maintained at adult lockups vary widely. Facilities which maintain admission records containing the name, birthdate, race, gender, admit date/time, offense(s), and release date/time of each person detained during the monitoring period may simply mail you a copy of the printout and a signed certification of authenticity. It may not be possible for some facilities to submit data by mail, in which case the person in charge of the facility should be advised that a site visit may be required. Facilities which do not maintain admission records, or which maintain records which do not contain all information specified above, should be sent a copy of the Juvenile Detention Data Reporting Form (see Appendix E) and instructions regarding its use.

The person in charge of each adult lockup which is due for inspection during the current monitoring effort should be notified that an inspection will be conducted and, to the extent possible, arrangements should be made to schedule inspections. The person in charge of each lockup for which data cannot be submitted by mail should be notified that a site visit may be required.

Following the initial telephone contact with each lockup, a letter should be mailed to the person in charge of the facility, explaining the monitoring process, identifying the specific records/ data which should be submitted, reinforcing the importance of timely submission of data and inviting the person to contact either you or their supervisor if there are questions concerning the monitoring itself or authorization to release records to you. Each letter should be accompanied by a copy of the initial authorization letter sent by the DFYS Associate Coordinator for Juvenile Justice and Delinquency Prevention to the Rural/Village Public Safety Officer Enforcement Unit Administrator, Alaska State Troopers. A copy of the certification of authenticity should be enclosed for the person to sign and return with the data.

Because it is likely that some facilities will not respond to the initial request for data, it will be necessary to make follow-up calls to facilities which do not submit data within a two-week period following the initial contact. Some non-reporting villages may be scheduled for on-site data collection.

IV. SITE VISITS: FACILITY INSPECTION AND RECORD VERIFICATION

One-third of the facilities in the monitoring universe must be inspected each year so that all facilities will be visited during a three-year period. The purposes of the visits are: to inspect facilities for classification; to inspect for sight and sound separation of juveniles from adults; to verify records and examine record-keeping procedures; to collect data from sites where records are judged inadequate; and to educate police and public safety personnel in the relevant statutes and assist them in understanding and developing adequate record-maintenance systems.

A. Scheduling Facilities for Site Visits

A list of facilities in the monitoring universe is maintained which includes the year each facility was visited and whether or not data were received from each facility (Appendix B). A three-year cycle of site visits has been essentially routinized since monitoring began in 1989. During the first years of the monitoring process geographic considerations were important to the scheduling of visits and an effort has been made to maintain these patterns for cost-efficiency. The following steps should be taken to select sites for inspection before scheduling site visits.

1) After the monitoring universe has been updated as described in Section III above, the facilities should be checked against the monitoring universe list. All facilities remaining in the

universe which have not been visited during the previous two monitoring years should be scheduled for site visits.

2) Facilities which have been added to the universe or which have changed classification *must* receive site visits within three years of their addition to the universe, but as many as possible should receive visits during the year in which they are added. The decision to delay site visits for these facilities is based on cost-efficient travel: each should be added to scheduled visits of other sites in the region.

3) Facilities identified during the data collection phase of the monitoring process (Section V above) as having no data or inadequate data *may* be scheduled for visits for the purpose of data collection. The decision should be based on geographic considerations and the cost of travel.

B. Conducting Site Visits

Facilities selected for site visits should be scheduled for visitation at a time which is convenient for both facility staff and monitoring staff. Efficiency is improved to the extent that facilities which lie on a single commercial air carrier route are scheduled sequentially for site visits. It is therefore recommended that current flight schedules for all local airlines and air services in each region of the state be obtained prior to scheduling of site visits. These flight schedules should be examined carefully to determine optimum sequencing for site visits.

In some areas of the state commercial airlines may stop in villages only once per day. It may be more cost-efficient to charter planes under these circumstances; three or four villages can often be visited in a day with a charter, while with commercial planes visits to three or four villages will take three or four days–salary and *per diem* costs need to be considered.

Initial contact with each facility which has not already been contacted regarding data collection should be by telephone, followed by a letter explaining the monitoring process and the nature of the inspection and accompanied by a copy of the initial letter of authorization sent by the Director of DFYS.

Each facility visited during the current monitoring effort should be inspected. As explained in the Formula Grant regulation:

> 28 CFR Part 31.303(f)(1)(i)
> (C) **Inspection of Facilities**: Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and record keeping. The inspection must include: (1) A review of the physical accommodations to determine whether it is a secure or non-secure facility or whether adequate sight and sound separation between juvenile and adult offenders exists and (2) a review of the record keeping system to determine whether sufficient data are maintained to determine compliance with section 223(a)(12), (13) and (14) of the JJDP Act.
>
> ***–28 CFR Part 31.303(f)(1)(i)(C)***

Additionally, the Formula Grant regulation requires on-site verification of self-report data:

28 CFR Part 31.303(f)(1)(i)
(D) … If the data is self-reported by the facility or is collected and reported by an agency other than the State agency designated pursuant to section 223(a)(1) of the JJDP Act … a statistically valid procedure [must be] used to verify the reported data.

–28 CFR Part 31.303(f)(1)(i)(D)

For each facility visited, notes should be prepared which contain, at a minimum:

1) A general description of the jurisdiction in which the facility is located.

2) A description of who (which agency) administers the facility.

3) A general description of the facility, the services it provides and the clients it serves.

4) A description of the security provisions and methods of supervision at the facility and a determination that the facility meets (or fails to meet) the definition of a secure facility as provided in the Formula Grant regulation. (See Section IV of these guidelines for definitions of facility types).

5) A hand-sketched diagram of the facility, including the "juvenile area" of adult facilities.

6) A detailed description of the provisions for sight and sound separation in adult facilities and a determination that separation of juvenile and adult inmates is adequate (or inadequate). A guide for separation monitoring is included in Appendix E and may be used by site visitors to determine the adequacy of separation.

7) A detailed description of the admission data reviewed. The following procedures should be followed in examining admission records:

(a) At each facility from which mail-in data have not been received prior to the site visit it will be necessary, first, to determine whether detention records containing adequate monitoring data are systematically maintained for all persons placed in secure confinement and, if so, to collect the requisite data for all juveniles detained at the facility during the monitoring period. (The Booking Log Data Form contained in Appendix E should be used for this purpose. This form should be made available to non-reporting facilities for use in record maintenance.)

(b) At each facility for which a photocopy of the facility's booking log has already been submitted by mail, you should compare not less than 10 percent of entries in the booking log with booking records contained in appropriate case files to verify the accuracy of information entered in the booking log. You should also examine a sample of not less than 10 percent of all case files which might include data pertaining to instances of detention during the current monitoring period to determine whether a booking log entry has been made each time a person has been detained at the facility.

(c) At facilities which have submitted photocopies of individual booking records, rather than a booking log, at least 10 percent of case files which might contain data pertaining to instances of detention during the current monitoring period should be examined on-site to verify that a booking record has been submitted for every instance of detention during the monitoring period.

(d) If the facility has submitted self-report data (i.e. any data which are not contained in certified reproductions of original records generated at the time of detention), a sample of not less than 10 percent of entries should be compared with original records to determine

the accuracy of information reported in the self-report data, and a sample of not less than 10 percent of case files which might contain data pertaining to instances of detention during the current monitoring period should be examined to verify that all instances of detention have been reported.

(e) For each case examined at *all* facilities, booking records should be carefully examined to verify that the individual was actually placed in secure confinement, as defined in Section IV of these guidelines. A juvenile who has been "booked" at a facility, but who has not been placed in secure confinement should *not* be reported as a violation of any requirement of the JJDP Act.

8) A list of findings in relation to the admission data reviewed.

9) A description of the documents examined to verify any instances of detention which might constitute valid court order exceptions to the deinstitutionalization requirement of the JJDP Act and a photocopy of each document supporting designation of an instance of detention as a valid court order exception. Verification of valid court order exceptions will require examination of facility records pertinent to each instance of juvenile detention in which the exception may apply. In each case, the person performing on-site verification must photocopy all court documents or other records which indicate the presence of conditions which must be present in order for the valid court order exception to apply, as described in 28 CFR Part 31.303(f)(3). If records are insufficient to support a determination of the presence or absence of a violation, the instance of detention must be reported as a violation of Section 223(a)(12)(A) [the deinstitutionalization requirement] of the JJDP Act. Detailed procedures for verification of valid court order exceptions are described in Section VII(C)(3) of these guidelines.

10) A description of the area(s) designated for confinement and an explanation why this/these area(s) is/are secure or not secure, based on the definitions contained in Section IV of these guidelines.

The date of each inspection, and any changes in classification, should be noted in the Monitoring Universe listing in Appendix B.

VII. DATA ANALYSIS

A. Entering and Cleaning Data

Data should be entered in an ASCII format for analysis using SPSSx or comparable software. The following data for each case must be entered for each instance of secure detention in an adult facility involving a juvenile who is under 18 years of age and for each instance of secure detention in a juvenile detention center involving a juvenile who is under 18 years of age and who is not confirmed to be an accused or adjudicated criminal-type offender as defined in Section VII(B) of these guidelines:

- Identification number
- Facility
- Facility type
- Name or initials of juvenile
- Date of birth
- Race
- Sex
- Date admitted
- Time admitted
- Offense(s)
- Date released
- Time released
- Total hours (if indicated in facility records)
- Book only/lockup (in adult facilities)

Data entry will be expedited if all cases which must be entered are highlighted with a marking pen prior to data entry. For adult facilities, this may be accomplished by highlighting/entering data for all persons whose year of birth is consistent with possible juvenile status (e.g., in monitoring for juvenile incarceration in 1994, all cases involving persons whose year of birth is 1976 or later may be entered, and SPSS commands can be used to eliminate those who had reached their 18th birthday prior to the date of detention). Data should be entered for all juveniles detained in juvenile facilities. The program should remove all cases where a criminal-type offense is the reason for detention and will leave the cases which require closer examination.

Once all data have been entered, the data should be cleaned to remove incorrectly entered data. No special techniques are required in data cleaning, provided that generally acceptable methods are employed. A discussion of data cleaning methods is beyond the scope of this manual. If guidance is required, it is recommended that a research methods text be consulted.

B. Classification of Offenders

The following definitions of offender types are contained in the Formula Grant regulation:

> 28 CFR Part 31.304
>
> (d) **Juvenile who is accused of having committed an offense**. A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e. a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.
>
> (e) **Juvenile who has been adjudicated as having committed an offense**. A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e. a criminal-type offender or a status offender.
>
> (f) **Juvenile offender**. An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law, i.e. a criminal-type offender or a status offender.
>
> (g) **Criminal-type offender**. A juvenile offender who has been charged with or adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(h) **Status offender**. A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(i) **Non-offender**. A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

–28 CFR Part 31.304(d), (e), (f), (g), (h) and (i)

Note: *Underage drinking is a criminal offense (Class A misdemeanor) under Alaska statutes, but, for purposes of the JJDP Act, minor consuming is a status offense.*

The following procedures should be used in classifying juveniles as accused criminal-type offenders, adjudicated criminal-type offenders, accused status offenders and adjudicated status offenders for purposes of JJDP monitoring:

1. Accused Criminal-type Offenders. Juveniles detained for the following should be classified as *accused criminal-type offenders* for purposes of JJDP monitoring, except those eliminated from juvenile detention data:

- Violation of Alaska Statutes:
  –Title 11 (Criminal Law)
  –Title 16 (Fish and Game)
  –Title 28 (Motor Vehicles)
- Violation of local traffic ordinances
- Traffic Warrants
- Failure to Appear
- Contempt of Court
- Material Witness
- Violation of any other statute or ordinance for which a person may be sentenced to a jail or prison term *except* violations of AS 4.16.050, possession or consumption [of alcohol] by persons under the age of 21, in which case the juvenile should be classified as an accused status offender as described below

2. Adjudicated Criminal-type Offenders. Subject to the verification procedures described in Section VII(C)(2) of these guidelines, juveniles detained for any of the following reasons should be classified as *adjudicated criminal-type offenders* unless (1) the juvenile is accused of committing a new criminal-type offense, in which case the juvenile should be classified as an accused criminal-type offender, or (2) conditions of probation were imposed pursuant to an adjudication for violation of AS 4.16.050 (possession or consumption of alcohol), in which case the juvenile should be classified as an adjudicated status offender:

- Probation Violation
- Violation of Conditions of Release
- Warrant (Bench Warrant, Juvenile Pick-up Order)
- Detention Order (Court Order)
- Transfer
- Juvenile Hold (Juvenile Probation Hold)
- Delinquent Minor
- Agency Assist
- Sentence (Serve Time)
- Re-book (RBK)

- Failure to Serve Time
- AWOL (Leaving Placement)

3. Accused Status Offenders. Juveniles detained for the following should be classified as *accused status offenders* for purposes of JJDP monitoring:

- Possession or consumption of alcohol (minor consuming alcohol, minor in possession, minor on premises)
- Curfew violations
- Runaway
- Protective Custody (Alcohol) in excess of 12 hours as prescribed in AS 47.37.170.

4. Adjudicated Status Offenders. In addition to juveniles identified as children in need of aid under the provisions of AS 47.10.010 or comparable statutes governing juvenile court jurisdiction in other states, juveniles detained for any of the reasons identified in Section VII(B)(2) of these guidelines should be classified as *adjudicated status offenders* if their names and birthdates are included on the list of juveniles previously adjudicated delinquent for possession or consumption of alcohol described in Section VII(C)(2) of these guidelines or if the verification procedures described in Section VII(C)(2) reveal that they are adjudicated status offenders.

5. Nonoffenders. Juveniles detained because they are victims of child abuse or neglect should be classified as *nonoffenders* for purposes of JJDP monitoring.

6. Protective Custody. Juveniles detained in adult jails, lockups and correctional facilities for protective custody under AS 47.30.705 (which provides for emergency detention of mentally ill persons where "considerations of safety do not allow initiation of involuntary commitment procedures …") or AS 47.37.170 (which provides for emergency detention of persons who are incapacitated by alcohol in a public place) should be counted as violations of Section 223(a)(13) [the separation requirement] of the JJDP Act. However, because juveniles are accorded the same treatment given adults taken into custody under the protective custody statutes, instances of detention involving juveniles lawfully detained under protective custody statutes should not be counted as violations of either Section 223(a)(12)(A) [the deinstitutionalization requirement] or Section 223(a)(14) [the jail removal requirement] of the JJDP Act. Because AS 47.37.170 permits protective custody of a person who is incapacitated by alcohol for no more than 12 hours, any juvenile held under this statute for longer than 12 hours should be deemed an accused status offender for JJDP monitoring purposes, since consumption of alcohol in violation of AS 4.16.050 is a status offense. In JJDP monitoring, the 12-hour limit should be applied to all protective custody cases except those where facility records indicate that protective custody was based on mental illness under AS 47.30.705. There is no definitive time limit for protective custody of mentally ill persons. The following terms are used in detention records to designate protective custody cases:

- Protective Custody (PC)
- Protective Custody–Alcohol

- Protective Custody–Mental
- Noncriminal Booking
- Detox
- Sleep Off
- Mental Hold
- Title 47

Many shorthand terms, acronyms, etc. are used by individual facilities to indicate reasons for detention. Definitions and proper offender-type classifications for terms commonly used by facilities in previous years are contained in Appendix C, which should be updated each year.

C. Special Problems in Classification of Offenders

1. Multiple Offenses. Where a juvenile is charged with multiple offenses of different types, the following rules should be applied to determine the appropriate offender-type classification:

(a) If **protective custody** is given as one of the reasons for detention, the offender-type should be protective custody **except** where the lawful duration of protective custody has been exceeded. In this event, rules (ii) through (v) should be followed.

(b) If a criminal-type offense (including traffic offenses and fish and game violations) is charged **and** there is no indication that the juvenile was adjudicated or convicted for this offense prior to detention, the offender-type should be accused criminal-type offender **except** where rule (i) applies.

(c) If **probation violation** or **violation of conditions of release** or **sentence** or **warrant** or **detention order** is given as one of the reasons for detention **and** the juvenile is determined to have been placed on probation for a criminal-type offense, the offender-type should be adjudicated criminal-type offender **except** where rule (i) or rule (ii) applies.

(d) If a **status offense** (including possession or consumption of alcohol) is charged **and** there is no indication that the juvenile has already been adjudicated for this offense, the offender-type should be accused status offender **except** where rule (i) or rule (ii) or rule (iii) applies.

(e) If **probation violation** or **violation of conditions of release** or **sentence** or **warrant** or **detention order** is given as one of the reasons for detention **and** the juvenile is determined to have previously been either placed on probation for a status offense (i.e. minor consuming alcohol) or adjudicated a Child In Need of Aid (CINA), the offender-type should be adjudicated status offender **except** where rule (i) or rule (ii) or rule (iii) or rule (iv) applies.

2. Probation Violations, Warrants, Detention Orders, etc. Where the reason for detention is one of the following, the juvenile should be classified as an adjudicated criminal-type offender, **unless** additional information indicates a more appropriate classification **or** the results of the verification procedures described below necessitate a different method of classification:

- Probation Violation
- Violation of Conditions of Release
- Warrant (Bench Warrant, Juvenile Pick-up Order)
- Detention Order (Court Order)
- Transfer
- Juvenile Hold (Juvenile Probation Hold)

- Delinquent Minor
- Agency Assist
- Sentence (Serve Time)
- Re-book (RBK)
- Failure to Serve Time
- AWOL (Leaving Placement)

In order to verify this method of classifying these instances of detention, the following procedure should be followed:

Each instance of detention involving a juvenile detained for one of the reasons listed above must be checked against a comprehensive list of juveniles adjudicated delinquent for violation of AS 4.16.050 (possession or consumption of alcohol by persons under 21) on or after January 1, 1985. This list, hereafter identified as the MCA (minor consuming alcohol) list, is maintained by the DFYS Associate Coordinator for Juvenile Justice and Delinquency Prevention. The Coordinator should be asked to update the MCA list each year by requesting each intake/probation office to report the name and date of referral for each juvenile adjudicated delinquent for minor consuming alcohol during the previous year. The list need not include juveniles who were already on probation for criminal-type offenses at the time of the MCA adjudication, but any subsequent adjudication for a criminal-type offense should be noted. Juveniles whose names are on the updated MCA list should be classified as adjudicated status offenders **except** where (a) the juvenile was subsequently adjudicated for a criminal-type offense and the current instance of detention took place **after** the subsequent adjudication (in which case the juvenile should be classified as an adjudicated criminal-type offender), or (b) a more appropriate classification is indicated pursuant to the rules for classifying juveniles charged with multiple offenses. (See Section VII(C)(1) of these guidelines). Juveniles whose names are **not** on the updated MCA list **and** who were detained for **Probation Violation** should be classified as adjudicated criminal-type offenders **except** where a more appropriate classification is indicated by the classification rules. Further verification, as described below, is required for all other cases described in this section.

Instances of detention pursuant to a warrant or court order (except those for which additional information is sufficient to properly classify the juvenile), and instances of detention where one of the other reasons for detention listed above (**except** Probation Violation) is indicated, should also be verified through a check of facility records at any juvenile detention center where such instances of detention occured during the current monitoring period. This will require examination of facility and/or other records pertaining to all such instances of detention which took place at the facility during the current monitoring period. For each case, the reason for issuance of the warrant or court order–or the specific reason for detention, if none is indicated in records submitted by mail–and the probation status of the juvenile should be determined. If any instances of detention verified in this manner are determined to involve juveniles who are not adjudicated criminal-type offenders or

juveniles who have been adjudicated delinquent for possessing or consuming alcohol, it will be necessary **either** (a) to verify all other instances of detention pursuant to warrants, detention orders or other reasons listed above on a case-by-case basis **or** (b) to devise a method for projecting an appropriate classification for each instance of detention which has not been verified, based on the distribution of offender-types among the instances of detention which were subjected to verification.

3. Valid Court Orders. Under Section 223(a)(12)(A) [the deinstitutionalization requirement] of the JJDP Act, any instance of detention involving a status offender or nonoffender who is detained for violation of a valid court order does **not** constitute a violation of the deinstitutionalization requirement, provided that a detention hearing is held within 24 hours. As provided in the Formula Grant regulation:

> 28 CFR Part 31.303(f)
> (3) **Valid Court Order**. For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:
> (i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.
> (ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes the proper procedures.
> (iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to the juvenile's attorney and/or legal guardian in writing and be reflected in the court record and proceedings.
> (iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juveniles may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.
> (v) Prior to and during the violation hearing the following full due process rights must be provided:
> (A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;
> (B) The right to a hearing before a court;
> (C) The right to an explanation of the nature and consequences of the proceeding;
> (D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;
> (E) The right to confront witnesses;
> (F) The right to present witnesses;
> (G) The right to have a transcript or record of the proceedings; and
> (H) The right of appeal to an appropriate court.
> (vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3)(i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.
> (vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.
>
> ***–28 CFR Part 31.303(f)(3)***

Valid court order exceptions to the requirements of Section 223(a)(12)(A) [the deinstitutionalization requirement] must be verified on a case-by-case basis. To determine whether the valid court order exception applies, the following procedure should be followed:

For each instance of detention of an accused status offender for more than 24 hours (not including weekends and holidays), and each instance of detention of an adjudicated status offender for any length of time, photocopies of all pertinent court documents should be obtained from the facility, the court or the probation officer or intake officer handling the case. This may be accomplished when the facility is inspected, or appropriate documentation may be submitted by mail. For the exception to apply, there must be evidence that each of the requirements indicated in the Formula Grant regulation is present. If facility records are insufficient to support a determination that the valid court order exception applies, the instance of detention must be reported as a violation of Section 223(a)(12)(A) [the deinstitutionalization requirement] of the JJDP Act. The following documentation is sufficient to verify each valid court order exception:

- A court order clearly intended to regulate future conduct of the child (e.g. disposition order placing the child under conditions of probation);
- A detention order or other record indicating that the juvenile was detained for violating the court order and that a detention hearing was held at the time of detention or within the 24-hour grace period; and
- An adjudication order or other record indicating that a violation hearing was held within 72 hours should also be obtained. ***Note:*** The Formula Grant regulation indicates that a violation hearing **should** be held within 72 hours, but this is **not** a requirement which must be present in order for the valid court order exception to apply.

4. Inadequate Offense Data. Admission records and other records at at least one juvenile detention facility should be examined to determine the reason for detention in instances where offense information submitted by the facility is not sufficient to permit determination of the appropriate offender-type classification. This should be done at the same time as the verification of offender-type classifications discussed in Section VII(C)(2) of these guidelines. A list of all instances of detention for which the reason for detention is inadequately specified should be sent to the facility with a request that facility staff provide documentation (e.g. a photocopy of the admission record or the arrest report prepared by the arresting officer) of the reason for detention in each case. A procedure for projecting offense data for instances of detention for which no reason for detention is recorded and for instances of detention at adult facilities where insufficient offense data have been submitted is described in Section VII(E)(4) of these guidelines.

D. Determining Duration of Detention

The Formula Grant regulation provides for a 24-hour grace period during which an accused status offender may be held in either a secure juvenile facility or a secure adult facility without

violating the deinstitutionalization requirement of the JJDP Act. The Formula Grant regulation also provides for a 6-hour grace period during which an accused criminal-type offender may be held in a secure adult facility without violating the jail removal requirement of the act. Procedures for calculating the duration of detention to determine whether a juvenile was released within the applicable grace period are as follows:

1. 24-Hour Grace Period. The Formula Grant regulation requires states to report as violations of the deinstitutionalization requirement the "[t]otal number of accused status offenders and non-offenders held in any secure detention or correctional facility as defined in §31.303(f)(2) for longer than 24 hours (not including weekends and holidays), excluding those held pursuant to the valid court order provision as defined in paragraph (f)(3) of this section" [28 CFR Part 31.303(f)(5)(i)(C)] and the number of adjudicated status offenders held for any period of time.

For each instance of detention where all data relevant to determination of the duration of detention (i.e. date in, time in, date out, time out) are available, initial computation of the duration of detention is straightforward and can be accomplished using a computerized time interval computation function such as the YRMODA function contained in SPSSx software. Where data for one or more of these variables are missing, logical inferences may be employed to supplement computerized calculations (e.g. if date in and date out are the same, it can reasonably be inferred that the duration of detention is less than 24 hours even if time in and time out data are missing). For cases lacking sufficient data for duration of detention to be either calculated or inferred, the data projection method described in Section VII(E)(3)(a) of these guidelines should be employed.

Once duration of detention is calculated, inferred or projected for all cases involving accused status offenders, a printout of all cases in which detention extended beyond the 24-hour grace period should be generated. This printout should identify each case and show the date and time of admission and release for each instance of detention. Each case should be individually checked to determine whether the detention period included any portion of a weekend or judicial holiday. Judicial holidays and business hours for superior and district courts are described in Rules 16 and 18 of Alaska Rules of Court, Rules Governing the Administration of All Courts:

Rule 16. Judicial Holidays–Transaction of Business

(a) Judicial Holidays. Subject to the provisions of AS 22.10.050 and AS 22.15.090, no court shall be open for the transaction of business on any judicial holiday as defined herein unless ordered by the presiding judge for good cause shown.

Judicial holidays are:

(1) Every Sunday;
(2) The first of January, known as New Year's Day;
(3) The 12th of February, known as Lincoln's Birthday;
(4) The third Monday in February, known as Washington's Birthday;
(5) The last Monday of March, known as Seward's Day;
(6) The last Monday in May, known as Memorial Day;
(7) The fourth of July, known as Independence Day;
(8) The first Monday in September, known as Labor Day;
(9) The 18th of October, known as Alaska Day;
(10) The 11th of November, known as Veteran's Day;

(11) The fourth Thursday in November, known as Thanksgiving Day;
(12) The 25th of December, known as Christmas Day;
(13) Every day designated by public proclamation by the President of the United States or the Governor of the state as a legal holiday.

If any day specified or provided for as a holiday in this rule falls on a day appointed for the holding or sitting of a court, or to which it is adjourned, it shall be deemed appointed for or adjourned to the next day not a judicial holiday.

(b) Holidays Falling on Sunday or Saturday. If any holiday designated in Rule 16(a)(2) through (12) falls upon a Sunday, the Monday following is a holiday and if it falls on a Saturday, the Friday preceding is a holiday.

(c) Special or Limited Holidays. On any special or limited holiday, all courts shall be open and function in their normal and usual manner. A special or limited holiday is a holiday applying only to a special class or classes of persons, and not appointed to be generally observed throughout the state by all classes of business and all classes of persons.

…

Rule 18. Superior and District Courts–Time and Place of Sitting

(a) Superior and District Courts–When Open for Business. The superior and district courts shall be open for the transaction of business during business hours from 8:00 a.m. until 4:30 p.m. on all days except judicial holidays and Saturdays; provided, however, that the courts may at any time extend these hours as circumstances may require or as may be ordered by the presiding judge.

–Alaska Rules of Court*, Rules Governing the Administration of All Courts, Rule 16 and Rule 18(a)*

For each case involving detention during any portion of the period between 4:30 p.m. on a Friday or the day before a judicial holiday and 8:00 a.m. on a Monday or the day after a judicial holiday, the duration of detention should be re-calculated to reflect only that portion which occurred before and/or after the weekend or holiday. Any case(s) which are determined through re-calculation of the duration of detention to fall within the 24-hour grace period should **not** be reported as violations.

2. 6-Hour Grace Period. The Formula Grant regulation requires states to report as violations of the jail removal requirement the "[t]otal number of juvenile criminal-type offenders held in adult jails in excess of six hours" [28 CFR Part 31.303(f)(5)(iv)(G)] and the "[t]otal number of juvenile criminal-type offenders held in adult lockups in excess of six hours" [28 CFR Part 31.303(f)(5)(iv)(H)]. The Office of Juvenile Justice and Delinquency Prevention has interpreted these sections to apply only to **accused** criminal-type offenders**; adjudicated** criminal-type offenders may not be held in adult facilities for **any** length of time.

As with computation of duration of detention for accused status offenders, calculations are straightforward if data are available for all relevant variables (i.e. date in, time in, date out, time out). The YRMODA function in SPSSx, or a comparable function, should be used for this purpose. Where data for one or more of these variables are missing, logical inferences may be employed to supplement computerized calculations (e.g. if date in and date out are the same, and time in is 6:00 p.m. or later, it can reasonably be inferred that the duration of detention is less than 6 hours even if time out data are missing). For cases lacking sufficient data for duration of detention to be either calculated or inferred, the data projection method described in Section VII(E)(3)(b) of these guidelines should be employed. Note that there are no provisions in the Formula Grant regulation or elsewhere for excluding weekends and holidays in determining whether the 6-hour grace period has been exceeded. **All** cases involving accused criminal-type offenders for whom the duration of detention

is calculated, inferred or projected to exceed six hours must be reported as violations of the jail removal requirement.

E. Data Projection

1. Partial Data for Monitoring Period. Complete data for the entire monitoring period should be collected from each facility included in the monitoring effort. It is possible, however, that data for the full monitoring period may be unavailable for some facilities. In this event, it will be necessary to project data for such facilities to cover the entire monitoring period. This should be done by computing, for each facility, the proportion of the year for which data are available and weighting each instance of detention at the facility by a factor equal to the reciprocal of that proportion. Thus, for example, each instance of juvenile detention at a facility for which data are unavailable for the period between November 22, 1988 and December 31, 1988 should be weighted by a factor of 1.12 (366 days in the year divided by 327 days elapsed prior to November 22nd). With this weighting procedure, instances of noncompliant detention during the portion of the year for which data are unavailable are projected to have occurred at a rate identical to the rate of noncompliant detention during that portion of the year for which data are available.

2. Inadequate Admission Data. Data for facilities which fail to submit data or whose records are determined to be inadequate for monitoring purposes should be projected for each type of facility by assigning a weight equal to the reciprocal of the proportion of all facilities of that type represented by those included in the analysis to each case involving detention of a juvenile in that type of facility. Thus, for example, if there are 90 adult lockups in the monitoring universe, but adequate data are obtained from only 50 of them, each instance of detention at an adult lockup should be weighted by a factor of 1.8 (90 adult lockups in the monitoring universe divided by 50 adult lockups from which adequate data were obtained).

3. Duration of Detention. In addition to projection of data for facilities for which less than a full year of data are collected and for facilities which do not maintain adequate records, it may be necessary to project data regarding duration of detention for cases for which such data are inadequate. Separate procedures should be followed in projecting data to determine the number of instances of detention involving (a) accused status offenders held for more than 24 hours in violation of the deinstitutionalization requirement and (b) accused criminal-type offenders held in adult facilities for more than 6 hours in violation of the jail removal requirement). Procedures for making both projections are as follows:

a. Accused Status Offenders (Deinstitutionalization). Projection of data regarding duration of detention for cases involving accused status offenders where records are insufficient to determine whether the 24-hour grace period permitted under 28 CFR Part 31.303(f)(5)(i)(C) has been exceeded

should proceed as follows: The proportion of cases in which detention extended beyond the 24-hour grace period should be computed for all cases involving detention of status offenders and for which all variables used in computation of the duration of detention are available. The cases for which duration of detention cannot be determined should each be assigned a weight equal to the proportion of noncompliant instances among all cases involving detention of status offenders for which all pertinent data are available.

b. Accused Criminal-type Offenders (Jail Removal). In order to determine the appropriate weight to assign each case involving accused criminal-type offenders for which data sufficient to determine the duration of detention are unavailable, the proportion of cases in which detention extended beyond the 6-hour grace period should be computed for all cases involving detention of an accused criminal-type offender in an adult facility and for which all variables used in computation of the duration of detention are available. Each case for which duration of detention cannot be determined should be assigned a weight equal to the proportion of noncompliant instances among all cases involving detention in adult facilities of juveniles accused of criminal-type offenses for which sufficient data are available.

4. Inadequate Offense Data. Data projection for cases where the reason for detention is inadequately specified will require computation, for each type of facility, of the proportion of accused criminal-type offenders, adjudicated criminal-type offenders, accused status offenders and adjudicated status offenders among all instances of juvenile detention for which records are sufficiently complete to permit identification of the type of offender. Weights should be assigned as follows:

- In calculations employed to determine the total number of accused criminal-type offenders held in adult facilities for more than six hours in violation of the jail removal requirement (item F7 in the monitoring report), each case for which offense information is inadequate should be assigned a weight equal to the proportion of accused criminal-type offenders among all juveniles detained in the same type of facility and for which records are sufficiently complete to permit identification of the type of offender.
- In calculation of the total number of adjudicated criminal-type offenders held in adult facilities for any length of time in violation of the jail removal requirement (item F9), each case for which offense information is inadequate should be assigned a weight equal to the proportion of adjudicated criminal-type offenders among all instances of detention in the same type of facility and for which offense information is adequate.
- In calculations used to determine the total number of accused and adjudicated status offenders held for any length of time in adult facilities in violation of the jail removal requirement (item F11), each case for which offense information is inadequate should be weighted by a factor equal to the proportion of accused and adjudicated status offenders among all instances of detention in the same type of facility and for which offense information is adequate.
- In calculations employed to determine the total number of accused status offenders held over 24 hours in violation of the deinstitutionalization requirement (item B5), each case for which offense information is inadequate should be assigned a weight equal to the proportion

of accused status offenders among all juveniles detained in the same type of facility and for which records are sufficiently complete to permit identification of the type of offender

- In calculations used to determine the total number of adjudicated status offenders held for any length of time in violation of the deinstitutionalization requirement (item B6), each case for which offense information is inadequate should be assigned a weight equal to the proportion of adjudicated status offenders among all juveniles detained in the same type of facility and for which records are sufficient for identification of the type of offender.

5. Inadequate Age Data. Cases with missing or obviously incorrect birthdates should be recoded to indicate that the person is a juvenile where detention occurs at a juvenile detention center. Where data for facilities which house juveniles and adults include such cases, these cases should be weighted as follows: Records submitted by some facilities identify detainees as juveniles or adults (e.g. the Client Billing Sheets submitted by jails which provide adult detention services under contract with the Department of Public Safety contain a separate column in which juvenile charges are entered). It should be possible to identify cases which do not include a birthdate but provide some indication whether the person is an adult or juvenile and to determine the proportion of juveniles among these cases. A weight equal to this proportion should be assigned each case for which no indication of age is present. Each case for which age status is indicated should be counted as an instance of juvenile detention only if the person is identified as a juvenile.

6. Data Projection in Practice. The weighting procedure described above–involving data projection for facilities which are unable to submit adequate data, for facilities from which data for less than the full year have been obtained, for cases lacking sufficient data to determine the duration of detention, for cases in which data are insufficient for identification of the type of offender and for cases where the age of the offender cannot be determined–is most easily implemented in practice by assigning a weight equivalent to the product of the five separate weights to each case. Because the product of the five weights may be less than 1.00 for the majority of weighted cases (i.e. those in which offense data, age data and/or data related to duration of detention are inadequate), the projected number of noncompliant instances for both the deinstitutionalization and jail removal sections of the monitoring report may be smaller than the number of unweighted cases upon which it is based.

VIII. PREPARATION OF MONITORING REPORT

The information which must be included in monitoring reports is described in the Formula Grant regulation as follows:

> 28 CFR Part 31.303(f)
>
> (5) **Reporting Requirement**. The State shall report annually to the Administrator of OJJDP on the results of monitoring for section 223(a)(12), (13), and (14) of the JJDP Act. The reporting period should provide 12 months of data, but shall not be less than 6 months. Three copies of the report shall be submitted to the Administrator of OJJDP no later than December 31 of each year.

(i) To demonstrate the extent of compliance with section 223(a)(12)(A) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Dates of baseline and current reporting period.

(B) Total number of public and private secure detention and correctional facilities AND the number inspected on-site.

(C) Total number of accused status offenders and non-offenders held in any secure detention or correctional facility as defined in §31.303(f)(2) for longer than 24 hours (not including weekends and holidays), excluding those held pursuant to the valid court order provision as defined in paragraph (f)(3) of this section.

(D) Total number of adjudicated status offenders and non-offenders held in any secure detention or correctional facility as defined in §31.303(f)(2), excluding those held pursuant to the valid court order provision as defined in paragraph (f)(3) of this section.

(E) Total number of status offenders held in any secure detention or correctional facility pursuant to a judicial determination that the juvenile violated a valid court order as defined in paragraph (f)(3) of this section.

(ii) To demonstrate the extent to which the provisions of section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and non-offenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community based.

(iii) To demonstrate the progress toward and extent of compliance with section 223(a)(13) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Designated date for achieving full compliance.

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months AND the number inspected on-site.

(C) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide adequate separation.

(D) The total number of juvenile offenders and non-offenders NOT adequately separated in facilities used for the secure detention and confinement of both juveniles and adults.

(iv) To demonstrate the progress toward and extent of compliance with section 223(a)(14) of the JJDP Act the report must at least include the following information for the baseline and current reporting periods:

(A) Dates of baseline and current reporting period.

(B) Total number of adult jails in the State AND the number inspected on-site.

(C) Total number of adult lockups in the State AND the number inspected on-site.

(D) Total number of adult jails holding juveniles during the past twelve months.

(E) Total number of adult lockups holding juveniles during the past twelve months.

(F) Total number of adult jails and lockups in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which it is located.

(G) Total number of juvenile criminal-type offenders held in adult lockups in excess of six hours.

(H) Total number of juvenile criminal-type offenders held in adult lockups in excess of six hours.

(I) Total number of accused and adjudicated status offenders and non-offenders held in any adult jail or lockup.

(J) Total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less that 24 hours in adult jails and lockups in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section.

–28 CFR Part 31.303(f)(5)

The Formula Grant regulation also requires the state to document the extent to which the requirements of the JJDP Act are met:

28 CFR Part 31.303(f)

(6) **Compliance**. The State must demonstrate the extent to which the requirements of section 223(a)(12)(A), (13), and (14) of the Act are met. Should the State fail to demonstrate compliance with the requirements of this Section within the designated time frames, eligibility for formula grant funding shall terminate. The compliance levels are:

(i) **Substantial compliance** with section 223(a)(12)(A) requires within three years of initial plan submission achievement of a 75% reduction in the aggregate number of status offenders and non-offenders held in secure detention or correctional facilities or removal of 100% of such offenders from

secure correctional facilities only. In addition, the State must make an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within two additional years. **Full compliance** is achieved when a State has removed 100% of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with **de minimis** exceptions pursuant to the policy criteria contained in the Federal Register of January 9, 1981 (46 FR 2568-2569).

(ii) **Compliance** with section 223(a)(13) has been achieved when a State can demonstrate that:

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of section 223(a)(13); or

(B)(1) State law, regulation, court rule, or other established executive or judicial policy clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of section 223(a)(13);

(2) All instances of noncompliance reported in the last submitted monitoring report were in violation of, or departures from, the State law, rule or policy referred to in paragraph (f)(6)(ii)(B)(1) of this section;

(3) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances; and

(4) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (f)(6)(ii)(B)(1) of this section are such that the instances of noncompliance are unlikely to recur in the future.

(iii)(A) Substantial compliance with section 223(a)(14) requires:

(1) The achievement of a 75% reduction in the number of juveniles held in adult jails and lockups after December 8, 1985; or

(2) That a state demonstrate it has met each of the standards set forth in paragraphs (f)(6)(iii)(A)(2)(i)-(iv) of this section:

(i) Removed all status and nonoffender juveniles from adult jails and lockups. Compliance with this standard requires that the last submitted monitoring report demonstrate that no status offender (including those accused of or adjudicated for violating a valid court order) or nonoffender juveniles were securely detained in adult jails or lockups for any length of time; or, that all status offenders and nonoffenders securely detained in adult jails and lockups for any length of time were held in violation of an enforceable state law and did not constitute a pattern or practice within the state;

(ii) Made meaningful progress in removing other juveniles from adult jails and lockups. Compliance with this standard requires the state to document a significant reduction in the number of jurisdictions securely detaining juvenile criminal-type offenders in violation of section 223(a)(14) of the JJDP Act; or, a significant reduction in the number of facilities securely detaining such juveniles; or, a significant reduction in the number of juvenile criminal-type offenders securely detained in violation of section 223(1)(14) of the JJDP Act; or, a significant reduction in the average length of time each juvenile criminal-type offender is securely detained in an adult jail or lockup; or, that state legislation has recently been enacted and taken effect and which the state demonstrates will significantly impact the secure detention of juvenile criminal-type offenders in adult jails and lockups;

(iii) Diligently carried out the state's jail and lockup removal plan approved by OJJDP. Compliance with this standard requires that actions have been undertaken to achieve the state's jail and lockup removal goals and objectives within approved timelines, and that the State Advisory Group, required by section 223(1)(3) of the JJDP Act, has maintained an appropriate involvement in developing and/or implementing the state's plan;

(iv) Historically expended and continues to expend an appropriate and significant share of its Formula Grant funds to comply with Section 223(a)(14). Compliance with this standard requires that, based on an average from two (2) Formula Grant Awards, a minimum of 40 percent of the program funds was expended to support jail and lockup removal programs; or that the state provides a justification which supports the conclusion that a lesser amount constituted an appropriate and significant share because the state's existent jail and lockup removal barriers did not require a larger expenditure of Formula Grant Program funds; and

(3) The state has made an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within a reasonable time but in no event may such time extend beyond December 8, 1988.

(B) Full compliance is achieved when a state demonstrates that the last submitted monitoring report, covering 12 months of actual data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of section 223(a)(14). (C) Full compliance with de minimis exceptions is achieved when a State demonstrates that it has met the standard set forth in either of paragraphs (f)(6)(iii)(C)(1) or (2) of this section:

(1) **Substantive De Minimis Standard**. To comply with this standard the state must demonstrate that each of the following requirements have been met:

(i) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of section 223(a)(14);

(ii) All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from, the state law, rule, or policy referred to in paragraph (f)(6)(iii)(C)(1)(i) of this section;

(iii) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;

(iv) Existing mechanisms for the enforcement of the state law, rule, or policy referred to in paragraph (f)(6)(iii)(C)(1)(i) of this section are such that the instances of noncompliance are unlikely to recur in the future; and

(v) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(C)(1)(iv) of this section.

(2) **Numerical De Minimis Standard**. To comply with this standard the state must demonstrate that each of the following requirements under paragraphs (f)(6)(iii)(C)(2)(i) and (ii) of this section have been met:

(i) The incidents of noncompliance reported in the state's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the state;

(ii) An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of state law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

(iii) Exception. When the annual rate for a state exceeds 9 incidents of noncompliance per 100,000 juvenile population, the state will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis standard unless the state has recently enacted changes in state law which have gone into effect and which the state demonstrates can reasonably be expected to have a substantial, significant and positive impact on the state's achieving full (100%) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

(iv) Progress. Beginning with the monitoring report due by December 31, 1990, any state whose prior full compliance status is based on having met the numerical de minimis standard set forth in paragraph (f)(6)(iii)(C)(2)(i) of §31.303, must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100%) compliance with de minimis exceptions.

(v) Request Submission. Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the monitoring report due by December 31 of each calendar year. Any state reporting less than full (100%) compliance may request a finding of full compliance with de minimis exceptions under paragraph (f)(6)(iii)(C)(1) or (2) of this section. The request must be submitted in conjunction with the monitoring report, as soon thereafter as all information required for a determination is available, or be included in the annual state plan and application for the state's Formula Grant Award.

(D) Waiver. (1) Failure to achieve substantial compliance as defined in this section shall terminate any state's eligibility for Formula Grant funds unless the Administrator of OJJDP waives termination of the state's eligibility. In order to be eligible for a waiver of termination, a state must submit a waiver request which demonstrates that it meets the standards set forth in paragraph (f)(6)(iii)(D)(1)(i)-(v) of this section:

(i) Agrees to expend all of its Formula Grant Award except planning and administration, advisory group set aside, and Indian-tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(ii) Diligently carried out the state's jail and lockup removal plan as set forth in paragraph (f)(6)(iii)(A)(2)(iii) of this section; and

(iii) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the state, to eliminate noncompliant incidents; and

(iv) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(v) Demonstrates a commitment, through appropriate executive or legislative action, to achieving full compliance.

(2) Failure to achieve full compliance as defined in this section shall terminate any state's eligibility for Formula Grant funds unless the Administrator of OJJDP waives termination of the state's eligibility. In order to be eligible for this waiver of termination, a state must request a waiver and demonstrate that it meets the standards set forth in paragraphs (f)(6)(iii)(D)(2)(i)-(vii) of this section:

(i) Agrees to expend all of its Formula Grant Award except planning and administration, advisory group set aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(ii) Removed all status and nonoffender juveniles from adult jails and lockups as set forth in paragraph (f)(6)(iii)(A)(2)(i) of this section; and

(iii) Made meaningful progress in removing other juveniles from adult jails and lockups as set forth in paragraphs (f)(6)(iii)(A)(2)(ii) of this section; and

(iv) Diligently carried out the state's jail and lockup removal plan as set forth in paragraph (f)(6)(iii)(A)(2)(iii) of this section; and

(v) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the state, to eliminate noncompliant incidents; and

(vi) Achieved compliance with section 223(a)(15) of the JJDP Act; and
(vii) Demonstrates a commitment, through appropriate executive or legislative action, to achieving full compliance.
(E) Waiver Maximum. A state may receive a waiver of termination of eligibility from the Administrator under paragraph (f)(6)(iii)(D)(1) and
(2) of this section for a combined maximum of three Formula Grant Awards. No additional waivers will be granted.

–28 CFR Part 31.303(f)(6)

The monitoring report form mandated by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) for use in preparation of monitoring reports is contained in Appendix F. The format generally follows the Reporting Requirement described in the Formula Grant regulation [28 CFR Part 31.303(f)(5)], sequentially addressing the deinstitutionalization, separation and jail removal requirements and providing separate sections for documentation relevant to requests for findings of full compliance, full compliance with de minimis exceptions and substantial compliance for both the deinstitutionalization and jail removal requirements, as described in 28 CFR 31.303(f)(6). It should be noted that two sections pertaining to monitoring in the Formula Grant regulation–28 CFR Part 31.303(f)(4), which provides for exceptions to the jail removal requirement, and 28 CFR Part 31.303(f)(7), which exempts certain states from the annual monitoring report requirements–are not applicable to Alaska at this time and are therefore not addressed in the monitoring guidelines. Responses to Items F13 and F14 in the monitoring report form should indicate that no adult jails and lockups are in areas meeting the "removal exception" (Item F13) and that no juveniles accused of criminal-type offenses were held in excess of six hours but less than twenty-four hours in adult jails and lockups in areas meeting this exception (Item F14). The monitoring report exception will not be applicable to Alaska until the state has achieved full compliance with Section 223(a)(12)(A) [the deinstitutionalization requirement] and compliance with Section 223(a)(13) [the separation requirement] of the JJDP Act and a written request for exemption from the annual monitoring report requirements is approved by OJJDP.

The 1989 compliance monitoring report for Alaska is contained in Part 8 of this volume. Narrative text and data for baseline reporting periods may be drawn from this or other previous monitoring reports wherever appropriate. The JJDP Act, the Formula Grant regulation and other pertinent regulations are also contained in this volume, as are the most recent audit of Alaska's compliance monitoring system, the Revised 1987 Jail Removal Plan and the Three Year Plan submitted with the 1987 Formula Grant application. These documents, and the policy statements, legal opinions, regulations and other materials contained in Volume 1 of the *Formula Grants Program Manual* issued by OJJDP, should be consulted as necessary to clarify reporting requirements or other issues. OJJDP is also willing to provide additional technical assistance by telephone if necessary.

APPENDIX A
CHECKLIST OF MONITORING ACTIVITIES

APPENDIX A: CHECKLIST OF MONITORING ACTIVITIES

I. Introduction–Read monitoring guidelines and supporting materials

II. Startup/Initial Contacts–Contact the following officials to obtain authorization letters, etc.:

- A. Director of the Division of Family and Youth Services for the Department of Health and Social Services
- B. Rural/Village Public Safety Officer Enforcement Unit Administrator, Alaska State Troopers Associations
- C. Contract Jail Administrator, Department of Public Safety
- D. Director of Institutions, Department of Corrections
- E. Administrative Director, Alaska Court System
- F. Director, North Slope Borough Department of Public Safety
- G. VPSO Coordinators, Regional Nonprofit Native Associations
- H. Information letter to Presidents of regional nonprofit Native corporations

III. Identification of the monitoring universe–Contact the following officials to update the monitoring universe:

- A. Village Oversight Troopers, Alaska State Troopers
- B. Contract Jail Administrator, Department of Public Safety
- C. Director of Institutions, Department of Corrections
- D. Administrative Director, Alaska Court System
- E. Director, North Slope Borough Department of Public Safety
- F. Regional Directors, Division of Family and Youth Services

IV. Classification of the monitoring universe–Classify new facilities and re-classify facilities as necessary

V. Data collection–Request submission of monitoring data for all facilities in the following categories:

- A. Juvenile detention centers
- B. Juvenile holdover facilities
- C. Adult jails
- D. Adult correctional facilities
- E. Adult lockups

VI. Site visits/inspection of facilities

- A. Identify facilities for site visits
- B. Conduct site visits

VII. Data analysis

- A. Enter and clean data
- B. Classify offenders
  1. Accused criminal-type offenders
  2. Adjudicated criminal-type offenders
  3. Accused status offenders
  4. Adjudicated status offenders
  5. Nonoffenders
  6. Protective custody

C. Resolve special problems in classification of offenders:
   1. Multiple offenses
   2. Probation violations, warrants, detention orders, etc.
   3. Valid court orders
   4. Inadequate offense data
D. Determine duration of detention–Use separate procedures to calculate duration of detention for use in identifying violations of:
   1. 24-hour Grace period
   2. 6-hour Grace period
E. Identify possible violations
   1. Compare possible violations with MCA list
   2. Submit list of violations to Associate Coordinator for Juvenile Justice and Delinquency Prevention
F. Data projection–Determine appropriate weights to assign cases with missing or inadequate data:
   1. Partial data for monitoring period
   2. Inadequate admission data
   3. Inadequate duration of detention data
      a. Accused status offenders (deinstitutionalization)
      b. Accused criminal-type offenders (jail removal)
   4. Inadequate offense data
   5. Inadequate age data
   6. Data projection in practice–Follow appropriate procedures for weighting cases in computerized data analysis

VIII. Prepare monitoring report

APPENDIX B
MONITORING UNIVERSE

APPENDIX B: MONITORING UNIVERSE

JUVENILE DETENTION CENTERS

Facility	Year added	1987 Data	1987 Insp	1988 Data	1988 Insp	1989 Data	1989 Insp	1990 Data	1990 Insp	1991 Data	1991 Insp	1992 Data	1992 Insp	1993 Data	1993 Insp	1994 Data	1994 Insp
Bethel		X	X	X	X	X		X		X	X	X		X			
Fairbanks		X		X		X		X	X	X		X		X	X		
Johnson Center (Juneau)		X		X		X	X	X		X		X	X	X			
McLaughlin (Anchorage)		X	X	X	X	X		X		X	X	X		X			
Nome		X		X		X	X	X		X		X	X	X			

JUVENILE HOLDOVER FACILITIES -- not applicable

Facility	Year added	1987 Data	1987 Insp	1988 Data	1988 Insp	1989 Data	1989 Insp	1990 Data	1990 Insp	1991 Data	1991 Insp	1992 Data	1992 Insp	1993 Data	1993 Insp	1994 Data	1994 Insp
Kenai	1989	--	--	--	--	X	X	X		X		X	X	X			
Kodiak	1991	--	--	--	--	--	--	--	--	X		X	X	X			

ADULT JAILS -- not applicable

** denotes adult facilities which provide sight and sound separation of juvenile and adult inmates*

Facility	Year added	1987 Data	1987 Insp	1988 Data	1988 Insp	1989 Data	1989 Insp	1990 Data	1990 Insp	1991 Data	1991 Insp	1992 Data	1992 Insp	1993 Data	1993 Insp	1994 Data	1994 Insp
Barrow		X		X		X	X	X		X		X	X	X			
Cordova		X	X	X	X	X		X		X	X	X		X			
Craig		X		X		X	X	X		X		X	X	X			
* Dillingham		X		X		X		X	X	X		X		X	X		
Emmonak	1990	--	--	--	--	--	--	X	X	X		X		X	X		
Haines		X		X		X	X	X		X		X	X	X			
Homer		X	X	X	X	X		X		X	X	X	X	X	X		
Kotzebue		X		X		X	X	X		X		X	X	X			
Naknek		X		X		X		X	X	X		X		X	X		
Petersburg		X		X		X	X	X		X		X	X	X			
Seldovia		X	X	X	X	X		X		X	X	X		X			
* Seward		X	X	X	X	X		X		X	X	X		X			
* Sitka		X		X		X	X	X		X		X	X	X			
Unalaska		X		X		X		X	X	X		X		X	X		
Valdez		X	X	X	X	X		X		X	X	X		X			
Wrangell		X		X		X	X	X		X		X	X	X			

ADULT CORRECTIONAL FACILITIES -- not applicable

+ denotes adult correctional facilities which are prohibited from detaining juveniles by documented Department of Corrections policy.

Facility	Year added	1987 Data	1987 Insp	1988 Data	1988 Insp	1989 Data	1989 Insp	1990 Data	1990 Insp	1991 Data	1991 Insp	1992 Data	1992 Insp	1993 Data	1993 Insp	1994 Data	1994 Insp
+ Anchorage Annex		--	--	--	--	--	--	--	--	--	--	--	--	--	--		
+ Anvil Mountain (Nome)		--	--	--	--	--	--	--	--	--	--	--	--	--	--		
+ Cook Inlet Pretrial (Anchorage)		--	--	--	--	--	--	--	--	--	--	--	--	--	--		
+ Fairbanks		--	--	--	--	--	--	--	--	--	--	--	--	--	--		
+ Hiland Mountain (Eagle River)		--	--	--	--	--	--	--	--	--	--	--	--	--	--		
+ Ketchikan		X		X		X	X	X		--	--	--	--	--	--		
+ Lemon Creek (Juneau)		--	--	--	--	--	--	--	--	--	--	--	--	--	--		
Mat-Su Pretrial (Palmer)		X	X	X	X	X		X		X	X	X		X			
+ Meadow Creek (Eagle River)		--	--	--	--	--	--	--	--	--	--	--	--	--	--		
+ Palmer		--	--	--	--	--	--	--	--	--	--	--	--	--	--		

+ Spring Creek (Seward)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
+ Wildwood (Kenai)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
+ Wildwood Pretrial (Kenai)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
+ Yukon--Kuskokwim (Bethel)	X	X	X	X	--	--	--	--	--	--	--	--	--	--	

ADULT LOCKUPS -- not applicable

All adult lockups are operated by municipal police departments or Village Public Safety Officers (VPSOs) unless otherwise noted.
NSB denotes adult lockups operated by the North Slope Borough Department of Corrections.
AST denotes adult lockups operated by the Alaska State Troopers.
** Kake and Whittier were contract jails till mid-1992, at which time they became lockups.*

Facility	Year added	1987 Data	1987 Insp	1988 Data	1988 Insp	1989 Data	1989 Insp	1990 Data	1990 Insp	1991 Data	1991 Insp	1992 Data	1992 Insp	1993 Data	1993 Insp	1994 Data	1994 Insp
Akiachak	1987		X		X						X	X					
Akutan	1987	X		X					X					X	X		
Alakanuk	1987							X	X					X	X		
Ambler	1987						X	X					X	X			
Anaktuvuk Pass (NSB)	1987	X		X		X	X	X		X		X	X	X			
Angoon	1987					X	X			X			X				
Aniak	1987		X		X					X	X						
Atka	1992	--	--	--	--	--	--	--	--	--	--	X					
Atqasuk (NSB)	1987	X		X		X	X	X		X		X	X	X			
Brevig Mission	1992	--	--	--	--	--	--	--	--	--	--			X			
Cantwell	1987	X	X	X	X			X		X	X	X		X			
Chefornak	1992	--	--	--	--	--	--	--	--	--	--				X		
Chevak	1987	X	X	X	X	X				X	X						
Chignik	1989	--	--	--	--	X	X	X						X	X		
Cold Bay	1987	X	X	X	X	X				X		X		X	X		
Deadhorse	1987	X			X	X	X	X		X		X	X	X			
Delta Junction (AST)	1987	X	X	X	X	X		X		X	X	X		X			
Eek	1987							X	X	X				X	X		
Egegik	1992	--	--	--	--	--	--	--	--	--	--	X			X		
Ekwok	1987					X		X	X	X		X		X	X		
Elim	1987						X			X			X	X			
False Pass	1992	--	--	--	--	--	--	--	--	--	--				X		
Fort Yukon (AST)	1987		X	X	X	X				X	X	X		X			
Galena	1987	X	X	X	X	X		X		X	X						
Gambell	1987						X					X	X				
Glennallen (AST)	1989	--	--	--	--	X	X	X		X		X	X	X			
Golovin	1987					X	X	X					X				
Goodnews Bay	1987								X	X				X	X		
Grayling	1992	--	--	--	--	--	--	--	--	--	--			X			
Holy Cross	1992	--	--	--	--	--	--	--	--	--	--	X		X			
Hoonah	1987					X	X			X		X	X	X			
Hooper Bay	1987						X						X				
Huslia	1987		X		X						X						
* Kake		X		X		X	X	X		X		X	X				
Kaktovik (NSB)	1989	--	--	--	--	X	X	X		X		X	X	X			
Kaltag	1987		X		X						X			X			
Kasigluk	1989	--	--	--	--		X						X				
Kiana	1987					X	X	X				X	X	X			
King Cove	1987	X	X	X	X	X		X		X	X	X		X			
Kipnuk	1989	--	--	--	--					X							
Kivalina	1987		X		X						X			X			
Kobuk	1987								X			X		X	X		
Kotlik	1987							X	X	X		X		X	X		
Koyuk	1987					X		X	X	X				X	X		
Kwethluk	1987		X		X						X						
Kwigillingok	1992	--	--	--	--	--	--	--	--	--	--			X			
Lower Kalskag	1989	--	--	--	--	X											
Manokotak	1987								X			X		X	X		

Marshall	1987					X	X					X	X	X		
McGrath	1989	--	--	--	--			X	X	X		X		X	X	
Mekoryuk	1987	X		X		X			X	X					X	
Mountain Village	1987								X					X	X	
Napakiak	1987								X		X				X	
Napaskiak	1987		X		X								X			
Nenana	1987	X	X	X	X	X				X	X					
New Stuyahok	1992	--	--	--	--	--	--	--	--	--	--				X	
Nondalton	1987					--	--	X	X	X					X	
Noorvik	1987	X	X	X	X			X			X			X		
Nuiqsut (NSB)	1987	X		X		X	X	X		X		X	X	X		
Nulato	1987		X		X						X	X				
Nunapitchuk	1987						X						X			
Pelican	1987					X	X	X		X		X	X	X		
Pilot Point	1992	--	--	--	--	--	--	--	--	--	--	X		X	X	
Pilot Station	1987						X			X		X	X			
Point Hope (NSB)	1987	X		X		X	X	X		X		X	X	X		
Point Lay (NSB)	1987					X	X	X		X		X	X	X		
Quinhagak	1987					X	X	X		X			X			
Ruby	1987		X		X					X	X			X		
Russian Mission	1992	--	--	--	--	--	--	--	--	--	--	X		X		
Saint Marys	1987					X	X						X	X		
Saint Michael	1992											X				
Saint Paul	1987	X	X	X	X					X	X					
Sand Point	1989	--	--	--	--			X	X	X		X		X	X	
Savoonga	1987						X						X			
Scammon Bay	1987						X						X			
Selawik	1987					X	X	X				X	X	X		
Shaktoolik	1987								X						X	
Sheldon Point	1991	--	--	--	--	--	--	--	--						X	
Shishmaref	1987								X	X					X	
Shungnak	1987						X	X		X			X			
Skagway	1989	--	--	--	--	X	X	X					X	X		
Stebbins	1987		X		X					X	X					
Tanana	1987	X	X	X	X					X	X					
Tatitlek	1992	--	--	--	--	--	--	--	--	--	--					
Teller	1987	X		X					X						X	
Togiak	1987								X	X				X	X	
Tok (AST)	1987	X	X	X	X	X				X	X	X		X		
Toksook Bay	1987					X	X	X					X			
Tununak	1987								X	X						
Unalakleet	1987	X	X	X	X						X					
Upper Kalskag	1991	--	--	--	--	--	--	--	--		X	X				
Wainwright (NSB)	1987	X		X		X	X	X		X		X	X	X		
* Whittier	1990	--	--	--	--	--	--	X		X			X			
Yakutat	1987	X	X	X	X	X					X					

FACILITIES REMOVED FROM MONITORING UNIVERSE

Facility	Year added	1987 Data	1987 Insp	1988 Data	1988 Insp	1989 Data	1989 Insp	1990 Data	1990 Insp	1991 Data	1991 Insp	1992 Data	1992 Insp	1993 Data	1993 Insp	1994 Data	1994 Insp
Kodiak (rem. 1994)		X		X		X		X	X	X		X					
Wales (rem. 1994)	1992	--	--	--	--	--	--	--	--	--	--						
White Mountain (rem. 1994	1992	--	--	--	--	--	--	--	--	--	--						

Akiak, Atmautluak, Buckland, Deering, Koyukuk, Nightmute, Tuntutuliak, Wales

APPENDIX C
DATA COLLECTION AND PROCESSING RESOURCES

Protocol, DFYS Site Visitation

Offense Coding Sheet (acronyms and abbreviations)

Checklist to Determine Valid Court Order Violations

PROTOCOL: DFYS SITE VISITATION

1. Obtain a copy of the booking logs for your destination(s) for calendar year 1994. If we do not have a copy on file, make one during your visit. We will reimburse the agency for the copying costs if they provide us with an invoice.

2. Inspect the booking log for juveniles (anyone born after the booking log **date in** month and day in 1975). The data we are specifically looking for are: **Date In, Time In, Name (or initials), Date of Birth, Charge, Date Out and Time Out**.

3. Ask to inspect **ANY** other records which will verify the juvenile's booking log data. Possible sources are: case files, activity logs, jailer timesheets, etc. Make thorough notes detailing all verification data required.

4. Randomly select approximately 10% of the adults and attempt to verify their booking log data as well. This establishes the accuracy of the booking log.

5. Photograph the detention facility. If this is not possible, make a rough sketch of the detention facility and determine the sight and sound capacity of the facility.

6. Obtain information from facility personnel regarding their standard operating procedures for the handling of juvenile detainees. If these policies are in writing, get a copy. Attempt to gauge the extent to which they are cognizant of the restrictions regarding the detention of juveniles. Take good notes!

Purpose of the Project

The purpose of this project is to examine the detention of juveniles in jails, lock-ups, detention facilities and correctional facilities to ascertain if they are being held in compliance with the mandates of the Juvenile Justice and Delinquency Prevention Act of 1974. Because federally funded juvenile programs are at risk in states which are not in substantial compliance with the act, the Alaska legislature has authorized DFYS monitoring activities in AS 47.10.150 & 160.

There are two phases to the monitoring process. The first is to collect booking log information on all detainees held in all secure detention facilities during the monitored year. The second requires that we visit one-third of the secure detention facilities across the state each year to verify the accuracy and completeness of the booking records that we have received and to assess whether sight and sound separation of juveniles can be provided.

OFFENSE CODING SHEET

Acronyms and abbreviations commonly used in detention records.

Code	Entry	Description	Offender-type
001	A	Assault	acc. crim.
002	AWOL	Away without leave	adj. crim.[1]
003	BIAD	Burglary in a dwelling	acc. crim.
004	BNIAD	Burglary not in a dwelling	acc. crim.
005	BTR	Blood test refusal	acc. crim.
006	BURG	Burglary	acc. crim.
007	BW (B/W)	Bench warrant	adj. crim.[1]
008	CCW	Carrying a concealed weapon	acc. crim.
009	CINA	Child in need of aid	adj. stat.
010	CM	Criminal mischief	acc. crim.
011	CO	Court order	adj. crim.[1]
012	CT	Criminal trespass	acc. crim.
013	CV	Curfew	acc. stat.
014	DC	Disorderly conduct	acc. crim.
015	DETHOLD	Detention hold	adj. crim.[1]
016	DETOX	Detoxification	protective custody[2]
017	DO	Detention order	adj. crim.[1]
018	DWI	Driving while intoxicated	acc. crim.
019	DWLR	Driving with license revoked	acc. crim.
020	DWLS	Driving with license suspended	acc. crim.
021	FLTM	Furnishing liquor to a minor	acc. crim.
022	FTA	Failure to appear	acc. crim.
023	FTSJ	Failure to satisfy judgement	acc. crim.
024	FTST	Failure to serve time	adj. crim.[1]
025	H	Harassment	acc. crim.
026	K	Kidnapping	acc. crim.
027	MC	Minor consuming	acc. stat.
028	MCA	Minor consuming alcohol	acc. stat.
029	MICS	Misconduct involving a controlled substance	acc. crim.
030	MIP	Minor in possession (alcohol)	acc. stat.
031	MIPBC	Minor in possession or consuming	acc. stat.
032	MIPC	Minor in possession or consuming	acc. stat.
033	MIW	Misconduct involving weapons	acc. crim.
034	MOP	Minor on premises	acc. stat.
035	NONCRIM	Noncriminal booking	protective custody[2]
036	OMVI	Operating motor vehicle while intoxicated	acc. crim.
037	ORIG:	Re-admit; original charge was….	no violation
038	PR	Probation revocation	adj. crim.[1]
039	PC (P/C)	Protective custody	protective custody[2]

[1] Indicates that verification is required.

[2] Unless records indicate that protective custody is based on mental illness under AS 47.30.705, protective custody for more than 12 hours as permitted under AS 47.37.170 should be recoded as minor consuming alcohol (AS 46.16.050).

Code	Entry	Description	Offender-type
040	PREV	Previously admitted on this offense	no violation
041	PV (P/V)	Probation violation	adj. crim.[1]
042	R	Robbery	acc. crim.
043	RAR	Resisting arrest	acc. crim.
044	RBK	Re-book	adj. crim.[1]
045	RD	Reckless driving	acc. crim.
046	SA	Sexual assault	acc. crim.
047	SAM	Sexual abuse of a minor	acc. crim.
048	SAWL	Sale of alcohol without license	acc. crim.
049	SOLWOL	Sale of liquor without license	acc. crim.
050	ST (S/T)	Serve time	adj. crim.[1]
051	TH	Theft	acc. crim.
052	TITLE 47	Protective custody	protective custody[2]
053	VCP	Violation of conditions of probation	adj. crim.[1]
054	VCR	Violation of conditions of release	adj. crim.[1]
055	VOR	Violation of release	adj. crim.[1]
056	WA (W/A)	Warrant	adj. crim.[1]
057	WAR	Warrant	adj. crim.[1]
058	WE	Weapons	acc. crim.
059	WT	Warrant	adj. crim.[1]
060		Cont crt	
061	FTGNOA	Failure to give notice of accident	
062	AOAA	Action of operator immediately after accident	
063		Con of mrch	
064		Witness tampering	
065		Arson	
066		Traffic -- other	
067		Fish and game violations	
068		Hold for court	
069	DWOL	Driving without license	
070		Escape	
071		Violation of valid court order	

[1] Indicates that verification is required.

[2] Unless records indicate that protective custody is based on mental illness under AS 47.30.705, protective custody for more than 12 hours as permitted under AS 47.37.170 should be recoded as minor consuming alcohol (AS 46.16.050).

CHECKLIST TO DETERMINE VALID COURT ORDER VIOLATIONS

This checklist may be used to determine whether an individual non-criminal juvenile offender (i.e., status offender) was under a valid court order and whether such juvenile has either been accused of violating valid court order or found to be in violation of a valid order. Such determination may result in his/her placement in a secure facility pursuant to Section 223(a)(l2)(A) of the JJDP Act, as amended.

A. DETERMINING WHETHER A VALID COURT ORDER EXISTS

1. Was the juvenile brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority?

   _____ Yes
   _____ No
   _____ Unknown

2. Was the order one which regulated the future conduct of the juvenile?

   _____ Yes
   _____ No
   _____ Unknown

3. Was a hearing conducted which observed proper procedures?

   _____ Yes
   _____ No
   _____ Unknown

4. Did the court enter a judgment and/or remedy in accord with established legal principles?

   _____ Yes
   _____ No
   _____ Unknown

5. Did the juvenile in question receive adequate and fair warning of the consequences of violating the order at the time it was issued?

   _____ Yes
   _____ No
   _____ Unknown

6. Was such warning provided to the juvenile and to his attorney and/or his legal guardian in writing?

   _____ Yes
   _____ No
   _____ Unknown

7. Was such warning reflected in the court record and proceedings, (i.e., noted in transcript or copy placed in court file)?

   _____ Yes
   _____ No
   _____ Unknown

If there is a “no” or “unknown” response to any one of the above seven questions, then a valid court order did not exist, thus the juvenile in question can not be securely detained pursuant to the valid court order provision of Section 223(a)(12)(A) of the JJDP Act, as amended.

B. DETERMINING WHETHER A JUVENILE ACCUSED OF VIOLATING A VALID COURT ORDER MAY BE SECURELY DETAINED

8. Was there a judicial determination, based upon a hearing before a court of competent jurisdiction, that there was probable cause to believe the juvenile violated a valid court order?

_____ Yes
_____ No
_____ Unknown

9. If the juvenile was in secure detention at the time of the hearing, was the probable cause hearing held during the 24-hour grace period permitted for a noncriminal juvenile offender (i.e., status offender) under OJJDP monitoring policy?

_____ Yes
_____ No
_____ Unknown

10. Was the juvenile held for protective purposes or to assure the juvenile's appearance at the violation hearing, as provided or prescribed by State law?

_____ Yes
_____ No
_____ Unknown

11. Was the juvenile held, pending a violation hearing, within the maximum length of time permitted by State law?

_____ Yes
_____ No
_____ Unknown

12. Did the judge presiding over the probable cause hearing determine that all elements of a valid court order exist (i.e., items 1 through 7 of this checklist)?

_____ Yes
_____ No
_____ Unknown

13. Did the judge presiding over the probable cause hearing determine that the applicable due process rights were afforded the juvenile in connection with either (1) the initial hearing at which the court order was rendered or (2) the probable cause hearing?

_____ Yes
_____ No
_____ Unknown*

(* If the response to item 13 is "Unknown", were each of the following due process rights provided in connection with either (1) the initial hearing at which the court order was rendered or (2) the probable cause hearing?)

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

_____ Yes
_____ No
_____ Unknown

(B) The right to a hearing before a court;

_____ Yes
_____ No
_____ Unknown

(C) The right to an explanation or the nature and consequences of the proceeding;

_____ Yes
_____ No
_____ Unknown

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

_____ Yes
_____ No
_____ Unknown

(E) The right to confront witnesses;

_____ Yes
_____ No
_____ Unknown

(F) The right to present witnesses;

_____ Yes
_____ No
_____ Unknown

(G) The right to have a transcript or record of the proceedings;

_____ Yes
_____ No
_____ Unknown

(H) The right of appeal to an appropriate court.

_____ Yes
_____ No
_____ Unknown

If the answer is “no” or “unknown” to any one of the questions in items 8 through 13 above, then the juvenile accused of violating a valid court order and held in a secure facility beyond the 24-hour grace period permitted for non-criminal juvenile offenders (i.e., status offenders) under the OJJDP monitoring policy is for the purposes of monitoring, reported as a violation incident to Section 223(a)(l2)(A) and is <u>not</u> considered eligible to securely detain under the valid court order provision.

C. DETERMINING WHETHER A JUVENILE FOUND TO HAVE VIOLATED A VALID COURT ORDER MAY BE SECURELY HELD

14. Was there a judicial determination, based upon a hearing before a court of competent jurisdiction, that the juvenile violated a valid court order?

_____ Yes
_____ No
_____ Unknown

15. Did the judge presiding over the violation hearing determine that all elements of a valid court order exist (i.e., items I through 7 of this checklist)?

_____ Yes
_____ No
_____ Unknown

16. Did the judge presiding over the violation hearing determine that the applicable due process rights were afforded the juvenile in connection with the violation hearing?

_____ Yes
_____ No
_____ Unknown*

(* If the response to item 16 is "Unknown" were each of the following due process rights provided in connection with the violation hearing?)

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

_____ Yes
_____ No
_____ Unknown

(B) The right to a hearing before a court;

_____ Yes
_____ No
_____ Unknown

(C) The right to an explanation or the nature and consequences of the proceeding;

_____ Yes
_____ No
_____ Unknown

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

_____ Yes
_____ No
_____ Unknown

(E) The right to confront witnesses;

_____ Yes
_____ No
_____ Unknown

(F) The right to present witnesses;

_____ Yes
_____ No
_____ Unknown

(G) The right to have a transcript or record of the proceedings;

_____ Yes
_____ No
_____ Unknown

(H) The right of appeal to an appropriate court.

_____ Yes
_____ No
_____ Unknown

17. Did the judge presiding over the violation hearing determine there was no less restrictive alternative appropriate to the needs of the juvenile and the community?

_____ Yes
_____ No
_____ Unknown

If the answer is "no" or "unknown" to any one of the questions in items 14 through 17 above, then the juvenile found to have violated a court order and held in a secure facility is, for the purposes of monitoring, reported as a violation incident to Section 223(a)(12XA) and is not considered eligible to be securely held under the valid court order procedures.

D. DETERMINING WHETHER THE JUVENILE IS A NON-OFFENDER

18. Was the juvenile a non-offender such as an abused, dependent or neglected child?

_____ Yes
_____ No
_____ Unknown

If the answer to question 18 is "yes", then the juvenile in question can not be securely detained pursuant to the valid court order provision of Section 223(a)(12)(A) of the JJDP Act, as amended.

THIS IS A TECHNICAL ASSISTANCE
TOOL AND ITS USE IS OPTIONAL.

7/83

APPENDIX D
MAILING LIST

Initial Contact List
Law Enforcement Agencies and Contract Jails
Regional Non-Profit VPSO Coordinators
Regional Non-Profit Leaders

INITIAL CONTACT LIST

Alaska State Troopers

Lieutenant Ted Bachman
Alaska State Troopers
5700 E. Tudor Road
Anchorage, AK 99507

Colonel Glenn G. Godfrey, Director
Alaska State Troopers
5700 E. Tudor Road
Anchorage, AK 99507

Ronald Otte, Commissioner
Department of Public Safety
Box 111200
Juneau, AK 99811

Lieutenant Al Schadle
Statewide VPSO Program Director
Alaska State Troopers
5200 East Tudor Road
Anchorage, AK 99507

North Slope Borough

Mr. Dennis Packer, Director
North Slope Borough Department
of Public Safety
P.O. Box 470
Barrow, AK 99723

Corrections

Mr. Joe Pendergrass, Superintendent
Mat-Su Pre-trial Facility
339 East Dogwood
Palmer, AK 99645

Ms. Margaret Pugh, Commissioner
Alaska Department of Corrections
4500 Diplomacy Drive, Suite 207
Anchorage, AK 99508-5918

Mr. Frank Sauser
Director of Institutions
Alaska Department of Corrections
4500 Diplomacy Drive, Suite 207
Anchorage, AK 99508-5918

Court System

Mr. Arthur Snowden
Administrative Director
Alaska Court System
303 "K" Street
Anchorage, AK 99501-2084

DFYS Regional Administrators

Ms. Faye Moore, Ph.D.
Southcentral Regional Administrator
Division of Family and Youth Services
550 W. 8th Avenue, Suite 304
Anchorage, AK 99501

Mr. Phil Snyder
Acting Southeast Regional Administrator
Division of Family and Youth Services
10002 Glacier Highway, Suite 305
Juneau, AK 99801

Mr. Gene Shafer
Northern Regional Administrator
Division of Family and Youth Services
1502 Wilbur Street
Fairbanks, AK 99701

Youth Facility Administrators

Mr. George Buhite
Youth Center Superintendent
McLaughlin Youth Center
2600 Providence Drive
Anchorage, AK 99508

Ms. Patricia Leeman
Youth Center Superintendent
Bethel Youth Facility
P.O. Box 1988
Bethel, AK 99559

Mr. Billy Holder
Youth Center Superintendent
Fairbanks Youth Facility
1502 Wilbur Street
Fairbanks, AK 99701

Mr. Greg Roth
Youth Center Superintendent
Johnson Youth Center
3252 Hospital Drive
Juneau, AK 99801

Ms. Karen Rogers
District Supervisor
Kenai Youth Services
145 Main Street Loop, Room 204
Kenai, AK 99611

Youth Facility Administrators (continued)

Ms. Val Watson
Youth Center Superintendent
Kodiak Youth Services
202 Marine Way
Room 18 Courthouse
Kodiak, AK 99615

Mr. William C. Quirion
Youth Center Supervisor
1045 4th Street
P.O. Box 1750
Nome, AK 99762

LAW ENFORCEMENT AGENCIES AND CONTRACT JAILS

Police Departments

Chief Louie Fairchild
Fort Yukon Police Department
P.O. Box 174
Fort Yukon, AK 99740

Chief Milton J. Haken
Hoonah Department of Public Safety
P.O. Box 450
Hoonah, AK 99829

Chief Luke Tall
Hooper Bay Public Safety Department
P.O. Box 37
Hooper Bay, AK 99604

Chief Larry Chevalier
Kake Police Department
P.O. Box 140
Kake, AK 99830

Chief Daniel A. Anslinger III
Ketchikan Police Department
361 Main Street
Ketchikan, AK 99901

Chief Gary K. Eilers
King Cove Police Department
P.O. Box 48
King Cove, AK 99612

VPSO Curtis Abalama
Quinhagak Police Department
General Delivery
Quinhagak, AK 99655

Chief Michael Brown
Sand Point Police Department
P.O. Box 249
Sand Point, AK 99661

Chief Rick Groshung
St. Mary's Department of Public Safety
P.O. Box 163
St. Mary's, AK 99658

Chief Gary Putman
Saint Paul Police Department
P.O. Box 901
Saint Paul, AK 99660

Chief Stan Higgins
Sand Point Police Department
P.O. Box 423
Sand Point, AK 99661

VPO Charlie Macanelli
Selawik Police Department
General Delivery
Selawik, AK 99770

Chief David Sexton
Skagway Police Department
P.O. Box 518
Skagway, AK 99840

Chief Grant Tabor
Tanana Department of Public Safety
P.O. Box 189
Tanana, AK 99777

VPO Robert Brown
Togiak Police Department
P.O. Box 253
Togiak, AK 99678

Chief of Police Jack Powell
Whittier Police Department
P.O. Box 687
Whittier, AK 99693

Chief Charles C. Dennis
Yakutat Department of Public Safety
P.O. Box 160
Yakutat, AK 99689

Contract Jails

Barrow - see North Slope Borough letter

Chief Kevin C. Clayton
Cordova Department of Public Safety
P.O. Box 1210
602 Railroad Avenue
Cordova, AK 99574-1210

Chief James See
Craig Police Department
P.O. Box 25
Craig, AK 99921

Chief G. Lowell Crezee, Jr.
Dillingham Police Department
Box 869
Dillingham, AK 99576

VPSO Carolyn Kameroff
General Delivery
Emmonak, AK 99581

Chief Duwayne C. Fannon
Haines Police Department
P.O. Box 1049
Haines, AK 99827

Chief Michael Daugherty
Homer Department of Public Safety
4060 Heath Street
Homer, AK 99603

Captain Lawrence A. Wallace
Kotzebue Police Department
Box 46
Kotzebue, AK 99752

Chief Floyd Steele
Bristol Bay Borough Police Department
Box 189
Naknek, AK 99633

Chief Dale Stone
Petersburg Police Department
P.O. Box 329
Petersburg, AK 99833

Chief A.W. Anderson
Seldovia Police Department
P.O. Box 221
Seldovia, AK 99663

Chief Tom Walker
Seward Police Department
Box 167
Seward, AK 99664

Chief John H. Newell
Sitka Police Department
304 Lake St.
Sitka, AK 99835

Chief Glenn Herbst
Unalaska Department of Public Safety
P.O. Box 112
Unalaska, AK 99685

Chief Bert L. Cottle
Valdez Police Department
Box 307
Valdez, AK 99686

Chief Brent C. Moody
Wrangell Police Department
431 Zimovia Highway
Box 531
Wrangell, AK 99929

Trooper Posts

Trooper Roger Ellis
Alaska State Troopers, Cantwell Post
Box 28
Cantwell, AK 99729

Trooper Rose Edgren
Alaska State Troopers, Delta Junction Post
P.O. Box 465
Delta Junction, AK 99737

Trooper Jeff Slamin
Alaska State Troopers, Glennallen Post
P.O. Box 26
Glennallen, AK 99588

Trooper Charles Tressler
Alaska State Troopers, Nenana Post
P.O. Box 00334
Nenana, AK 99760

Sergeant Roy Minatra
Alaska State Troopers, Tok Post
Box 335
Tok, AK 99780

REGIONAL NON-PROFIT VPSO COORDINATORS

Mr. Richard Krause
Aleutian Pribilof Island Association, Inc.
401 E. Fireweed, Suite 201
Anchorage, AK 99503

Mr. Everett Richards
Chugachmiut
3300 "C" Street
Anchorage, AK 99503

Ms. Desiree Furman
Cook Inlet Tribal Council
670 W. Fireweed Lane, Suite 200
Anchorage, AK 99503

Mr. Jack L. Hopstad
Association of Village Council Presidents
Pouch 219
Bethel, AK 99559

Mr. Chuck Grediagin
Bristol Bay Native Association
P.O. Box 310
Dillingham, AK 99576

Ms. Daisy Stevens
Tanana Chiefs Conference
122 First Avenue
Fairbanks, AK 99701

Mr. George Cole
Tlingit Haida Central Council
320 Willoughby Avenue, Suite 300
Juneau, AK 99801

Ms. Brenda Schwantes
Kodiak Area Native Association
402 Center Avenue
Kodiak, AK 99615

Mr. Steve Gomez
Manillaq Manpower, Inc.
P.O. Box 725
Kotzebue, AK 99752-0725

Ms. Josie King
Kawerak, Inc.
P.O. Box 948
Nome, AK 99762

REGIONAL NON-PROFIT LEADERS

Mr. Dimitri Philemonof
Aleutian Pribilof Island Association, Inc.
401 E. Fireweed Lane, Suite 201
Anchorage, AK 99503

Ms. Brook Kirstovich
Chugachmiut
3300 "C" Street
Anchorage, AK 99503

Ms. Esther Combs
Cook Inlet Tribal Council
670 W.. Fireweed Lane, Suite 200
Anchorage, AK 99503

Mr. Myron Naneng
Association of Village Council Presidents
Pouch 219
Bethel, AK 99559

Mr. Terry Hoefferle
Bristol Bay Native Association
P.O. Box 310
Dillingham, AK 99576

Mr. Will Mayo
Tanana Chiefs Conference, Inc.
122 First Avenue
Fairbanks, AK 99701

Mr. Edward Thomas
Tlingit Haida Central Council
320 Willoughby Avenue, Suite 300
Juneau, AK 99801

Mr. Kelly Simeonoff Jr.
Kodiak Area Native Association
402 Center Avenue
Kodiak, AK 99615

Ms. Jan Harris
Maniilaq Manpower, Inc.
P.O. Box 725
Kotzebue, AK 99752-0725

Ms. Loretta Bullard
Kawerak, Inc.
P.O. Box 948
Nome, AK 99762

APPENDIX E
MONITORING FORMS

No Facility Certification
Facility to Be Deleted/Facility to Be Added
Certification of No Prisoners Held
Certification of Authenticity and Completeness of Records
Booking Log Data Form
Juvenile Confinement Admission and Release Log
Juvenile Confinement Admission and Release Form
JJDP Monitoring Unit Separation Monitoring Report

NO FACILITY CERTIFICATION

I, _____, certify that there is no secure
(Name)

detention facility in the village of _____.
(Community)

_____
(Signature)

_____
(Title)

_____
(Date)

FACTILITY TO BE DELETED

Type of facility _____ (Contract jail, lock-up, etc.)

Location _____

FACILITY TO BE ADDED

Type of facility _____ (Contract jail, lock-up, etc.)

Location _____

Agency in charge _____

Contact person _____

Please return to: **Cassie Atwell** **or fax: 786-7777**
Justice Center
University of Alaska Anchorage
3211 Providence Drive
Anchorage, Alaska 99508

CERTIFICATION OF NO PRISONERS HELD

I, _____, hereby certify that to the
(print name)

best of my knowledge no prisoners or other persons have been held

in the _____ holding cell(s)
(name of community)

during calendar year _____:

Signature _____ Date _____

Title _____

CERTIFICATION OF AUTHENTICITY AND COMPLETENESS OF RECORDS

I, _____, hereby certify that the
(print name)

enclosed documents contain the following information about every person admitted to the _____ in _____, Alaska in _____: date in, time in, name (or initials), birthdate, sex,race, offense/charge, date out and time out.
(name of facility) (community)

Signature _____ Date _____

Title _____

BOOKING LOG DATA FORM

Holding Institution_____ Calendar Year_____

Date in	Time in	Name	DOB	Sex	Race	Charge	Date out	Time Out	Book only	Lock up

Juvenile Confinement Admission and Release Log

Name of Facility: _____

Location: _____

Report covers the period: _____ (M/D/Y) to _____ (M/D/Y)

Number of Juveniles held in facility during report period _____
(Anyone under 18 regardless of alleged offense)

Number	Name	Date of Birth (M/D/Y)	Admission		Release		Person Authorizing Admission
			Date (M/D/Y)	Time	Date (M/D/Y)	Time	

Division of Family and Youth Services/Facility Compliance
P.O. Box H, Juneau, AK 99811-0630, (907) 465-2112

Original to facility file; Send copy to:
Division of Family and Youth Services/Facility Compliance
P.O. Box H, Juneau, Alaska 99811-0630
(907) 465-2112

06-9681 (3/91)

Juvenile Confinement Admission and Release Form

CONFIDENTIAL

Complete this form for every juvenile admitted to secure confinement in this facility. (Please Print)

1. Facility Name		2. Facility Address	
3. Juvenile Name (First, Middle Initial, Last)		4. Juvenile Address	
5. Sex: (Check One) ☐ Male ☐ Female	6. Race (Check One) ☐ White ☐ Black ☐ AK Native/Amer. Indian ☐ Hispanic ☐ Asian-Oriental/Pacific Is. ☐ Other		
7. Age	8. D.O.B.	9. Arrest Charge(s) (List All)	
10. Date of Admission to this Facility			
11. Time of Admission ☐ A.M. / ☐ P.M.		12. Admitting Official's Name:	
13. Reason or Authority for Detention: (Check One) Court Detention Order/Warrant ..... ☐ Following arrest—pending delinquency arraignment or detention hearing ..... ☐ Protective custody—intoxication ..... ☐		**DFYS USE ONLY**	
14. Date of Release	15. Time of Release ☐ A.M. ☐ P.M.		
16. Released to (Check One) ☐ Parent/Guardian ☐ Foster Home or Emergency Shelter ☐ State Juvenile Detention Facility ☐ Hospital ☐ Other Relative ☐ Non-Secure Attendant Care ☐ Separate Secure Juvenile Hold Over ☐ Detox Center			
17. Name of Person taking Custody at Discharge:			

Copies: 1-Division of Family and Youth Services; 2-Audit; 3-Jail

06-9680 (3/91)

Send copies 1 and 2 to:
Division of Family and Youth Services/Facility Compliance
P.O. Box H, Juneau, Alaska 99811-0630 (907) 465-2112

JJDP MONITORING UNIT

SEPARATION MONITORING REPORT

Name of Facility _____ Phone _____
Superintendent _____
Dates of Inspection _____ _____ _____

Please note to what extent separation of juvenile and adult offenders exists in the areas listed below.

Please use the following code in describing the degree of separation:

(1) Adult inmates and juveniles can have physical, visual, and aural contact with each other (no separation).

(2) Adult inmates and juveniles cannot have physical contact with each other, but they can see or hear each other (physical separation).

(3) Conversation possible between adult inmates and juveniles although they cannot see each other (sight separation).

(4) Adult inmates and juveniles can see each other but no conversation is possible (sound separation).

(5) Adult inmates and juveniles within the same facility cannot see each other and no conversation is possible (sight and sound separation).

(6) Adult inmates and juveniles are not placed in the same facility (environmental separation).

	1	2	3	4	5	6
Reception						
Housing						
Dining						
Recreation						
Education						
Vocation/Work						
Visiting						
Transportation						
Medical/Dental						
Detention/Segregation						

Does the facility utilize adult trustees for supervision of juvenile ?

YES NO

APPENDIX F
OJJDP MONITORING REPORT FORM

DRAFT

OMB # 1121-0089
EXPIRES: 09/96

THIS FORM IS A TECHNICAL ASSISTANCE TOOL AND ITS USE IS OPTIONAL

(YEAR) STATE MONITORING REPORT

A. GENERAL INFORMATION

1. NAME AND ADDRESS OF STATE PLANNING AGENCY

_____

_____

_____

2. CONTACT PERSON REGARDING STATE REPORT

Name:_____ Phone#:_____

3. DOES THE STATE'S LEGISLATIVE DEFINITION OF CRIMINAL-TYPE OFFENDER, STATUS OFFENDER, OR NONOFFENDER DIFFER WITH THE OJJDP DEFINITION CONTAINED IN THE CURRENT OJJDP FORMULA GRANTS REGULATION?_____

IF YES, HOW?_____

_____

_____

_____

4. (To be answered only if response to item 3 above is yes). DURING THE STATE MONITORING EFFORT WAS THE FEDERAL DEFINITION OR STATE DEFINITION FOR CRIMINAL-TYPE OFFENDER, STATUS OFFENDER AND NONOFFENDER USED?_____

Revised 3/93

SECTION 223(a)(12)(A)

B. REMOVAL OF STATUS OFFENDERS AND NONOFFENDERS FROM SECURE DETENTION AND CORRECTIONAL FACILITIES

The information required in this section concerns those public and private residential facilities which have been classified as a secure detention or correctional facility as defined in the JJDP Act and OJJDP regulation.

1. BASELINE REPORTING PERIOD _____

_____

CURRENT REPORTING PERIOD _____

_____

2. NUMBER OF PUBLIC AND PRIVATE SECURE DETENTION AND CORRECTIONAL FACILITIES.

Enter the number of facilities which have been classified as public or private secure detention and correctional facilities as defined in the JJDP Act and OJJDP regulation. This includes but is not limited to juvenile detention facilities, juvenile correctional facilities, jails, lockups, or other secure facilities.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____
Juvenile Detention Centers	_____	_____	_____
Juvenile Training Schools	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Other	_____	_____	_____

3. NUMBER OF FACILITIES IN EACH CATEGORY REPORTING ADMISSION AND RELEASE DATA FOR JUVENILES TO THE STATE MONITORING AGENCY.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____
Juvenile Detention Centers	_____	_____	_____
Juvenile Training Schools	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Other	_____	_____	_____

4. NUMBER OF FACILITIES IN EACH CATEGORY RECEIVING AN ON-SITE INSPECTION DURING THE CURRENT REPORTING PERIOD FOR THE PURPOSE OF VERIFYING SECTION 223(a)(12)(A) COMPLIANCE DATA.

	TOTAL	PUBLIC	PRIVATE
Current Data	_____	_____	_____
Juvenile Detention Centers	_____	_____	_____
Juvenile Training Schools	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Other	_____	_____	_____

5. TOTAL NUMBER OF ACCUSED STATUS OFFENDERS AND NONOFFENDERS HELD FOR LONGER THAN 24 HOURS IN PUBLIC AND PRIVATE SECURE DETENTION AND CORRECTIONAL FACILITIES DURING THE REPORT PERIOD, EXCLUDING THOSE HELD PURSUANT TO A JUDICIAL DETERMINATION THAT THE JUVENILE VIOLATED A VALID COURT ORDER.

Write in the number of accused status offenders and nonoffenders held in excess of 24 hours in the facilities during the report period. This number should not include (1) accused status offenders or nonoffenders held less than 24 hours following initial police contact, (2) accused status

offenders or nonoffenders held less than 24 hours following initial court contact, or (3) status offenders accused of violating a valid court order for which a probable cause hearing was held during the 24 hour grace period.

The 24 hour period should not include weekends and holidays.

Where a juvenile is admitted on multiple offenses, the most serious offense should be used as the official offense for purposes of monitoring compliance.

	TOTAL	PUBLIC	PRIVATE
Baseline Date	_____	_____	_____
Current Data	_____	_____	_____
Juvenile Detention Centers	_____	_____	_____
Juvenile Training Schools	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Other	_____	_____	_____

6. TOTAL NUMBER OF ADJUDICATED STATUS OFFENDERS AND NONOFFENDERS HELD IN PUBLIC AND PRIVATE SECURE DETENTION AND CORRECTIONAL FACILITIES FOR ANY LENGTH OF TIME DURING THE REPORT PERIOD, EXCLUDING THOSE HELD PURSUANT TO A JUDICIAL DETERMINATION THAT THE JUVENILE VIOLATED A VALID COURT ORDER.

Write in the number of adjudicated status offenders and nonoffenders held in secure facilities for any length of time during the report period. This number should not include those status offenders found in a violation hearing to have violated a valid court order.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____
Juvenile Detention Centers	_____	_____	_____
Juvenile Training Schools	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Other	_____	_____	_____

7. TOTAL NUMBER OF STATUS OFFENDERS HELD IN ANY SECURE DETENTION OR CORRECTIONAL FACILITY PURSUANT TO A JUDICIAL DETERMINATION THAT THE JUVENILE VIOLATED A VALID COURT ORDER.

Write in the total number of status offenders accused of violating a valid court order pursuant to a judicial determination, based on a hearing during the 24 hour grace period, that there is probable cause to believe the juvenile violated the court order and the number of status offenders found in violation hearings to have violated a valid court order.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____
Juvenile Detention Centers	_____	_____	_____
Juvenile Training Schools	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Other	_____	_____	_____

Has the state monitoring agency verified that the criteria for using this exclusion (including the requirement for a public agency report on possible alternatives) have been satisfied pursuant to the current OJJDP regulation?_____

_____

If yes, how was this verified (state law and/or judicial rules match the OJJDP regulatory criteria, or each case was individually verified through a check of court records)?_____

_____

C. DE MINIMIS REQUEST

1. CRITERION A -- THE EXTENT THAT NONCOMPLIANCE IS INSIGNIFICANT OR OF SLIGHT CONSEQUENCE.

Number of accused status offenders and nonoffenders held in excess of 24 hours and the number of adjudicated status offenders and nonoffenders held for any length of time in secure detention or secure correctional facilities.

ACCUSED		ADJUDICATED		TOTAL
_____	+	_____	=	_____

Total juvenile population of the State under age 18 according to the most recent available U.S. Bureau of Census data or census projection.

_____

If the monitoring data was projected to cover a 12-month period, provide the specific data used in making the projection and the statistical method used to project the data.

	ACCUSED		ADJUDICATED		TOTAL
Data:	_____	+	_____	=	_____

Statistical Method of Projection:_____

_____

Calculation of status offender and nonoffender detention and correctional institutionalization rate per 100,000 population under age 18.

Status offenders and nonoffenders held (total) = _____(a)

Population under age 18/100,000 = _____(b)

_____/ _____ = _____

(a) (b) Rate

NOTE: If the rate is less than 5.8 per 100,000 population, the State does not have to respond to Criteria B and C.

2. CRITERION B -- THE EXTENT TO WHICH THE INSTANCES OF NONCOMPLIANCE WERE IN APPARENT VIOLATION OF STATE LAW OR ESTABLISHED EXECUTIVE OR JUDICIAL POLICY.

   a. Provide a brief narrative discussion of the circumstances surrounding the noncompliant incidents. Describe whether the instances of noncompliance were in apparent violation of state law, established executive policy or established judicial policy. Attach a copy of the applicable law and/or policy.

_____

_____

_____

3. CRITERION C -- THE EXTENT TO WHICH AN ACCEPTABLE PLAN HAS BEEN DEVELOPED.

A plan is to be developed to eliminate noncompliant incidents within a reasonable time where the instances of noncompliance (1) indicate a pattern or practice or (2) appear to be sanctioned by or consistent with state law or established executive or judicial policy, or both.

a. Do the instances of noncompliance indicate a pattern or practice?

Yes _____ No _____

b. Do the instances of noncompliance appear to be sanctioned or allowable by state law, established executive policy, or established judicial policy?

Yes _____ No _____

c. Describe the State's plan to eliminate the noncompliant incidents within a reasonable time. The following must be addressed as elements of an acceptable plan:

(1) If the instances of noncompliance are sanctioned by or consistent with state law or executive or judicial policy, then the plan must detail a strategy to modify the law or policy to prohibit noncompliant placement so that it is consistent with the Federal deinstitutionalization of status offenders and nonoffenders requirement.

(2) If the instances of noncompliance were in apparent violation of state law, or executive or judicial policy, and amount to or constitute a pattern or practice rather than isolated instances of noncompliance, the plan must detail a strategy which will be employed to rapidly identify violations and ensure the prompt enforcement of applicable state law or executive or judicial policy.

(3) In addition, the plan must be targeted specifically to the agencies, courts, or facilities responsible for the placement of status offenders and nonoffenders in noncompliance with Section 223(a)(12)(A). It must include a specific strategy to eliminate instances of noncompliance through statutory reform, changes in facility policy and procedure, or modification of court policy.

_____

_____

_____

_____

4. OUT OF STATE RUNAWAYS

Number of out of state runaways securely held beyond 24 hours in response to a want, warrant, or request from a jurisdiction in another state or pursuant to a court order, solely for the purpose of being returned to proper custody in the order state? _____

The OJJDP will exclude these juveniles only if their presence created a noncompliance rate in excess of 29.4 per 100,000 juvenile population.

5. FEDERAL WARDS

Number of Federal wards held in the State's secure detention and correctional facilities pursuant to a written contract or agreement with a Federal agency and for the specific purpose of affecting a jurisdictional transfer or appearance as a material witness?_____

_____

The OJJDP will exclude these juveniles only if their presence created a noncompliance rate in excess of 29.4 per 100,000 juvenile population.

6. RECENTLY ENACTED CHANGE IN STATE LAW

Describe recently enacted changes in state law which have gone into effect, and which can reasonably be expected to have substantial, significant, and positive impact on the State's achieving full compliance within a reasonable time.

_____

_____

_____

_____

SECTION 223(a)(12)(B)

D. PROGRESS MADE IN ACHIEVING REMOVAL OF STATUS OFFENDERS AND NONOFFENDERS FROM SECURE DETENTION AND CORRECTIONAL FACILITIES

1. PROVIDE A BRIEF SUMMARY OF THE PROGRESS MADE IN ACHIEVING THE REQUIREMENTS OF SECTION 223(a)(12)(A) and (B).

_____

_____

_____

_____

_____

2. NUMBER OF ACCUSED AND ADJUDICATED STATUS OFFENDERS AND NONOFFENDERS WHO ARE PLACED IN FACILITIES WHICH (A) ARE NOT NEAR THEIR HOME COMMUNITY; (B) ARE NOT THE LEAST RESTRICTIVE APPROPRIATE ALTERNATIVE; AND, (C) DO NOT PROVIDE THE SERVICES DESCRIBED IN THE DEFINITION OF COMMUNITY-BASED.

_____

SECTION 223(a)(13)

E. SEPARATION OF JUVENILES AND ADULTS

The information required in this section concerns the separation of juveniles and incarcerated adults in facilities which can be used for the secure detention and confinement of both juvenile offenders and adult criminal offenders.

Separation means adult inmates and juveniles cannot see each other and no conversation is possible. Separation may be established through architectural design or time phasing use of an area to prohibit simultaneous use by juveniles and adults.

1. BASELINE REPORTING PERIOD _____

_____

CURRENT REPORTING PERIOD _____

_____

2. WHAT DATE HAS BEEN DESIGNATED BY THE STATE FOR ACHIEVING COMPLIANCE WITH THE SEPARATION REQUIREMENTS OF SECTION 223(a)(13)?

_____

3. TOTAL NUMBER OF FACILITIES USED TO DETAIN OR CONFINE BOTH JUVENILE OFFENDERS AND ADULT CRIMINAL OFFENDERS DURING THE PAST TWELVE (12) MONTHS.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____

4. NUMBER OF FACILITIES IN EACH CATEGORY RECEIVING AN ON-SITE INSPECTION DURING THE CURRENT REPORTING PERIOD TO CHECK THE PHYSICAL PLANT TO ENSURE ADEQUATE SEPARATION.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____

5. TOTAL NUMBER OF FACILITIES USED FOR THE SECURE DETENTION AND CONFINEMENT OF BOTH JUVENILE AND ADULT OFFENDERS WHICH DID NOT PROVIDE SEPARATION OF JUVENILES AND ADULTS.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____

6. TOTAL NUMBER OF JUVENILES NOT SEPARATED IN FACILITIES USED FOR THE SECURE DETENTION AND CONFINEMENT OF BOTH JUVENILE OFFENDERS AND ADULT CRIMINAL OFFENDERS DURING THE REPORT PERIOD.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____

7. TOTAL NUMBER OF JUVENILE DETENTION CENTERS LOCATED WITHIN THE SAME BUILDING OR ON THE SAME GROUNDS AS AN ADULT JAIL OR LOCKUP.

Enter the number of colocated juvenile detention centers and adult jails/lockups classified by the state planning agency as juvenile detention centers and approved by OJJDP pursuant to the JJDP Act and current regulation.

	TOTAL	PUBLIC	PRIVATE
Current Data	_____	_____	_____
Detention/Jail	_____	_____	_____
Detention/Lockup	_____	_____	_____

Provide the names of the approved colocated facilities. (Attach additional sheets as necessary).

_____ _____ _____

NOTE: Pursuant to the JJDP Act Amendments of 1992, OJJDP cannot approve colocated facilities that allow part-time or full-time security staff (including management) or direct care staff of an adult jail or lockup to have contact with juveniles in a colocated juvenile detention center.

Provide the names of the colocated facilities classified as juvenile detention centers by the state planning agency, but not approved by OJJDP. (Attach additional sheets as necessary).

_____ _____ _____

8. TOTAL NUMBER OF JUVENILES DETAINED IN "COLOCATED" FACILITIES THAT WERE NOT SEPARATED FROM THE SECURITY OR DIRECT CARE STAFF OF THE ADULT PORTION OF THE FACILITY.

Enter the total number of juveniles alleged to be or found to be delinquent, and status offender and nonoffender youth detained in approved "colocated" facilities where contact with the security or direct care staff of the adult jail or lockup occurred.

	TOTAL	PUBLIC	PRIVATE
Current Data	_____	_____	_____
Detention/Jail	_____	_____	_____
Detention/Lockup	_____	_____	_____

Will the facilities in violation be reclassified as jails/lockups?_____

Please explain._____

_____

_____

9. PROVIDE A BRIEF SUMMARY OF THE PROGRESS MADE IN ACHIEVING THE REQUIREMENTS OF SECTION 223(a)(13).

This summary should discuss the extent of the State's compliance in implementing Section 223(a)(13), and how reductions have been achieved, including the identification of state legislation which directly impacts on compliance. Discuss any proposed or recently

passed legislation or policy which has either positive or negative impact on achieving or maintaining compliance. (Attach additional sheets as necessary.)

_____

_____

_____

_____

DESCRIBE THE MECHANISM FOR ENFORCING THE STATE'S SEPARATION LAW.

_____

_____

_____

_____

SECTION 223(a)(14)

F. REMOVAL OF JUVENILES FROM ADULT JAILS AND LOCKUPS.

The information in this section concerns the removal of juveniles from adult jails and lockups as defined in the JJDP Act and current OJJDP regulation.

1. BASELINE REPORTING PERIOD _____

   CURRENT REPORTING PERIOD _____

2. NUMBER OF ADULT JAILS

   Enter the total number of facilities meeting the definition of adult jail as contained in the JJDP Act and current OJJDP regulation.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____

3. NUMBER OF ADULT LOCKUPS

Enter the total number of facilities meeting the definition of adult lockup as contained in the JJDP Act and current OJJDP regulation.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____

4. NUMBER OF FACILITIES IN EACH CATEGORY RECEIVING AN ON-SITE INSPECTION DURING THE CURRENT REPORTING PERIOD FOR THE PURPOSE OF VERIFYING SECTION 223(a)(14) COMPLIANCE DATA.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____

5. TOTAL NUMBER OF ADULT JAILS HOLDING JUVENILES DURING THE PAST TWELVE MONTHS.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____

6. TOTAL NUMBER OF ADULT LOCKUPS HOLDING JUVENILES DURING THE PAST TWELVE MONTHS.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____

7. TOTAL NUMBER OF ACCUSED JUVENILE CRIMINAL-TYPE OFFENDERS HELD IN ADULT JAILS AND LOCKUPS IN EXCESS OF SIX (6) HOURS.

Enter the total number of accused juvenile criminal-type offenders held in all adult jails, lockups, and non-approved "colocated" facilities in excess of six hours during the report period. This number includes juveniles held in those counties meeting the removal exception criteria. This number should not include (1) status offenders and nonoffenders held (2) accused criminal-type offenders held less than six hours, and (3) adjudicated criminal-type offenders.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Nonapproved Colocated	_____	_____	_____

8. TOTAL NUMBER OF ADJUDICATED JUVENILE CRIMINAL-TYPE OFFENDERS HELD IN ADULT JAILS, LOCKUPS, AND NONAPPROVED "COLOCATED" FACILITIES FOR ANY LENGTH OF TIME.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Nonapproved Colocated	_____	_____	_____

9. TOTAL NUMBER OF ACCUSED AND ADJUDICATED STATUS OFFENDERS AND NONOFFENDERS HELD IN ADULT JAILS, LOCKUPS, AND NONAPPROVED "COLOCATED" FACILITIES FOR ANY LENGTH OF TIME, INCLUDING THOSE STATUS OFFENDERS ACCUSED OF OR ADJUDICATED FOR VIOLATION OF A VALID COURT ORDER.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Nonapproved Colocated	_____	_____	_____

10. TOTAL NUMBER OF ADULT JAILS AND LOCKUPS IN AREAS MEETING THE "REMOVAL EXCEPTION."

If the State has received approval from OJJDP pursuant to the removal exception contained in the current regulation, enter the number of adult jails and lockups located in those counties or jurisdictions which are outside a Metropolitan Statistical Area.

Baseline Data _____

Current Data _____

Provide the names of the adult jails and lockups and the county in which it is located. (Attach additional sheets as necessary).

_____ _____ _____

11. TOTAL NUMBER OF JUVENILES ACCUSED OF A CRIMINAL-TYPE OFFENSE WHO WERE HELD IN EXCESS OF SIX (6) HOURS BUT LESS THAN TWENTY-FOUR (24) HOURS IN ADULT JAILS AND LOCKUPS IN AREAS MEETING THE "REMOVAL EXCEPTION."

Enter the number of juveniles accused of a criminal-type offense who were held in excess of six (6) hours but less than twenty-four (24) hours in adult jails and lockups located in counties which are outside a Metropolitan Statistical Area.

The 24 hour period should not include weekends and holidays.

Baseline Data	_____	_____	_____
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____

NOTE: The criteria for this exception include the provision of sight and sound separation, the existence of a state law requiring detention hearings within 24 hours, and a determination that no existing acceptable alternative placement was available.

12. TOTAL NUMBER OF JUVENILES ALLEGED OF A CRIMINAL-TYPE OFFENSE WHO WERE HELD IN EXCESS OF TWENTY-FOUR (24) HOURS ~~BUT LESS THAN FORTY-EIGHT~~ (48) HOURS IN ADULT JAILS AND LOCKUPS IN AREAS MEETING THE "REMOVAL EXCEPTION."

Enter the number of juveniles accused of a criminal-type offense who were held for more than 24 ~~but less than 48 hours~~ in adult jails and lockups outside a Metropolitan Statistical Area, due to conditions of distance or lack of ground transportation.

	TOTAL	PUBLIC	PRIVATE
Current Data	_____	_____	_____
Detention/Jail	_____	_____	_____
Detention/Lockup	_____	_____	_____

13. TOTAL NUMBER OF JUVENILES ACCUSED OF A CRIMINAL-TYPE OFFENSE WHO WERE HELD IN EXCESS OF TWENTY-FOUR (24) HOURS IN ADULT JAILS AND LOCKUPS DUE TO ADVERSE WEATHER CONDITIONS IN AREAS MEETING THE "REMOVAL EXCEPTION."

Enter the number of juveniles accused of a criminal-type offense who were held for more than 24 hours in adult jails and lockups outside a Metropolitan Statistical Area

due to severe weather conditions that made travel unsafe. The exception permits a delay in court appearance for 24 hours after the time such conditions abate.

	TOTAL	PUBLIC	PRIVATE
Current Data	_____	_____	_____
Detention/Jail	_____	_____	_____
Detention/Lockup	_____	_____	_____

14. PROVIDE A BRIEF SUMMARY OF THE PROGRESS MADE IN ACHIEVING THE REQUIREMENTS OF SECTION 223(a)(14).

This summary should discuss the extent of the State's compliance in implementing Section 223(a)(14), and how reductions have been achieved, including the identification of state legislation which directly impacts on compliance. Discuss any proposed or recently passed legislation or policy which has either positive or negative impact on achieving or maintaining compliance. (Attach additional sheets as necessary).

_____

_____

_____

G. DE MINIMIS REQUEST: NUMERICAL

1. THE EXTENT THAT NONCOMPLIANCE IS INSIGNIFICANT OR OF SLIGHT CONSEQUENCE.

Number of accused juvenile criminal-type offenders held in adult jails and lockups in excess of six (6) hours, accused juvenile criminal-type offenders held in adult jails and lockups in non-MSA's for more than 24 hours, adjudicated criminal-type offenders held in adult jails and lockups for any length of time, and status offenders and nonoffenders held securely in adult jails and lockups for any length of time.

TOTAL = _____

Age at which original juvenile court jurisdiction ends

_____

Total juvenile population of the state under the age stated above, according to the most recent available U.S. Bureau of Census data or census projection _____ _____.

If the monitoring data was projected to cover a 12-month period, provide the specific data used in making the projection and the statistical method used to project the data.

Data: _____

Statistical Method of Projection: _____

_____

Calculation of jail removal violations rate per 100,000 juvenile population.

Total instances of noncompliance =_____(a)
Total juvenile population/100,000 =_____(b)

_____ /_____ = _____
(a) (b) Rate

2. ACCEPTABLE PLAN

Describe the State's plan to eliminate the noncompliant incidents through the enactment or enforcement of state law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

_____

_____

_____

_____

_____

3. RECENTLY ENACTED CHANGE IN STATE LAW

Describe recently enacted changes in state law which have gone into effect, and which can reasonably be expected to have a substantial, significant, and positive impact on the State's achieving full (100%) compliance, or full

compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

H. DE MINIMIS REQUEST: SUBSTANTIVE

1. THE EXTENT THAT NONCOMPLIANCE IS INSIGNIFICANT OR OF SLIGHT CONSEQUENCE.

   a. Were all instances of noncompliance in violation of or departures from state law, court rule, or other statewide executive or judicial policy?

   b. Do the instances of noncompliance indicate a pattern or practice, or do they constitute isolated instances?

   c. Are existing mechanisms for enforcement of the state law, court rule, or other statewide executive or judicial policy such that the instances of noncompliance are unlikely to recur in the future?

d. Describe the State's plan to eliminate the noncompliant incidents and to monitor the existing enforcement mechanism. _____

_____

_____

_____

APPENDIX G
SAMPLE LETTERS

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

May 11, 1995

Mr. Arthur Snowden, Administrative Director
Alaska Court System
303 "K" Street
Anchorage, Alaska 99501-2084

Dear Director Snowden:

The Justice Center at the University of Alaska Anchorage again has contracted with the Alaska Division of Family and Youth Services (DFYS) to monitor Alaska's compliance with the mandates of the federal Juvenile Justice and Delinquency Prevention Act. This monitoring process is the only way a state can provide the compliance data necessary to continue receiving federal funding for a number of important juvenile justice programs. The state legislature authorized the Division's monitoring activities in AS 47.10. 150 & 160.

Because monitoring is required of all secure detention facilities within the state, it is necessary for us to contact your office annually in order to confirm that we are in fact monitoring all such facilities maintained by the state court system. At the present time our records indicate that the only secure detention facility attached to the court is the one in Delta Junction. If any facilities have been added, please contact us with the following information: the name and location of the secure detention facility and the name of the person who can provide us with access to the facility and its records.

The monitoring process involves two steps. The first entails the annual collection and verification of detention data from all secure detention facilities across the state. This includes holding areas such as the one in the state court facility in Delta Junction. The second requires that we visit one-third of the detention facilities in our "monitoring universe" each year in order to verify records and to assess whether sight and sound separation of juveniles and adults can be provided. Delta Junction is scheduled for a visit this year.

Thank you in advance for your time and cooperation. Should you have any questions or suggestions regarding this monitoring project, please call me, Dr. Nancy Schafer, Richard Curtis or Cassie Atwell at 786-1810.

Sincerely,

Nancy Schafer, Ph.D.

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

May 11, 1995

Ronald Otte, Commissioner
Department of Public Safety
Box 111200
Juneau, Alaska 99811

Dear Commissioner Otte:

For several years the Justice Center at the University of Alaska Anchorage has monitored compliance with the mandates of the federal Juvenile Justice and Delinquency Prevention Act on behalf of the Division of Family and Youth Services. An independent monitoring process is the only way a state can provide the compliance data necessary to continue receiving federal funding of some important juvenile programs. The state authorized these compliance activities in AS 47.10.150 & 160. I am writing to let you know that we are presently beginning data collection for calendar year 1994.

We will again be relying on the assistance and cooperation of the Alaska State Troopers and, through them, VPSOs for both data collection and data verification. We will be contacting them this month.

I want you to know how much we appreciate the professionalism we have met everywhere - from Anchorage to the smallest village - and the helpful spirit which has smoothed many obstacles in this complicated project.

Sincerely,

Nancy E. Schafer, Ph.D.

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

May 11, 1995

Ms. Margaret Pugh, Commissioner
Alaska Department of Corrections
4500 Diplomacy Drive, Suite 207
Anchorage, Alaska 99508-5918

Dear Commissioner Pugh:

For several years the Justice Center has monitored compliance with the mandates of the federal Juvenile Justice and Delinquency Prevention Act on behalf of the Division of Family and Youth Services. I am writing to let you know that we are beginning the process of data collection for calendar year 1994 and will begin requesting information from Department of Corrections staff.

Because monitoring is required of all secure detention facilities in the state it is necessary to contact the Department annually to request computer data as well as to update any changes in Department policy regarding the detention of persons under 18 years of age. We will contact Director of Institutions Frank Sauser directly with our requests.

I want you to know how much we have appreciated the cooperation the Department has given us in this complicated project. You have many helpful and capable people in your staff.

Sincerely,

Nancy E. Schafer, Ph.D.

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

May 15, 1995

Mr. Frank Sauser
Director of Institutions
Alaska Department of Corrections
4500 Diplomacy Drive, Suite 207
Anchorage, Alaska 99508-5918

Dear Director Sauser:

The Justice Center at the University of Alaska Anchorage has again contracted with the Division of Family and Youth Services to monitor Alaska's 1994 compliance with the mandates of the federal Juvenile Justice and Delinquency Prevention Act. Compliance monitoring requires that we collect intake data in all facilities where juveniles might be detained and that we visit one-third of the facilities each year to verify the data we have received and to ascertain whether sight and sound separation of juveniles can be provided. We are also required to update the "monitoring universe"; adding or deleting jails, lock-ups, juvenile centers, etc. as conditions change. The state legislature authorized the Division's monitoring activities in AS 47.10.150 & 160.

Our records indicate that the only DOC facility to have held juveniles in 1993 was the Mat-Su Pretrial facility and we are writing to request that you verify by letter that no other facility under your direction held juveniles in calendar year 1994. The monitoring project requires that we obtain full booking information from any DOC facility which held juveniles last year.

Although the actual topic of study is the extent to which juveniles are securely detained across Alaska, we are required to collect booking data on people of all ages. Specifically, we are collecting the following facts on anyone securely detained in any facility which held any juvenile between December 31, 1993 and January 1, 1995: **Date in, Time in, Name (or initials), Date of Birth, Charge (or reason such as protective custody), Race and Sex, Date out and Time out.**

We will contact Mat-Su pretrial facility (and any other facility you identify) directly to request the booking data. If you have any questions about this project we would be glad to discuss them with you. Please feel free to call me, Richard Curtis or Cassie Atwell at 786-1810.

Sincerely,

Nancy E. Schafer, Ph.D.

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

May 15, 1995

Colonel Glenn G. Godfrey, Director
Alaska State Troopers
5700 E. Tudor Road
Anchorage, Alaska 99507

Dear Col. Godfrey:

As you are aware, the Justice Center at the University of Alaska Anchorage has monitored compliance with the mandates of the federal Juvenile Justice and Delinquency Prevention Act for several years. We are presently beginning data collection for calendar year 1994.

An independent monitoring process is the only way a state can provide the compliance data necessary to continue receiving federal funding of some important juvenile programs. The state authorized these compliance activities in AS 47.10.150 & 160.

We will again be relying on the assistance and cooperation of the Alaska State Troopers and, through them, VPSOs for both data collection and data verification. In addition, we need to obtain copies of the contract jail billing sheets. In order to accomplish this, we intend to contact Lt. Al Schadle and Lt. Ted Bachman shortly.

I want you to know how much we appreciate the professionalism and helpfulness of the Alaska State Troopers we have dealt with over the years.

Sincerely,

Nancy E. Schafer, Ph.D.

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

May 15, 1995

Lieutenant Al Schadle
Statewide VPSO Program Director
Alaska State Troopers
5200 East Tudor Road
Anchorage, AK 99507

Dear Lt. Schadle:

The Justice Center at the University of Alaska Anchorage has again begun its independent monitoring of Alaska's compliance with the mandates of the 1974 Juvenile Justice and Delinquency Prevention Act on behalf of the Division of Family and Youth Services.
Alaska's monitoring plan calls for data collection from all secure facilities where juveniles might be held, updating of the list of facilities in the monitoring "universe," and on-site data verification and inspection of one third of the facilities in the universe each year.

I am writing to request that you again notify the oversight troopers about the project, authorize Village Public Safety Officers to mail copies of their booking logs for calendar year 1994 to the Justice Center and advise them of possible site visits for inspection and data verification and/or collection. As in previous years, we would appreciate receiving a letter of authorization to use for site visits.

We would appreciate receiving an updated list of VPSOs and oversight troopers. We must contact oversight troopers to get information on jails and lockups in their jurisdictions in order to update the monitoring universe. We also need to begin contacting VPSOs to introduce the project and request copies of booking logs.

If you would advise us of any additional steps we might take to make the project go smoothly, please contact one of the project staff: Nancy Schafer, Richard Curtis or Cassie Atwell at 786-1810.

Thank you in advance for helping us. I am also enclosing, for your information, a copy of the universe chart updated for 1993 monitoring.

Sincerely,

Nancy E. Schafer, Ph.D.

Enclosure

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

May 15, 1995

Lieutenant Ted Bachman
Alaska State Troopers
5700 E. Tudor Road
Anchorage, Alaska 99507

Dear Lt. Bachman:

The Justice Center at the University of Alaska Anchorage has again begun its independent monitoring of Alaska's compliance with the mandates of the 1974 Juvenile Justice and Delinquency Prevention Act on behalf of the Division of Family and Youth Services. We will be collecting data for calendar year 1994.

As you know, the monitoring plan calls for data collection from all secure facilities where juveniles might be held, updating of the list of facilities in the monitoring "universe," and on-site data verification and inspection of one-third of the facilities in the universe each year.

Your assistance with last year's monitoring project was crucial to its timely completion and we were most appreciative. I am writing to again request your help in obtaining contract jail data and in verifying the accuracy of the enclosed list of contract jails. Please let us know if there are any additions to or deletions from the list.

Last year you generously provided us with photocopies of the contract billing sheets. Of course, as in the past, we are certainly ready to provide the labor required to photocopy the contract jail billing sheets. In any regard, we would like to make arrangements to copy the billing sheets for calendar year 1994. We will, of course, reimburse your office for the photocopies if you will provide us with an invoice.

If you have any questions or suggestions for expediting the photocopying process, please contact one of the project staff: Nancy Schafer, Richard Curtis or Cassie Atwell at 786-1810. One of us will telephone you next week to make arrangements.

Sincerely,

Nancy E. Schafer, Ph.D.

CONTRACT JAILS

Barrow
Cordova
Craig
Dillingham
Emmonak
Haines
Homer
Kodiak
Kotzebue
Naknek
Petersburg
Seldovia
Seward
Sitka
Unalaska
Valdez
Wrangell

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

May 15, 1995

Mr. Dennis Packer, Director
North Slope Borough Department of Public Safety
P.O. Box 470
Barrow, Alaska 99723

Dear Director Packer:

I am writing to let you know that the Justice Center has again contracted with the Alaska Division of Family and Youth Services (DFYS) to monitor Alaska's compliance with the mandates of the federal 1974 Juvenile Justice and Delinquency Prevention Act and to request your assistance in this endeavor. This monitoring is the only way a state can provide the compliance data necessary to continue receiving federal funding for a number of important juvenile justice programs. The state legislature authorized the Division's monitoring activities in AS 47.10.150 & 160.

There are two phases to the monitoring process. The first is to collect booking log information on all detainees held in all secure detention facilities during the monitored year. The second requires that we visit one-third of the secure detention facilities across the state each year to verify the booking log records that we have received and to assess whether sight and sound separation of juveniles can be provided. We are aware of the North Slope Borough's policy prohibiting the secure detention of juveniles; however the monitoring protocol requires us to monitor all agencies with secure detention facilities.

In the current cycle, we are only collecting booking log data for the calendar year **1994** from all jails/lock-ups in the North Slope Borough: **Barrow, Point Hope, Point Lay, Wainwright, Anaktuvuk Pass, Atqasuk, Kaktovik, Nuiqsut and Deadhorse**. Specifically we need the following information on anyone securely detained in a lock-up between December 31, 1993 and January 1, 1995: **Date in, Time in, Name (or initials), Date of Birth, Charge (or reason such as protective custody), Race and Sex, Date out and Time out**. While the focus of the monitoring project is the detention of juveniles, the protocol requires us to examine all records regarding the use of secure detention facilities. We will reimburse the North Slope Borough Department of Public Safety for any copying costs if you provide us with an invoice.

I am enclosing nine copies of a "Certification of Authenticity and Completeness of Records" form. This form should be completed and signed by each Public Safety Officer who provides copies of village logs. I am also enclosing a sample booking sheet which some public safety departments have told us they find useful.

I am aware of the magnitude of work involved in meeting my requests, and I want to thank you in advance for your assistance and cooperation this year. If you have any questions regarding this project, please contact me or project staff members, Richard Curtis and Cassie Atwell at 786-1810.

Sincerely,

Nancy E. Schafer, Ph.D.

Enclosures

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

May 11, 1994

Mr. Dimitri Philemonof
Aleutian Pribilof Island Association, Inc.
401 E. Fireweed Lane, Suite 201
Anchorage, Alaska 99503

Dear Mr. Philemonof:

I am writing to inform you that the Justice Center at the University of Alaska Anchorage has again contracted with the Alaska Division of Family and Youth Services (DFYS) to monitor Alaska's compliance with the mandates of the federal Juvenile Justice and Delinquency Prevention Act of 1974 and to briefly describe the monitoring project. The purpose of this project is to examine the detention of juveniles in jails, lock-ups, detention facilities and correctional facilities to ascertain if they are being held in compliance with federal mandates. Because federally funded juvenile programs are at risk in states which are not in substantial compliance with the act, the Alaska legislature has authorized DFYS monitoring activities in AS 47.10.150 & 160.

There are two phases to the monitoring process. The first is to collect booking log information on all detainees held in all secure detention facilities during the monitored year. The second requires that we visit one-third of the secure detention facilities across the state each year to verify the accuracy and completeness of the booking records that we have received and to assess whether sight and sound separation of juveniles can be provided.

We will be contacting your VPSO program manager, Richard Krause, to inform him of the project and its requirements and to enlist his help should any questions arise from the VPSOs or VPOs in a particular village.

The project staff include: Richard Curtis (Program Manager), Cassie Atwell (Research Assistant) and Nancy Schafer (Professor).

Please call us at 786-1810 if you have any questions.

Sincerely,

Nancy E. Schafer, Ph.D.

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

May 13, 1994

Mr. Gene Shafer, DFYS Regional Administrator
Southeast Region
Wildmeadow Building
10002 Glacier Highway, Suite 305
Juneau, Alaska 99801

Dear Mr. Shafer:

The Justice Center at the University of Alaska Anchorage has begun gathering data under contract with DFYS for the 1993 compliance monitoring report mandated by the federal Juvenile Justice and Delinquency Prevention Act. The Act requires that states report their compliance with the provisions set forth with the goal of deinstitutionalization of status offenders, as well as the goals of jail removal and separation by sight and sound from adult offenders.

As you are aware, the compliance monitoring plan requires data collection from all facilities in the state which hold juveniles and verification of the data from one third of these facilities each year. In previous years we have received computer printouts of intake information from detention centers which include the charge and date of birth for each child, as well as date and time of entry and date and time of release. We do not need the juveniles' full names, however at least initials are required.

You should have received a letter from Deborah Wing authorizing us to begin collecting the necessary data. We will be contacting the superintendents directly to request the data for calendar year 1993. I would appreciate it if you would remind them of the coming compliance activities.

If you have any questions or comments please contact one of the project staff: Nancy Schafer (Principal Investigator), Richard Curtis (Project Manager) or Cassie Atwell (Research Assistant) at 786-1810.

Sincerely,

Nancy E. Schafer, PhD.

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

May 13, 1994

Ms. Desiree Furman
Cook Inlet Tribal Council
670 W. Fireweed Lane, Suite 200
Anchorage, Alaska 99503

Dear Ms. Furman:

In accordance with the Juvenile Justice and Delinquency Prevention Act of 1974 and AS 47.10.150 & 160, the Justice Center at the University of Alaska Anchorage has again contracted with the Alaska Division of Family and Youth Services (DFYS) to collect information on juveniles held in secure detention facilities across the state during calendar year 1993. States which are not in substantial compliance with the Act are at risk of losing federal funding for many juvenile programs.

This monitoring project is accomplished in two phases. The first phase requires that we complete a listing of secure detention facilities across the state where juveniles might be detained and then collect booking log information from each facility for the monitored year. This is done with the assistance of the Alaska State Troopers as well as VPSO coordinators. The second phase requires that we visit one-third of these facilities each year to determine the accuracy and completeness of the records and to verify that sight and sound separation of juveniles from adults is provided.

We are requesting your assistance in updating our list of secure facilities. I am enclosing a copy of the listing. If you know of any facilities that need to be added to or deleted from this list please fill out the enclosed form. This form can be either faxed or mailed to us. The return address and fax number are on the form.

We will be contacting the VPSOs or VPOs in each village directly to ask for booking log information. Should anyone have any questions, please contact one of the project staff: Nancy Schafer (Principal Investigator), Richard Curtis (Project Manager) or Cassie Atwell (Research Assistant) at 786-1810.

Sincerely,

Nancy E. Schafer, Ph.D.

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

May 27, 1994

Mr. George Buhite, Superintendent
McLaughlin Youth Center
2600 Providence Drive
Anchorage, Alaska 99508

Dear Superintendent Buhite:

The Justice Center at the University of Alaska Anchorage has begun the process of monitoring Alaska's 1993 compliance with the mandates of the federal Juvenile Justice and Delinquency Prevention Act for the Division of Family and Youth Services. You should have already received information about the 1993 project from the Southcentral Regional Administrator, Ms. Faye Moore.

The monitoring plan requires data collection from all facilities which have held juveniles during the **1993** calendar year. Specifically, we need the following information on all detainees held in your facility between December 31, 1992 and January 1, 1994: **Date in, Time in, Name (or initials), Charge (or reason such as protective custody), Race and sex, Date out and Time out.** Since the McLaughlin Youth Center is a youth facility, date of birth will not be necessary.

The project rules require that all data be certifiable copies of original forms, photocopies of log books, or computer printouts. If we receive an invoice, we will reimburse you for any copy and mailing costs associated with this project.

If you have any questions regarding this project please call one of the project staff: Nancy Schafer (Principal Investigator), Richard Curtis (Project Manager) or Cassie Atwell (Research Assistant) at 786-1810.

Sincerely,

Nancy E. Schafer, Ph.D.

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

May 31, 1994

Trooper Dixie Spencer
Alaska State Troopers
1979 Peger Road
Fairbanks, Alaska 99709

Dear Trooper Spencer:

The Justice Center at the University of Alaska Anchorage is again requesting the assistance of AST in completing the 1993 compliance monitoring project for DFYS. We are writing to you in your capacity as oversight trooper for the villages of Allakaket, Beaver, Birch Creek, Chalkyitsik, Circle, Minto and Stevens to provide you with information about the project, and to verify that **none** of these villages had secure detention facilities in calendar year 1993. If this is incorrect, please let us know.

The purpose of this project is to monitor Alaska's compliance with the mandates of the federal 1974 Juvenile Justice and Delinquency Prevention Act. Independent monitoring is the only means by which a state can provide the compliance data necessary to continue receiving federal funding for a number of important juvenile justice programs. The state legislature authorized the division's monitoring activities in AS 47.10.150 & 160.

The project requires that we collect detention data from all secure facilities in the state and that we visit a sample of them each year to verify the accuracy of records and to assess whether sight and sound separation of adults and juveniles can be provided. We must collect the following information on everyone (both adults and juveniles) detained in any lock-up between December 31, 1992 - January 1, 1994: **Date and time in, charge (or other reason, such as protective custody), name (or initials), date of birth, race and sex , date and time out**.

We have contacted Captain Tom Sterns and obtained clearance to pursue information on juvenile detention in rural Alaska from Oversight Troopers and VPSO's. I am including a memo from Captain Sterns which authorizes participation in the project.

If you have any questions about the Alaska monitoring effort, please contact one of the project staff: Nancy Schafer (Principal Investigator), Richard Curtis (Project Manager) or Cassie Atwell (Research Assistant) during business hours at 786-1810.

Thank you very much for your time and cooperation.

Sincerely,

Nancy E. Schafer, Ph.D.

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

June 2, 1994

Trooper Dave Aspelund
Alaska State Troopers
P.O. Box 187
King Salmon, Alaska 99613

Dear Trooper Aspelund:

The Justice Center at the University of Alaska Anchorage is again requesting the assistance of AST in completing the 1993 compliance monitoring project for DFYS. We are writing to you in your capacity as oversight trooper for the villages of Chignik, Egegik, Levelock, Pilot Point and Port Heiden to provide you with information about the project, to verify that only Chignik, Egegik,Pilot Point and Port Heiden had secure detention facilities in calendar year 1993, and to seek your assistance in data collection and verification.

The purpose of this project is to monitor Alaska's compliance with the mandates of the federal 1974 Juvenile Justice and Delinquency Prevention Act. Independent monitoring is the only means by which a state can provide the compliance data necessary to continue receiving federal funding for a number of important juvenile justice programs. The state legislature authorized the division's monitoring activities in AS 47.10.150 & 160.

The project requires that we collect detention data from all secure facilities in the state and that we visit a sample of them each year to verify the accuracy of records and to assess whether sight and sound separation of adults and juveniles can be provided. We must collect the following information on everyone (both adults and juveniles) detained in any lock-up between December 31, 1992 - January 1, 1994: **Date and time in, charge (or other reason, such as protective custody), name (or initials), date of birth, race and sex, date and time out.**

Please remind the VPSOs and/or VPOs in Chignik and Egegik to mail photocopies of all 1993 booking logs (or equivalent materials) to the Justice Center. Project rules require that data be certifiable copies of original forms or booking logs. If these are not maintained, photocopies of other documents which contain this information are acceptable (e.g. case files, notebooks, staff records, time sheets).

Enclosed you will also find two "CERTIFICATION OF NO PRISONERS HELD" forms which need to be filled out for both the Pilot Point and Port Heiden facilities since neither facility has ever been used.

We will also be conducting site visits to Chignik and Egegik to verify the booking log data for calendar year 1993 and to inspect the facilities. The VPSO in these villages will be contacted directly to make arrangements for the site visit.

We have contacted Captain Tom Sterns and obtained clearance to pursue information on juvenile detention in rural Alaska from Oversight Troopers and VPSO's. I am including a memo from Captain Sterns which authorizes participation in the project.

If any of this information is incorrect or if you have any questions about the Alaska monitoring effort, please contact one of the project staff: Nancy Schafer (Principal Investigator), Richard Curtis (Project Manager) or Cassie Atwell (Research Assistant) during business hours at 786-1810.

Thank you very much for your time and cooperation.

Sincerely,

Nancy E. Schafer, Ph.D.

c.c. Sgt. Mike Gomez

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

June 8, 1994

Chief Michael Brown
Sand Point Police Department
P.O. Box 249
Sand Point, Alaska 99661

Dear Chief Brown:

The Justice Center at the University of Alaska Anchorage has again contracted with the Alaska Division of Family and Youth Services (DFYS) to monitor Alaska's compliance with the mandates of the federal 1974 Juvenile Justice and Delinquency Prevention Act. This monitoring is the only way a state can provide the compliance data necessary to continue receiving federal funding for a number of important juvenile justice programs. The state legislature authorized the division's monitoring activities in AS 47.10.150 & 160. The goal of the Act is the ultimate removal of juveniles from all adult facilities.

As you are aware, the monitoring process involves two stages. The first stage involves the collection of detention data from all secure detention facilities in the state. The second stage requires visits to one-third of the sites every three years in order to verify the data and assess whether sight and sound separation of juveniles and adults can be provided in those facilities.

Although the project addresses detention of juveniles the monitoring protocol requires that we examine records on all detainees in order to verify the presence (or absence) of those under 18 years of age.

For the current project we are collecting copies of booking logs for the calendar year **1993** from the Sand Point detention facility, and will also visit the facility. During the visit we may need to make copies of your booking logs and supporting documents. We will reimburse you for these expenses upon receipt of your invoice. We will be contacting you shortly regarding our visit to your facility.

Specifically, the type of booking information we request for both adults and juveniles is as follows: **Date in, Time in, Name (or initials), Date of Birth, Charge, Race, Sex, Date out, Time out.**

If you have any questions regarding this project, please contact one of the project staff: Nancy Schafer (Principal Investigator), Richard Curtis (Project Manager) or Cassie Atwell (Research Assistant) at 786-1810.

Sincerely,

Cassie L. Atwell
Research Assistant

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

June 8, 1994

Chief Grant Tabor
Tanana Department of Public Safety
P.O. Box 189
Tanana, Alaska 99777

Dear Chief Tabor:

The Justice Center at the University of Alaska Anchorage has again contracted with the Alaska Division of Family and Youth Services (DFYS) to monitor Alaska's compliance with the mandates of the federal 1974 Juvenile Justice and Delinquency Prevention Act. This monitoring is the only way a state can provide the compliance data necessary to continue receiving federal funding for a number of important juvenile justice programs. The state legislature authorized the division's monitoring activities in AS 47.10.150 & 160. The goal of the Act is the ultimate removal of juveniles from all adult facilities.

As you are aware, the monitoring process involves two stages. The first stage involves the collection of booking log data from all secure detention facilities in the state. The second stage requires visits to one-third of the sites every three years in order to verify the data and assess whether sight and sound separation of juveniles and adults can be provided in those facilities.

Although the project addresses detention of juveniles the monitoring protocol requires that we examine records on all detainees in order to verify the presence (or absence) of those under 18 years of age.

For the current project we are collecting copies of booking logs for the calendar year **1993** from the Tanana detention facility. We will reimburse you for copy expenses upon receipt of your invoice. We will not be doing a site visit.

Specifically, the type of booking information we request for both adults and juveniles is as follows: **Date in, Time in, Name (or initials), Date of Birth, Charge, Race, Sex, Date out, Time out.**

If you have any questions regarding this project, please contact one of the project staff: Nancy Schafer (Principal Investigator), Richard Curtis (Project Manager) or Cassie Atwell (Research Assistant) at 786-1810.

Sincerely,

Cassie L. Atwell
Research Assistant

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

June 10, 1994

Demetri Tcheripanoff
Village Public Safety Officer
General Delivery
Akutan, Alaska 99553

Dear VPSO Tcheripanoff:

The Justice Center at the University of Alaska Anchorage is again monitoring Alaska's compliance with the federal Juvenile Justice and Delinquency Prevention Act of 1974 under contract with the Alaska Division of Family and Youth Services. States must conduct this monitoring in order to maintain their eligibility for continued federal funding of many important juvenile justice programs.

As the VPSO of a village with a lock-up facility, your assistance is necessary to meet the data collection requirements of this monitoring project.

This project requires the collection of information on juvenile detention from all secure detention sites in Alaska including: adult prisons, jails, lock-ups and juvenile detention facilities. In addition, the project also requires visits to all detention facilities once every three years.

This year we will be visiting Akutan, and will be contacting you shortly to make arrangements regarding the visit. During the visit, we will examine and copy any booking records you have for calendar year 1993, and make a physical inspection of the facility. We will reimburse you for photocopying costs if you will provide us with an invoice.

Although the actual topic of study is the extent to which juveniles are securely detained across Alaska, we are required to collect booking data on people of all ages. Specifically, we are collecting the following facts on anyone securely detained in your lock-up between December 31, 1992 and January 1, 1994: **Date in, Time in, Name (or initials), Charge (or other reason, such as protective custody), Date of Birth, Race and Sex, Date out and Time out.**

The project rules require that all data be certifiable copies of original forms, photocopies of log books or booking logs, for example. If you do not keep a log-type record, then we need copies of any type of case-file materials that present the pertinent information, including notebook entries, staffing records, timesheets, etc.

Of course this request is made with the full knowledge and consent of the Alaska Department of Public Safety. Captain Stearns has notified all VPSO Oversight Troopers of this year's project and our requests for data. Should you require further verbal or written assurances prior to releasing copies of these documents, please contact Trooper Roop.

If you have any questions regarding this project please call one of the project staff: Nancy Schafer (Principal Investigator), Richard Curtis (Program Manager) or Cassie Atwell (Research Assistant) at 786-1810.

Sincerely,

Cassie L. Atwell

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

June 14, 1994

Robert Pitka
Village Public Safety Officer
General Delivery
Akiachak, Alaska 99551

Dear VPSO Pitka:

The Justice Center at the University of Alaska Anchorage has again entered into a contract with the Division of Family and Youth Services (DFYS) to monitor Alaska's compliance with the federal Juvenile Justice and Delinquency Prevention Act of 1974. States must conduct this monitoring in order to maintain their eligibility for continued federal funding of many juvenile justice programs. The state legislature has authorized the division's monitoring activities in AS 47.10.150 & 160.

As the VPSO of a village with a lock-up facility, your assistance is necessary to meet the data collection requirements of this monitoring project.

This project requires the collection of information on juvenile detention from all secure detention sites in Alaska, including: adult prisons, jails and lock-ups, and juvenile facilities. In addition, the project also requires visits to one-third of all detention facilities every year, however this year your village is not scheduled for a visit.

Although the actual topic of study is the extent to which juveniles are securely detained across Alaska, we are required to collect booking data on people of all ages. Specifically, we are collecting the following facts on anyone securely detained in your lock-up between December 31, 1992 and January 1, 1994: **Date in, Time in, Name (or initials), Charge (or other reason, such as protective custody), Date of Birth, Race and Sex , Date out and Time out.**

The project rules require that all data be certifiable copies of original forms, photocopies of log books or booking logs, for example. If you do not keep a log-type record, then we need copies of any type of case-file materials that present the pertinent information, including notebook entries, staffing records, timesheets, etc. Please send the material to the address on the letterhead. If you wish to receive reimbursement for the photocopies and costs associated with mailing this information, please enclose an invoice.

Of course this request is made with the full knowledge and consent of the Alaska Department of Public Safety. Captain Thomas Stearns has notified all VPSO Oversight Troopers of this year's project and our requests for data. Should you require further verbal or written assurances prior to releasing copies of these documents, please contact Trooper Roberts.

If you have any questions regarding this project, please call collect to one of the project staff: Nancy Schafer (Principal Investigator), Richard Curtis (Project Manager) or Cassie Atwell (Research Assistant) at 786-1810.

Sincerely,

Cassie L. Atwell

UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive Anchorage, Alaska 99508
(907) 786-1810 (907) 786-7777 fax

JUSTICE CENTER

June 21, 1994

Trooper Roger Ellis
Alaska State Troopers, Cantwell Post
Box 28
Cantwell, Alaska 99729

Dear Trooper Ellis:

The Justice Center at the University of Alaska Anchorage has again contracted with the Alaska Division of Family and Youth Services (DFYS) to monitor Alaska's compliance with the mandates of the federal 1974 Juvenile Justice and Delinquency Prevention Act. This monitoring is the only way a state can provide the compliance data necessary to continue receiving federal funding for a number of important juvenile justice programs. The state legislature authorized the division's monitoring activities in AS 47.10.150 & 160. The goal of the Act is the ultimate removal of juveniles from all adult facilities.

The monitoring process involves two stages. The first stage involves the collection of booking log data from all secure detention facilities in the state including: adult prisons, jails, lockups, and juvenile detention facilities. The second stage requires visits to one-third of the sites every year in order to verify the data and assess whether sight and sound separation of juveniles and adults can be provided in those facilities, however this year Cantwell is not scheduled for a visit.

Although the actual topic of study is the extent to which juveniles are securely detained across Alaska, we are required to collect booking data on people of all ages. Specifically, we are collecting the following facts on anyone securely detained in the Cantwell detention facility between December 31, 1992 and January 1, 1994: **Date and time in, charge (or other reason, such as protective custody), name (or initials), date of birth, race and sex, date and time out.**

The project rules require that all data be certifiable copies of original forms, photocopies of log books or booking logs, for example. If you do not keep a log-type record, then we need the copies of any type of case-file materials that present the pertinent information, including notebook entries, staffing records, timesheets, etc. Please send the copies to the address on the letterhead. If you wish to receive reimbursement for the photocopies and costs associated with mailing this information please enclose an invoice.

Of course, this request is made with the full knowledge and consent of the Alaska Department of Public Safety. Captain Thomas Stearns has notified all Trooper personnel of this year's project and our requests for data.

If you have any questions regarding this project please call one of the project staff: Nancy Schafer (Principal Investigator), Richard Curtis (Project Manager) or Cassie Atwell (research Assistant) at 786-1810.

Sincerely,

Cassie L. Atwell

APPENDIX H
CORRESPONDENCE RE: STATUS OFFENDERS

U.S. Department of Justice

Office of Juvenile Justice and
Delinquency Prevention

Washington, D.C. 20531

NOV 23 1987

Yvonne M. Chase, Director
Department of Health and Social Services
Division of Family and Youth Services
Pouch H-05
Juneau, Alaska 99811

Dear Ms. Chase:

As we discussed during the course of the audit of Alaska's JJDP monitoring system, one of the more critical findings of the audit is that minors charged with alcohol violations have not been counted as status offenders in Alaska's Annual Monitoring Reports. It appeared from the audit that counting this class of offenders as status offenders will have a profound effect on the reported level of compliance with Sections 223(a)(12)(A) and 223(a)(14) of the JJDP Act.

For this reason, we are delaying the review of Alaska's 1986 Monitoring Report until we receive a revised report that counts minors charged with alcohol violations as status offenders. Please review the OJJDP definition of status offender (see 28 CFR 31.304) for guidance on this matter. Also, please note the legal opinion I forwarded to Russell Webb on October 19, 1987.

We cannot recommend award of Alaska's FY 1988 Formula Grant until we have received a satisfactory Monitoring Report and have determined that Alaska has achieved the levels of compliance necessary for eligibility to receive the FY 1988 award.

I have discussed this matter with Russell Webb and I will be glad to answer any questions you might have.

Sincerely,

Paul Steiner
Juvenile Justice Specialist
State Relations and Assistance
Division

MEMORANDUM State of Alaska

TO: Regional Administrators
Intake Officers
Institutional Superintendents

DATE: December 18, 1987

FILE NO.:

THRU:

TELEPHONE NO.:

SUBJECT: Detention Admission Criteria

FROM: Richard Illias
Youth Corrections Administrator

Several years ago instructions were issued to discontinue the practice of placing status offenders in our juvenile detention facilities. At that time the offense of minor consuming alcohol was interpreted to be a "criminal" offense under state law. Interpretation of the Juvenile Justice and Delinquency Prevention Act of 1974 by the U.S. Attorney General categorizes offenses such as minor consuming alcohol as status offenses. The logic is that those offenses can only be committed by a person of a certain age status. Even though the offense is criminal in many states between the ages of 18 and 21, it is none the less a status offense for both juveniles and a small group of adults.

In order to comply with Federal mandates and maintain eligibility of OJJDP block grants, it is necessary for intake units and institutions to revise detention screening and admission practices.

EFFECTIVE IMMEDIATELY YOUTH ARRESTED FOR THE OFFENSE OF MINOR CONSUMING MAY NO LONGER BE DETAINED IN DIVISION YOUTH FACILITIES UNLESS:

1. They are detained as probation violators (detention criteria number 8 and a petition is filed for revocation of probation.

2. Youth is also an absconder with a valid court order (warrant) for detention.

3. The youth has been charged with another offense sufficient to warrant detention.

4. The youth's identity cannot be determined.

5. The youth refused to sign a promise to appear.

Prohibition against detention of youth charged with minor consuming alcohol has no effect on the authority to detain a youth who is incapacitated by alcohol and requires protective custody pursuant to AS47.37.170. Protective custody admissions require a pre-admission medical examination and written certificate which attests to <u>two</u> conditions:

1. The youth's level of intoxication meets the definition of incapacitated by alcohol. That level is defined by statute as "a person who, as the result of consumption of alcohol, is rendered unconscious or has judgment or physical mobility so impaired that the person cannot readily recognize or escape conditions of apparent or imminent danger to personal health or safety."

2. The youth does not require either immediate or constant medical attention until the level of intoxication is reduced.

Persons admitted to detention facilities under the PC Statute must have the reason for detention marked "protective custody - AS47.37." Both detention booking records and intake records should show that designation as the reason for detention. Intake records such as the intake log should show under the offense column as both HCA and PC.

Please make sure that staff adhere to the PC requirement and that those youth be released from detention within 12 hours or sobering up whichever comes first.

RFI:ag

cc: Yvonne Chase
Donna Bownes

Enclosures

U.S. Department of Justice

Office of Juvenile Justice and
Delinquency Prevention

Washington, D.C. 20531

April 1, 1988

Russell Webb
JJDP Coordinator
Division of Family and Youth Services
Pouch H-05
Juneau, Alaska 99811

Dear Russ:

I have enclosed a copy of the Alaska Field Audit Report which describes the information I gained and the recommendations I made during the September 28 - October 3, 1987, on-site review of the state's compliance monitoring system.

Please review the Report and recommendations carefully. Pursuant to OJJDP Policy, you are required to respond to the Report, in writing, within 30 business days of receiving it.

Your response should clarify any issues relating to Alaska's compliance monitoring system that you feel are not adequately addressed by the Report. In addition, your response should address each of the recommendations contained in Section 6 of the Report.

If you concur with a recommendation, you may indicate such by describing what steps will be taken, by whom, and within what period of time, to implement it. If you disagree with a recommendation, please state your reasons, and I will respond to them. Although discussed during our exit conference on October 3, if any of the recommendations are not clear to you, please contact me for additional information.

I look forward to receiving your response to the Report.

Sincerely,

Paul Steiner
Juvenile Justice Specialist

Enclosure

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

#870

August 25, 1988

Mr. Verne L. Speirs
Administrator
Office of Juvenile Justice
and Delinquency Prevention
Washington, DC 20531

Dear Mr. Speirs:

I wish to communicate by way of this letter my commitment to achieving the complete removal of juveniles from adult jails and lockups in Alaska, and my intent to demonstrate that commitment in a manner which meets the eligibility requirements of OJJDP's 1988 Special Emphasis grant program relating to jail removal.

Specifically, I will, before September 25, 1988, issue a proclamation indicating my intent to support legislation prohibiting the confinement of juveniles in adult jails or lockups; committing the various departments and agencies of state government to taking appropriate actions within their authority to achieve removal of juveniles from jails; and during the support and participation of local governmental agencies and citizens for jail removal efforts. A copy of that proclamation will be forwarded to you on the date it is issued.

Alaska faces unique and difficult challenges in achieving the removal of juveniles from adult jails. I am confident, however, that with continued encouragement and support at the Federal level and with the commitment of Alaska's executive agencies and citizens, these challenges will be met. We look forward to the continued support of your staff in our efforts to improve Alaska's juvenile justice system.

Sincerely,

Steve Cowper
Governor

cc: Commissioner Munson
Department of Health and
Social Services

STATE OF ALASKA

STEVE COWPER, GOVENOR

P.O. Box H-05
Juneau, Alaska 99811-0630

DEPT. OF HEALTH AND SOCIAL SERVICES

(907) 465-3170

DIVISION OF FAMILY & YOUTH SERVICES
YOUTH CORRECTIONS SECTION

March 20, 1990

Pamela Swain, Director
State Relations and Assistance Division
Office of Juvenile Justice and Delinquency Prevention
633 Indiana Avenue, N.W.
Washington, DC 20531

Attention: Mike Holloway, State Representative

Dear Ms. Swain:

Enclosed is the long awaited 1988 Monitoring Report for Alaska. I think you will find the report thorough and well documented.

Alaska is requesting a finding of full compliance with de minimis exceptions for Section 223 (a) (12) (A) of the JJDP Act. This request is based on achievement in 1988 of a non-compliance rate of 5.4 per 100,000 juveniles. This rate is less than the noncompliance rate of 5.8 per 100,000 juveniles which has been established by OJJDP as the highest institutionalization rate a state may have and still be considered to be in full compliance with de minimis exceptions based solely on the numerical standard set forth in Criterion A (46 FR 2567).

Although the requirements for a finding of full compliance with de minimis exceptions are fully satisfied since the rate of non-compliance is below 5.4 per 100,000 juveniles, the monitoring report for 1988 also documents Alaska's achievement of the standards outlined in Criteria B and C. With respect to Criterion B, the monitoring report describes the circumstances surrounding the instances of non-compliance and explains the extent to which the instances of non-compliance were in violation of state law or established executive policy. Of the nine instances of non-compliant detention, only two appear to have not violated state law or established executive policy and one of these two instances involved an out of state runaway detained pending return to her home state. Finally, as explained in the monitoring report, Criterion C also appears to be satisfied, based on 1) the absence of any pattern or practice of non-

compliant detention, 2) apparent violation of state laws and/or executive policies in all but two of the nine reported instances of noncompliance and 3) development by DFYS of a detailed plan to eliminate non-compliant incidents.

Alaska is also requesting a finding of alternative substantial compliance with Section 223(a) (14) of the JJDP Act. This request is based on the following: First, 28 CFR Part 31.303 (f) (6) (iii) (A) (2) (i) is satisfied if "all status offenders and non-offenders securely detained in adult jails and lockups for any length of time were held in violation of an enforceable state law and did not constitute a pattern or practice within the state." Although both accused and adjudicated status offenders were securely detained in adult jails and lockups for short periods of time (note, however, that only four of these instances of detention of status offenders in adult facilities violated the deinstitutionalization requirement), there was only one instance of such detention which did not violate state laws requiring separation of juvenile and adult offenders. This instance of detention occurred at the only adult jail in Alaska which provided adequate separation in 1988. All other instances of detention of status offenders in adult facilities were in violation of Alaska's separation laws. These separation laws, as explained in the monitoring report, are enforceable through a variety of mechanisms which have been effective in reducing separation violations by 32 percent in the one year period following implementation of the state's revised Jail Removal Plan in December, 1987. These same mechanisms have been effective in reducing jail removal violations by 32 percent in the one year following implementation of the state's revised Jail Removal Plan in December, 1987.

Second, Alaska has made meaningful progress in removing other juveniles from adult jails and lockups, as documented by a 79 percent reduction in the number of criminal-type offenders securely detained in violation of section 223(a)(14) of the JJDP Act, from 766 in the baseline year (1980), to 161 in 1988. A reduction of this magnitude represents "a significant reduction in the number of juvenile criminal-type offenders securely detained in violation of section 223(a)(14) of the JJDP Act: and thus satisfies the "meaningful progress" standard for alternative substantial compliance outlined in 28 CFR Part 31.303 (f) (6) (iii) (A) (2) (ii).

Pamela Swain
March 20, 1990

Page 3

The state has also diligently carried out its revised 1987 Jail Removal Plan by undertaking actions necessary to achieve jail and lockup removal goals and objectives and by appropriate involvement of the State Advisory Group in developing and implementing the state's plan. These efforts are documented in the 1988 Performance Report and Alaska's responses to the 1987 OJJDP Field Audit. The requirement that a state must demonstrate that it has "diligently carried out the state's jail and lockup removal plan," as required under 28 CFR Part 31.303 (f) (6) (iii) (A) (2) (iii), is thus also satisfied.

Fourth, as required under CFR Part 31.303 (f) (6) (iii) (A) (2) (iv), Alaska has historically expended and continues to expend a significant share of its Formula Grant funds to comply with Section 223(a)(14). In 1987 and 1988, after subtracting the administration and SAG allowance, Alaska spent 100 percent of its Formula Grant funds on jail removal efforts.

Finally, as required under 28 CFR Part 31.303 (f) (6) (iii) (A) (3), Alaska has made an unequivocal commitment to achieving full compliance within a reasonable time as evidenced in an Executive Proclamation issued on April 14, 1989 by Governor Steve Cowper. In this proclamation, the Governor explicitly proclaimed his support for efforts to develop regulations which reduce detention of children in adult facilities.

Alaska has thus achieved each of the requirements for alternative substantial compliance with jail removal requirement, as outlined in 28 CFR Part 31.303 (f) (6) (iii) (A) (2) and (3). Moreover, if OJJDP interpretations of the definitions of "criminal-type offender: and "status offender" were the same in 1988 as they were in 1980 (the baseline year), and if our monitoring universe had not expanded greatly between 1980 and 1988, Alaska would have exceeded the 75 percent reduction in non-compliant detention required for substantial compliance under 28 CFR Part 31.303 (f) (6) (iii) (A) (1).

We would appreciate your prompt review of our report and a statement of findings. I believe several other important

Pamela Swain
March 20, 1990

Page 4

decisions such as award of the 1989 Formula Grant are being held pending your determination on our monitoring data.

Sincerely,

Russ Webb, Director
Division of Family and Youth Services
Department of Health and Social Services
State of Alaska

cc: Donna Schultz, Juvenile Justice Specialist
Richard Illias, Youth Corrections Administrator

MEMORANDUM

State of Alaska

DFYS rec'd 7/2/90 8 AM

TO: The Honorable Myra Munson
Commissioner
Department of Health and Social Services

DATE: June 25, 1990

TELEPHONE: 561-4426

SUBJECT: Housing of Juveniles at Ketchikan Correctional Center

FROM: Susan Humphrey-Barnett
Commissioner
Department of Corrections

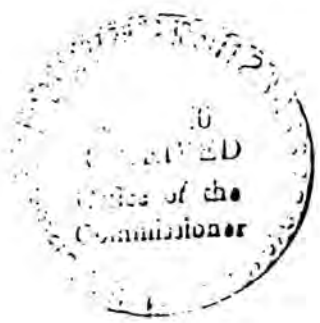
Effective August 15, 1990, the Department of Corrections will cease the detention of juveniles at the Ketchikan Correctional Center, thus terminating the 1986 Memorandum of Agreement between our respective agencies.

The situation described in my December 1987 letter to you on this subject has become more critical. Ketchikan Correctional Center experienced unprecedented overcrowding this past year and our projections indicate that this trend will continue. Under the circumstances, Corrections cannot provide juveniles physical separation from adults, nor can we provide adequate supervision to ensure the safety of the juveniles.

I know that the Department of Health and Social Services has pursued juvenile detention alternatives in Ketchikan. If I can assist in your efforts in any way, please do not hesitate to contact me.

SHB:dlh

cc: Thomas E. Schulz, Superior Court Judge
Caren Robinson, Special Staff Assistant
Margaret M. Pugh, Director
Alan Bailey, Superintendent



MEMORANDUM

STATE OF ALASKA

DIVISION OF FAMILY AND YOUTH SERVICES
YOUTH CORRECTIONS OFFICE

TO: All District Supervisors

DATE: July 2, 1990

FILE NO:

THRU: Richard F. Illias
Youth Corrections Administrator

PHONE: 265-5090

FROM: Randall Hines
Associate Coordinator

SUBJECT: Data Collection Project

It is data collection time again! And in efforts to make this project as delightful and stimulating as possible, a handy form has been developed to help us, or more specifically you, provide the necessary information to make this project a worthwhile endeavor. We are requesting that the 1989 Intake Log be scanned for all those cases who meet the criteria found on the form, specifically, those cases where an adjudication on an alcohol offence alone or an alcohol offense and another related offense have occurred.

As you know, OJJDP considers alcohol offenses, such as minor consuming alcohol, to be "status offenses". The Juvenile Justice and Delinquency Prevention Act of 1974 mandates that we remove all status offenders from both adult jails/lockups and our own juvenile detention facilities.

We are collecting this data for our compliance monitoring report. Please complete this form and fax it to my office by July 24, 1990.

If you have any questions regarding these case, please call me prior to filling out the form as it will save us all time in the long run. Thank you for your help.

RI:br

cc: Regional Administrators
cc: Dave Parry

1989 INTAKES FOR ALCOHOL OFFENCES

REGION:_____ **DISTRICT:**_____ **PERSON REPORTING:**_____

Name (Last, First, MI)	DOB	Referral Date	Already on Conditions of Conduct/Probat. For Prior Non Alcohol Offence Yes or NO	Court Finding or Adjudicat. on the Alcohol Offence ALONE Yes or No	Date of Finding or Adjud.	Subsequ. Crt. Finding or Adjud. for Non Alcohol Criminal Type Delinquent Offence Yes or No	Date of Subseq. Finding or Adjud.

U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Washington, D.C. 20531

SEP 0 6 1990

Ms. Donna M. Schultz
Juvenile Justice Specialist
Department of Health and
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Division of Family and
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P.O. Box H-05
Juneau, Alaska 99811-0630

DIVISION OF FAMILY AND YOUTH SERVICES
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Dear Donna:

This is in response to your request that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) explain its finding that Alaska's 1988 Monitoring Report failed to demonstrate full, or at least substantial compliance with the jail and lockup removal provision, Section 223 (a)(14) of the JJDP Act. Specifically, you asked for the basis of OJJDP's finding that Alaska failed to demonstrate substantial compliance under the alternative standard developed by Congress in 1988.

The alternative substantial compliance provision is set forth at Section 223 (c)(2)(A)(i)(II) of the JJDP Act. The standards for demonstrating compliance with this provision are set forth at Section 223 (c) of the Act. These standards are further delineated at Section 31.303 (f)(6)(iii)(A)(2)(i)-(iv) of the OJJDP Formula Grants Regulation (28 CFR 31), which was published in the August 8, 1989, Federal Register.

The OJJDP review of Alaska's 1988 Monitoring Report indicated that the State failed to demonstrate its compliance with the standard set forth at Section 223 (c)(4)(A) of the JJDP Act and Section 31.303 (f)(6)(iii)(A)(2)(i) of the OJJDP Formula Grants Regulation. This Standard reads as follows:

> "...(i) Removed all status and non-offender juveniles from adult jails and lockups. Compliance with this standard requires that the last submitted monitoring report demonstrate that no status offender (including

> those accused of or adjudicated for violating a valid court order) or nonoffender juveniles were securely detained in adult jails or lockups for any length of time; or that all status offenders and nonoffenders securely detained in adult jails and lockups for any length of time were held in violation of an enforceable state law and did not constitute a pattern or practice within the state..."

This standard contains three (3) critical components. First, that all status and nonoffenders securely detained in adult jails and lockups for any length of time were held in violation of state law.

Alaska's 1988 Monitoring Report transmittal letter, dated March 20, 1990, indicates on page 2 that with one exception, the status and nonoffenders securely detained in adult jails and lockups violated state separation statutes. The OJJDP cannot accept Alaska's claim that separation statutes prohibit the secure detention of status and nonoffenders in adult jails and lockups. Clearly, if the facilities involved were renovated and/or they modified their separation practices, status and nonoffenders could be securely detained there without violating state law. Not only is this inconsistent with the jail and lockup removal provision of the Act, but concurrence by OJJDP with this argument could conceivably place this Office and Alaska in an untenable position in the future should these facilities begin providing adequate separation.

Even if OJJDP accepted the argument that separation statutes prohibit the secure detention of status and nonoffenders in adult jails and lockups, the transmittal letter cited above indicates that one (1) status or nonoffender was securely detained in an adult facility that provided adequate separation. As a result, this detention was not a violation of state law, and therefore, the requirement that "all" such detentions violate state law was not met. This incident also serves to illustrate why the OJJDP cannot accept Alaska's premise.

The second critical element is that the state law be enforceable. Your 1988 Monitoring Report indicates that increased public education, stepped-up monitoring, and the amendment of 17 DPS contracts has resulted in a 32% reduction in violations. While these measures are to be commended, and it is clear that they are necessary, their sufficiency remains in question at this time. In order for the OJJDP to accept a state's enforcement mechanisms as sufficient or adequate, it must be demonstrated that the mechanisms have been successful in eliminating all, or substantially all of the violations. A 32% reduction is not tantamount to elimination of substantially all of the violations.

The third and final critical element is that the violations did not constitute a pattern or practice. Admittedly, these terms are subjective. However, using standard denotations, I have to question Alaska's assertion that the fact that one-half of the violations involved one type of status offender (minor in possession of alcohol) does not constitute a pattern. Similarly, I believe the fact that over 40% of the violations occurred in three (3) facilities constitutes a practice.

Based on these findings, I could not conclude that Alaska satisfied the status and nonoffender requirement for alternative substantial compliance. Alaska does, however, satisfy the remaining alternative substantial compliance standards. In addition, I am confident that Alaska will continue to make progress toward full compliance with the jail and lockup removal provision of the JJDP Act.

I hope this information is useful to you. If you have any questions, please call me at (202) 307-5924.

Sincerely,

Jeff Allison
Compliance Monitoring Coordinator
State Relations and Assistance Division

APPENDIX I
ALASKA LAWS, REGULATIONS, AND EXECUTIVE ORDERS RELATED TO JUVENILE DETENTION

Alaska Statutes

Alaska Rules of Court

Alaska Administrative Code

Executive Proclamation

ALASKA STATUTES

Sec. 47.10.010. Jurisdiction. (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor

(1) to be a delinquent minor as a result of violating a criminal law of the state or a municipality of the state; or

(2) to be a child in need of aid as a result of

(A) the child being habitually absent from home or refusing to accept available care, or having no parent, guardian, custodian, or relative caring or willing to provide care, including physical abandonment by

(i) both parents,

(ii) the surviving parent, or

(iii) one parent if the other parent's rights and responsibilities have bee terminated under AS 25.23.180(c) or AS 47.10.080 or voluntarily relinquished;

(B) the child being in real need of medical treatment to cure, alleviate, or prevent substantial harm, or in need of treatment for mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and the child's parent, guardian, or custodian has knowingly failed to provide the treatment;

(C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by the child's parent, guardian, or custodian or the failure of the parent, guardian, or custodian adequately to supervise the child;

(D) the child having been, or being in imminent and substantial danger of being, sexually abused either by the child's parent, guardian, or custodian, or as a result of conditions created by the child's parent, guardian, or custodian, or by the failure of the child's parent, guardian, or custodian adequately to supervise the child;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from the child's parents, guardian, or custodian;

(F) the child having suffered substantial physical abuse or neglect as a result of conditions created by the child's parent, guardian, or custodian.

(b) When a minor is accused of violating a traffic statute or regulation, a traffic ordinance or regulation of an incorporated municipality, AS 11.76.105 relating to the possession of tobacco by a minor, a fish and game statute or regulation under AS 16, or parks and recreational facilities statute or regulation under AS 41.21, excepting a statute the violation of which is a felony, the procedure prescribed in AS 47.10.020 - 47.10.090 may not be followed, except that a parent, guardian, or legal custodian shall be present at all proceedings. The minor accused of an offense specified in this subsection shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult.

(c) In a controversy concerning custody of a minor, the court may appoint a guardian of the person and property of a minor and may order support from either or both parents. Custody of a minor may be given to the department, and payment of support money to the department may be ordered.

(d) The provisions of AS 47.10.020 - 47.10.085 do not apply to driver's license proceedings under AS 28.15.185. The court shall impose a driver's license revocation under AS 28.15.185 in the same manner as adult driver's license revocations, except that a parent or legal guardian shall be present at all proceedings.

(e) When a minor who was at least 16 years of age at the time of the offense is arraigned on a charge for an offense specified in this subsection, AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules do not apply to the offense for which the minor is arraigned or to any additional offenses joinable to it under the applicable rules of court governing criminal procedure. The minor shall be charged, prosecuted, and sentenced in the superior court in the same manner as an adult unless the minor is convicted of some offense other than an offense specified in the subsection, in which event the minor may attempt to prove, by a preponderance of the evidence, that the minor is amenable to treatment under this chapter. If the court finds that the minor is amenable to treatment under this chapter, the minor shall be treated as though the charges had been heard under AS 47.10.010 - 47.10.142, and the court shall order disposition of the charges of which the minor is

convicted under AS 47.10.080(b). The provisions of this subsection apply when the minor is arraigned on a charge

(1) that is an unclassified felony or a class A felony and the felony is a crime against a person; or

(2) of arson in the first degree. (§ 4 art I ch 145 SLA 1957; am § 1 ch 76 SLA 1961; am §§ 1, 2 ch 110 SLA 1967; am § 1 ch 64 SLA 1969; am § 6 ch 104 SLA 1971; am §§ 7, 8 ch 63 SLA 1977; am § 1 ch 104 SLA 1982; am § 5 ch 39 SLA 1985; am § 17 ch 50 SLA 1987; am § 6 ch 125 SLA 1988; am § 3 ch 130 SLA 1988; am § 6 ch 125 SLA 1990; am § 6 ch 113 SLA 1994)

Sec. 47.10.130 Detention. (a) A minor may not be incarcerated in a correctional facility that houses adult prisoners.

(b) When a minor is detained under this chapter, the person having responsibility for the facility in which the minor is detained shall immediately make reasonable attempts to notify the minor's parent, guardian, or custodian of the minor's detention.

(c) Notwithstanding (a) of this section, a minor may be incarcerated in a correctional facility

(1) if the minor is the subject of a petition filed with the court under this chapter seeking adjudication of the minor as a delinquent minor or if the minor is in official detention pending the filing of that petition; however, detention in a correctional facility under this paragraph may not exceed the lesser of

(A) six hours; or

(B) the time necessary to arrange the minor's transportation to a juvenile detention home or comparable facility for the detention of minors;

(2) if, in response to a petition of delinquency filed under this chapter, the court has entered an order closing the case under AS 47.10.060(a), allowing the minor to be prosecuted as an adult; or

(3) if the incarceration constitutes a protective custody detention of the minor that is authorized by AS 47.37.170(b).

(d) When a minor is detained under (c)(1) or (c)(3) of this section and incarcerated in a correctional facility, the minor shall be

(1) assigned to quarters in the correctional facility that are separate from quarters used to house adult prisoners so that the minor cannot communicate with or view adults who are in official detention;

(2) provided admission, health care, hygiene, and food services and recreation and visitation opportunities separate from services and opportunities provided to adults who are in official detention.

(e) Notwithstanding the limitation on detention set out in (c)(1) of this section, a minor whose detention is authorized by (c)(1) of this section may be detained in a correctional facility for more than six hours if transportation to a juvenile detention home or comparable facility for the detention of minors is not available. The minor's detention for more than six hours is authorized by this subsection only if the person having responsibility for the facility in which the minor is detained

(1) documents the reason that transportation of the minor to a juvenile detention home or comparable facility is not available; and

(2) during the minor's detention, after learning that transportation is not available, promptly notifies the appropriate officials or employees of the department and the Alaska Court System of the lack of available transportation.

(f) A detention authorized by (e) of this section may not exceed the time necessary to satisfy the requirement of (c)(1)(B) of this section.

(g) The provisions of AS 47.37.170(i) apply to a minor incarcerated in a correctional facility when authorized by (c)(3) of this section.

(h) In this section,

(1) "correctional facility" has the meaning given in AS 33.30.901 whether the facility is operated by the state, a municipality, a village, or another entity;

(2) "official detention" has the meaning given in AS 11.81.900. (§ 14 art I ch 145 SLA 1957; am § 11 ch 33 SLA 1994)

Sec. 47.10.140 Temporary detention and detention hearing. (a) A peace officer may arrest a minor who violates a law or ordinance in the officer's presence, or whom the officer reasonably believes is a fugitive from justice. A peace officer may continue a lawful arrest made by a citizen. The officer may have

the minor detained in a juvenile detention facility if in the officer's opinion it is necessary to do so to protect the minor or the community.

(b) A peace officer who has a minor detained under (a) of this section shall immediately, and in no event more than 12 hours later, notify the court and make reasonable efforts to notify the minor's parents or guardian, and the department of the officer's action. The department may file with the court a petition alleging delinquency before the detention hearing.

(c) The court shall immediately, and in no event more than 48 hours later, hold a hearing at which the minor and the minor's parents or guardian if they can be found shall be present. The court shall determine whether probable cause exists for believing the minor to be delinquent. The court shall inform the minor of the reasons alleged to constitute probable cause and the reasons alleged to authorize the minor's detention. The minor is entitled to counsel and to confrontation of adverse witnesses.

(d) If the court finds that probable cause exists, it shall determine whether the minor should be detained pending the hearing on the petition or released. It may either order the minor held in detention or released to the custody of a suitable person pending the hearing on the petition. If the court finds no probable cause, it shall order the minor released and close the case.

(e) Except for temporary detention pending a detention hearing, a minor may be detained only by court order.

(f), (g) [Repealed, § 3 ch 42 SLA 1985.] (§ 15 art I ch 145 SLA 1957; am § 3 ch 118 SLA 1962; am § 2 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am §§ 1, 2 ch 128 SLA 1972; am §§ 1, 3 ch 42 SLA 1985; am § 12 ch 33 SLA 1994)

Sec. 47.10.141 Runaway and missing minors. (a) Upon receiving a written, telephonic, or other request to locate a minor evading the minor's legal custodian or to locate a minor otherwise missing, a law enforcement agency shall make reasonable efforts to locate the minor and shall immediately complete a missing person's report containing information necessary for the identification of the minor. As soon as practicable, but not later than 24 hours after completing the report, the agency shall transmit the report for entry into the Alaska Public Safety Information Network and the National Crime Information Center computer system. The report shall also be submitted to the missing persons information clearinghouse under AS 18.65.620. As soon as practicable, but not later than 24 hours after the agency learns that the minor has been located, it shall request that the Department of Public Safety and the Federal Bureau of Investigation remove the information from the computer systems.

(b) A peace officer shall take into protective custody a minor described in (a) of this section if the minor is not otherwise subject to arrest or detention. Unless (c) of this section applies, the peace officer shall exercise the officer's discretion and

(1) return the minor to the legal custodian if the legal custodian consents to the return except that the officer may not use this option if the officer has reasonable cause to suspect that the minor has experienced physical or sexual abuse in the legal custodian's household;

(2) take the minor to a nearby location agreed to by the minor and the legal custodian; or

(3) take the minor to an office specified by the Department of Health and Social Services, a program for runaway minors licensed by the department under AS 47.10.310, a shelter for runaways that has a permit from the department under AS 47.35.085 that agrees to shelter the minor, or a facility or contract agency of the department. If an office specified by the department, a licensed program for runaway minors, a shelter for runaways that will accept the minor, or a facility or contract agency of the department does not exist in the community, the officer shall take the minor to another suitable location and promptly notify the department. A minor under protective custody may not be housed in a jail or other detention facility. Immediately upon taking a minor into protective custody, the officer shall advise the minor orally and in writing of the right to social services under AS 47.10.142(b), and, if known, the officer shall advise the legal custodian that the minor has been taken into protective custody and that counseling services for the custodian and the minor's household may be available under AS 47.10.142(b).

(c) A minor may be taken into emergency protective custody by a peace officer and placed into temporary detention in a juvenile detention home in the local community if there has been an order issued by a court under a finding of probable cause that

(1) the minor is a runaway in wilful violation of a valid court order issued under AS 47.10.080 or 47.10.142(f),

(2) the minor's current situation poses a severe and imminent risk to the minor's life or safety, and

(3) no reasonable placement alternative exists within the community. For the purposes of this subsection, a risk may not be considered severe and imminent solely because of the general conditions for runaway minors in the community, but shall be assessed in view of the specific behavior and situation of the minor. A minor detained under this subsection shall be brought before a court on the day the minor is detained, or if that is not possible, within 24 hours after the detention for a hearing to determine the most appropriate placement in the best interests of the minor. A minor taken into emergency protective custody under this subsection may not be detained for more than 24 hours, except as provided under AS 47.10.140. Emergency protective custody may not include placement of a minor in a jail or secure facility other than a juvenile detention home, nor may an order for protective custody be enforced against a minor who is residing in a licensed program for runaway minors, as defined in AS 47.10.390.

(d) If, after investigation of a report of a missing minor, a law enforcement agency has reason to believe that the minor is involuntarily absent from the custody of a custodial parent or guardian, the department shall notify the Bureau of Vital Statistics of the disappearance and shall provide the bureau with a description of the minor. The description of the minor must include, if known, the minor's full name, date and place of birth, parent's names, and mother's maiden name. If the Department of Public Safety has reason to believe that the minor, whether born in this state or not, has been enrolled in a specific school or school district in the state, the department shall also notify the last known school or school district attended in the state by the missing minor of the disappearance. When a person who was listed as a missing minor is found, the Department of Public Safety shall notify the Bureau of Vital Statistics and any school or school district previously informed of the person's disappearance.

(e) In this section, "law enforcement agency" has the meaning given in AS 12.36.090. (§ 2 ch 42 SLA 1985; am § 3 ch 72 SLA 1988; am §§ 1, 2 ch 144 SLA 1988; am § 4 ch 202 SLA 1990; am § 13 ch 33 SLA 1994)

Sec. 47.10.150 General powers of department over juvenile institutions. The department may

(1) purchase, lease, or construct buildings or other facilities for the care, detention, rehabilitation, and education of children in need of aid or delinquent minors;

(2) adopt plans for construction of juvenile homes, juvenile work camps, juvenile detention facilities, and other juvenile institutions;

(3) adopt standards and regulations under this chapter for the design, construction, repair, maintenance, and operation of all juvenile detention homes, work camps, facilities, and institutions;

(4) inspect periodically each juvenile detention home, work camp, facility, or other institution to ensure that the standards and regulations adopted are being maintained;

(5) reimburse cities maintaining and operating juvenile detention homes, work camps, and facilities;

(6) enter into contracts and arrangements with cities and state and federal agencies to carry out the purposes of this chapter;

(7) do all acts necessary to carry out the purposes of this chapter;

(8) adopt the regulations necessary to carry out this chapter;

(9) accept donations, gifts, or bequests of money or other property for use in construction of juvenile homes, work camps, institutions, or detention facilities;

(10) operate juvenile homes when municipalities are unable to do so;

(11) receive, care for, and place in a juvenile detention home, the minor's own home, a foster home, or a correctional school, work camp, or treatment institution all minors committed to its custody under this chapter. (§ 3 art II ch 145 SLA 1957; am § 1 ch 152 SLA 1959; am § 6 ch 104 SLA 1971; am § 25 ch 63 SLA 1977; am § 2 ch 72 SLA 1993)

Sec. 47.10.160 Duties of department.

(a) The department shall

(1) accept all minors committed to the custody of the department and all minors who are involved in a written agreement under AS 47.10.230(c), and provide for the welfare, control, care, custody, and placement of these minors in accordance with this chapter;

(2) require and collect statistics on juvenile offenses and offenders in the state;

(3) conduct studies and prepare findings and recommendations on the need, number, type, construction, maintenance, and operating costs of juvenile homes, work camps, facilities, and the other institutions, and adopt and submit a plan for construction of the homes, work camps, facilities, and institutions when needed, together with a plan for financing the construction programs;

(4) examine, where possible, all facilities, institutions, work camps, and places of juvenile detention in the state and inquire into their methods and the management of juveniles in them.

(b) For the purpose of collecting statistics, the department shall establish and require state and local agencies that operate a jail or other detention facility to use a standardized form to keep a record and report the admission of a minor. The record shall be limited to the name of the minor admitted, the minor's date of birth, the specific offense for which the minor was admitted, the date and time admitted, the date and time released, the sex of the minor, the ethnic origin of the minor, and other information required by federal law. Except for the notation of the date and time of the minor's release, the record shall be prepared at the time of the minor's admission. Unless otherwise provided by law, information and records obtained under this subsection are confidential and are not public records. They may be disclosed only for the purpose of compiling statistics and in a manner that does not reveal the identity of the minor. (§ 5 art II ch 145 SLA 1957; am § 4 ch 110 SLA 1967; am § 4 ch 100 SLA 1971; am § 6 ch 104 SLA 1971; am § 1 ch 169 SLA 1990; am § 3 ch 72 SLA 1993)

Sec. 47.10.180 Operation of homes and facilities. (a) The department shall adopt standards and regulations for the operation of

(1) juvenile detention homes and juvenile detention facilities in the state; and

(2) juvenile work camps in the state; the regulations adopted under this paragraph must provide a means by which to ensure that a minor who is placed in a work camp

(A) is in good physical and mental condition and able to perform the work and engage in the activities that may be required of the minor;

(B) does not present a danger to the physical safety of other minors who are placed in the work camp.

(b) The department may enter into contracts with cities and other governmental agencies for the detention of juveniles before and after commitment by juvenile authorities. A contract may not be made for longer than one year. (§ 8 art II ch 145 SLA 1957; am § 3 ch 97 SLA 1960; am § 6 ch 104 SLA 1971; am § 5 ch 72 SLA 1993)

Sec. 47.10.190 Detention of minors. When the court commits a minor to the custody of the department, except when detention in a correctional facility is authorized by AS 47.10.130(c), the department shall arrange to place the juvenile in a detention home, work camp, or another suitable place that the department designates for that purpose. (§ 9 art II ch 145 SLA 1957; am § 6 ch 72 SLA 1993; am § 16 ch 33 SLA 1994)

Sec. 47.30.705. Emergency detention for evaluation. A peace officer, a psychiatrist or physician who is licensed to practice in this state or employed by the federal government, or clinical psychologist licensed by the state Board of Psychologists and psychological Examiners who has probable cause to believe that a person is gravely disabled or is suffering from mental illness and is likely to cause serious harm to self or others of such immediate nature that considerations of safety do not allow initiation of involuntary commitment procedures set out in AS 47.30.700, may cause the person to be taken into custody and delivered to the nearest evaluation facility. A person taken into custody for emergency evaluation may not be placed in a jail or other correctional facility except for protective custody purposes and only while awaiting transportation to a treatment facility. The peace officer or mental health professional shall complete an application for examination of the person in custody and be interviewed by a mental health professional at the facility. (§ 1 ch 84 SLA 1981; am § 8 ch 142 SLA 1984)

Sec. 47.30.725. Commitment proceeding rights; notification. (a) When a respondent is detained for evaluation under AS 47.30.660 - 47.30.915, the respondent shall be immediately notified orally and in writing of the rights under this section. Notification must be in a language understood by the respondent.

The respondent's guardian, if any, and if the respondent requests, an adult designated by the respondent, shall also be notified of the respondent's rights under this section.

(b) Unless a respondent is released or voluntarily admitted for treatment within 72 hours of arrival at the facility or, if the respondent is evaluated by evaluation personnel, within 72 hours from the beginning of the respondent's meeting with evaluation personnel, the respondent is entitled to a court hearing to be set for not later than the end of that 72 hour period to determine whether there is a cause for detention after the 72 hours have expired for up to an additional 30 days on the grounds that the respondent is mentally ill, and as a result presents a likelihood of serious harm to the respondent or others, or is gravely disabled. The facility or evaluation personnel shall give notice to the court of the releases and voluntary admissions under AS 47.30.700 - 47.30.815.

(c) The respondent has the right to communicate immediately, at the department's expense, with the respondent's guardian, if any, or an adult designated by the respondent and the attorney designated in the ex parte order, or an attorney of the respondent's choice.

(d) The respondent has the right to be represented by an attorney, to present evidence, and to cross-examine witnesses who testify against the respondent at the hearing.

(e) The respondent has the right to be free of the effects of medication and other forms of treatment to the maximum extent possible before the 30-day commitment hearing; however, the facility or evaluation personnel may treat the respondent with medication under prescription by a licensed physician or by a less restrictive alternative of the respondent's preference if, in the opinion of a licensed physician in the case of medication, or of a mental health professional in the case of alternative treatment, the treatment is necessary to

(1) prevent bodily harm to the respondent or others;

(2) prevent such deterioration of the respondent's mental condition that subsequent treatment might not enable the respondent to recover; or

(3) allow the respondent to prepare for and participate in the proceedings.

(f) A respondent, if represented by counsel, may waive, orally or in writing, the 72-hour time limit on the 30-day commitment hearing and have the hearing set for a date no more than seven calendar days after arrival at the facility. The respondent's counsel shall immediately notify the court of the waiver. (§ 1 ch 84 SLA 1981; am § 10 ch 142 SLA 1984)

Sec. 47.30.730 Procedure for 30-day commitment; petition for commitment. (a) In the course of the 72-hour evaluation period, a petition for commitment to a treatment facility may be filed in court. The petition must be signed by two mental health professionals who have examined the respondent, one of whom is a physician. The petition must

(1) allege that the respondent is mentally ill and as a result is likely to cause harm to self or others or is gravely disabled;

(2) allege that the evaluation staff has considered but has not found that there are any less restrictive alternatives available that would adequately protect the respondent or others; or, if a less restrictive involuntary form of treatment is sought, specify the treatment and the basis for supporting it;

(3) allege with respect to a gravely disabled respondent that there is reason to believe that the respondent's mental condition could be improved by the course of treatment sought;

(4) allege that a specified treatment facility or less restrictive alternative that is appropriate to the respondent's condition has agreed to accept the respondent;

(5) allege that the respondent has been advised of the need for, but has not accepted, voluntary treatment, and request that the court commit the respondent to the specified treatment facility or less restrictive alternative for a period not to exceed 30 days;

(6) list the prospective witnesses who will testify in support of commitment or involuntary treatment; and

(7) list the facts and specific behavior of the respondent supporting the allegation in (1) of this subsection.

(b) A copy of the petition shall be served on the respondent, the respondent's attorney, and the respondent's guardian, if any, before the 30-day commitment hearing. (§ 1 ch 84 SLA 1981; am § 11 ch 142 SLA 1984)

Sec. 47.30.735. 30-day commitment. (a) Upon receipt of a proper petition for commitment, the court shall hold a hearing at the date and time previously specified according to procedures set out in AS 47.30.715.

(b) The hearing shall be conducted in a physical setting least likely to have a harmful effect on the mental or physical health of the respondent, within practical limits. At the hearing, in addition to other rights specified in AS 47.30.660 — 47.30.915, the respondent has the right

(1) to be present at the hearing; this right may be waived only with the respondent's informed consent; if the respondent is incapable of giving informed consent, the respondent may be excluded from the hearing only if the court, after hearing, finds that the incapacity exists and that there is a substantial likelihood that the respondent's presence at the hearing would be severely injurious to the respondent's mental or physical health;

(2) to view and copy all petitions and reports in the court file of the respondent's case;

(3) to have the hearing open or closed to the public as the respondent elects;

(4) to have the rules of evidence and civil procedure applied so as to provide for the informal but efficient presentation of evidence;

(5) to have an interpreter if the respondent does not understand English;

(6) to present evidence on the respondent's behalf;

(7) to cross-examine witnesses who testify against the respondent;

(8) to remain silent;

(9) to call experts and other witnesses to testify on the respondent's behalf.

(c) At the conclusion of the hearing the court may commit the respondent to a treatment facility for not more than 30 days if it finds, by clear and convincing evidence, that the respondent is mentally ill and as a result is likely to cause harm to the respondent or others or is gravely disabled.

(d) If the court finds that there is a viable less restrictive alternative available and that the respondent has been advised of and refused voluntary treatment through the alternative, the court may order the less restrictive alternative treatment for not more than 30 days if the program accepts the respondent.

(e) The court shall specifically state to the respondent, and give the respondent written notice, that if commitment or other involuntary treatment beyond the 30 days is to be sought, the respondent has the right to a full hearing or jury trial. (§ 1 ch 84 SLA 1981; am § 12 ch 142 SLA 1984)

Sec. 47.30.915 Definitions. In AS 47.30.660 — 47.30.915

(1) "commissioner" means the commissioner of health and social services;

(2) "court" means a superior court of the state;

(3) "department" means the Department of Health and Social Services;

(4) "designated treatment facility" means a hospital, clinic, institution, center, or other health care facility that has been designated by the department for the treatment or rehabilitation of mentally ill persons and for the receipt of these persons by court-ordered commitment, but does not include correctional institutions;

(5) "evaluation facility" means a health care facility that has been designated or is operated by the department to perform the evaluations described in AS 47.30.660 — 47.30.915, or a medical facility licensed under AS 18.20.020 or operated by the federal government;

(6) "evaluation personnel" means mental health professionals designated by the department to conduct evaluations as prescribed in AS 47.30.660 — 47.30.915 who conduct evaluations in places in which no staffed evaluation facility exists;

(7) "gravely disabled" means a condition in which a person as a result of mental illness

(A) is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness, or death highly probable if care by another is not taken; or

(B) will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior causing a substantial deterioration of the person's previous ability to function independently;

(8) "inpatient treatment" means care and treatment rendered inside or on the premises of a treatment facility, or a part or unit of a treatment facility, for a continual period of 24 hours or longer;

(9) "least restrictive alternative" means mental health treatment facilities and conditions of treatment that are

(A) no more harsh, hazardous, or intrusive than necessary to achieve the treatment objectives of the patient; and

(B) involve no restrictions on physical movement nor supervised residence or inpatient care except as reasonably necessary for the administration of treatment or the protection of the patient or others from physical injury;

(10) "likely to cause serious harm" means a person who

(A) poses a substantial risk of bodily harm to that person's self, as manifested by recent behavior causing, attempting, or threatening that harm;

(B) poses a substantial risk of harm to others as manifested by recent behavior causing, attempting, or threatening harm, and is likely in the near future to cause physical injury, physical abuse, or substantial property damage to another person; or

(C) manifests a current intent to carry out plans of serious harm to that person's self or another;

(11) "mental health professional" means a psychiatrist or physician who is licensed to practice in this state or employed by the federal government; a clinical psychologist licensed by the state Board of Psychologists and Psychological Associate Examiners; a psychological associate trained in clinical psychology and licensed by the Board of Psychologists and Psychological Associate Examiners; a registered nurse with a master's degree in psychiatric nursing, licensed by the State Board of Nursing; and a social worker with a master's degree in social work and substantial experience in the field of mental illness;

(12) "mental illness" means an organic, mental, or emotional impairment that has substantial adverse effects on an individual's ability to exercise conscious control of the individual's actions or ability to perceive reality or to reason or understand; mental retardation, epilepsy, drug addiction, and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness;

(13) "peace officer" includes a state police officer, municipal or other local police officer, state, municipal, or other local health officer, public health nurse, United States marshal or deputy United States marshal, or a person authorized by the court;

(14) [**See effective date note**] "persons with mental disorders" has the meaning given in AS 47.30.610.

(15) "professional person in charge" means the senior mental health professional at a facility or that person's designee; in the absence of a mental health professional it means the chief of staff or a physician designated by the chief of staff;

(16) "provider of outpatient care" means a mental health professional or hospital, clinic, institution, center, or other health care facility designated by the department to accept for treatment patients who are ordered to undergo involuntary outpatient treatment by the court or who are released early from inpatient commitments on condition that they undergo outpatient treatment;

(17) "screening investigation" means the investigation and review of facts that have been alleged to warrant emergency examination or treatment, including interviews with the persons making the allegations, any other significant witnesses who can readily be contacted for interviews, and, if possible, the respondent, and an investigation and evaluation of the reliability and credibility of persons providing information or making allegations;

(18) "state" means a state of the United States, the District of Columbia, the territories and possessions of the United States, and the Commonwealth of Puerto Rico, and, with the approval of the United States Congress, Canada. (§ 1 ch 84 SLA 1981; am §§ 26-30 ch 142 SLA 1984; am § 43 ch 66 SLA 1991)

Sec. 47.37.170 Treatment and services for intoxicated persons and persons incapacitated by alcohol. (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help or a person who appears to be intoxicated in or upon a licensed premise where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee or a peace officer, may be taken into protective custody and assisted by a peace officer or a member of the emergency service patrol to the person's home, an approved public treatment facility, an approved private treatment facility, or another appropriate health facility. If all of the preceding facilities, including the person's home, are

determined to be unavailable, a person taken into protective custody and assisted under this subsection may be taken to a state or municipal detention facility in the area.

(b) A person who appears to be incapacitated by alcohol in a public place shall be taken into protective custody by a peace officer or a member of the emergency service patrol and immediately brought to an approved public treatment facility, an approved private treatment facility, or another appropriate health facility or service for emergency medical treatment. If no treatment facility or emergency medical service is available, a person who appears to be incapacitated by alcohol in a public place shall be taken to a state or municipal detention facility in the area, if that appears necessary for the protection of the person's health or safety.

(c) A person who voluntarily appears or is brought to an approved public treatment facility shall be examined by a licensed physician or other qualified health practitioner as soon as possible. The department shall, by regulation, determine which health practitioners may be authorized to perform the examination. After the examination, the person may be admitted as a patient or referred to another health facility. The approved public treatment facility which refers the person shall arrange for transportation.

(d) A person who, after medical examination, is found to be incapacitated by alcohol at the time of admission or to have become incapacitated at any time after admission, may not be detained at a facility after the person is no longer incapacitated by alcohol. A person may not be detained at a facility if the person remains incapacitated by alcohol for more than 48 hours after admission as a patient, unless the person is committed under AS 47.37.180. A person may consent to remain in the facility as long as the physician in charge considers it appropriate.

(e) A person who is not admitted to an approved public treatment facility, is not referred to another health facility, and has no funds, may be taken to the person's home, if any. If the person has no home, the approved public treatment facility shall assist the person in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility, family or next of kin shall be promptly notified. If an adult patient who is not incapacitated requests that there be no notification of next of kin, request shall be granted.

(g) A person may not bring an action for damages based on the decision under this section to take or not to take an intoxicated person or a person incapacitated by alcohol into protective custody, unless the action is for damages caused by gross negligence or intentional misconduct.

(h) If the physician in charge of the approved public treatment facility determines it is for the patient's benefit, an attempt shall be made to encourage the patient to submit to further diagnosis and appropriate voluntary treatment.

(i) A person taken to a detention facility under (a) or (b) of this section may be detained only (1) until a treatment facility or emergency medical service is made available, or (2) until the person is no longer intoxicated or incapacitated by alcohol, or (3) for a maximum period of 12 hours, whichever occurs first. A detaining officer or a detention facility official may release a person who is detained under (a) or (b) of this section at any time to the custody of a responsible adult. A peace officer or a member of the emergency service patrol, in detaining a person under (a) or (b) of this section and in taking the person to a treatment facility, an emergency medical service or a detention facility, is taking the person into protective custody and the officer or patrol member shall make reasonable efforts to provide for and protect the health and safety of the detainee. In taking a person into protective custody under (a) and (b) of this section, a detaining officer, a member of the emergency service patrol or a detention facility official may take reasonable steps for self-protection, including a full protective search of the person of a detainee. Protective custody under (a) and (b) of this section does not constitute an arrest and no entry or other record may be made to indicate that the person detained has been arrested or charged with a crime, except that a confidential record may be made which is necessary for the administrative purposes of the facility to which the person has been taken or which is necessary for statistical purposes where the person's name may not be disclosed.

(j) For purposes of (b) of this section, "incapacitated by alcohol" means a person who, as the result of consumption of alcohol, is rendered unconscious or has judgment or physical mobility so impaired that the person cannot readily recognize or escape conditions of apparent or imminent danger to personal health or safety. The definition in AS 47.37.270 applies to other portions of this chapter. (§ 1 ch 207 SLA 1972; am §§ 1, 4 ch 101 SLA 1976; am § 2 ch 68 SLA 1989; am § 1 ch 62 SLA 1990)

ALASKA RULES OF COURT

Rule 7. Emergency Detention or Placement

(a) Arrest.

(1) A juvenile may be arrested for the commission of a delinquent act under the same circumstances and in the same manner as would apply to the arrest of an adult for violation of a criminal law of the state or a municipality of the state.

(2) A peace officer or probation officer may, without a warrant, arrest a juvenile if probable cause exists to believe that the juvenile has violated conditions of release or probation.

(3) In conformity with the Interstate Compact on Juveniles, a peace officer may, without a requisition, arrest a juvenile based upon reasonable information that the juvenile is a delinquent and has escaped from an institution or absconded from probation, parole or the jurisdiction of a court.

(b) Detention, Placement, Notification. If a juvenile is arrested, the juvenile must be taken immediately to a detention facility or placement facility designated by the Department or released pursuant to paragraph (c) of this rule. The arresting officer shall immediately notify the parents or guardian of the arrest and detention or placement and shall notify the court and Department immediately, if possible, and in no event more than 12 hours later. The arresting officer shall make and retain a written record of the notification. If the juvenile is arrested under subparagraph (a)(3) of this rule, prompt notification must also be given to the Department of Law.

(c) Release. A peace officer or probation officer may, before taking the juvenile arrested under subparagraphs (a)(1) or (2) of this rule to a detention or other placement facility, release the juvenile to the juvenile's parents or guardian if detention or placement is not necessary to protect the juvenile or others, and the juvenile will be available for court hearings. The Department may direct that a juvenile arrested under paragraph (a) of this rule be released from detention before the temporary detention hearing.

[Amended effective January 15, 1991.]

Cross References: AS 47.10.095; AS 47.10.010(a)(1); AS 12.25; AS 47.10.140(a); AS 33.05.070(a); AS 47.15; AS 47.10.130; AS 47.10.140; AS 47.10.290(6) and (7).

Rule 12. Temporary Detention Hearing

(**a) Hearing Required.** A juvenile detained under AS 47.10.140 must be taken before the court for a temporary detention hearing. The hearing must be held as soon as is practicable, but in no event later than 48 hours after notification to the court, including weekends and holidays.

(**b) Detention or Placement After Hearing.** A juvenile may not be detained or placed outside the home of a parent or guardian unless the court makes the following findings:

(1) that probable cause exists to believe that either (a) the juvenile has committed a delinquent act as alleged in a petition, or (b) after such a probable cause finding has been made at a prior hearing, the juvenile has violated a release condition or probation condition imposed by the court; and

(2) that detention or placement outside the home of a parent or guardian is necessary either (a) to protect the juvenile or others, or (b) to ensure the juvenile's appearance at subsequent court hearings. The court may not order detention unless there is no less restrictive alternative which would protect the juvenile and the public or ensure the juvenile's appearance at subsequent hearings.

(**c) Release From Detention or Placement.** The juvenile must be released to a parent, guardian, relative or some other responsible person upon such reasonable conditions as the court may set if insufficient reason exists to warrant detention or placement outside the home under paragraph (b) of this rule.

(**d) Termination of Detention or Placement.** A juvenile who has been detained for a period of 30 days, but who has not been adjudicated a delinquent, will be released unless, at or prior to the expiration of the 30 days, either:

(1) the court, after a hearing, orders continued detention and makes findings stating the reasons supporting the order; or

(2) the minor and the minor's attorney stipulate with the Department to continued detention.

If the juvenile is not in the same community as the court, the juvenile's participation at the hearing to determine continued detention may be by telephone. An order for placement outside the home pending adjudication or disposition must specify its duration.

Cross References: AS 47.10.030(c); AS 47.10.040; AS 47.10.050(b); AS 47.10.130; AS 47.10.140(c), (d).

Rule 13. Judge's Responsibility Concerning Conditions of Detention

A court exercising jurisdiction under these rules has a continuing duty to ascertain that appropriate conditions of detention of juveniles are observed concerning visitation, clothing, exercise, private visitation of counsel and confinement. A juvenile may not be confined in solitary confinement for punitive reasons.

ALASKA ADMINISTRATIVE CODE

Article 2. Admission to Juvenile Correctional Facilities

7 AAC 52.005. Regional classification. (a) When a child has been institutionalized by court order, he shall appear before a regional classification committee for placement in a facility. The child and his parents or legal guardian must be given notice in writing at least five days before the hearing unless they waive the time period in writing.

(b) A regional classification committee must be composed of three persons selected by the regional administrator of the probation office located in the judicial district where the institutionalization order originated. The chairperson of the committee and other members, where practicable, must be employees of the department.

(c) Classification meetings must be informal and nonadversarial in nature. The committee shall reach a placement decision after considering the following factors:

(1) treatment objectives for the child;

(2) protection of the public and the child; and

(3) resources available to the division.

(d) Decisions must be made by a majority of the committee, and must be recorded in writing specifically discussing alternatives considered and reasons for rejecting them. All in-state resources must be exhausted for placement consideration before a child may be classified to an institution outside the state.

(e) Immediately following a placement decision, the committee shall verbally inform the child of that decision and the findings on which it was based. Written notice of the findings must be provided to the child, his attorney, and his parents or legal guardian within 10 working days following the classification action. If the placement facility designated by the committee refuses a referral, the child must be reclassified without undue delay. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.190; AS 47.10.230

7 AAC 52.010. Criteria for admission. When a child has been institutionalized by court order and classified to a particular facility by a regional classification committee, that facility may accept or reject the child on the basis of:

(1) the ability of the facility to help the child taking into consideration other available alternatives;

(2) the ability of the child to participate in the programs of the facility; and

(3) the population of the facility. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.190

7 AAC 52.015. Legal authority to admit. No child may be admitted to a juvenile correctional institution unless:

(1) he has been adjudicated delinquent;

(2) his official record contains a valid institutional order; and

(3) he has been classified to the facility by a regional classification committee. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.080; AS 47.10.150

7 AAC 52.020. Search upon admission. Institutional staff members may search each juvenile for contraband immediately upon his entrance to the institution. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.250

7 AAC 52.025. Physical examination. Each new resident of a facility must be given a complete physical examination by medical personnel within five days after admission. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.250

7 AAC 52.030. Photographs and fingerprints. Juveniles may not be photographed or fingerprinted except by court order. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.250

7 AAC 52.035. Placement in treatment program. All children accepted by a facility must be classified and placed within a treatment program consistent with the treatment and rehabilitative needs of the individual. A treatment board shall screen, classify and designate a child to a living unit within the facility upon consideration of the child's permanent record and any psychological testing administered to the child. A treatment board shall meet within two weeks of the date on which a child is received at the institution. On the basis of information available, the board shall establish treatment goals, prescribe treatment strategy and techniques, establish a vocational or academic training program or both, and determine living unit and counselor assignments. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.250

7 AAC 52.040. Clothing and valuables. A juvenile correctional facility shall have an approved list of the maximum amount of clothing and personal items a child may have. All money and excess personal property taken from the child on admission must be stored, or provision made to send those items to the child's parents or guardian. The child must be given a receipt for stored items. Stored property must be returned to the child upon release. The state is not responsible for any personal property retained by the child. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.250

Article 8. Juvenile Detention Facilities

7 AAC 52.395. Legal authority to admit. No child may be admitted to a juvenile detention facility without completion of a request for detention by a commissioned law enforcement officer, probation officer, intake officer, or a current and valid court order committing the child to the detention facility. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.080; AS 47.10.150; AS 47.10.250; AS 47.10.140; AS 47.10.180

7 AAC 52.400. Notification of court. Institution staff shall notify the appropriate court within 24 hours of admission that a child has been admitted to detention, unless the child is admitted under court order. (Eff. 7/3/80, Register 74)

Authority: AS 47-10.140; AS 47.10.180; AS 47.10.250; AS 47.10.150

7 AAC 52.405. Search upon admission. (a) Institutional staff members shall search each child for weapons or other contraband immediately upon his entrance to the detention facility.

(b) A full and complete search of the child and his personal effects must be made to complete the admission process. The purpose of the search is to seize contraband or to ascertain the child's true identity. The staff member may require the child to undress and a more careful inspection may be made. Female staff members shall conduct searches of girls; male staff members shall conduct searches of boys. A search may be deferred while a child is incapacitated. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.180; AS 47.10.250

7 AAC 52.410. Communications upon admission. (a) Immediately upon entrance to a detention facility, a child must be permitted to make phone calls or other communications reasonably necessary to communicate with an attorney and parents or guardian, subject to (b) of this section. All long-distance calls must be made collect or arranged so as not to be made at the expense of the institution, unless authorized by the superintendent.

(b) Institutional staff members may search a child under sec. 405(a) of this chapter before allowing him to communicate under (a) of this section. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.180; AS 47.10.250

7 AAC 52.415. Health inspection upon admission. (a) A juvenile detention facility shall provide for the safekeeping, housing, care, and subsistence of those children admitted under sec. 400 of this chapter. However, if the admitting institutional staff member finds the child to be unconscious or in immediate need of medical attention, the admitting staff member shall advise the remanding or admitting party to contact responsible medical authority. The admission process may not be commenced until the admitting staff member is satisfied that the admittee has received medical attention.

(b) During the admission process, the admitting staff member shall determine whether the admittee is in need of any medical attention by inspecting for obvious injuries or illnesses, and by inquiring about any medical problems or recent use of medication or unprescribed drugs. Children who appear to be ill, injured, or incapacitated by alcohol, narcotics, or similar agents, but not in immediate need of medical attention, must be given medical attention as soon as practical. A written record must be kept of the admission interview and health inspection. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.180; AS 47.10.250

7 AAC 52.420. Clothing and valuables. A juvenile detention facility shall have an approved list of the maximum amount of clothing and personal items a child may have. All money and excess personal property taken from the child on admission must be stored, or provision made to send those items to the child's parents or guardian. The child must be given a receipt for stored items. Stored property must be returned to the child upon release. The state is not responsible for any personal property retained by the child. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47-10-180; AS 47.10.250

7 AAC 52.425. Education. Each resident must be given a reasonable opportunity to continue his education within the limits imposed by security requirements. Those residents detained in excess of 10 days must be provided n program of study through the local school district. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.250

7 AAC 52.430. Recreation and exercise. (a) Each child must be offered the opportunity for outdoor physical exercise for a minimum of 30 minutes each day, and a recreation program compatible with the varying needs and abilities of children residing at the institution.

(b) Indoor physical exercise may be substituted for outdoor exercise where weather conditions make such activities inappropriate.

(c) The recreation program must include other leisure activities as well as physical exercise. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.180; AS 47.10.250

7 AAC 52.435. Religious activity. (a) Each resident must be given a reasonable opportunity to pursue his faith.

(b) Participation in religious services conducted at a facility is voluntary. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.180; AS 47.10.250

7 AAC 52.440. Release from detention. Unless a court orders otherwise, a child must be released from detention whenever 48 hours have passed and the child has not had a hearing under AS 47.10.140. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.140; AS 47.10.180; AS 47.10.250; AS 47.10.150

7 AAC 52.445. Rules. (a) A set of rules along with the potential disciplinary action for violation of those rules must be adopted for each living unit within the institution. These rules must be in writing, must be given to each resident entering the institution, and must be available for inspection by residents at any time. If a resident is unable to understand the written rules, a counselor shall read and explain them. All rules must be approved by the director.

(b) Conduct of residents may not result in disciplinary action unless it is prohibited by the written rules of the institution or by state statute or local ordinance. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.180; AS 47.10.250

7 AAC 52.450. Adjustment rooms. (a) An adjustment room may be used only if a child is out of control and is

(1) a physical danger to others;

(2) a physical danger to himself; or

(3) so disruptive as to be a major interference to the other children in the unit.

(b) A child who is held in an adjustment room for longer than a total of 24 hours in a seven-day period, or longer than a total of four hours in a 24-hour period must be seen by a physician, psychologist, or psychiatrist, who shall submit a written report concerning the child's physical and mental condition to the superintendent, which must then be placed in the child's file.

(c) No child may be held in an adjustment room for more than 60 continuous minutes without the approval of the designated senior staff member on duty. No child may be placed in an adjustment room for over a total of four hours in any seven-day period without the express consent of the superintendent or, in his absence, the acting superintendent. If, in the opinion of the superintendent, it is necessary to place a child in an adjustment room for over 24 hours in any seven-day period, the superintendent shall make written findings to support his conclusion and shall send these to the family court, together with the report received from the examining physician, psychologist, or psychiatrist.

(d) A staff member of the institution shall observe each child in an adjustment room at least once every half hour. During non-sleeping hours, verbal contact must be made with each child observed.

(e) Complete records must be maintained in all instances of the use of an adjustment room and a record must be kept of all staff contacts while the child is in the adjustment room. (Eff. 7/3180, Register 74)

Authority: AS 47.10.150; AS 47.10.180; AS 47.10.250

7 AAC 52.455. Harsh discipline. No disciplinary action may be taken in the form of depriving a child of adequate food, drink, clothing, bedding, or adequate room temperature. Corporal punishment may not be used. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.180; AS 47.10.250

Article 9. General Provisions

7 AAC 52.900. DEFINITIONS. In this chapter, unless the context otherwise requires

(1) "adjustment room" means a locked, single room with a bed and toilet facilities in a secure area of a juvenile institution;

(2) "admission" means the administrative process of initially accepting a child into a juvenile correctional facility or a juvenile detention facility;

(3) "commissioner" means the commissioner of the Alaska Department of Health and Social Services, or any employee of the department designated by him to carry out any official function of the commissioner;

(4) "contraband" has the same meaning as in 7 AAC 60.660;

(5) "counselor" means a person who provides counseling, care, and supervision services for residents of a juvenile institution;

(6) "department" means the Alaska Department of Health and Social Services;

(7) "director" means the director of the Division of Family and Youth Services, or any employee of the division designated by him or the commissioner to carry out any official function of the director;

(8) "division" means the Division of Family and Youth Services;

(9) "family" means any person or group of persons having a relationship to the child of spouse, father, mother, sister, brother, son, daughter, step relationship to the previously mentioned relations, or any persons having an immediate family relationship with the resident during his formative years;

(10) "institution-wide emergency" means a situation in which a resident poses a threat to the security of a juvenile institution which cannot be neutralized with the resources available to the institution at any given moment in time;

(11) "juvenile correctional institution" or "juvenile correctional facility" means a facility for children adjudicated delinquent and committed to the care and custody of the Department of Health and Social Services;

(12) "juvenile detention facility" means an institution or separate quarters within an institution designated by the director for the purpose of housing children who are detained pending court hearing, disposition, or transfer to another institution;

(13) "juvenile institution" or "juvenile facility" means a juvenile correctional facility or a juvenile detention facility;

(14) "living unit" means separate living quarters for a group of children within a juvenile institution;

(15) "resident" means a child under the care and control of an institution;

(16) "security" means the interest of the division in preventing assaults, escapes, hazards to health, self-destructive behavior, serious property damage, and the introduction, transmittal, or possession of contraband;

(17) "superintendent" means the chief administrator of a juvenile institution facility;

(18) "working day" means a 24-hour period of which no portion includes Saturdays, Sundays, or holidays. (Eff. 7/3/80, Register 74)

Authority: AS 47.10.150; AS 47.10.250; AS 47.10.290; AS 47.10.180

EXECUTIVE PROCLAMATION

STATE OF ALASKA

Executive Proclamation

by

Steve Cowper, Governor

Confining children in adult jails is not in the best interest of Alaska's children or the public. In 1986 as many as 427 children were detained in adult jails and lockups throughout the state. Alaska statutes prohibit confinement of children in adult jails and lockups unless they are assigned to separate quarters so that they not view or communicate with adult prisoners.

The practice of jailing children with adults often leads to depression or suicide attempts. The risk of those children experiencing emotional, physical and sexual abuse is also increased.

The federal Juvenile Justice Delinquency Prevention Act mandates that states improve their juvenile justice systems by:

1. eliminating the practice of detaining children charged with status offenses;
2. separating children from adults by sight and sound when both are detained in the same jail, lockup, or other correctional facility;
3. identifying and monitoring all facilities which detain children;
4. eliminating the practice of detaining children in any adult jail, lockup, or correctional facility.

NOW, THEREFORE, I, Steve Cowper, Governor of the State of Alaska, do hereby proclaim my support for the Department of Health and Social Services to work with the Departments of Corrections and Public Safety, the public, and municipalities to develop regulations which reduce detention of children in adult facilities, ensure safe and appropriate conditions for children who are detained, and provide for collection and maintenance of accurate records on each youth admitted, detained and released.

DATED: April 14, 1989

Done by —

Steve Cowper, Governor,
who has also authorized
the seal of the State of
Alaska to be affixed to
this proclamation.

PART 2:

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

As Amended Through December 31, 1992

UNITED STATES CODE ANNOTATED

Title 42

The Public Health and Welfare

Sections 4541 to 6500

Comprising All Laws of a General and Permanent Nature
Under Arrangement of Official Code of
the Laws of the United States
with
Annotations from Federal and State Courts

ST. PAUL, MINN.
WEST PUBLISHING CO.

§ [illegible]. Construction with National Energy Conservation Policy Act

Nothing in this subchapter shall be construed to negate, duplicate, or otherwise affect the provisions of part C of subchapter III of chapter 91 of this title, and such part C shall be exempted fully from the provisions of this subchapter and any regulations, guidelines, or criteria pursuant thereto.

(Pub.L. 95–590, § 14, Nov. 4, 1978, 92 Stat. 2521.)

Historical Note

References in Text. Part C (section 8271 et seq.) of subchapter III of chapter 91 of this title, referred to in text, in the original read "title V (Federal Initiatives), part 4 (Federal Photovoltaic Utilization), National Energy Conservation Policy Act, H.R. 5037, 95th Congress, if and when that Act becomes enacted by the Ninety-fifth Congress". The Act was enacted as Pub.L. 95–619, Nov. 9, 1978, 92 Stat. 3206, and is classified principally to chapter 91 (section 8201 et seq.) of this title. For complete classification of this Act of the Code, see Short Title note set out under section 8201 of this title and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 95–590, see 1978 U.S. Code Cong. and Adm.News, p. 5723.

§ 5594. Authorization of appropriations

There is hereby authorized to be appropriated to the Secretary, for the fiscal year ending September 30, 1979, $125,000,000, inclusive of any funds otherwise authorized for photovoltaic programs, (1) to carry out the functions vested in the Secretary by this subchapter, (2) to carry out the functions in fiscal year 1979, vested in the Secretary by part C of subchapter III of chapter 91 of this title, and (3) for transfer to such other agencies of the Federal Government as may be required to enable them to carry out their respective functions under this subchapter. Funds appropriated pursuant to this section shall remain available until expended: *Provided,* That any contract or agreement entered into pursuant to this subchapter shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Authorizations of appropriations for fiscal years after fiscal year 1979 shall be contained in the annual authorization for the Department of Energy, except for those funds authorized for fiscal years 1980 and 1981 contained in part C of subchapter III of chapter 91 of this title.

(Pub.L. 95–590, § 15, Nov. 4, 1978, 92 Stat. 2522.)

Historical Note

References in Text. Part C (section 8271 et seq.) of subchapter III of chapter 91 of this title, referred to in text, in the original read "part 4 of title V of H.R. 5037, 95th Congress, if enacted by the 95th Congress". H.R. 5037 was enacted as Pub.L. 95–619, Nov. 9, 1978, 92 Stat. 3206, and is classified principally to chapter 91 (section 8201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 95–590, see 1978 U.S. Code Cong. and Adm.News, p. 5723.

CHAPTER 72—JUVENILE JUSTICE AND DELINQUENCY PREVENTION

SUBCHAPTER I—GENERALLY

SUBCHAPTER II—PROGRAMS AND OFFICES

PART A—JUVENILE JUSTICE AND DELINQUENCY PREVENTION OFFICE

Cross References

Plans submitted by states to carry out purposes of this chapter as prerequisite to receiving formula grants, see section 3745 of this title.

State criminal justice council as state planning agency for carrying out purposes of this chapter, see section 3797 of this title.

SUBCHAPTER I—GENERALLY

§ 5601. Congressional statement of findings

(a) The Congress hereby finds that—

(1) juveniles account for almost half the arrests for serious crimes in the United States today;

(2) understaffed, overcrowded juvenile courts, probation services, and correctional facilities are not able to provide individualized justice or effective help;

(3) present juvenile courts, foster and protective care programs, and shelter facilities are inadequate to meet the needs of the countless, abandoned, and dependent children, who, because of this failure to provide effective services, may become delinquents;

(4) existing programs have not adequately responded to the particular problems of the increasing numbers of young people who are addicted to or who abuse alcohol and other drugs, particularly nonopiate or polydrug abusers;

(5) juvenile delinquency can be prevented through programs designed to keep students in elementary and secondary schools through the prevention of unwarranted and arbitrary suspensions and expulsions;

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(6) States and local communities which experience directly the devastating failures of the juvenile justice system do not presently have sufficient technical expertise or adequate resources to deal comprehensively with the problems of juvenile delinquency;

(7) existing Federal programs have not provided the direction, coordination, resources, and leadership required to meet the crisis of delinquency; and

(8) the juvenile justice system should give additional attention to the problem of juveniles who commit serious crimes, with particular attention given to the areas of sentencing, providing resources necessary for informed dispositions, and rehabilitation.

(b) Congress finds further that the high incidence of delinquency in the United States today results in enormous annual cost and immeasurable loss of human life, personal security, and wasted human resources and that juvenile delinquency constitutes a growing threat to the national welfare requiring immediate and comprehensive action by the Federal Government to reduce and prevent delinquency.

(Pub.L. 93–415, Title I, § 101, Sept. 7, 1974, 88 Stat. 1109; Pub.L. 96–509, § 3, Dec. 8, 1980, 94 Stat. 2750.)

Historical Note

1980 Amendment. Subsec. (a)(4). Pub.L. 96–509, § 3(1), inserted reference to alcohol abuse.

Subsec. (a)(8). Pub.L. 96–509, § 3(2)–(4), added par. (8).

Effective Date of 1977 Amendment. Section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, § 6(d)(2), Oct. 3, 1977, 91 Stat. 1058, provided that: "Except as otherwise provided by the Juvenile Justice Amendments of 1977, the amendments made by the Juvenile Justice Amendments of 1977 [see Short Title of 1977 Amendment note below] shall take effect on October 1, 1977."

Effective Date. Section 263(a) and (b) of Pub.L. 93–415, as amended by Pub.L. 94–273, § 32(a), Apr. 21, 1976, 90 Stat. 380; Pub.L. 95–115, § 6(d)(1), Oct. 3, 1977, 91 Stat. 1158, provided that:

"(a) Except as provided by subsections (b) and (c) [set out as an Effective Date of 1977 Amendment note above], the foregoing provisions of this Act [enacting subchapters I and II of this chapter and amending section 5108 of Title 5, Government Organization and Employees] shall take effect on the date of enactment of this Act [Sept. 7, 1974.]

"(b) Section 204(b)(5) and 204(b)(6) [section 5614(b)(5) and 5614(b)(6) of this title] shall become effective at the close of the thirty-first day of the twelfth calendar month of 1974. Section 204(*l*) [section 5614(*l*) of this title] shall become effective at the close of the thirtieth day of the eleventh month of 1976."

Short Title of 1980 Amendment. Pub.L. 96–509, § 1, provided that: "This Act [enacting section 5617 of this title, amending this section and sections 5602, 5603, 5611, 5612, 5614, 5615, 5616, 5632, 5633, 5634, 5637, 5638, 5651, 5654, 5655, 5656, 5659, 5660, 5661, 5671, 5672, 5711, 5712, 5713, 5715 and 5751 of this title, repealing former section 5617, sections 5618 and 5619 of this title, and enacting provisions set out as notes under this section and section 5633 of this title] may be cited as the 'Juvenile Justice Amendments of 1980'."

Short Title of 1977 Amendment. Section 1 of Pub.L. 95–115, Oct. 3, 1977, 91 Stat. 1048, provided that: "This Act [which enacted section 5741 of this title, amended section 5316 of Title 5, Government Organization and Employees, sections 4351 and 5038 of Title 18, Crimes and Criminal Procedure, and sections 3723, 3767, 3811 to 3814, 3882, 3883, 3888, 3889, 5603, 5611, 5612, 5614 to 5618, 5631 to 5635, 5637 to 5639, 5651, 5653 to 5657, 5659 to 5661, 5671, 5672, 5711 to 5713, 5731, and 5751 of this title, repealed sections 3821, 5658, and 5732 of this title, enacted provisions set out as notes under this section and sections 5632, 5633, and 5638 of this title, and amended provisions set out as a note under this section] may be cited as the 'Juvenile Justice Amendments of 1977'."

Short Title. Section 1 of Pub.L. 93–415 provided: "That this Act [enacting this chapter and sections 3772 to 3774, and 3821 of this title, and sections 4351 to 4353, 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amending sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, 3883 and 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealing section 3889 of this title] may be cited as the 'Juvenile Justice and Delinquency Prevention Act of 1974'."

Section 301 of Pub.L. 93–415 as amended by Pub.L. 96–509, § 18(b), Dec. 8, 1980, 94 Stat. 2762, provided that: "This [enacting subchapter III of this chapter] may be cited as the 'Runaway and Homeless Youth Act'."

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

Code of Federal Regulations

Juvenile justice and delinquency prevention see 28 CFR 31.1 et seq.

Library References

Infants ⇐131 et seq. C.J.S. Infants §§ 11 et seq., 93 et seq.

§ 5602. Congressional declaration of purpose and policy

(a) It is the purpose of this chapter—

(1) to provide for the thorough and prompt evaluation of all federally assisted juvenile delinquency programs;

(2) to provide technical assistance to public and private agencies, institutions, and individuals in developing and implementing juvenile delinquency programs;

(3) to establish training programs for persons, including professionals, paraprofessionals, and volunteers, who work with delinquents or potential delinquents or whose work or activities relate to juvenile delinquency programs;

(4) to establish a centralized research effort on the problems of juvenile delinquency, including an information clearinghouse to disseminate the findings of such research and all data related to juvenile delinquency;

(5) to develop and encourage the implementation of national standards for the administration of juvenile justice, including recommendations for administrative, budgetary, and legislative action at the Federal, State, and local level to facilitate the adoption of such standards;

(6) to assist States and local communities with resources to develop and implement programs to keep students in elementary and secondary schools and to prevent unwarranted and arbitrary suspensions and expulsions;

(7) to establish a Federal assistance program to deal with the problems of runaway youth; and

(8) to assist State and local governments in removing juveniles from jails and lockups for adults.

(b) It is therefore the further declared policy of Congress to provide the necessary resources, leadership, and coordination (1) to develop and implement effective methods of preventing and reducing juvenile delinquency, including methods with a special focus on maintaining and strengthening the family unit so that juveniles may be retained in their homes; (2) to develop and conduct effective programs to prevent delinquency, to divert juveniles from the traditional juvenile justice system and to provide critically needed alternatives to institutionalization; (3) to improve the quality of juvenile justice in the United States; and (4) to increase the capacity of State and local governments and public and private agencies to conduct effective juvenile justice and delinquency prevention and rehabilitation programs and to provide research, evaluation, and training services in the field of juvenile delinquency prevention.

(Pub.L. 93–415, Title I, § 102, Sept. 7, 1974, 88 Stat. 1110; Pub.L. 96–509, § 4, Dec. 8, 1980, 94 Stat. 2750.)

Historical Note

References in Text. This chapter, referred to in subsec. (a), in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

1980 Amendment. Subsec. (a)(8). Pub.L. 96–509, § 4(a), added subsec. (a)(8).

Subsec. (b)(1). Pub.L. 96–509, § 4(b), inserted reference to methods with a special focus on maintaining and strengthening the family unit so that juveniles may be retained in their homes.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

Notes of Decisions

Dismissal 2
Retroactive effect 1

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1. Retroactive effect

This chapter was applicable to juvenile, who was 16 years old at time of incident in national park giving rise to first-degree murder charge, where indictment had not been tried by date of approval of this chapter; exposure of juvenile to mandatory treatment as an adult for offenses punishable by death or life imprisonment was not a liability saved by section 109 of Title 1, the general savings provision. U. S. v. Azevedo, D.C.Hawaii 1975, 394 F.Supp. 852.

2. Dismissal

Although this chapter applied to defendant, who was 16 years old at time of incident in national park giving rise to first-degree murder charge and who had not been tried prior to approval of this chapter, proper remedy was not necessarily dismissal. U. S. v. Azevedo, D.C.Hawaii 1975, 394 F.Supp. 852.

§ 5603. Definitions

For purposes of this chapter—

(1) the term "community based" facility, program, or service means a small, open group home or other suitable place located near the juvenile's home or family and programs of community supervision and service which maintain community and consumer participation in the planning operation, and evaluation of their programs which may include, but are not limited to, medical, educational, vocational, social, and psychological guidance, training, special education, counseling, alcoholism treatment, drug treatment, and other rehabilitative services;

(2) the term "Federal juvenile delinquency program" means any juvenile delinquency program which is conducted, directly, or indirectly, or is assisted by any Federal department or agency, including any program funded under this chapter;

(3) the term "juvenile delinquency program" means any program or activity related to juvenile delinquency prevention, control, diversion, treatment, rehabilitation, planning, education, training, and research, including drug and alcohol abuse programs; the improvement of the juvenile justice system; and any program or activity for neglected, abandoned, or dependent youth and other youth to help prevent delinquency;

(4)(A) the term "Office of Justice Assistance, Research, and Statistics" means the office established by section 3781(a) of this title;

(B) the term "Law Enforcement Assistance Administration" means the administration established by section 3711 of this title;

(C) the term "National Institute of Justice" means the institute established by section 3722(a) of this title; and

(D) the term "Bureau of Justice Statistics" means the bureau established by section 3732(a) of this title;

(5) the term "Administrator" means the agency head designated by section 5611(c) of this title;

(6) the term "law enforcement and criminal justice" means any activity pertaining to crime prevention, control, or reduction or the enforcement of the criminal law, including, but not limited to police efforts to prevent, control, or reduce crime or to apprehend criminals, activities of courts having criminal jurisdiction and related agencies (including prosecutorial and defender services), activities of corrections, probation, or parole authorities, and programs relating to the prevention, control, or reduction of juvenile delinquency or narcotic addiction;

(7) the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(8) the term "unit of general local government" means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligibility, any agency of the District of Columbia government performing law enforcement functions in and for the District of Columbia and funds appropriated by the Congress for

the activities of such agency may be used to provide the non-Federal share of the cost of programs or projects funded under this subchapter;

(9) the term "combination" as applied to States or units of general local government means any grouping or joining together of such States or units for the purpose of preparing, developing, or implementing a juvenile justice and delinquency prevention plan;

(10) the term "construction" means acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees but not the cost of acquisition of land for buildings);

(11) the term "public agency" means any State, unit of local government, combination of such States or units, or any department, agency, or instrumentality of any of the foregoing;

(12) the term "secure detention facility" means any public or private residential facility which—

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and

(B) is used for the temporary placement of any juvenile who is accused of having committed an offense, of any nonoffender, or of any other individual accused of having committed a criminal offense;

(13) the term "secure correctional facility" means any public or private residential facility which—

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and

(B) is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense, any nonoffender, or any other individual convicted of a criminal offense;

(14) the term "serious crime" means criminal homicide, forcible rape, mayhem, kidnapping, aggravated assault, robbery, larceny or theft punishable as a felony, motor vehicle theft, burglary or breaking and entering, extortion accompanied by threats of violence, and arson punishable as a felony; and

(15) the term "treatment" includes but is not limited to medical, educational, special education, social, psychological, and vocational services, corrective and preventive guidance and training, and other rehabilitative services designed to protect the public, including services designed to benefit addicts and other users by eliminating their depen-

dence on alcohol or other addictive or nonaddictive drugs by controlling their dependence and susceptibility to addiction o[1]

(Pub.L. 93–415, Title I, § 103, Sept. 7, 1974, 88 Stat. 1111; Pub.L. 95–115, § 2, Oct. 3, 1977, 91 Stat. 1048; Pub.L. 96–509, §§ 5, 19(a), Dec. 8, 1980, 94 Stat. 2751, 2762.)

[1] So in original. Probably should be close parenthesis.

Historical Note

References in Text. This chapter, referred to in introductory clause and in par. (2), in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

1980 Amendment. Par. (1). Pub.L. 96–509, § 5(a), added reference to special education.

Par. (4). Pub.L. 96–509, § 5(b), designated existing provisions as subpar. (B) and added subpars. (A), (C), and (D).

Par. (5). Pub.L. 96–509, § 19(a), substituted "section 5611(c) of this title" for "section 3711(c) of this title".

Par. (7). Pub.L. 96–509, § 5(c), substituted "the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands" for "and any territory or possession of the United States".

Par. (9). Pub.L. 96–509 § 5(d), substituted "juvenile justice and delinquency prevention" for "law enforcement".

Par. (12). Pub.L. 96–509, § 5(e), substituted the definition of the term "secure detention facility" for the definition of the term "correctional institution or facility".

Par. (13). Pub.L. 96–509, § 5(f), added par. (13). Former par. (13) was redesignated (15).

Par. (14). Pub.L. 96–509, § 5(f), added par. (14).

Par. (15). Pub.L. 96–509, § 5(f), (g), redesignated par. (13) as (15) and, in par. (15) as so redesignated, added reference to special education and substituted "protect the public, including services designed to benefit addicts and other users by eliminating their dependence on alcohol or other addictive or nonaddictive drugs or by controlling their dependence and susceptibility to addiction or use" for "protect the public and benefit the addict or other user by eliminating his dependence on addicting or other drugs or by controlling his dependence, and his susceptibility to addiction or use".

1977 Amendment. Par. (3). Pub.L. 95–115 substituted "to help prevent delinquency" for "who are in danger of becoming delinquent".

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 admendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

SUBCHAPTER II—PROGRAMS AND OFFICES

PART A—JUVENILE JUSTICE AND DELINQUENCY PREVENTION OFFICE

§ 5611. Establishment

(a) Placement under general authority of Attorney General, Department of Justice; administration of provisions by administrator

There is hereby created within the Department of Justice, under the general authority of the Attorney General, the Office of Juvenile Justice and

Delinquency Prevention (referred to in this chapter as the "Office"). The Administrator shall administer the provisions of this chapter through the Office.

(b) Administration of programs

The programs authorized pursuant to this chapter unless otherwise specified in this chapter shall be administered by the Office established under this section.

(c) Administrator; nomination by President

There shall be at the head of the Office an Administrator who shall be nominated by the President by and with the advice and consent of the Senate.

(d) Powers of Administrator

The Administrator shall exercise all necessary powers, subject to the general authority of the Attorney General. The Administrator is authorized to prescribe regulations for, award, administer, modify, extend, terminate, monitor, evaluate, reject, or deny all grants and contracts from, and applications for, funds made available under part B and part C of this subchapter. The Administrator of the Law Enforcement Assistance Administration and the Director of the National Institute of Justice may delegate such authority to the Administrator of the Office of Juvenile Justice and Delinquency Prevention for all grants and contracts from, and applications for, funds made available under this part and funds made available for juvenile justice and delinquency prevention programs under the Omnibus Crime Control and Safe Streets Act of 1968, as amended [42 U.S.C.A. § 3701 et seq.].

(e) Deputy Administrator; appointment; general functions

There shall be in the Office a Deputy Administrator who shall be appointed by the Attorney General. The Deputy Administrator shall perform such functions as the Administrator from time to time assigns or delegates, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

(f) Supervision of National Institute for Juvenile Justice and Delinquency Prevention

There shall be established in the Office a Deputy Administrator who shall be appointed by the Attorney General whose function shall be to supervise and direct the National Institute for Juvenile Justice and Delinquency Prevention established under section 5651 of this title.

(Pub.L. 93–415, Title II, § 201(a)–(f), Sept. 7, 1974, 88 Stat. 1112, 1113; Pub.L. 95–115, § 3(a)(1)–(3)(A), (4), (5), Oct. 3, 1977, 91 Stat. 1048, 1049; Pub.L. 96–509, §§ 6, 19(b), Dec. 8, 1980, 94 Stat. 2752, 2762.)

Historical Note

Reference in Text. The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (d), is Pub.L. 90–351, June 19, 1968, 82 Stat. 197, as amended, Title I of which is classified principally to chapter 46 (section 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables volume.

This chapter, referred to in subsecs. (a) and (b), in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

1980 Amendment. Subsec. (a). Pub.L. 96–509, § 6(a), substituted "under the general authority of the Attorney General" for "Law Enforcement Assistance Administration".

Subsec. (c). Pub.L. 96–509, § 19(b)(1), substituted "Administrator" for "Associate Administrator" as the name of the official heading the Office of Juvenile Justice and Delinquency Prevention and struck out provisions that had governed the meaning to be placed upon the use of the title "Associate Administrator".

Subsec. (d). Pub.L. 96–509, §§ 6(b), 19(b)(2), substituted "Administrator" for "Associate Administrator" wherever appearing, struck out provisions that had required the former Associate Administrator to report directly to the Administrator, and provided that the Administrator exercises all necessary powers under the general authority of the Attorney General rather than the Administrator of the Law Enforcement Assistance Administration, clarified that the Administrator of the Office of Juvenile Justice and Delinquency Prevention is authorized to prescribe regulations for all grants and contracts available under part B and part C of this subchapter, and provided that the Administrator of the Law Enforcement Assistance Administration and the Director of the National Institute of Justice may delegate authority to the Administrator for all juvenile justice and delinquency prevention grants and contracts for funds made available under the Omnibus Crime Control and Safe Streets Act of 1968.

Subsec. (e). Pub.L. 96–509, §§ 6(c), 19(b)(3), substituted "'Deputy Administrator" for "Deputy Associate Administrator", "Administrator" for "Associate Administrator", "Attorney General" for "Administrator of the Law Enforcement Assistance Administration", and "office" for "Office".

Subsec. (f). Pub.L. 96–509, §§ 6(d), 19(b)(4), substituted "Deputy Administrator" for "Deputy Associate Administrator" and "Attorney General" for "Administrator".

1977 Amendment. Subsec. (a). Pub.L. 95–115, § 3(a)(1), added provisions relating to administration of provisions of this chapter.

Subsec. (c). Pub.L. 95–115, § 3(a)(2), (3)(A), added provisions relating to statutory references to the Associate Administrator and substituted "an Associate" for "an Assistant".

Subsec. (d). Pub.L. 95–115, § 3(a)(3)(A), (4), added provisions relating to powers of the Associate Administrator over grants and contracts and provisions relating to reporting requirement and substituted "The Associate Administrator shall exercise" for "The Assistant Administrator shall exercise".

Subsec. (e). Pub.L. 95–115, § 3(a)(3)(A), (5), substituted references to Deputy Associate Administrator and Associate Administrator for references to Deputy Assistant Administrator and Assistant Administrator, respectively, wherever appearing therein.

Subsec. (f). Pub.L. 95–115, § 3(a)(5), substituted "Associate" for "Assistant".

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News. p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

[Part 2 – p. 8]

Cross References

Programs relating to juvenile delinquency and administration administered and subject to direction of Office established by this section, see section 3789i of this title.

Library References

Infants ⇐132.
United States ⇐29.
C.J.S. United States §§ 34, 62.
C.J.S. Infants §§ 17, 18.

§ 5612. Personnel

(a) Selection; employment; compensation

The Administrator is authorized to select, employ, and fix the compensation of such officers and employees, including attorneys, as are necessary to perform the functions vested in him and to prescribe their functions.

(b) Special personnel

The Administrator is authorized to select, appoint, and employ not to exceed three officers and to fix their compensation at rates not to exceed the rate now or hereafter prescribed for GS–18 of the General Schedule by section 5332 of Title 5.

(c) Personnel from other agencies

Upon the request of the Administrator, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of its personnel to the Administrator to assist him in carrying out his functions under this chapter.

(d) Experts and consultants

The Administrator may obtain services as authorized by section 3109 of Title 5, at rates not to exceed the rate now or hereafter prescribed for GS–18 of the General Schedule by section 5332 of Title 5.

(Pub.L. 93–415, Title II, § 202, Sept. 7, 1974, 88 Stat. 1113; Pub.L. 95–115, § 3(a)(3)(A), Oct. 3, 1977, 91 Stat. 1048; Pub.L. 96–509, § 19(c), Dec. 8, 1980, 94 Stat. 2763.)

Historical Note

References in Text. This chapter, referred to in subsec. (c), in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

1980 Amendment. Subsec. (c). Pub.L. 96–509, § 19(c)(1), substituted "Administrator" for "Associate Administrator".

Subsec. (d). Pub.L. 96–509, § 19(c)(2), substituted "Title 5" for "Title I" following "section 5332 of".

1977 Amendment. Subsec. (c). Pub.L. 95–115 substituted "Associate" for "Assistant".

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5613. Voluntary and uncompensated services

The Administrator is authorized to accept and employ, in carrying out the provisions of this chapter, voluntary and uncompensated services notwithstanding the provisions of section 1342 of Title 31.

(Pub.L. 93–415, Title II, § 203, Sept. 7, 1974, 88 Stat. 1113.)

Historical Note

References in Text. This chapter, referred to in text, in the original read "this Act" meaning Pub.L. 93–415 Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

Codification. "Section 1342 of Title 31" was substituted in text for "section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))" on authority of Pub.L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283.

§ 5614. Concentration of federal efforts

(a) Implementation of policy by Administrator; consultation with Council and Advisory Committee

The Administrator shall implement overall policy and develop objectives and priorities for all Federal juvenile delinquency programs and activities relating to prevention, diversion, training, treatment, rehabilitation, evaluation, research, and improvement of the juvenile justice system in the United States. In carrying out his functions, the Administrator shall consult with the Council and the National Advisory Committee for Juvenile Justice and Delinquency Prevention.

(b) Duties of Administrator

In carrying out the purposes of this chapter, the Administrator shall—

(1) advise the President through the Attorney General as to all matters relating to federally assisted juvenile delinquency programs and Federal policies regarding juvenile delinquency;

(2) assist operating agencies which have direct responsibilities for the prevention and treatment of juvenile delinquency in the development and promulgation of regulations, guidelines, requirements, criteria, standards, procedures, and budget requests in accordance with the policies, priorities, and objectives he establishes;

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(3) conduct and support evaluations and studies of the performance and results achieved by Federal juvenile delinquency programs and activities and of the prospective performance and results that might be achieved by alternative programs and activities supplementary to or in lieu of those currently being administered;

(4) implement Federal juvenile delinquency programs and activities among Federal departments and agencies and between Federal juvenile delinquency programs and activities and other Federal programs and activities which he determines may have an important bearing on the success of the entire Federal juvenile delinquency effort;

(5) develop annually with the assistance of the Advisory Committee and the Coordinating Council and submit to the President and the Congress, after the first year following October 3, 1977, prior to December 31, an analysis and evaluation of Federal juvenile delinquency programs conducted and assisted by Federal departments and agencies, the expenditures made, the results achieved, the plans developed, and problems in the operations and coordination of such programs and a brief but precise comprehensive plan for Federal juvenile delinquency programs, with particular emphasis on the prevention of juvenile delinquency and the development of programs and services which will encourage increased diversion of juveniles from the traditional juvenile justice system, which analysis and evaluation shall include recommendations for modifications in organization, management, personnel, standards, budget requests, and implementation plans necessary to increase the effectiveness of these programs; and

(6) provide technical assistance and training assistance to Federal, State, and local governments, courts public and private agencies, institutions, and individuals, in the planning, establishment, funding, operation, or evalution of juvenile delinquency programs.

(c) Report by President to Congress and Council; time for report

The President shall, no later than ninety days after receiving each annual report under subsection (b)(5) of this section, submit a report to the Congress and to the Council containing a detailed statement of any action taken or anticipated with respect to recommendations made by each such annual report.

(d) First and second annual reports of Administrator; contents

(1) The first annual report submitted to the President and the Congress by the Administrator under subsection (b)(5) of this section shall contain, in addition to information required by subsection (b)(5) of this section, a detailed statement of criteria developed by the Administrator for identifying the characteristics of juvenile delinquency, juvenile delinquency prevention, diversion of youths from the juvenile justice system, and the training, treatment, and rehabilitation of juvenile delinquents.

(2) The second such annual report shall contain, in addition to information required by subsection (b)(5) of this section, an identification of Federal programs which are related to juvenile delinquency prevention or treatment,

together with a statement of the moneys expended for each such program during the most recent complete fiscal year. Such identification shall be made by the Administrator through the use of criteria developed under paragraph (1).

(e) Third annual report of Administrator; contents

The third such annual report submitted to the President and the Congress by the Administrator under subsection (b)(5) of this section shall contain, in addition to the comprehensive plan required by subsection (b)(5) of this section, a detailed statement of procedures to be used with respect to the submission of juvenile delinquency development statements to the Administrator by Federal agencies under subsection (*l*) of this section. Such statement submitted by the Administrator shall include a description of information, data, and analyses which shall be contained in each such development statement.

(f) Information, reports, studies, and surveys from other agencies

The Administrator may require, through appropriate authority, Federal departments and agencies engaged in any activity involving any Federal juvenile delinquency program to provide him with such information and reports, and to conduct such studies and surveys, as he may deem to be necessary to carry out the purposes of this part.

(g) Delegation of functions

The Administrator may delegate any of his functions under this subchapter, to any officer or employee of the Office.

(h) Utilization of services and facilities of other agencies; reimbursement

The Administrator is authorized to utilize the services and facilities of any agency of the Federal Government and of any other public agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement as may be agreed upon.

(i) Transfer of funds to other agencies

The Administrator is authorized to transfer funds appropriated under this subchapter to any agency of the Federal Government to develop or demonstrate new methods in juvenile delinquency prevention and rehabilitation and to supplement existing delinquency prevention and rehabilitation programs which the Administrator finds to be exceptionally effective or for which he finds there exists exceptional need.

(j) Grants and contracts to other agencies, organizations, institutions, and individuals

The Administrator is authorized to make grants to, or enter into contracts with, any public or private agency, organization, institution, or individual to carry out the purposes of this subchapter.

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(k) Coordination of functions of Administrator and Secretary of Health and Human Services

All functions of the Administrator under this subchapter shall be coordinated as appropriate with the functions of the Secretary of Health and Human Services under subchapter III of this chapter.

(l) Annual juvenile delinquency development statements of other agencies; procedure; contents; review by Administrator

(1) The Administrator shall require through appropriate authority each Federal agency which administers a Federal juvenile delinquency program which meets any criterion developed by the Administrator under subsection (d)(1) of this section to submit annually to the Council a juvenile delinquency development statement. Such statement shall be in addition to any information, report, study, or survey which the Administrator may require under subsection (f) of this section.

(2) Each juvenile delinquency development statement submitted to the Administrator under this subsection shall be submitted in accordance with procedures established by the Administrator under subsection (e) of this section and shall contain such information, data, and analyses as the Administrator may require under subsection (e) of this section. Such analyses shall include an analysis of the extent to which the juvenile delinquency program of the Federal agency submitting such development statement conforms with and furthers Federal juvenile delinquency prevention and treatment goals and policies.

(3) The Administrator shall review and comment upon each juvenile delinquency development statement transmitted to him under this subsection. Such development statement, together with the comments of the Administrator, shall be included by the Federal agency involved in every recommendation or request made by such agency for Federal legislation which significantly affects juvenile delinquency prevention and treatment.

(m) Authorization of appropriations

To carry out the purposes of this section, there is authorized to be appropriated for each fiscal year an amount which does not exceed 7.5 percent of the total amount appropriated to carry out this subchapter.

(Pub.L. 93–415, Title II, § 204, Sept. 7, 1974, 88 Stat. 1113; Pub.L. 94–273, §§ 8(3), 12(3), Apr. 21, 1976, 90 Stat. 378; Pub.L. 95–115, § 3(a)(3)(A), (b), Oct. 3, 1977, 91 Stat. 1048, 1049; Pub.L. 96–509, §§ 7, 19(d), Dec. 8, 1980, 94 Stat. 2752, 2763.)

Historical Note

References in Text. This chapter, referred to in subsec. (b), in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3[illegible] of this title.

The Juvenile Delinquency Prevention Act, referred to in subsec. (k), is Pub.L. 90–445, as added Pub.L. 92–381, Aug. 14, 1972, 86 Stat. [illegible]

[illegible] as amended, which is classified generally to chapter 47 (section 3801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of this title and Tables volume.

1980 Amendment. Subsec. (b). Pub.L. 96–509, § 7(a), struck out reference to the Associate Administrator in the provisions preceding par. (1) and in par. (6) inserted reference to training assistance.

Subsec. (d)(1). Pub.L. 96–509, § 19(d)(1), substituted "Administrator for identifying" for "Associate Administrator for identifying".

Subsec. (g). Pub.L. 96–509, § 19(d)(2), substituted "Office" for "Administration".

Subsec. (i). Pub.L. 96–509, § 19(d)(3) substituted "Administrator finds" for "Associate Administrator finds".

Subsec. (k). Pub.L. 96–509, § 19(d)(4), substituted "Health and Human Services" for "the Department of Health, Education, and Welfare".

Subsec. (*l*)(1). Pub.L. 96–509, § 19(d)(5), substituted "developed by the Administrator" for "developed by the Associate Administrator".

Subsec. (m). Pub.L. 96–509, § 7(b), added subsec. (m).

1977 Amendment. Subsec. (b). Pub.L. 95–115, § 3(b)(1), in introductory material added requirement for assistance of the Associate Administrator, added par. (5), and redesignated former par. (7) as (6). Former par. (5), relating to an analysis and evalution of Federal juvenile delinquency programs, and former par. (6), relating to a comprehensive plan for Federal juvenile delinquency programs, were struck out.

Subsec. (d)(1). Pub.L. 95–115, § 3(b)(2), added "Associate" preceding "Administrator for".

Subsec. (e). Pub.L. 95–115, § 3(b)(3), substituted "(5)" for "(6)" in two places.

Subsec. (f). Pub.L. 95–115, § 3(b)(4), added "Federal" following "appropriate authority,".

Subsec. (g). Pub.L. 95–115, § 3(b)(5), substituted "subchapter" for "part, except the making of regulations".

Subsec. (i). Pub.L. 95–115, § 3(a)(3)(A), substituted "Associate" for "Assistant".

Subsec. (j). Pub.L. 95–115, § 3(b)(6), added "organization," following "agency," and substituted "subchapter" for "part".

Subsec. (k). Pub.L. 95–115, § 3(b)(7), substituted "subchapter" for "part" and "subchapter III of this chapter" for "the Juvenile Delinquency Prevention Act".

Subsec. (*l*)(1). Pub.L. 95–115, § 3(b)(8), added "Associate" preceding "Administrator under".

1976 Amendment. Subsec. (b)(5). Pub.L. 94–273, § 8(3), substituted "December 31" for "September 30".

Subsec. (b)(6). Pub.L. 94–273, § 12(3), substituted "June" for "March".

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, except that subsecs. (b)(5) and (b)(6) effective at the close of the thirty-first day of the twelfth calendar month of 1974, and subsec. (*l*) effective at the close of the thirtieth day of the eleventh calendar month of 1976, see section 263 of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Termination of Advisory Committees. Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of its establishment unless in the case of a committee established by the President or an officer of the federal government, such committee is renewed by appropriate action prior to the end of such period, or in the case of a committee established by the Congress, its duration is otherwise provided by law see section 14 of Pub.L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 94–273, 1976 U.S.Code Cong. and Adm.News, p. 690; Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5615. Joint funding; non-Federal share requirements

Notwithstanding any other provision of law, where funds are made available by more than one Federal agency to be used by any agency, organization, institution, or individual to carry out a Federal juvenile delinquency

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program or activity, any one of the Federal agencies providing funds may be requested by the Administrator to act for all in administering the funds advanced whenever the Administrator finds the program or activity to be exceptionally effective or for which the Administrator finds exceptional need. In such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each Federal agency, and the Administrator may order any such agency to waive any technical grant or contract requirement (as defined in such regulations) which is inconsistent with the similar requirement of the administering agency or which the administering agency does not impose.

(Pub.L. 93–415, Title II, § 205, Sept. 7, 1974, 88 Stat. 1116; Pub.L. 95–115, § 3(c), Oct. 3, 1977, 91 Stat. 1049; Pub.L. 96–509, § 19(e), Dec. 8, 1980, 94 Stat. 2763.)

Historical Note

1980 Amendment. Pub.L. 96–509 struck "Associate" preceding "Administrator finds" in two places.

1977 Amendment. Pub.L. 95–115 added provisions relating to functions of the Associate Administrator with respect to joint funding.

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5616. Coordinating Council on Juvenile Justice and Delinquency Prevention

(a) Establishment; membership

(1) There is hereby established, as an independent organization in the executive branch of the Federal Government a Coordinating Council on Juvenile Justice and Delinquency Prevention (hereinafter referred to as the "Council") composed of the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Director of the Community Services Administration, the Director of the Office of Drug Abuse Policy, the Director of the ACTION Agency, the Director of the Bureau of Prisons, the Commissioner of the Bureau of Indian Affairs, the Director for the Office of Special Education and Rehabilitation Services, the Commissioner for the Administration for Children, Youth, and Families, and the Director of the Youth Development Bureau, or their respective designees, the Director of the Office of Justice Assistance, Research and Statistics, the Administrator of the Law Enforcement Assistance Administration, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Deputy Administrator of the Institute for Juvenile Justice and Delinquency Prevention, the Director of the National Institute of Justice, and representatives of such other agencies as the President shall designate.

(2) Any individual designated under this section shall be selected from individuals who exercise significant decisionmaking authority in the Federal agency involved.

(b) Chairman and Vice Chairman

The Attorney General shall serve as Chairman of the Council. The Administrator of the Office of Juvenile Justice and Delinquency Prevention shall serve as Vice Chairman of the Council. The Vice Chairman shall act as Chairman in the absence of the Chairman.

(c) Functions

The function of the Council shall be to coordinate all Federal juvenile delinquency programs. The Council shall make recommendations to the President, and to the Congress, at least annually with respect to the coordination of overall policy and development of objectives and priorities for all Federal juvenile delinquency programs and activities. The Council is authorized to review the programs and practices of Federal agencies and report on the degree to which Federal agency funds are used for purposes which are consistent or inconsistent with the mandates of section 5633(a)(12)(A) and (13) of this title. The Council shall review, and make recommendations with respect to, any joint funding proposal undertaken by the Office of Juvenile Justice and Delinquency Prevention and any agency represented on the Council.

(d) Meetings

The Council shall meet at least quarterly and a description of the activities of the Council shall be included in the annual report required by section 5614(b)(5) of this title.

(e) Appointment of personnel or staff support by Administrator

The Administrator shall, with the approval of the Council, appoint such personnel or staff support as he considers necessary to carry out the purposes of this subchapter.

(f) Expenses of Council members; reimbursement

Members of the Council who are employed by the Federal Government full time shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Council.

(g) Authorization of appropriations

To carry out the purposes of this section there is authorized to be appropriated such sums as may be necessary, not to exceed $500,000 for each fiscal year.

(Pub.L. 93–415, Title II, § 206, Sept. 7, 1974, 88 Stat. 1116; Pub.L. 94–237, § 4(c)(5)(D), Mar. 19, 1976, 90 Stat. 244; Pub.L. 95–115, § 3(a)(3)(A), (5), (d), Oct. 3, 1977, 91 Stat. 1048–1050; Pub.L. 96–509, §§ 8, 19(f), Dec. 8, 1980, 94 Stat. 2753, 2763.)

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Historical Note

1980 Amendment. Subsec. (a)(1). Pub.L. 96–509, §§ 8(a), 19(f)(1), substituted "the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Director of the Community Services Administration, the Director of the Office of Drug Abuse Policy, the Director of the ACTION Agency, the Director of the Bureau of Prisons, the Commissioner of the Bureau of Indian Affairs, the Director of the Office of Special Education and Rehabilitation Services, the Commissioner for the Administration for Children, Youth, and Families, and the Director of the Youth Development Bureau, or their respective designees, the Director of the Office of Justice Assistance, Research and Statistics, the Administrator of the Law Enforcement Assistance Administration, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Deputy Administrator of the Institute for Juvenile Justice and Delinquency Prevention, the Director of the National Institute of Justice, and representatives" for "the Secretary of Health, Education, and Welfare, the Secretary of Labor, the Director of the Office of Drug Abuse Policy, the Commissioner of the Office of Education, the Director of the ACTION Agency, the Secretary of Housing and Urban Development, or their respective designees, the Associate Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Deputy Associate Administrator of the Institute for Juvenile Justice and Delinquency Prevention, and representatives".

Subsec. (b). Pub.L. 96–509, § 19(f)(2), struck out "Associate" preceding "Administrator".

Subsec. (c). Pub.L. 96–509, § 8(b), provided that the Coordinating Council make its annual recommendations to the Congress as well as the President and that the Coordinating Council review and make recommendations with respect to any joint funding proposal undertaken by the Office of Juvenile Justice and Delinquency Prevention and any agency represented on the Council and struck out "the Attorney General and".

Subsec. (d). Pub.L. 96–509, § 8(c), substituted "at least quarterly" for "a minimum of four times per year".

Subsec. (e). Pub.L. 96–509, §§ 8(d), 19(f)(3), substituted "The Administrator shall" for "The Associate Administrator may".

Subsec. (g). Pub.L. 96–509, § 8(e), placed a limit of $500,000 for each fiscal year on the amount authorized to be appropriat[illegible] ry out the purposes of this section.

1977 Amendment. Subsec. (a)(1). Pub.L. 95–115, § 3(a)(3)(A), (5), (d)(1), added ref[illegible] ences to the Commissioner of the Office [illegible] Education and the Director of the ACTION Agency, and substituted "Associate" for "Assistant" wherever appearing therein.

Subsec. (b). Pub.L. 95–115, § 3(a)(3)(A), substituted "Associate" for "Assistant".

Subsec. (c). Pub.L. 95–115, § 3(d)(2), added provisions relating to review functi[illegible] of the Council.

Subsec. (d). Pub.L. 95–115, § 3(d)(2), substituted "four" for "six".

Subsec. (e). Pub.L. 95–115, § 3(d)(4), designated former par. (3) as entire subs[illegible] and, as so redesignated, added "or staff su[illegible] port" following "personnel" and substi[illegible] "Associate Administrator" for "Executi[illegible] Secretary". Former pars. (1) and (2), wh[illegible] related to the appointment and responsibi[illegible] ties of the Executive Secretary, respectively, were struck out.

1976 Amendment. Subsec. (a)(1). Pub.L. 94–237 substituted "Office of Drug Abuse Policy" for "Special Action Office for Drug Abuse Prevention".

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Special Action Office for Drug Abuse Prevention. Provisions establishing the Special Action Office for Drug Abuse Prevention, authorizing the appointment of a Director, and setting forth the powers, functions, and duties of the Office and Director were classified to sections 1111 to 1143 of Title 21, Food and Drugs, prior to repeal of such sections and abolition of the Office and each position in the Office of Director, etc., by Pub.L. 92–255, Title I, § 104, Mar. 21, 1972, 86 Stat. 67, eff. June 30, 1975.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See also, Pub.L. 94–273, 1976 U.S.Code Cong. and Adm.News, p. 690; Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2[illegible] Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

5617. National Advisory Committee for Juvenile Justice and Delinquency Prevention

(a) [illegible]

(1) There is hereby established a National Advisory Committee for Juvenile Justice and Delinquency Prevention (hereinafter in this chapter referred to as the "Advisory Committee") which shall consist of 15 members appointed by the President.

(2) Members shall be appointed who have special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice, such as juvenile or family court judges; probation, correctional, or law enforcement personnel; representatives of private, voluntary organizations and community-based programs, including youth workers involved with alternative youth programs; and persons with special training or experience in addressing the problems of youth unemployment, school violence and vandalism, and learning disabilities.

(3) At least 5 of the individuals appointed as members of the Advisory Committee shall not have attained 24 years of age on or before the date of their appointment. At least 2 of the individuals so appointed shall have been or shall be (at the time of appointment) under the jurisdiction of the juvenile justice system. The Advisory Committee shall contact and seek regular imput from juveniles currently under the jurisdiction of the juvenile justice system.

(4) The President shall designate the Chairman from members appointed to the Advisory Committee. No full-time officer or employee of the Federal Government may be appointed as a member of the Advisory Committee, nor may the Chairman be a full-time officer or employee of any State or local government.

(b) Term of office; vacancies; reappointment

(1) Members appointed by the President shall serve for terms of 3 years. Of the members first appointed, 5 shall be appointed for terms of 1 year, 5 shall be appointed for terms of 2 years, and 5 shall be appointed for terms of 3 years, as designated by the President at the time of appointment. Thereafter, the term of each member shall be 3 years. The initial appointment of members shall be made not later than 90 days after the effective date of this section.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term. The President shall fill a vacancy not later than 90 days after such vacancy occurs. Members shall be eligible for reappointment and may serve after the expiration of their terms until their successors have taken office.

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(c) Meetings; quorum

The Advisory Committee shall meet at the call of the Chairman, but not less than quarterly. Ten members of the Advisory Committee shall constitute a quorum.

(d) Duties

The Advisory Committee shall—

(1) review and evaluate, on a continuing basis, Federal policies regarding juvenile justice and delinquency prevention and activities affecting juvenile justice and delinquency prevention conducted or assisted by all Federal agencies;

(2) advise the Administrator with respect to particular functions or aspects of the work of the Office;

(3) advise, consult with, and make recommendations to the National Institute of Justice and the National Institute for Juvenile Justice and Delinquency Prevention concerning the overall policy and operations of each such Institute regarding juvenile justice and delinquency prevention research, evaluations, and training provided by each such Institute and

(4) make refinements in recommended standards for the administration of juvenile justice at the Federal, State, and local levels which have been reviewed under section 5657 of this title, and recommend Federal, State, and local action to facilitate the adoption of such standards throughout the United States.

(e) Interim and annual reports to President and Congress

Beginning in 1981, the Advisory Committee shall submit such interim reports as it considers advisable to the President and to the Congress, and shall submit an annual report to the President and to the Congress not later than March 31 of each year. Each such report shall describe the activities of the Advisory Committee and shall contain such findings and recommendations as the Advisory Committee considers necessary or appropriate.

(f) Staff personnel; information from other Federal agencies; authority to procure temporary or intermittent employment of experts and consultants

The Advisory Committee shall have staff personnel, appointed by the Chairman with the approval of the Advisory Committee, to assist it in carrying out its activities. The head of each Federal agency shall make available to the Advisory Committee such information and other assistance as it may require to carry out its activities. The Advisory Committee shall not have any authority to procure any temporary or intermittent services of personnel under section 3109 of Title 5, or under any other provision of law.

(g) Compensation; reimbursement

(1) Members of the Advisory Committee shall, while serving on business of the Advisory Committee, be entitled to receive compensation at a rate not to exceed the daily rate specified for Grade GS–18 of the General Schedule in section 5332 of Title 5, including traveltime.

(2) Members of the Advisory Committee, while serving away from their places of residence or regular places of business, shall be entitled to reimbursement for travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703 of Title 5 for persons in the Federal Government service employed intermittently.

(h) Authorization of appropriations

To carry out the purposes of this section, there is authorized to be appropriated such sums as may be necessary, not to exceed $500,000 for each fiscal year.

(Pub.L. 93–415, Title II, § 207, as added Pub.L. 96–509, § 9, Dec. 8, 1980, 94 Stat. 2753.)

Historical Note

References in Text. This chapter, referred to in subsec. (a)(1), in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

The effective date of this section, referred to in subsec. (b)(1), probably means the date of enactment of section 9 of Pub.L. 96–509, which enacted this section and which was approved Dec. 8, 1980.

Prior Provisions. A prior section 5617, Pub.L. 93–415, Title II, § 207, Sept. 7, 1974, 88 Stat. 1117; Pub.L. 95–115, § 3(e), Oct. 3, 1977, 91 Stat. 1050, which related to the National Advisory Committee for Juvenile Justice and Delinquency Prevention, its membership, terms of office, etc., was repealed by Pub.L. 96–509, § 9, Dec. 8, 1980, 94 Stat. 2753.

Termination of Advisory Committees. Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of its establishment unless in the case of a committee established by the President or an officer of the federal government, such committee is renewed by appropriate action prior to the end of such period, or in the case of a committee established by the Congress, its duration is otherwise provided by law see section 14 of Pub.L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§§ 5618, 5619. Repealed. Pub.L. 96–509, § 9, Dec. 8, 1980, 94 Stat. 2753

Historical Note

Section 5618, Pub.L. 93–415, Title II, § 208, Sept. 7, 1974, 88 Stat. 1117; Pub.L. 95–115, § 3(a)(3)(B), (f), Oct. 3, 1977, 91 Stat. 1048, 1050, set out the duties and provided for the staffing of the National Advisory Committee and numerous subcommittees.

Section 5619, Pub.L. 93–415, Title II, § 209, Sept. 7, 1974, 88 Stat. 1118, set out provisions for compensation and reimbursement for travel and other expenses of full and part time Federal employees serving on the Advisory Committee.

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PART B—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAM

Subpart I—Formula Grants

§ 5631. Grants to States and units of general local governm or combinations thereof

The Administrator is authorized to make grants to States and unit general local government or combinations thereof to assist them in planni establishing, operating, coordinating, and evaluating projects directly through grants and contracts with public and private agencies for the deve opment of more effective education, training, research, prevention, div sion, treatment, and rehabilitation programs in the area of juvenile deli quency and programs to improve the juvenile justice system.

(Pub.L. 93–415, Title II, § 221, Sept. 7, 1974, 88 Stat. 1118; Pub.L. 95–115, § 4(Oct. 3, 1977, 91 Stat. 1050.)

Historical Note

1977 Amendment. Pub.L. 95–115 added "grants and" preceding "contracts" and substituted "units of general local government or combinations thereof" for "local governments".

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115 set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 1974, see section 263(a) and (b) of Pub 93–415, set out as an Effective Date note u der section 5601 of this title.

Legislative History. For legislative histor and purpose of Pub.L. 93–415, see 1974 U.S Code Cong. and Adm.News, p. 5283. Se also, Pub.L. 95–115, 1977 U.S.Code Cong and Adm.News, p. 2556.

Library References

United States ⇐82(2). C.J.S. United States § 122.

§ 5632. Allocation of funds

(a) Time; basis; amounts

In accordance with regulations promulgated under this part, funds shall be allocated annually among the States on the basis of relative population of people under age eighteen. No such allotment to any State shall be les than $225,000, except that for the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands no allotment shall be less than $56,250.

(b) Reallocation of unobligated funds

Except for funds appropriated for fiscal year 1975, if any amount so allo ted remains unobligated at the end of the fiscal year, such funds shall b reallocated in a manner equitable and consistent with the purpose of thi part. Funds appropriated for fiscal year 1975 may be obligated in acco dance with subsection (a) of this section until June 30, 1976, after whi time they may be reallocated. Any amount so reallocated shall be in ad tion to the amounts already allotted and available to the State, the Virgi

lands, American Samoa, Guam, and the Trust Territory of the Pacific Islands for the same period.

(c) Use of allotted funds for development, etc., of State plans; limitations; matching requirements

In accordance with regulations promulgated under this part, a portion of any allotment to any State under this part shall be available to develop a State plan or for other pre-award activities associated with such State plan, and to pay that portion of the expenditures which are necessary for efficient administration, including monitoring and evaluation. Not more than 7½ per centum of the total annual allotment of such State shall be available for such purposes, except that any amount expended or obligated by such State, or by units of general local government or any combination thereof, from amounts made available under this subsection shall be matched (in an amount equal to any such amount so expended or obligated) by such State, or by such units or combinations, from State or local funds, as the case may be. The State shall make available needed funds for planning and administration to units of general local government or combinations thereof within the State on an equitable basis.

(d) Minimum annual allotment for assistance of advisory group

In accordance with regulations promulgated under this part, 5 per centum of the minimum annual allotment to any State under this part shall be available to assist the advisory group established under section 5633(a)(3) of this title.

(Pub.L. 93–415, Title II, § 222, Sept. 7, 1974, 88 Stat. 1118; Pub.L. 95–115, § 4(b) (1), (2)(A)–(C), (3), (4), Oct. 3, 1977, 91 Stat. 1051; Pub.L. 96–509, § 10, Dec. 8, 1980, 94 Stat. 2755.)

Historical Note

1980 Amendment. Subsec. (a). Pub.L. 96–509 added reference to the Commonwealth of the Northern Mariana Islands.

1977 Amendment. Subsec. (a). Pub.L. 95–115, § 4(b)(1), substituted "$225,000" for "$200,000" and "$56,250" for "$50,000".

Subsec. (c). Pub.L. 95–115, § 4(b)(2)(A), (B), (3), added provisions relating to pre-award activities, monitoring and evaluation payments, and matching requirements for expended or obligated amounts, and substituted "7½" for "15" and "units of general local government or combinations thereof" for "local governments".

Subsec. (d). Pub.L. 95–115, § 4(b)(2)(C), (4)(B), redesignated former subsec. (e) as (d). Former subsec. (d) relating to limitations on financial assistance under this section was struck out.

Subsec. (e). Pub.L. 95–115, § 4(b)(4)(A), added subsec. (e).

Pub.L. 95–115, § 4(b)(4)(B), redesignated former subsec. (e) as (d).

Effective Date of 1977 Amendment. Amendment of subsec. (a), and subsec. (c), relating to units of general local government, by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Section 4(b)(2)(D) of Pub.L. 95–115 provided that: "The amendments made by this paragraph [amending subsec. (c) of this section, relating to pre-award activities, monitoring and evaluation payments, matching requirements, etc., and repealing subsec. (d) of this section] shall take effect on October 1, 1978."

Section 4(b)(4)(B) of Pub.L. 95–115 provided that: "Effective on October 1, 1978, section 222(e) of the Act, as added by subparagraph (A) [subsec. (e) of this section], is redesignated as section 222(d) of the Act [subsec. (d) of this section]."

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...section 203(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5633. State plans

(a) Requirements

In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs, and the State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall—

(1) designate the State criminal justice council established by the State under section 3742(b)(1) of this title as the sole agency for supervising the preparation and administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) (hereafter referred to in this part as the "State criminal justice council") has or will have authority, by legislation if necessary, to implement such plan in conformity with this part;

(3) provide for an advisory group appointed by the chief executive of the State to carry out the functions specified in subparagraph (F) and to participate in the development and review of the State's juvenile justice plan prior to submission to the supervisory board for final action and (A) which shall consist of not less than 15 and not more than 33 persons who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice, (B) which shall include locally elected officials, representation of units of local government, law enforcement and juvenile justice agencies such as law enforcement, correction or probation personnel, and juvenile or family court judges, and public agencies concerned with delinquency prevention or treatment such as welfare, social services, mental health, education, special education, or youth services departments, (C) which shall include representatives of private organizations concerned with delinquency prevention or treatment; concerned with neglected or dependent children; concerned with the quality of juvenile justice, education, or social services for children; which utilize volunteers to work with delinquents or potential delinquents; community-based delinquency prevention or treatment programs; business groups and businesses employing youth, youth workers involved with alternative youth programs, and persons with special experience and competence in addressing the problem of school violence and vandalism and the problem of learning disabilities; and organizations which represent employees affected by this chapter, (D) a majority of whose members (including the chairman) shall not be full-time employees of the Federal, State, or local government, (E) at least one-fifth of whose members shall be under the age of 24 at the time of appointment, and at least 3 of whose members shall have been or shall currently be under the jurisdiction of the juvenile justice system; and (F) which (i) shall, consistent with this subchapter, advise the State criminal justice council and its supervisory board; (ii) shall submit to the Governor and the legislature at least annually recommendations with respect to matters related to its functions, including State compliance with the requirements of paragraph (12)(A) and paragraph (13); (iii) shall have an opportunity for review and comment on all juvenile justice and delinquency prevention grant applications submitted to the State criminal justice council, except that any such review and comment shall be made no later than 30 days after the submission of any such application to the advisory group; (iv) may be given a role in monitoring State compliance with the requirements of paragraph (12)(A) and paragraph (13), in advising on State criminal justice council and local criminal justice advisory board composition, in advising on the State's maintenance of effort under section 3793a of this title, and in review of the progress and accomplishments of juvenile justice and delinquency prevention projects funded under the comprehensive State plan; and (v) shall contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system;

(4) provide for the active consultation with and participation of units of general local government or combinations thereof in the development of a State plan which adequately takes into account the needs and requests of local governments, except that nothing in the plan requirements, or any regulations promulgated to carry out such requirements, shall be construed to prohibit or impede the State from making grants to, or entering into contracts with, local private agencies or the advisory group;

(5) unless the provisions of this paragraph are waived at the discretion of the Administrator for any State in which the services for delinquent or other youth are organized primarily on a statewide basis, provide that at least 66⅔ per centum of funds received by the State under section 5632 of this title, other than funds made available to the State advisory group under section 5632(d) of this title, shall be expended through—

(A) programs of units of general local government or combinations thereof, to the extent such programs are consistent with the State plan; and

(B) programs of local private agencies, to the extent such programs are consistent with the State plan, except that direct funding of any local private agency by a State shall be permitted only if such agency requests such funding after it has applied for and been denied funding by any unit of general local government or combination thereof;

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(6) provide that the chief executive officer of the unit of general local government shall assign responsibility for the preparation and administration of the local government's part of a State plan, or for the supervision of the preparation and administration of the local government's part of the State plan, to that agency within the local government's structure or to a regional planning agency (hereinafter in this part referred to as the "local agency") which can most effectively carry out the purposes of this part and shall provide for supervision of the programs funded under this part by that local agency;

(7) provide for an equitable distribution of the assistance received under section 5632 of this title within the State;

(8) provide for (A) an analysis of juvenile crime problems and juvenile justice and delinquency prevention needs within the relevant jurisdiction, a description of the services to be provided, and a description of performance goals and priorities, including a specific statement of the manner in which programs are expected to meet the identified juvenile crime problems and juvenile justice and delinquency prevention needs of the jurisdiction; (B) an indication of the manner in which the programs relate to other similar State or local programs which are intended to address the same or similar problems; and (C) a plan for the concentration of State efforts which shall coordinate all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities, including provision for regular meetings of State officials with responsibility in the area of juvenile justice and delinquency prevention;

(9) provide for the active consultation with and participation of private agencies in the development and execution of the State plan; and provide for coordination and maximum utilization of existing juvenile delinquency programs and other related programs, such as education, health, and welfare within the State;

(10) provide that not less than 75 per centum of the funds available to such State under section 5632 of this title, other than funds made available to the State advisory group under section 5632(d) of this title, whether expended directly by the State, by the unit of general local government or combination thereof, or through grants and contracts with public or private agencies, shall be used for advanced techniques in developing, maintaining, and expanding programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to confinement in secure detention facilities and secure correctional facilities, to encourage a diversity of alternatives within the juvenile justice system, to establish and adopt juvenile justice standards, and to provide programs for juveniles who have committed serious crimes, particularly programs which are designed to improve sentencing procedures, provide resources necessary for informed dispositions, and provide for effective rehabilitation. These advanced techniques include—

(A) community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, halfway houses, homemaker and home health services, twenty-four hour intake screening, volunteer and crisis home programs, education, special education, day treatment, and home probation, and any other designated community-based diagnostic, treatment, or rehabilitative service;

(B) community-based programs and services to work with parents and other family members to maintain and strengthen the family unit so that the juvenile may be retained in his home;

(C) youth service bureaus and other community-based programs to divert youth from the juvenile court or to support, counsel, or provide work and recreational opportunities for delinquents and other youth to help prevent delinquency;

(D) projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth impacted by the juvenile justice system;

(E) educational programs or supportive services designed to encourage delinquent youth and other youth to remain in elementary and secondary schools or in alternative learning situations;

(F) expanded use of probation and recruitment and training of probation officers, other professional and paraprofessional personnel and volunteers to work effectively with youth;

(G) youth initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional youth assistance programs;

(H) statewide programs through the use of subsidies or other financial incentives to units of local government designed to—

(i) remove juveniles from jails and lockups for adults;

(ii) replicate juvenile programs designated as exemplary by the National Institute of Justice;

(iii) establish and adopt, based upon the recommendations of the Advisory Committee, standards for the improvement of juvenile justice within the State; or

(iv) increase the use of nonsecure community-based facilities and discourage the use of secure incarceration and detention;

(I) programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist law enforcement and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles; and

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(8) projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of juvenile gangs and their members;

(11) provide for the development of an adequate research, training, and evalution capacity within the State;

(12)(A) provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities; and

(B) provide that the State shall submit annual reports to the Administrator containing a review of the progress made by the State to achieve the deinstitutionalization of juveniles described in subparagraph (A) and a review of the progress made by the State to provide that such juveniles, if placed in facilities, are placed in facilities which (i) are the least restrictive alternatives appropriate to the needs of the child and the community; (ii) are in reasonable proximity to the family and the home communities of such juveniles; and (iii) provide the services described in section 5603(1) of this title;

(13) provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges;

(14) provide that, beginning after the 5-year period following December 8, 1980, no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which (A) recognize the special needs of areas characterized by low population density with respect to the detention of juveniles; and (B) shall permit the temporary detention in such adult facilities of juveniles accused of serious crimes against persons, subject to the provisions of paragraph (13), where no existing acceptable alternative placement is available;

(15) provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and nonsecure facilities to insure that the requirements of paragraph (12)(A), paragraph (13), and paragraph (14) are met, and for annual reporting of the results of such monitoring to the Administrator, except that such reporting requirements shall not apply in the case of a State which is in compliance with the other requirements of this paragraph, which is in compliance with the requirements in paragraph (12)(A) in paragraph (13), and which has enacted legislation which conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively;

(16) provide assurance that assistance will be available on an equitable basis to deal with disadvantaged youth including, but not limited to,

females, minority youth, and mentally retarded and emotionally or physically handicapped youth;

(17) provide for procedures to be established for protecting the rights of recipients of services and for assuring appropriate privacy with regard to records relating to such services provided to any individual under the State plan;

(18) provide that fair and equitable arrangements are made to protect the interests of employees affected by assistance under this chapter. Such protective arrangements shall, to the maximum extent feasible, include, without being limited to, such provisions as may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements or otherwise;

(B) the continuation of collective-bargaining rights;

(C) the protection of individual employees against a worsening of their positions with respect to their employment;

(D) assurances of employment to employees of any State or political subdivision thereof who will be affected by any program funded in whole or in part under provisions of this chapter;

(E) training or retraining programs.

The State plan shall provide for the terms and conditions of the protection arrangements established pursuant to this section;

(19) provide for such fiscal control and fund accounting procedures necessary to assure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter;

(20) provide reasonable assurance that Federal funds made available under this part for any period will be so used as to supplement and increase (but not supplant) the level of the State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs described in this part, and will in no event replace such State, local, and other non-Federal funds;

(21) provide that the State criminal justice council will from time to time, but not less often than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, which it considers necessary; and

(22) contain such other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of the programs assisted under this subchapter.

Such plan may at the discretion of the Associate Administrator be incorporated into the plan specified in section 3743 of this title. Such plan shall be modified by the State, as soon as practicable after December 8, 1980, in order to comply with the requirements of paragraph (14).

(b) Approval by State criminal justice council

ne State criminal justice council designated pursuant to subsection (a) of this section, after receiving and considering the advice and recommendations of the advisory group referred to in subsection (a) of this section, shall approve the State plan and any modification thereof prior to submission to the Administrator.

(c) Approval by Administrator; compliance with statutory requirements

The Administrator shall approve any State plan and any modification thereof that meets the requirements of this section. Failure to achieve compliance with the requirement of subsection (a)(12)(A) of this section within the three-year time limitation shall terminate any State's eligibility for funding under this subpart unless the Administrator determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 per centum of such juveniles or through removal of 100 percent of such juveniles from secure correctional facilities, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding two additional years. Failure to achieve compliance with the requirements of subsection (a)(14) of this section within the 5-year time limitation shall terminate any State's eligibility for funding under this subpart, unless the Administrator determines that (1) the State is in substantial compliance with such requirements through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the State has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed 2 additional years.

(d) Nonsubmission or nonqualification of plan; expenditure of allotted funds; availability of reallocated funds

In the event that any State chooses not to submit a plan, fails to submit a plan, or submits a plan or any modification thereof, which the Administrator, after reasonable notice and opportunity for hearing, in accordance with sections 3783, 3784, and 3785 of this title, determines does not meet the requirements of this section, the Administrator shall endeavor to make that State's allotment under the provisions of section 5632(a) of this title available to local public and private nonprofit agencies within such State for use in carrying out the purposes of subsection (a)(12)(A) of this section, subsection (a)(13) of this section, or subsection (a)(14) of this section. The Administrator shall make funds which remain available after disbursements are made by the Administrator under the preceding sentence, and any other unobligated funds, available on an equitable basis and to those States that have achieved full compliance with the requirements under subsection (a)(12)(A) of this section and subsection (a)(13) of this section.

(Pub.L. 93–415, Title II, § 223, Sept. 7, 1974, 88 Stat. 1119; Pub.L. 94–503, Title I, § 130(b), Oct. 15, 1976, 90 Stat. 2425; Pub.L. 95–115, §§ 3(a)(3)(B), 4(c)(1), (2), (3)–(15), Oct. 3, 1977, 91 Stat. 1048, 1051–1054; Pub.L. 96–509, §§ 11, 19(g), Dec. 8, 1980, 94 Stat. 2755, 2764.)

Historical Note

References in Text. Reference to the "Associate Administrator" in the provisions following subsec. (a)(22) should probably be a reference to the "Administrator" in view of the substitution of "Administrator" for "Associate Administrator" throughout this chapter by Pub.L. 96–509.

This chapter, referred to in subsec. (a)(3)(C) and (18), in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

1980 Amendment. Subsec. (a). Pub.L. 96–509, § 11(a)(1), in the provisions preceding par. (1), provided for 3-year, rather than annual, plans and annually submitted performance reports which describe the progress in implementing programs contained in the original plan and the status of compliance with State plan requirements.

Pub.L. 96–509, §§ 11(a)(15)(B), 19(g)(11), in the provisions following par. (22) substituted reference to section 3743 of this title for reference to section 3733(a) of this title and added provision that plans be modified by States as soon as possible after Dec. 8, 1980, in order to comply with the requirements of par. (14).

Subsec. (a)(1). Pub.L. 96–509, § 19(g)(1), substituted "State criminal justice council established by the State under section 3742(b)(1) of this title" for "State planning agency established by the State under section 3723 of this title".

Subsec. (a)(2). Pub.L. 96–509, § 19(g)(2), substituted "criminal justice council" for "planning agency".

Subsec. (a)(3)(A). Pub.L. 96–509, §§ 11(a)(2), 19(g)(3), provided that State advisory groups shall consist of between 15 and 33 members rather than between 21 and 33 members and substituted "juvenile delinquency" for "a juvenile delinquency".

Subsec. (a)(3)(B). Pub.L. 96–509, § 11(a)(2), provided that locally elected officials be included on State advisory groups and made clear that special education departments be included along with other public agencies for representation on State advisory groups.

Subsec. (a)(3)(E). Pub.L. 96–509, § 11(a)(4), provided that one-fifth of the members of State advisory groups be under 24 years of age at the time of their appointment, rather than one-third under 26 years of age.

Subsec. (a)(3)(F). Pub.L. 96–509, §§ 11(a)(5), (6), 19(g)(4), substituted in cl. (i) "criminal justice council" for "planning agency", in cl. (ii) provision that the State advisory groups submit recommendations to the Governor and the legislature at least annually regarding matters related to its functions for provision that the State advisory groups advise the Governor and the legislature on matters related to its functions as requested, in cl. (iii) "criminal justice council" for "planning agency other than those subject to review by the State's judicial planning committee established pursuant to section 3723(c) of this title", in cl. (iv) "criminal justice council and local criminal justice advisory" for "planning agency and regional planning unit supervisory" and "section 3793a of this title" for "sections 3768(b) and 5671(b) of this title", and added cl. (v).

Subsec. (a)(8). Pub.L. 96–509, § 11(a)(7), provided that State juvenile justice plan requirements conform to State criminal justice application requirements and required a State concentration of effort to coordinate State juvenile delinquency programs and policy.

Subsec. (a)(10). Pub.L. 96–509, § 11(a)(8)(A)–(C), in the provisions preceding subpar. (A), made clearer that the advanced techniques described in this paragraph are to be used to provide community-based alternatives to "secure" juvenile detention and correctional facilities and that advanced techniques can be used for the purpose of providing programs for juveniles who have committed serious crimes, particularly programs designed to improve sentencing procedures, provide resources necessary for informed dispositions, and provide for effective rehabilitation.

Subsec. (a)(10)(A). Pub.L. 96–509, § 11(a)(9), added provisions indicating that education and special education programs are appropriate to be included among community-based programs and services.

Subsec. (a)(10)(E). Pub.L. 96–509, § 11(a)(10), clarified the point that educational programs included as advanced techniques should be designed to encourage delinquent and other youth to remain in school.

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'sec. (a)(10)(H). Pub.L. 96–509, § 1), provided that statewide programs th...gh the use of subsidies or other financial incentives to units of local government be designed to: (1) remove juveniles from jails and lock-ups for adults; (2) replicate juvenile programs designed as exemplary by the National Institute of Justice; (3) establish and adopt standards for the improvement of juvenile justice within the State; or (4) increase the use of nonsecure, community-based facilities and discourage the use of secure incarceration and detention.

Subsec. (a)(10)(I). Pub.L. 96–509, § 11(a)(12), revised subpar. (I) to provide that advanced technique programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities include on-the-job training programs to assist law enforcement and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles.

Subsec. (a)(10)(J). Pub.L. 96–509, § 11(a)(8)(D), added subpar. (J) relating to projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of juvenile gangs and their members.

Subsec. (a)(11). Pub.L. 96–509, § 19(g)(5), substituted "provide" for "provides".

Subsec. (a)(12)(A). Pub.L. 96–509, § 11(a)(13), clarified that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult shall not be placed in "secure detention facilities or secure correctional facilities" rather than simply, as formerly, "juvenile detention or correctional facilities."

Subsec. (a)(12)(B). Pub.L. 96–509, § 19(g)(6), substituted "Administrator" for "Associate Administrator".

Subsec. (a)(14). Pub.L. 96–509, § 11(a)(15)(A), added par. (14). Former par. (14) was redesignated (15).

Subsec. (a)(15). Pub.L. 96–509, §§ 11(a)(14), (15)(A), 19(g)(7), redesignated former par. (14) as (15) and in par. (15) as so redesignated, provided that the annual reporting requirements of the results of the monitoring required by this section can be waived for States which have complied with the requirements of par. (12)(A), par. (13), and the new par. (14), and which have enacted legislation, conforming to those requirements, which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively and substituted "to the Administrator" for "to the Associate Administrator".

Subsec. (a)(16), (17). Pub.L. 96–509, § 11(a)(15)(A), redesignated pars. (15) and (16) as (16) and (17), respectively.

Subsec. (a)(18). Pub.L. 96–509, §§ 11(a)(15)(A), 19(g)(8), redesignated par. (17) as (18) and, in subpar. (A) of par. (18) as so redesignated, substituted "preservation of rights" for "preservation or rights".

Subsec. (a)(19), (20). Pub.L. 96–509, § 11(a)(15)(A), redesignated pars. (18) and (19) as (19) and (20), respectively.

Subsec. (a)(21). Pub.L. 96–509, §§ 11(a)(15)(A), 19(g)(9), redesignated par. (20) as (21) and, in par. (21) as so redesignated, substituted "State criminal justice council will from time to time, but not less often than annually, review its plan and submit to the Administrator" for "State planning agency will from time to time, but not less often then annually, review its plan and submit to the Associate Administrator".

Subsec. (a)(22). Pub.L. 96–509, §§ 11(a)(15)(A), 19(g)(10), redesignated par. (21) as (22) and, in par. (22) as so redesignated, substituted "Administrator" for "Associate Administrator".

Subsec. (b). Pub.L. 96–509, § 19(g)(12), substituted "criminal justice council" for "planning agency".

Subsec. (c). Pub.L. 96–509, § 11(b), made conforming amendment, redefined "substantial compliance" with regard to subsec. (a)(12)(A) of this section to include either 75 percent deinstitutionalization of juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, or such nonoffenders as dependent or neglected children or the "removal of 100 percent of such juveniles from secure correctional facilities", and added a new sentence at the end defining the term substantial compliance with regard to new subsec. (a)(14) of this section.

Subsec. (d). Pub.L. 96–509, §§ 11(c), 19(g)(13), substituted reference to sections 3783, 3784, and 3785 of this title for reference to sections 3757, 3758, and 3759 of this title and provided that redistributed allotments be for the purposes of removing juveniles from jails and lockups for adults, replicating exemplary juvenile programs, or establishing and adopting standards to improve the juvenile justice system, or to increase the use of nonsecure community-based facilities and to provide that the Administrator shall make such reallocated funds available on an equitable basis to States that have achieved full compliance with the requirements under subsecs. (a)(12)(A) and (a)(13) of this section.

1977 Amendment. Subsec. (a)(3). Pub.L. 95–115, § 4(c)(1), in the material preceding subpar. (A) substituted provisions relating to functions under subpar. (F) and participation in the development and review of the plan, for provisions relating to advisement of the State planning agency and its supervisory board, in subpar. (C) added provisions relating to representatives from business groups and businesses, and in subpar. (E) added requirement for at least three of the members to be or have been under the jurisdiction of the juvenile justice system, and added subpar. (F).

Subsec. (a)(4). Pub.L. 95–115, § 4(c)(2), added provisions relating to grants or contracts with local private agencies or the advisory group, and substituted "units of general local government or combinations thereof in" for "local governments in".

Subsec. (a)(5). Pub.L. 95–115, § 4(c)(3)(B), substituted "(d)" for "(e)".

Subsec. (a)(6). Pub.L. 95–115, § 4(c)(4), added provision relating to regional planning agency and "unit of general" preceding "local government".

Subsec. (a)(8). Pub.L. 95–115, § 4(c)(5), added provisions relating to programs and projects developed under the study.

Subsec. (a)(10). Pub.L. 95–115, § 4(c)(6)(B), substituted "(d)" for "(e)".

Subsec. (a)(10)(A). Pub.L. 95–115, § 4(c)(6)(A)(ii), added "twenty-four hour intake screening, volunteer and crisis home programs, day treatment, and home probation," following "health services,".

Subsec. (a)(10)(C). Pub.L. 95–115, § 4(c)(6)(A)(iii), substituted "other youth to help prevent delinquency" for "youth in danger of becoming delinquent".

Subsec. (a)(10)(D). Pub.L. 95–115, § 4(c)(6)(A)(iv), substituted provisions relating to programs stressing advocacy activities, for provisions relating to programs of drug and alcohol abuse education and prevention and programs for treatment and rehabilitation of drug addicted youth and drug dependent youth as defined in section 201(q) of this title.

Subsec. (a)(10)(G). Pub.L. 95–115, § 4(c)(6)(A)(v), added "traditional youth" following "reached by".

Subsec. (a)(10)(H). Pub.L. 95–115, § 4(c)(6)(A)(vi), substituted "are" for "that may include but are not limited to programs".

Subsec. (a)(10)(I). Pub.L. 95–115, § 4(c)(6)(A)(vii), added subpar. (I).

Subsec. (a)(12). Pub.L. 95–115, § 4(c)(7), redesignated existing provisions as subpar. (A) and, as so redesignated, substituted provisions relating to detention requirements respecting programs within three years after submission of the initial plan, for provisions relating to detention requirements respecting programs within two years after submission of the plan, and added subpar. (B).

Subsec. (a)(13). Pub.L. 95–115, § 4(c)(8), added "and youths within the purview of paragraph (12)" following "delinquent".

Subsec. (a)(14). Pub.L. 95–115, §§ 3(a)(3)(B), 4(c)(9), added "(A)" following "(12)" and "Associate" preceding "Administrator" and substituted "facilities, correctional facilities, and non-secure facilities" for "facilities, and correctional facilities".

Subsec. (a)(15). Pub.L. 95–115, § 4(c)(10), struck out "all" preceding "disadvantaged".

Subsec. (a)(19). Pub.L. 95–115, § 4(c)(11), struck out ", to the extent feasible and practical" preceding "the level".

Subsecs. (a)(20), (21). Pub.L. 95–115, § 3(a)(3)(B), added "Associate" preceding "Administrator" wherever appearing therein.

Subsec. (b). Pub.L. 95–115, § 4(c)(12), substituted provisions relating to advice and recommendations for provisions relating to consultations.

Subsec. (c). Pub.L. 95–115, § 4(c)(13), added provisions relating to failure to achieve compliance with the requirements of subsec. (a)(12)(A) within the three-year time limitation.

Subsec. (d). Pub.L. 95–115, § 4(c)(14), added provision relating to the State choosing not to submit a plan and provision relating to reallocation of funds by the Administrator.

Subsec. (e). Pub.L. 95–115, § 4(c)(15), struck out subsec. (e) which related to reallotment of funds in a state where the state plan fails to meet the requirements of this section as a result of oversight or neglect.

1976 Amendment. Subsec. (a). Pub.L. 94–503 substituted "(15), and (17)" for "and (15)" in the provisions preceding par. (1).

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

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Section 4(c)(3)(B) of Pub.L. 95–115 provided part that the amendment of subsec. (a) of this section, which substituted "5632(d)" for "5632(e)", by section 4(c)(3)(B) of Pub.L. 95–115 is effective on Oct. 1, 1978.

Section 4(c)(6)(B) of Pub.L. 95–115 provided in part that the amendment of subsec. (a) (10) of this section, which substituted "5632(d)" for "5632(e)", by section 4(c)(6)(B) of Pub.L. 95–115 is effective Oct. 1, 1978.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Termination of Advisory Committees. Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub.L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Costs and Implications of Removal of Juveniles From Adults in Jails; Report to Congress. Section 17 of Pub.L. 96–509 provided that:

"(a) The Administrator of the Office of Juvenile Justice and Delinquency Prevention, not later than 18 months after the date of the enactment of this Act [Dec. 8, 1980], shall submit a report to the Congress relating to the cost and implications of any requirement added to the Juvenile Justice and Delinquency Prevention Act of 1974 [see Short Title note under section 5601 of this title] which would mandate the removal of juveniles from adults in all jails and lockups.

"(b) The report required in subsection (a) shall include—

"(1) an estimate of the costs likely to be incurred by the States in implementing the requirement specified in subsection (a);

"(2) an analysis of the experience of States which currently require the removal of juveniles from adults in all jails and lockups;

"(3) an analysis of possible adverse ramifications which may result from such requirement of removal, including an analysis of whether such requirement would lead to an expansion of the residential capacity of secure detention facilities and secure correctional facilities for juveniles, thus resulting in a net increase in the total number of juveniles detained or confined in such facilities; and

"(4) recommendations for such legislative or administrative action as the Administrator considers appropriate."

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 94–503, 1976 U.S.Code Cong. and Adm.News, p. 5374; Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

Cross References

Submission of plans under this section as condition for reception of funds under this chapter, see section 3745 of this title.

Notes of Decisions

1. Private right of action

This chapter did not define a civil right of liberty such as to be actionable under section 1343(3) of Title 28 granting federal district courts jurisdiction over "civil rights" cases, even though this chapter clearly evinced intention to implement "least restrictive alternative" in regard to rehabilitation of juvenile delinquents, since there was no evidence that a private cause of action was created by Congress so as to give standing to juvenile herein to sue state or state agencies for not complying with such national federal policy. Cruz v. Collazo, D.C.Puerto Rico, 1979, 84 F.R.D. 307.

§ 5634. Funding

(a) Grants and contracts to public and private agencies, organizations, etc.; purpose

The Administrator is authorized to make grants to and enter into contracts with public and private agencies, organizations, institutions, or individuals to—

(1) develop and implement new approaches, techniques, and methods with respect to juvenile delinquency programs;

(2) develop and maintain community-based alternatives to traditional forms of institutionalization;

(3) develop and implement effective means of diverting juveniles from the traditional juvenile justice and correctional system, including restitution projects which test and validate selected arbitration models, such as neighborhood courts or panels, and increase victim satisfaction while providing alternatives to incarceration for detained or adjudicated delinquents;

(4) improve the capability of public and private agencies and organizations to provide services for delinquents and other youth to help prevent delinquency;

(5) develop statewide programs through the use of subsidies or other financial incentives designed to—

(A) remove juveniles from jails and lockups for adults;

(B) replicate juvenile programs designated as exemplary by the National Institute of Justice; or

(C) establish and adopt, based upon recommendations of the Advisory Committee, standards for the improvement of juvenile justice within the State;

(6) develop and implement, in coordination with the Secretary of Education, model programs and methods to keep students in elementary and secondary schools and to prevent unwarranted and arbitrary suspensions and expulsions and to encourage new approaches and techniques with respect to the prevention of school violence and vandalism;

(7) develop and support programs stressing advocacy activities aimed at improving services to youth impacted by the juvenile justice system;

(8) develop, implement, and support, in conjunction with the Secretary of Labor, other public and private agencies and organizations and business and industry programs for youth employment;

(9) improve the juvenile justice system to conform to standards of due process;

(10) develop and support programs designed to encourage and enable State legislatures to consider and further the purposes of this chapter,

both by amending State laws where necessary, and devoting greater resources to those purposes;

(11) develop and implement programs relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist law enforcement personnel and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles; and

(12) develop and implement special emphasis prevention and treatment programs relating to juveniles who commit serious crimes.

(b) Limitations on availability of appropriated funds

Twenty-five per centum of the funds appropriated for each fiscal year pursuant to this part shall be available only for special emphasis prevention and treatment grants and contracts made pursuant to this section.

(c) Availability of funds for private agencies, etc.

At least 30 per centum of the funds available for grants and contracts made pursuant to this section shall be available for grants and contracts to private nonprofit agencies, organizations, or institutions who have had experience in dealing with youth.

(d) Assistance for disadvantaged youth

Assistance provided pursuant to this section shall be available on an equitable basis to deal with disadvantaged youth, including females, minority youth, and mentally retarded and emotionally or physically handicapped youth.

(e) Grants to address problems of juvenile delinquency in territories and possessions of United States

At least 5 percent of the funds available for grants and contracts made pursuant to this section shall be available for grants and contracts designed to address the special needs and problems of juvenile delinquency in the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub.L. 93–415, Title II, § 224, Sept. 7, 1974, 88 Stat. 1122; Pub.L. 95–115, § 4(d), Oct. 3, 1977, 91 Stat. 1054; Pub.L. 96–509, §§ 12, 19(h), Dec. 8, 1980, 94 Stat. 2759, 2765.)

Historical Note

References in Text. This chapter, referred to in subsec. (a)(10), in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3819 of this title.

1980 Amendment. Subsec. (a)(5). Pub.L. 96–509, § 12(a), substituted provisions establishing, as a special emphasis category, state-wide programs through the use of subsidies or other financial incentives designed to remove juveniles from jails and lock-ups for adults, replication of juvenile programs designated as exemplary by the National Institute of Justice, and the establishment and adoption of standards for the improvement of juvenile justice within the State for provisions that had simply called for the adoption of recommendations of the Advisory Committee and the Institute as set forth pursuant to section 5657 of this title.

Subsec. (a)(6). Pub.L. 96–509, § 19(h), substituted "Secretary" for "Commissioner".

Subsec. (a)(11). Pub.L. 96–509, § 12(b), inserted ", including on-the-job training programs to assist law enforcement personnel and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles" following "learning disabilities".

Subsec. (a)(12). Pub.L. 96–509, § 12(c), added par. (12).

Subsecs. (d), (e). Pub.L. 96–509, § 12(d), added subsecs. (d) and (e).

1977 Amendment. Subsec. (a)(3). Pub.L. 95–115, § 4(d)(1), added provisions relating to restitution projects.

Subsec. (a)(4). Pub.L. 95–115, § 4(d)(2), substituted "and other youth to help prevent delinquency" for "and youths in danger of becoming delinquent".

Subsec. (a)(5). Pub.L. 95–115, § 4(d)(3), struck out "on Standards for Juvenile Justice" following "Committee" and "and" following "title,".

Subsec. (a)(6). Pub.L. 95–115, § 4(d)(4), added provision relating to coordination with the Commissioner of Education and provision relating to prevention of school violence and vandalism.

Subsecs. (a)(7) to (11). Pub.L. 95–115, § 4(d)(5), added pars. (7) to (11).

Subsec. (b). Pub.L. 95–115, § 4(d)(6), substituted provisions authorizing the availability of twenty-five per centum of the funds appropriated for provisions authorizing the availability of not less than twenty-five or more than fifty per centum of the funds appropriated.

Subsec. (c). Pub.L. 95–115, § 4(d)(7), substituted "30" for "20".

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Termination of Advisory Committees. Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of its establishment unless in the case of a committee established by the President or an officer of the federal government, such committee is renewed by appropriate action prior to the end of such period, or in the case of a committee established by the Congress, its duration is otherwise provided by law see section 14 of Pub.L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

Library References

United States ⇐82(2).

C.J.S. United States § 122.

§ 5635. Applications for grants and contracts

(a) Time and manner prescribed by Administrator

Any agency, institution, or individual desiring to receive a grant, or enter into any contract under section 5634 of this title, shall submit an application at such time, in such manner, and containing or accompanied by such information as the Administrator may prescribe.

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(b) Contents

In accordance with guidelines established by the Administrator, each such application shall—

(1) provide that the program for which assistance is sought will be administered by or under the supervision of the applicant;

(2) set forth a program for carrying out one or more of the purposes set forth in section 5634 of this title;

(3) provide for the proper and efficient administration of such program;

(4) provide for regular evaluation of the program;

(5) indicate that the applicant has requested the review of the application from the State planning agency and local agency designated in section 5633 of this title, when appropriate, and indicate the response of such agency to the request for review and comment on the application;

(6) provide that regular reports on the program shall be sent to the Administrator and to the State planning agency and local agency, when appropriate;

(7) provide for such fiscal control and fund accounting procedures as may be necessary to assure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter; and

(8) indicate the response of the State agency or the local agency to the request for review and comment on the application.

(c) Approval by Administrator; criteria

In determining whether or not to approve applications for grants under section 5634 of this title, the Administrator shall consider—

(1) the relative cost and effectiveness of the proposed program in effectuating the purposes of this part;

(2) the extent to which the proposed program will incorporate new or innovative techniques;

(3) the extent to which the proposed program meets the objectives and priorities of the State plan, when a State plan has been approved by the Administrator under section 5633(c) of this title and when the location and scope of the program makes such consideration appropriate;

(4) the increase in capacity of the public and private agency, institution, or individual to provide services to delinquents and other youth to help prevent delinquency;

(5) the extent to which the proposed project serves communities which have high rates of youth unemployment, school dropout, and delinquency;

(6) the extent to which the proposed program facilitates the implementation of the recommendations of the Advisory Committee as set forth pursuant to section 5657 of this title; and

(7) the adverse impact that may result from the restriction of eligibility, based upon population, for cities with a population greater than forty thousand, located within States which have not[1] city with a population over two hundred and fifty thousand.

(d) Application by city

No city should be denied an application solely on the basis of its population.

(Pub.L. 93–415, Title II, § 225, Sept. 7, 1974, 88 Stat. 1123; Pub.L. 94–503, Title I, § 130(c), Oct. 15, 1976, 90 Stat. 2425; Pub.L. 95–115, § 4(e), Oct. 3, 1977, 91 Stat. 1085.)

[1] So in original. Probably should read "no".

Historical Note

1977 Amendment. Subsec. (c)(4). Pub.L. 95–115, § 4(e)(1), substituted "and other youth to help prevent delinquency" for "or youths in danger of becoming delinquents".

Subsec. (c)(5). Pub.L. 95–115, § 4(e)(2), struck out "and" following "delinquency;".

Subsec. (c)(6). Pub.L. 95–115, § 4(e)(3), substituted "title; and" for "title.", and struck out "on Standards for Juvenile Justice" following "Committee".

1976 Amendment. Subsec. (c)(7). Pub.L. 94–503, § 130(c)(1), added par. (7).

Subsec. (d). Pub.L. 94–503, § 130(c)(2), added subsec. (d).

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L.93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Termination of Advisory Committees. Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of its establishment unless in the case of a committee established by the President or an officer of the federal government, such committee is renewed by appropriate action prior to the end of such period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see section 14 of Pub.L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 94–503, 1976 U.S.Code Cong. and Adm.News, p. 5374; Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556.

§ 5636. Noncompliance of program or activity; proceedings by Administrator

Whenever the Administrator, after giving reasonable notice and opportunity for hearing to a recipient of financial assistance under this subchapter, finds—

(1) that the program or activity for which such grant was made has been so changed that it no longer complies with the provisions of this subchapter; or

(2) that in the operation of the program or activity there is failure to comply substantially with any such provision;

the Administrator shall initiate such proceedings as are appropriate.

(Pub.L. 93–415, Title II, § 226, Sept. 7, 1974, 88 Stat. 1124.)

Historical Note

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283.

§ 5637. Use of funds

(a) Permitted uses

Funds paid pursuant to this subchapter to any public or private agency, organization, institution, or individual (whether directly or through a State planning agency) may be used for—

(1) planning, developing, or operating the program designed to carry out the purposes of this part; and

(2) not more than 50 per centum of the cost of the construction of innovative community-based facilities for less than twenty persons which, in the judgment of the Administrator, are necessary for carrying out the purposes of this part.

(b) Restrictions on construction of facilities

Except as provided by subsection (a) of this section, no funds paid to any public or private agency, organization, institution, or individual under this subchapter (whether directly or through a State planning agency) may be used for construction.

(c) Restrictions on lobbying

Funds paid pursuant to section 5633(a)(10)(D) of this title and section 5634(a)(7) of this title to any public or private agency, organization, or institution or to any individual (whether directly or through a State criminal justice council) shall not be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence a Member of the Congress or any other Federal, State, or local elected official to favor or oppose any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure by the Congress, any State legislature, any local council, or any similar governing body, except that this subsection shall not preclude such funds from being used in connection with communications to Federal, State, or local elected officials, upon the request of such officials through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved. The Administrator shall take such action as may be necessary to ensure that no funds paid under section 5633(a)(10)(D) of this title or section 5634 (a)(7) of this title are used either directly or indirectly in any manner prohibited in this subsection.

(Pub.L. 93–415, Title II, § 227, Sept. 7, 1974, 88 Stat. 1124; Pub.L. 95–115, § 4(f), Oct. 3, 1977, 91 Stat. 1055; Pub.L. 96–509, § 13(a), Dec. 8, 1980, 94 Stat. 2759.)

Historical Note

1980 Amendment. Subsec. (c). Pub.L. 96–509 added subsec. (c).

1977 Amendment. Subsec. (a). Pub.L. 95–115, § 4(f)(1), substituted "public or private agency, organization, institution, or individual (whether directly or through a State planning agency)" for "State, public or private agency, institution, or individual (whether directly or through a State or local agency)".

Subsec. (b). Pub.L. 95–115, § 4(f)(2), substituted "organization, institution, or individual under this subchapter (whether directly or through a State planning agency)" for "institution, or individual under this part (whether directly or through a State agency or local agency)".

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out at an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5638. Continuing financial assistance for programs

(a) Contributions by recipient

Whenever the Administrator determines that it will contribute to the purposes of part A or part C of this subchapter, he may require the recipient of any grant or contract to contribute money, facilities, or services.

(b) Methods of payment

Payments under this part, pursuant to a grant or contract, may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursements, in such installments and on such conditions as the Administrator may determine.

(c) Amount of assistance

Except as provided in the second sentence of section 5632(c) of this title, financial assistance extended under the provisions of this subchapter shall be 100 per centum of the approved costs of any program or activity.

(d) Grants to Indian tribe or other aboriginal group; increase in Federal share; waiver of State liability

In the case of a grant under this part to an Indian tribe or other aboriginal group, if the Administrator determines that the tribe or group does not have sufficient funds available to meet the local share of the cost of any program or project to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent he deems necessary. Where a State does not have an adequate forum to enforce grant provisions imposing any liability on Indian tribes, the Administrator is authorized to waive State liability and may pursue such legal remedies as are necessary.

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(e) Reallocation of funds

If the Administrator determines, on the basis of information available to him during any fiscal year, that a portion of the funds granted to an applicant under this subpart for that fiscal year will not be required by the applicant or will become available by virtue of the application of the provisions of section 3783 of this title, that portion shall be available for reallocation in an equitable manner to States which have complied with the requirements in section 5633(a)(12)(A) of this title and section 5633(a)(13) of this title, under section 5634(a)(5) of this title.

(Pub.L. 93–415; Title II, § 228, Sept. 7, 1974, 88 Stat. 1124; Pub.L. 95–115, § 4(g)(1), (2), (3)(A), Oct. 3, 1977, 91 Stat. 1055, 1056; Pub.L. 96–509, §§ 14, 19(i), Dec. 8, 1980, 94 Stat. 2760, 2765.)

Historical Note

1980 Amendment. Subsec. (a). Pub.L. 96–509, § 14(a)(1), (2), redesignated former subsec. (c) as (a) and struck out former subsec. (a), which provided that it was the policy of Congress that programs funded under this subchapter continue to receive financial assistance so long as the yearly evaluation of such programs was satisfactory.

Subsec. (b). Pub.L. 96–509, § 14(a)(1), (2), redesignated former subsec. (d) as (b) and struck out former subsec. (b), which authorized a State, when there was no other way to fund an essential juvenile delinquency program not funded by the Law Enforcement Assistance Administration, to utilize 25 percent of the formula grant funds available to it under this part to meet the non-Federal matching share requirement for any other Federal juvenile delinquency program grant.

Subsecs. (c), (d). Pub.L. 96–509, § 14(a)(2), redesignated former subsecs. (e) and (f) as (c) and (d), respectively. Former subsecs. (c) and (d) redesignated (a) and (b), respectively.

Subsec. (e). Pub.L. 96–509, §§ 14(a)(2), (b), 19(i), redesignated former subsec. (g) as (e), and in subsec. (e) as so redesignated, substituted reference to this subpart for reference to this part, "section 3783 of this title" for "section 3757 of this title", and "in an equitable manner to States which have complied with the requirements in section 5633(a)(12)(A) of this title and section 5633(a)(13) of this title, under section 5634(a)(5) of this title" for "under section 5634 of this title". Former subsec. (e) redesignated (c).

Subsecs. (f), (g). Pub.L. 96–509, § 14(a)(2), redesignated former subsecs. (f) and (g) as (d) and (e), respectively.

1977 Amendment. Subsec. (b). Pub.L. 95–115, § 4(g)(1), substituted "by the Law Enforcement Assistance Administration" for "under this part".

Subsec. (c). Pub.L. 95–115, § 4(g)(2), substituted "part A or part C" for "this part".

Subsecs. (e) to (g). Pub.L. 95–115, § 4(g)(3)(A), added subsecs. (e) to (g).

Effective Date of 1977 Amendment. Amendment of subsecs. (b), (c), (f), and (g) by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Addition of subsec. (e) effective Oct. 1, 1978, pursuant to section 4(g)(3)(B) of Pub.L. 95–115.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5639. Confidentiality of program records

Except as authorized by law, program records containing the identity of individual juveniles gathered for purposes pursuant to this subchapter may

not be disclosed except with the consent of the service recipient or legally authorized representative, or as may be necessary to perform the functions required by this subchapter. Under no circumstances may project reports or findings available for public dissemination contain the actual names of individual service recipients.

(Pub.L. 93–415, Title II, § 229, as added Pub.L. 95–115, § 4(h), Oct. 3, 1977, 91 Stat. 1056.)

Historical Note

Effective Date. Section effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95–115, see 1977 U.S. Code Cong. and Adm.News, p. 2556.

Part C—National Institute for Juvenile Justice and Delinquency Prevention

§ 5651. Institute structure and operation

(a) Establishment

There is hereby established within the Juvenile Justice and Delinquency Prevention Office a National Institute for Juvenile Justice and Delinquency Prevention.

(b) Deputy Administrator as head; Administrator to supervise and direct

The National Institute for Juvenile Justice and Delinquency Prevention shall be under the supervision and direction of the Administrator, and shall be headed by a Deputy Administrator of the Office appointed under section 5611(f) of this title.

(c) Coordination of activities with National Institute of Justice

The activities of the National Institute for Juvenile Justice and Delinquency Prevention shall be coordinated with the activities of the National Institute of Justice in accordance with the requirements of section 5611(b) of this title.

(d) Purpose of Institute

It shall be the purpose of the Institute to provide a coordinating center for the collection, preparation, and dissemination of useful data regarding the treatment and control of juvenile offenders, and it shall also be the purpose of the Institute to provide training for representatives of Federal, State, and local law enforcement officers, teachers, and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation personnel, correctional personnel and other persons, including lay personnel, including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations, connected with the treatment and control of juvenile offenders.

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(e) Additional powers

In addition to the other powers, express and implied, the Institute may—

(1) request any Federal agency to supply such statistics, data, program reports, and other material as the Institute deems necessary to carry out its functions;

(2) arrange with and reimburse the heads of Federal agencies for the use of personnel or facilities or equipment of such agencies;

(3) confer with and avail itself of the cooperation, services, records, and facilities of State, municipal, or other public or private local agencies;

(4) make grants and enter into contracts with public or private agencies, organizations, or individuals, for the partial performance of any functions of the Institute;

(5) compensate consultants and members of technical advisory councils who are not in the regular full-time employ of the United States, at a rate now or hereafter prescribed for GS–18 of the General Schedule by section 5332 of Title 5 and while away from home, or regular place of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently; and

(6) assist, through training, the advisory groups established pursuant to section 5633(a)(3) of this title or comparable public or private citizen groups in nonparticipating States in the accomplishment of their objectives consistent with this chapter.

(f) Cooperation of other Federal agencies

Any Federal agency which receives a request from the Institute under subsection (e)(1) of this section may cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information and advice to the Institute.

(Pub.L. 93–415, Title II, § 241, Sept. 7, 1974, 88 Stat. 1125; Pub.L. 95–115, §§ 3(a)(3)(A), (5), 5(a), (f), Oct. 3, 1977, 91 Stat. 1048, 1049, 1056, 1057; Pub.L. 96–509, § 19(j), Dec. 8, 1980, 94 Stat. 2765.)

Historical Note

References in Text. This chapter, referred to in subsec. (e)(6), in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

1980 Amendment. Subsec. (b). Pub.L. 96–509, § 19(j)(1), substituted "Administrator" for "Associate Administrator" and "Deputy Administrator" for "Deputy Associate Administrator".

Subsec. (c). Pub.L. 96–509, § 19(j)(2), substituted "National Institute of Justice" for "National Institute of Law Enforcement and Criminal Justice".

1977 Amendment. Subsec. (b). Pub.L. 95–115, § 3(a)(3)(A), (5), substituted "Associate" for "Assistant" wherever appearing therein.

Subsec. (d). Pub.L. 95–115, § 5(a)(1), (f), redesignated former subsec. (f) as (d) and, as so redesignated, expanded scope of lay personnel to include persons associated with law-related education programs, etc. Former subsec. (d), which set forth the responsibilities of the Administrator, was struck out.

Subsec. (e). Pub.L. 95–115, § 5(a)(1), (2), (5), redesignated former subsec. (g) as (e) and, as so redesignated, in par. (4) added provision authorizing the making of grants and added par. (6). Former subsec. (e), which authorized the Administrator to delegate powers under this chapter, was struck out.

Subsec. (f). Pub.L. 95–115, § 5(a)(1), (4), (5), redesignated former subsec. (h) as (f) and, as so redesignated, substituted "(e)" for "(g)". Former subsec. (f) was redesignated as (d).

Subsec. (g). Pub.L. 95–115, § 5(a)(1), redesignated former subsec. (g) as (e).

Subsec. (h). Pub.L. 95–115, § 5(a)(4), redesignated former subsec. (h) as (f).

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

Library References

C.J.S. Infants §§ 11 et seq., 17, 18, 93 et seq.

§ 5652. Information function of Institute

The National Institute for Juvenile Justice and Delinquency Prevention is authorized to—

(1) serve as an information bank by collecting systematically and synthesizing the data and knowledge obtained from studies and research by public and private agencies, institutions, or individuals concerning all aspects of juvenile delinquency, including the prevention and treatment of juvenile delinquency;

(2) serve as a clearinghouse and information center for the preparation, publication, and dissemination of all information regarding juvenile delinquency, including State and local juvenile delinquency prevention and treatment programs and plans, availability of resources, training and educational programs, statistics, and other pertinent data and information.

(Pub.L. 93–415, Title II, § 242, Sept. 7, 1974, 88 Stat. 1126.)

Historical Note

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283.

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§ 5653. Research, demonstration, and evaluation functions of Institute

The National Institute for Juvenile Justice and Delinquency Prevention is authorized to—

(1) conduct, encourage, and coordinate research and evaluation into any aspect of juvenile delinquency, particularly with regard to new programs and methods which show promise of making a contribution toward the prevention and treatment of juvenile delinquency;

(2) encourage the development of demonstration projects in new, innovative techniques and methods to prevent and treat juvenile delinquency;

(3) provide for the evaluation of all juvenile delinquency programs assisted under this subchapter in order to determine the results and the effectiveness of such programs;

(4) provide for the evaluation of any other Federal, State, or local juvenile delinquency program, upon the request of the Associate Administrator;

(5) prepare, in cooperation with educational institutions, Federal, State, and local agencies, and appropriate individuals and private agencies, such studies as it considers to be necessary with respect to the prevention and treatment of juvenile delinquency and related matters, including recommendations designed to promote effective prevention and treatment, such as assessments regarding the role of family violence, sexual abuse or exploitation and media violence and delinquency, the improper handling of youth placed in one State by another State, the possible ameliorating roles of recreation and the arts, and the extent to which youth in the juvenile system are treated differently on the basis of sex and the ramifications of such practices;

(6) disseminate the results of such evaluations and research and demonstration activities particularly to persons actively working in the field of juvenile delinquency; and

(7) disseminate pertinent data and studies (including a periodic journal) to individuals, agencies, and organizations concerned with the prevention and treatment of juvenile delinquency.

(Pub.L. 93–415, Title II, § 243, Sept. 7, 1974, 88 Stat. 1126; Pub.L. 95–115, §§ 3(a)(3)(B), 5(b), Oct. 3, 1977, 91 Stat. 1048, 1057.)

Historical Note

1977 Amendment. Par. (4). Pub.L. 95–115, § 3(a)(3)(B), added "Associate" preceding "Administrator".

Par. (5). Pub.L. 95–115, § 5(b), added provisions relating to assessments regarding the role of family violence, etc.

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556.

Library References

Infants ⇐131 et seq., 271, 273.

§ 5654. Training function of Institute

The National Institute for Juvenile Justice and Delinquency Prevention is authorized to—

(1) develop, conduct, and provide for training programs for the training of professional, paraprofessional, and volunteer personnel, and other persons who are or who are preparing to work with juveniles and juvenile offenders;

(2) develop, conduct, and provide for seminars, workshop, and training programs in the latest proven effective techniques and methods of preventing and treating juvenile delinquency for law enforcement officers, juvenile judges, and other court personnel, probation officers, correctional personnel, and other Federal, State, and local government personnel who are engaged in work relating to juvenile delinquency;

(3) devise and conduct a training program, in accordance with the provisions of sections 5659, 5660, and 5661 of this title, of short-term instruction in the latest proven-effective methods of prevention, control, and treatment of juvenile delinquency for correctional and law enforcement personnel, teachers and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation officers, and other persons (including lay personnel, including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations) connected with the prevention and treatment of juvenile delinquency; and

(4) develop technical training teams to aid in the development of training programs in the States and to assist State and local agencies which work directly with juveniles and juvenile offenders.

(Pub.L. 93–415, Title II, § 244, Sept. 7, 1974, 88 Stat. 1127; Pub.L. 95–115, § 5(f), Oct. 3, 1977, 91 Stat. 1057; Pub.L. 96–509, § 19(k), Dec. 8, 1980, 94 Stat. 2765.)

Historical Note

1980 Amendment. Par. (3). Pub.L. 96–509, substituted "sections 248, 249, and 250" for "sections 249, 250, and 251" which for purposes of codification already had been translated as "sections 5659, 5660, and 5661 of this title", thereby necessitating no further change in text.

1977 Amendment. Par. (3). Pub.L. 95–115 added provisions expanding scope of lay personnel to include persons associated with law-related education programs, etc.

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S.

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Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5655. Functions of the Advisory Committee

The Advisory Committee shall advise, consult with, and make recommendations to the Administrator concerning the overall policy and operations of the Institute.

(Pub.L. 93–415, Title II, § 245, Sept. 7, 1974, 88 Stat. 1127; Pub.L. 95–115, § 3(a)(3), Oct. 3, 1977, 91 Stat. 1057; Pub.L. 96–509, § 19(*l*), Dec. 8, 1980, 94 Stat. 2765.)

Historical Note

1980 Amendment. Pub.L. 96–509 substituted "Administrator" for "Associate Administrator".

1977 Amendment. Pub.L. 95–115 substituted provisions relating to the functions of the Advisory Committee with respect to the Associate Administrator concerning the policy and operations of the Institute, for provisions relating to the functions of the Advisory Committee for the National Institute for Juvenile Justice and Delinquency Prevention with respect to the Deputy Assistant Administrator for the National Institute concerning the policy and operations of the Institute.

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Termination of Advisory Committees. Advisory committees established after Jan. 5, 1973 to terminate not later than the expiration of the two-year period beginning on the date of its establishment unless in the case of a committee established by the President or an officer of the federal government, such committee is renewed by appropriate action prior to the end of such period, or in the case of a committee established by the Congress its duration is otherwise provided by law. See section 14 of Pub.L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5656. Annual report by Deputy Administrator; time; contents; summary to President and Congress

The Deputy Administrator for the National Institute for Juvenile Justice and Delinquency Prevention shall develop annually and submit to the Administrator after the first year the legislation is enacted, prior to September 30, a report on research, demonstration, training, and evaluation programs funded under this subchapter, including a review of the results of such programs, an assessment of the application of such results to existing and new juvenile delinquency programs, and detailed recommendations for future research, demonstration, training, and evaluation programs. The Administrator shall include a summary of these results and recommendations in his report to the President and Congress required by section 5614(b)(5) of this title.

(Pub.L. 93–415, Title II, § 246, Sept. 7, 1974, 88 Stat. 1127; Pub.L. 94–273, § 2(27), Apr. 21, 1976, 90 Stat. 376; Pub.L. 95–115, § 3(a)(3), (5), Oct. 3, 1977, 91 Stat. 1048, 1049; Pub.L. 96–509, § 19(m), Dec. 8, 1980, 94 Stat. 2765.)

Historical Note

1980 Amendment. Pub.L. 96–509 substituted "Deputy Administrator" and "Administrator" for "Deputy Associate Administrator" and "Associate Administrator", respectively wherever appearing.

1977 Amendment. Pub.L. 95–115, § 3(a)(3) substituted "Deputy Associate Administrator" for "Deputy Assistant Administrator" and inserted "Associate" preceding "Administrator" in two instances.

Pub.L. 95–115, § 3(a)(5), enacted identical amendment as section 3(a)(3) by substituting "Deputy Associate Administrator" for "Deputy Assistant Administrator".

1976 Amendment. Pub.L. 94–273 substituted "September" for "June".

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 94–273, 1976 U.S. Code Cong. and Adm.News, p. 690; Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5657. Standards for juvenile justice system

(a) Functions of Institute

The National Institute for Juvenile Justice and Delinquency Prevention, under the supervision of the Advisory Committee, shall review existing reports, data, and standards, relating to the juvenile justice system in the United States.

(b) Report by Advisory Committee to President and Congress; contents

Not later than one year after September 7, 1974, the Advisory Committee shall submit to the President and the Congress a report which, based on recommended standards for the administration of juvenile justice at the Federal, State, and local level—

(1) recommends Federal action, including but not limited to administrative and legislative action, required to facilitate the adoption of these standards throughout the United States; and

(2) recommends State and local action to facilitate the adoption of these standards for juvenile justice at the State and local level.

(c) Availability of information of Federal departments, etc.

Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Advisory Committee such information as the Committee deems necessary to carry out its functions under this section.

(d) Refinement of recommended standards and assistance in adoption of State and local standards; development of model State legislation

Following the submission of its report under subsection (b) of this section the Advisory Committee shall direct its efforts toward refinement of the recommended standards and may assist State and local governments and

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private agencies and organizations in the adoption of appropriate standards at State and local levels. The National Institute for Juvenile Justice and Delinquency Prevention is authorized to develop and support model State legislation consistent with the mandates of this chapter and the standards developed by Advisory Committee.

(Pub.L. 93–415, Title II, § 247, Sept. 7, 1974, 88 Stat. 1127; Pub.L. 95–115, § 3, Oct. 3, 1977, 91 Stat. 1057.)

Historical Note

References in Text. This chapter, referred to in subsec. (d), in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

1977 Amendment. Subsec. (a). Pub.L. 95–115, § 5(d)(1), struck out "on Standards for Juvenile Justice established in section 5618(e) of this title" following "Committee".

Subsec. (d). Pub.L. 95–115, § 5(d)(2), added subsec. (d).

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Termination of Advisory Committees. Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of its establishment unless in the case of a committee established by the President or an officer of the federal government, such committee is renewed by appropriate action prior to the end of such period, or in the case of a committee established by the Congress its duration is otherwise provided by law. See section 14 of Pub.L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556.

§ 5658. Repealed. Pub.L. 95–115, § 5(e)(1), Oct. 3, 1977, 91 Stat. 1057

Historical Note

Section, Pub.L. 93–415, Title II, § 248, Sept. 7, 1974, 88 Stat. 1128, set forth provisions relating to restrictions on disclosure and transfer of juvenile records. See section 5639 of this title.

Effective Date of Repeal. Repeal by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5659. Training program; establishment; purpose; utilization of State and local facilities, personnel, etc.; enrollees

(a) The Administrator shall establish within the Institute a training program designed to train enrollees with respect to methods and techniques for the prevention and treatment of juvenile delinquency. In carrying out the program the Administrator is authorized to make use of available State and local services, equipment, personnel, facilities, and the like.

(b) Enrollees in the training program established under this section shall be drawn from correctional and law enforcement personnel, teachers and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation officers, and other persons (including lay personnel, including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations) connected with the prevention and treatment of juvenile delinquency.

(Pub.L. 93–415, Title II, § 248, formerly § 249, Sept. 7, 1974, 88 Stat. 1128, renumbered and amended Pub.L. 95–115, §§ 3(a)(3)(B), 5(e)(1), (f), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub.L. 96–509, § 19(n), Dec. 8, 1980, 94 Stat. 2765.)

Historical Note

Prior Provisions. A prior section 248 of Pub.L. 93–415, relating to restrictions on disclosure and transfer of juvenile records, was classified to section 5658 of this title and was repealed by Pub.L. 95–115, § 5(e)(1), Oct. 3, 1977, 91 Stat. 1057.

1980 Amendment. Subsec. (a). Pub.L. 96–509 substituted "Administrator" for "Associate Administrator".

1977 Amendment. Subsec. (a). Pub.L. 95–115, § 3(a)(3)(B), added "Associate" preceding "Administrator" wherever appearing therein.

Subsec. (b). Pub.L. 95–115, § 5(f), added provisions expanding scope of lay personnel to include persons associated with law-related education programs, etc.

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5660. Curriculum for training program

The Administrator shall design and supervise a curriculum for the training program established by section 5659 of this title which shall utilize an interdisciplinary approach with respect to the prevention of juvenile delinquency, the treatment of juvenile delinquents, and the diversion of youths from the juvenile justice system. Such curriculum shall be appropriate to the needs of the enrollees of the training program.

(Pub.L. 93–415, Title II, § 249, formerly § 250, Sept. 7, 1974, 88 Stat. 1128, renumbered and amended Pub.L. 95–115, §§ 3(a)(3)(B), 5(e)(1), (2)(A), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub.L. 96–509, § 19(*o*), Dec. 8, 1980, 94 Stat. 2765.)

Historical Note

Prior Provisions. A prior section 249 of Pub.L. 93–415, relating to the establishment of a training program within the National Institute for Juvenile Justice and Delinquency Prevention, was renumbered section 248 of Pub.L. 93–415 by Pub.L. 95–115, § 5(e)(1), Oct. 3, 1977, 91 Stat. 1057, and is classified to section 5659 of this title.

1980 Amendment. Pub.L. 96–509 substituted "Administrator" for "Associate Administrator".

1977 Amendment. Pub.L. 95–115 added "Associate" preceding "Administrator" and substituted "section 248" for "section 249" which for purposes of codification had already been translated as "section 5659 of this title", thereby necessitating no further change in text.

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective

fective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5661. Enrollment for training program

(a) Application

Any person seeking to enroll in the training program established under section 5659 of this title shall transmit an application to the Administrator, in such form and according to such procedures as the Administrator may prescribe.

(b) Admittance; determination by Secretary

The Administrator shall make the final determination with respect to the admittance of any person to the training program. The Administrator, in making such determination, shall seek to assure that persons admitted to the training program are broadly representative of the categories described in section 5659(b) of this title.

(c) Travel expenses and per diem allowance

While studying at the Institute and while traveling in connection with his study (including authorized field trips), each person enrolled in the Institute shall be allowed travel expenses and a per diem allowance in the same manner as prescribed for persons employed intermittently in the Government service under section 5703 of Title 5.

(Pub.L. 93–415, Title II, § 250, formerly § 251, Sept. 7, 1974, 88 Stat. 1128, renumbered and amended Pub.L. 95–115, §§ 3(a)(3)(B), 5(e)(1), (2)(B), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub.L. 96–509, § 19(p), Dec. 8, 1980, 94 Stat. 2765.)

Historical Note

Prior Provisions. A prior section 250 of Pub.L. 93–415, relating to the curriculum for the training program within the National Institute of Juvenile Justice and Delinquency Prevention, was renumbered section 249 of Pub.L. 93–415 by Pub.L. 95–115, § 5(e)(1), Oct. 3, 1977, 91 Stat. 1057, and is classified to section 5660 of this title.

1980 Amendment. Subsec. (a). Pub.L. 96–509, § 19(p)(1), substituted "Administrator" for "Associate Administrator".

Subsec. (b). Pub.L. 96–509, § 19(p)(2), substituted "Administrator" for "Associate Administrator".

Subsec. (c). Pub.L. 96–509, § 19(p)(3), substituted "section 5703" for "section 5703(b)".

1977 Amendment. Subsec. (a). Pub.L. 95–115, §§ 3(a)(3)(B), 5(e)(2)(B), added "Associate" preceding "Administrator" wherever appearing therein and substituted "section 248" for "section 249" which for purposes of codification had been translated already as "section 5659 of this title", thereby necessitating no further change in text.

Subsec. (b). Pub.L. 95–115, §§ 3(a)(3)(B), 5(e)(2)(B), added "Associate" preceding "Administrator" wherever appearing therein and substituted "section 248(b)" for "section 249(b)" which for purposes of codification already had been translated as "section 5659 of this title", thereby necessitating no further change in text.

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective

Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

PART D. ADMINISTRATIVE PROVISIONS

§ 5671. Authorization of appropriations

(a) Availability of funds

To carry out the purposes of this subchapter there is authorized to be appropriated $200,000,000 for each of the fiscal years ending September 30, 1981, September 30, 1982, September 30, 1983, and September 30, 1984. Funds appropriated for any fiscal year may remain available for obligation until expended.

(b) Juvenile delinquency programs

In addition to the funds appropriated under subsection (a) of this section, the Administration shall maintain from the appropriation for the Law Enforcement Assistance Administration, each fiscal year, at least 19.15 percent of the total appropriations for the Administration, for juvenile delinquency programs.

(c) Approval of State agency and establishment of supervisory board

Notwithstanding any other provision of law, if the Administrator determines, in his discretion, that sufficient funds have not been appropriated for any fiscal year for the activities authorized in part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C.A. § 3741 et seq.], then the Administrator is authorized to—

(1) approve any appropriate State agency designated by the Governor of the State involved as the sole agency responsible for supervising the preparation and administration of the State plan submitted under section 5633 of this title; and

(2) establish appropriate administrative and supervisory board membership requirements for any agency designated in accordance with paragraph (1), and permit the State advisory group appointed under section 5633(a)(2) of this title to operate as the supervisory board for such agency, at the discretion of the Governor.

(Pub.L. 93–415, Title II, § 261, Sept. 7, 1974, 88 Stat. 1129; Pub.L. 94–273, § 2(b), Apr. 21, 1976, 90 Stat. 380; Pub.L. 94–503, Title I, § 130(a), Oct. 15, 1976, 90 Stat. 2425; Pub.L. 95–115, § 6(b), Oct. 3, 1977, 91 Stat. 1058; Pub.L. 96–509, §§ 2(a), 15, Dec. 8, 1980, 94 Stat. 2750, 2760.)

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Historical Note

References in Text. The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c), is Pub.L. 90–351, June 19, 1968, 82 Stat. 197, as amended. Part D of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is classified generally to subchapter IV (section 3741 et seq.) of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables volume.

1980 Amendment. Subsec. (a). Pub.L. 96–509, § 2(a), substituted provisions authorizing appropriations of $200,000,000 for each of the fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, for provisions that had authorized appropriations of $150,000,000 for the fiscal year ending Sept. 30, 1978, $175,000,000 for the fiscal year ending Sept. 30, 1979, and $200,000,000 for the fiscal year ending Sept. 30, 1980.

Subsec. (c). Pub.L. 96–509, § 15, added subsec. (c).

1977 Amendment. Subsec. (a). Pub.L. 95–115 substituted provisions setting forth authorization of appropriations for the fiscal year ending Sept. 30, 1978, through the fiscal year ending Sept. 30, 1980, and authorization of availability of funds until expended, for provisions setting forth authorization of appropriations for the fiscal year ending June 30, 1975, through the fiscal year ending Sept. 30, 1977.

1976 Amendments. Subsec. (a). Pub.L. 94–273 substituted "September 30, 1977" for "June 30, 1977".

Subsec. (b). Pub.L. 94–503 substituted "subsection (a) of this section" for "this section" and "the appropriation for the Law Enforcement Assistance Administration, each fiscal year, at least 19.15 percent of the ... appropriations for the Administration, for ... venile delinquency programs" for "other ... Enforcement Assistance Administration ... propriations other than the appropriations ... administration, at least the same level of ... nancial assistance for juvenile delinquency programs assisted by the Law Enforcement Assistance Administration during fiscal ... 1972".

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. ... 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Limitations on Authorization of Appropriations to Carry Out This Subchapter for Fiscal Years 1982, 1983, and 1984. Pub.L. 97–35, Title XV, § 1503, Aug. 13, 1981, 95 Stat. 750, provided that: "The total amount of appropriations to carry out Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 [this subchapter] shall not exceed $77,000,000 for fiscal year 1982; $77,500,000 for fiscal year 1983; and $74,900,000 for fiscal year 1984."

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See also, Pub.L. 94–273, 1976 U.S.Code Cong. and Adm.News, p. 690; Pub.L. 94–503, 1976 U.S.Code Cong. and Adm.News, p. 5376; Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

Cross References

Appropriations of funds for juvenile delinquency programs, see section 3793a of this title.

Library References

Infants ⇐13, 16, 17. C.J.S. Infants §§ 11 et seq., 17, 18, 93 et seq.

§ 5672. Applicability of other administrative provisions

(a) The administrative provisions of sections 3782(a), 3782(c), 3783, 3784, 3785, 3786, 3787, 3788, 3789a, 3789b, 3789c(a), 3789d(c), 3789f(a), 3789f(b), 3789f(c), 3789g(a), 3789g(b), and 3789g(d) of this title are incorporated in this chapter as administrative provisions applicable to this chapter. References in the cited sections authorizing action by the Director of the

Office of Justice Assistance, Research and Statistics, the Administrator of the Law Enforcement Assistance Administration, the Director of the National Institute of Justice, and the Director of the Bureau of Justice Statistics also shall be construed as authorizing the Administrator of the Office of Juvenile Justice and Delinquency Prevention to perform the same action.

(b) The Office of Justice Assistance, Research and Statistics shall directly provide staff support to, and coordinate the activities of, the Office of Juvenile Justice and Delinquency Prevention in the same manner as it is authorized to provide staff support and coordinate the activities of the Law Enforcement Assistance Administration, National Institute of Justice, and Bureau of Justice Statistics pursuant to section 3781(b) of this title.

(Pub.L. 93–415, Title II, § 262, Sept. 7, 1974, 88 Stat. 1129; Pub.L. 95–115, § 6(c), Oct. 3, 1977, 91 Stat. 1058; Pub.L. 96–509, § 16, Dec. 8, 1980, 94 Stat. 2761.)

Historical Note

References in Text. This chapter, referred to in subsec. (a), in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

1980 Amendment. Pub.L. 96–509 brought relevant applicable administrative provisions of the Omnibus Crime Control and Safe Streets Act of 1968 into conformance subsequent to the Justice System Improvement Amendments of 1979 and provided that the Office of Justice Assistance, Research, and Statistics provide staff support to, and coordinate the activities of the Office in the same manner as it does for the Law Enforcement Assistance Administration, National Institute of Justice, and Bureau of Justice Statistics pursuant to section 3781(b) of this title.

1977 Amendment. Pub.L. 95–115 substituted provisions setting forth applicability of specified statutory requirements, for provisions setting forth prohibitions against discrimination and required terms in grants, contracts, and agreements and enforcement procedures thereof.

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Effective Date. Section effective Sept. 7, 1974, see section 263(a) and (b) of Pub.L. 93–415, set out as an Effective Date note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

Library References

Civil Rights ⇐9.5. C.J.S. Civil Rights §§ 56 to 58.

SUBCHAPTER III—RUNAWAY AND HOMELESS YOUTH

§ 5701. Congressional statement of findings

The Congress hereby finds that—

(1) the number of juveniles who leave and remain away from home without parental permission has increased to alarming proportions, creating a substantial law enforcement problem for the communities inun-

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dated, and significantly endangering the young people who are without resources and live on the street;

(2) the exact nature of the problem is not well defined because national statistics on the size and profile of the runaway youth population are not tabulated;

(3) many such young people, because of their age and situation, are urgently in need of temporary shelter and counseling services;

(4) the problem of locating, detaining, and returning runaway children should not be the responsibility of already overburdened police departments and juvenile justice authorities; and

(5) in view of the interstate nature of the problem, it is the responsibility of the Federal Government to develop accurate reporting of the problem nationally and to develop an effective system of temporary care outside the law enforcement structure.

(Pub.L. 93–415, Title III, § 302, Sept. 7, 1974, 88 Stat. 1129.)

Historical Note

Short Title. For Short Title of Title III of Pub.L. 93–415, which enacted this subchapter, see Short Title note set out under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283.

Code of Federal Regulations

Grant and contracting procedures, see 45 CFR 1351.1 et seq.

Library References

Infants ⇐13.

C.J.S. Infants §§ 5, 92, 93, 95 to 98.

§ 5702. Promulgation of rules

The Secretary of Health and Human Services (hereinafter referred to as the "Secretary") may prescribe such rules as he considers necessary or appropriate to carry out the purposes of this subchapter.

(Pub.L. 93–415, Title III, § 303, Sept. 7, 1974, 88 Stat. 1130; Pub.L. 96–88, Title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

Historical Note

Change of Name. "Secretary of Health and Human Services" was substituted for "Secretary of Health, Education, and Welfare" in text, pursuant to section 509(b) of Pub.L. 96–88, which is classified to section 3508(b) of Title 20, Education.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283.

PART A—GRANTS PROGRAM

§ 5711. Grants and technical assistance

(a) Authorization; purposes; amount; priority

The Secretary is authorized to make grants and to provide technical assistance and short-term training to States, localities and nonprofit private agencies and coordinated networks of such agencies in accordance with the provisions of this part. Grants under this part shall be made equitably among the States based upon their respective populations of youth under 18 years of age for the purpose of developing local facilities to deal primarily with the immediate needs of runaway youth or otherwise homeless youth, and their families, in a manner which is outside the law enforcement structure and juvenile justice system. The size of such grant shall be determined by the number of such youth in the community and the existing availability of services. Grants also may be made for the provision of a national communications system for the purpose of assisting runaway and homeless youth in communicating with their families and with service providers. Among applicants priority shall be given to private organizations or institutions which have had past experience in dealing with such youth.

(b) Supplemental grants to runaway centers developing model programs

The Secretary is authorized to provide supplemental grants to runaway centers which are developing, in cooperation with local juvenile court and social service agency personnel, model programs designed to provide assistance to juveniles who have repeatedly left and remained away from their homes or from any facilities in which they have been placed as the result of an adjudication.

(c) On-the-job training to local runaway and homeless youth center personnel

The Secretary is authorized to provide on-the-job training to local runaway and homeless youth center personnel and coordinated networks of local law enforcement, social service, and welfare personnel to assist such personnel in recognizing and providing for learning disabled and other handicapped juveniles.

Pub.L. 93–415, Title III, § 311, Sept. 7, 1974, 88 Stat. 1130; Pub.L. 95–115, § 7(a)(1), Oct. 3, 1977, 91 Stat. 1058; Pub.L. 96–509, § 18(c), Dec. 8, 1980, 94 Stat. 2762.)

Historical Note

1980 Amendment. Subsec. (a). Pub.L. 96–509, § 18(c)(1)–(4), designated existing provision as subsec. (a), and in subsec. (a) as so designated, inserted "equitably among the States based upon their respective populations of youth under 18 years of age" following "shall be made", ", and their families," after "homeless youth", and provision that grants also be made for the provision of a national communications system to assist runaway and homeless youth in communicating with their families and with service providers.

Subsecs. (b), (c). Pub.L. 96–509, § 18(c)(5), added subsecs. (b) and (c).

1977 Amendment. Pub.L. 95–115 substituted "technical assistance and short-term training to States, localities and nonprofit private agencies and coordinated networks of such agencies in" for "technical assistance to

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localities and nonprofit private agencies in", "needs of runaway youth or otherwise homeless youth in" for "needs of runaway youth in", and "such youth" for "runaway youth" in two places.

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment [illegible] section 5601 of this title.

Legislative History. For legislative [illegible] and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

Code of Federal Regulations

Runaway Youth grants, see 40 CFR 1351.1 et seq.

Library References

United States ⇐82(2). C.J.S. United States § 122.

§ 5712. Eligibility; plan requirements

(a) To be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund an existing or proposed runaway center, a locally controlled facility providing temporary shelter, and counseling services to juveniles who have left home without permission of their parents or guardians or to other homeless juveniles.

(b) In order to qualify for assistance under this part, an applicant shall submit a plan to the Secretary meeting the following requirements and including the following information. Each center—

(1) shall be located in an area which is demonstrably frequented by or easily reachable by runaway youth;

(2) shall have a maximum capacity of no more than twenty children, with a ratio of staff to children of sufficient portion to assure adequate supervision and treatment;

(3) shall develop adequate plans for contacting the child's parents or relatives (if such action is required by State law) and assuring the safe return of the child according to the best interests of the child, for contacting local government officials pursuant to informal arrangements established with such officials by the runaway center and for providing for other appropriate alternative living arrangements;

(4) shall develop an adequate plan for assuring proper relations with law enforcement personnel, social service personnel, and welfare personnel, and the return of runaway youths from correctional institutions;

(5) shall develop an adequate plan for aftercare counseling involving runaway youth and their parents within the State in which the runaway center is located and for assuring, as possible, that aftercare services will be provided to those children who are returned beyond the State in which the runaway center is located;

(6) shall keep adequate statistical records profiling the children and parents which it serves, except that records maintained on individual runaway youths shall not be disclosed without the consent of the individual youth and parent or legal guardian to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual runaway youth, and reports or other documents based on such statistical records shall not disclose the identity of individual runaway youths;

(7) shall [illegible] the center has been able to meet the goals [illegible] statistical summaries required by paragraph (6);

(8) shall demonstrate its ability to operate under accounting procedures and fiscal control devices as required by the Secretary;

(9) shall submit a budget estimate with respect to the plan submitted by such center under this subsection; and

(10) shall supply such other information as the Secretary reasonably deems necessary.

(Pub.L. 93–415, Title III, § 312, Sept. 7, 1974, 88 Stat. 1130; Pub.L. 95–115, § 7(a)(2), (3), Oct. 3, 1977, 91 Stat. 1058; Pub.L. 96–509, § 18(d), Dec. 8, 1980, 94 Stat. 2762.)

Historical Note

1980 Amendment. Subsec. (a). Pub.L. 96–509, § 18(d)(1), substituted "center" for "house" and inserted "or to other homeless juveniles" following "parents or guardians".

Subsec. (b). Pub.L. 96–509, § 18(d)(2), substituted "center" for "house" wherever appearing and in par. (4) inserted reference to social service personnel and welfare personnel.

1977 Amendment. Subsec. (b). Pub.L. 95–115 in par. (5) substituted "aftercare services" for "aftercase services" and in par. (6) substituted "the consent of the individual youth and parent or legal guardian" for "parental consent".

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5713. Approval of application by Secretary; priority

An application by a State, locality, or nonprofit private agency for a grant under this part may be approved by the Secretary only if it is consistent with the applicable provisions of this part and meets the requirements set forth in section 5712 of this title. Priority shall be given to grants smaller than $150,000. In considering grant applications under this part, priority shall be given to organizations which have a demonstrated experience in the provision of service to runaway and homeless youth and their families.

(Pub.L. 93–415, Title III, § 313, Sept. 7, 1974, 88 Stat. 1131; Pub.L. 95–115, § 7(a)(4), Oct. 3, 1977, 91 Stat. 1058; Pub.L. 96–509, § 18(e), Dec. 8, 1980, 94 Stat. 2762.)

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Historical Note

1980 Amendment. Pub.L. 96–509 substituted "$150,000" for "$100,000" and "organizations which have a demonstrated experience in the provision of service to runaway and homeless youth and their families" for "any applicant whose program budget is smaller than $150,000".

1977 Amendment. Pub.L. 95–115 substituted "$100,000" and "$150,000" for "$75,000" and "$100,000", respectively.

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. [illegible], as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5714. Grants to nonprofit private agencies; control over staff and personnel

Nothing in this part shall be construed to deny grants to nonprofit private agencies which are fully controlled by private boards or persons but which in other respects meet the requirements of this part and agree to be legally responsible for the operation of the runaway house. Nothing in this part shall give the Federal Government control over the staffing and personnel decisions of facilities receiving Federal funds.

(Pub.L. 93–415, Title III, § 314, Sept. 7, 1974, 88 Stat. 1131.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283.

§ 5715. Annual report to Congress

The Secretary shall annually report to the Congress on the status and accomplishments of the runaway centers which are funded under this part with particular attention to—

(1) their effectiveness in alleviating the problems of runaway youth;

(2) their ability to reunite children with their families and to encourage the resolution of intrafamily problems through counseling and other services;

(3) their effectiveness in strengthening family relationships and encouraging stable living conditions for children; and

(4) their effectiveness in helping youth decide upon a future course of action.

(Pub.L. 93–415, Title III, § 315, Sept. 7, 1974, 88 Stat. 1131; Pub.L. 96–509, § 18(f), Dec. 8, 1980, 94 Stat. 2762.)

Historical Note

1980 Amendment. Pub.L. 96–509 substituted "centers" for "houses" [illegible]

Legislative History. [illegible] and purpose of Pub.L. 96–509, see 1980 U.S.Code Cong. and Adm.News, p. 5283. See, also, Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

§ 5716. Federal and non-Federal share; methods of payment

(a) The Federal share for the acquisition and renovation of existing structures, the provision of counseling services, staff training, and the general costs of operations of such facility's budget for any fiscal year shall be 90 per centum. The non-Federal share may be in cash or in kind, fairly evaluated by the Secretary, including plant, equipment, or services.

(b) Payments under this section may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

(Pub.L. 93–415, Title III, § 316, Sept. 7, 1974, 88 Stat. 1132.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283.

PART B—RECORDS

§ 5731. Restrictions on disclosure and transfer

Records containing the identity of individual youths pursuant to this chapter may under no circumstances be disclosed or transferred to any individual or to any public or private agency.

(Pub.L. 93–415, Title III, § 321, Sept. 7, 1974, 88 Stat. 1132; Pub.L. 95–115, § 7(b), Oct. 3, 1977, 91 Stat. 1058.)

Historical Note

References in Text. This chapter, referred to in text, in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

1977 Amendment. Pub.L. 95–115 substituted provisions relating to restrictions on disclosure and transfer of records, for provisions relating to scope, etc., of statistical report to Congress.

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm. News, p. 5283. See, also, Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2556.

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Library References

Infants ⇐133.

C.J.S. Criminal Law § 2008.
C.J.S. Infants §§ 69 to 85.

§ 5732. Repealed. Pub.L. 95–115, § 7(b), Oct. 3, 1977, 91 Stat. 1058

Historical Note

Section Pub.L. 93–415, Title III, § 322, Sept. 7, 1974, 88 Stat. 1132, set forth restrictions on disclosure and transfer of records. See section 5731 of this title.

Effective Date of Repeal. Repeal by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

PART C—REORGANIZATION

§ 5741. Reorganization plan; submittal to Congress; required contents

(a) After April 30, 1978, the President may submit to the Congress a reorganization plan which, subject to the provisions of subsection (b) of this section, shall take effect, if such reorganization plan is not disapproved by a resolution of either House of the Congress, in accordance with the provisions of, and the procedures established by chapter 9 of Title 5, except to the extent provided in this part.

(b) A reorganization plan submitted in accordance with the provisions of subsection (a) of this section shall provide—

(1) for the establishment of an Office of Youth Assistance which shall be the principal agency for purposes of carrying out this subchapter and which shall be established—

(A) within the Office of Juvenile Justice and Delinquency Prevention in the Department of Justice; or

(B) within the ACTION Agency;

(2) that the transfer authorized by paragraph (1) shall be effective 30 days after the last date on which such transfer could be disapproved under chapter 9 of Title 5;

(3) that property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions of the Office of Youth Development within the Department of Health and Human Services in the operation of functions pursuant to this subchapter, shall be transferred to the Office of Youth Assistance within the Office of Juvenile Justice and Delinquency Prevention or within the ACTION Agency, as the case may be, and that all grants, applications for grants, contracts, and other agreements awarded or entered into by the Office of

Youth Development shall continue in effect until modified, superseded, or revoked;

(4) that all official actions taken by the Secretary of Health and Human Services, his designee, or any other person under the authority of this subchapter which are in force on the effective date of such plan, and for which there is continuing authority under the provisions of this subchapter, shall continue in full force and effect until modified, superseded,[1] or revoked by the Associate Administrator for the office[2] of Juvenile Justice and Delinquency Prevention or by the Director of the ACTION Agency, as the case may be, as appropriate; and

(5) that references to the Office of Youth Development within the Department of Health and Human Services in any statue,[3] reorganization plan, Executive order, regulation, or other official document or proceeding shall, on and after such date, be deemed to refer to the Office of Youth Assistance within the Office of Juvenile Justice and Delinquency Prevention or within the ACTION Agency, as the case may be, as appropriate.

(Pub.L. 93–415, Title III, § 331, as added Pub.L. 95–115, § 7(c), Oct. 3, 1977, 91 Stat. 1059, and amended Pub.L. 96–88, Title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

[1] So in original. Probably should be "superseded".

[2] So in original. Probably should be "Office".

[3] So in original. Probably should be "statute".

Historical Note

Change of Name. "Department of Health and Human Services" was substituted for "Department of Health, Education, and Welfare" in subsec. (b)(3) and (5), and "Secretary of Health and Human Services" was substituted for "Secretary of Health, Eduation, and Welfare" in subsec. (b)(4), pursuant to section 509(b) of Pub.L. 96–88, which is classified to section 3508(b) of Title 20, Education.

Effective Date. Section effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95–115, see 1977 U.S. Code Cong. and Adm.News, p. 2556.

PART D—AUTHORIZATION OF APPROPRIATIONS

Historical Note

1977 Amendment. Pub.L. 95–115, § 7(c), Oct. 3, 1977, 91 Stat. 1059, designated former part C of this subchapter as part D.

§ 5751. Amounts authorized for programs and activities; consultative and coordinating requirements

(a) To carry out the purposes of part A of this subchapter there is authorized to be appropriated for each of the fiscal years ending September 30, 1981, September 30, 1982, September 30, 1983, and September 30, 1984 the sum of $25,000,000.

(b) The Secretary (through the Office of Youth Development which shall administer this subchapter) shall consult with the Attorney General

(through the Associate Administrator of the Office of Juvenile Justice and Delinquency Prevention) for the purpose of coordinating the development and implementation of programs and activities funded under this subchapter with those related programs and activities funded under subchapter II of this chapter and under the Omnibus Crime Control and Safe Streets Act of 1968, as amended [42 U.S.C.A. § 3701 et seq.].

(Pub.L. 93–415, Title III, § 341, formerly § 331, Sept. 7, 1974, 88 Stat. 1132; Pub.L. 94–273, § 32(c), Apr. 21, 1976, 90 Stat. 380, renumbered and amended Pub.L. 95–115, § 7(c), (d), Oct. 3, 1977, 91 Stat. 1059, 1060; Pub.L. 96–509, § 2(b), Dec. 8, 1980, 94 Stat. 2750.)

Historical Note

References in Text. The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (b), is Pub.L. 90–351, June 19, 1968, 82 Stat. 197, as amended, Title I of which is classified principally to chapter 46 (section 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables volume.

1980 Amendment. Subsec. (a). Pub.L. 96–509 substituted provisions authorizing appropriations of $25,000,000 for each of the fiscal years ending Sept. 30, 1981, 1982, 1983, and 1984, for provisions that had authorized appropriations of $10,000,000 for each of the fiscal years ending Sept. 30, 1975, 1976, and 1977, and $25,000,000 for each of the fiscal years ending Sept. 30, 1978, 1979, and 1980.

1977 Amendment. Subsec. (a). Pub.L. 95–115, § 7(d)(1), added provisions authorizing appropriations for the fiscal years ending Sept. 30, 1978, 1979, and 1980.

Subsec. (b). Pub.L. 95–115, § 7(d)(2) substituted provisions relating to consultative and coordinating requirements for funded programs and activities, for provisions relating to authorization for funding surveys under part B of this subchapter.

1976 Amendment. Subsec. (a). Pub.L. 94–273 added "and" preceding "1976" and substituted "September 30, 1977" for "1977".

Effective Date of 1977 Amendment. Amendment by Pub.L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub.L. 93–415, as added by Pub.L. 95–115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93–415, see 1974 U.S. Code Cong. and Adm.News, p. 5283. See also, Pub.L. 94–273, 1976 U.S. Code Cong. and Adm.News, p. 690; Pub.L. 95–115, 1977 U.S.Code Cong. and Adm.News, p. 2557; Pub.L. 96–509, 1980 U.S.Code Cong. and Adm.News, p. 6098.

Library References

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CHAPTER 73—DEVELOPMENT OF ENERGY SOURCES

Sec.

[Part 2 – p. 36]

UNITED STATES CODE ANNOTATED

Title 42
The Public Health and Welfare
§§ 4541 to 6500

1995
Supplementary Pamphlet
Covering Years 1984 to 1994

Replacing 1994 Supplementary Pamphlet

Includes the Laws of the
103rd CONGRESS, SECOND SESSION (1994)

For close of Notes of Decisions
See page III

For Later Laws and Cases
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Please detach the perforated card from inside the front cover and place it in the pocket part slot of the corresponding main volume as a reminder to refer to this supplementary pamphlet.

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Energy and Natural Resources a plan for demonstrating applications of solar photovoltaic energy systems and facilitating their widespread use in other nations, especially those with agreements for scientific cooperation with the United States.

[See main volume for text of (b)]

(As amended Pub.L. 103–82, Title IV, § 405(j), Sept. 21, 1993, 107 Stat. 922.)

HISTORICAL AND STATUTORY NOTES

1993 Amendments

Subsec. (a). Pub.L. 103–82 struck out "the Director of ACTION," following "Development,".

Effective Date of 1993 Amendments

Amendment by section 405(j) of Pub.L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub.L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

Legislative History

For legislative history and purpose of Pub.L. 103–82, see U.S. Code Cong. and Adm. News, p. 1710.

CHAPTER 72—JUVENILE JUSTICE AND DELINQUENCY PREVENTION

SUBCHAPTER II—PROGRAMS AND OFFICES

PART A—JUVENILE JUSTICE AND DELINQUENCY PREVENTION OFFICE

PART B—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

PART C—NATIONAL PROGRAMS

Subpart I—National Institute for Juvenile Justice and Delinquency Prevention

Subpart II—Special Emphasis Prevention and Treatment Programs

PART D—GANG-FREE SCHOOLS AND COMMUNITIES: COMMUNITY-BASED GANG INTERVENTION

Subpart I—Gang-Free School and Communities

Subpart II—Community-Based Gang Intervention

Subpart III—General Provisions

PART E—STATE CHALLENGE ACTIVITIES

PART F—TREATMENT FOR JUVENILE OFFENDERS WHO ARE VICTIMS OF CHILD ABUSE OR NEGLECT

PART G—MENTORING

PART H—BOOT CAMPS

PART II—WHITE HOUSE CONFERENCE ON JUVENILE JUSTICE

PART II—GENERAL AND ADMINISTRATIVE PROVISIONS

[Part 2 – p. 38]

[1]So in original. Two Parts of Subchapter II, both designated I, were enacted.

HISTORICAL AND STATUTORY NOTES

Severability of Provisions

If any provision of Pub. L. 101–624 or the application thereof to any person or circumstance is held invalid, such invalidity not to affect other provisions or applications of Pub. L. 101–624 which can be given effect without regard to the invalid provision or application, see section 2519 of Pub. L. 101–624, set out as a note under section 1421 of Title 7, Agriculture.

SUBCHAPTER I—GENERALLY

CROSS REFERENCES

Community-Based-Family Resource Programs, coordinate activities funded, see 42 USCA § 5116.

Safe schools, guarantee coordinate school crime and violence prevention with education, law enforcement, judicial health social services programs, see 20 USCA § 5964.

§ 5601. Congressional statement of findings

(a) The Congress hereby finds that—

(1) juveniles accounted for almost half the arrests for serious crimes in the United States in 1974 and for less than one-third of such arrests in 1983;

(2) recent trends show an upsurge in arrests of adolescents for murder, assault, and weapon use;

(3) the small number of youth who commit the most serious and violent offenses are becoming more violent;

(4) understaffed, overcrowded juvenile courts, prosecutorial and public defender offices, probation services, and correctional facilities and inadequately trained staff in such courts, services, and facilities are not able to provide individualized justice or effective help;

(5) present juvenile courts, foster and protective care programs, and shelter facilities are inadequate to meet the needs of children, who, because of this failure to provide effective services, may become delinquents;

(6) existing programs have not adequately responded to the particular problems of the increasing numbers of young people who are addicted to or who abuse alcohol and other drugs, particularly nonopiate or polydrug abusers;

(7) juvenile delinquency can be reduced through programs designed to keep students in elementary and secondary schools through the prevention of unwarranted and arbitrary suspensions and expulsions;

(8) States and local communities which experience directly the devastating failures of the juvenile justice system do not presently have sufficient technical expertise or adequate resources to deal comprehensively with the problems of juvenile delinquency;

(9) existing Federal programs have not provided the direction, coordination, resources, and leadership required to meet the crisis of delinquency;

(10) the juvenile justice system should give additional attention to the problem of juveniles who commit serious crimes, with particular attention given to the areas of sentencing, providing resources necessary for informed dispositions, and rehabilitation;

(11) emphasis should be placed on preventing youth from entering the juvenile justice system to begin with; and

(12) the incidence of juvenile delinquency can be reduced through public recreation programs and activities designed to provide youth with social skills, enhance self esteem, and encourage the constructive use of discretionary time.

[See main volume for text of (b)]

(As amended Pub.L. 98–473, Title II, § 611, Oct. 12, 1984, 98 Stat. 2107; Pub.L. 102–586, § 1(a), Nov. 4, 1992, 106 Stat. 4982.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Subsec. (a)(2). Pub.L. 102–586, § 1(a)(1), (2), added par. (2) and redesignated former par. (2) as (4).

Subsec. (a)(3). Pub.L. 102–586, § 1(a)(1), (2), added par. (3) and redesignated former par. (3) as (5).

Subsec. (a)(4). Pub.L. 102–586, § 1(a)(1), redesignated former pars. (2) and (4) as (4) and (6), respectively.

Pub.L. 102–586, § 1(a)(3), inserted provisions relating to prosecutorial and public defender offices.

Subsec. (a)(5)–(10). Pub.L. 102–586, § 1(a)(1), redesignated former pars. (3) through (8) as (5) through (10), respectively.

Subsec. (a)(11), (12). Pub.L. 102–586, § 1(a)(4)–(6), added pars. (11) and (12).

1984 Amendment

Subsec. (a)(1). Pub.L. 98–473, § 611(1)(A), substituted "accounted" for "account" before "for almost".

Pub.L. 98–473, § 611(1)(B), substituted "in 1974 and for less than one-third of such arrests in 1983" for "today" after "United States".

Subsec. (a)(2). Pub.L. 98–473, § 611(2), added "and inadequately trained staff in such courts, services, and facilities" after "facilities".

Subsec. (a)(3). Pub.L. 98–473, § 611(3), struck out "the countless, abandoned, and dependent" before "children, who".

Subsec. (a)(5). Pub.L. 98–473, § 611(4), substituted "reduced" for "prevented" before "through programs".

Effective Date of 1988 Amendment

Pub.L. 100–690, Title VII, § 7296, Nov. 18, 1988, 102 Stat. 4463, as amended Pub.L. 101–204, Title X, § 1001(d), Dec. 7, 1989, 103 Stat. 1827, provided that:

"(a) **Effective Date.** —Except as provided in subsection (b), this subtitle and the amendments made by this Act [probably means amendments made by subtitle F of Pub.L. 100–690, Title VII, Nov. 18, 1988, 102 Stat. 4434, for distribution of which see Short Title of 1988 Amendment note below] shall take effect on October 1, 1988.

"(b) **Application of Amendments.**—(1) The amendments made by section 7258(a) [amending section 5633 of this title] shall not apply to a State with respect to a fiscal year beginning before the date of the enactment of this Act [Nov. 18, 1988] if the State plan is approved before such date by the Administrator for such fiscal year.

"(2) The amendments made by section 7253(b)(1) [amending section 5614 of this title] and section 7278 [enacting section 5732 of this title] shall not apply with respect to fiscal year 1989.

"(3) Notwithstanding the 180–day period provided in—

"(A) section 207 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.), as added by section 7255 [section 5617 of this title];

"(B) section 361 of the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.), as redesignated by section 7273(e)(2) and amended by section 7274 [section 5715 of this title]; and

"(C) section 404(a)(5) of the Missing Children's Assistance Act (42 U.S.C. 5773(a)(5)), as amended by section 7285(a)(3) [section 5773(a)(5) of this title];

the reports required by such sections to be submitted with respect to fiscal year 1988 shall be submitted not later than August 1, 1989."

Effective Date of 1984 Amendment

Section 670 of Pub.L. 98–473 provided that:

"(a) Except as provided in subsection (b), this division and the amendments made by this division [see Short Title of 1984 Amendment note set out under this section] shall take effect on the date of the enactment of this joint resolution [Oct. 12, 1984] or October 1, 1984, whichever occurs later.

"(b) Paragraph (2) of section 331(c) of the Runaway and Homeless Youth Act, as added by section 657(d) of this division [section 5751(c) of this title], shall not apply with respect to any grant or payment made before the effective date of this joint resolution [Oct. 12, 1984]."

Effective Date of 1977 Amendment

Section 263(c) or Pub.L. 93–415, as added Pub.L. 95–115, § 6(d)(2), Oct. 3, 1977, 91 Stat. 1058, which set forth Oct. 1, 1977 as effective date of amendments made by Pub.L. 93–415, except as otherwise provided, was repealed by Pub.L. 100–690, Title VII, §§ 7266(2), 7296(a), Nov. 18, 1988, 102 Stat. 4449, 4463, eff. Oct. 1, 1988.

Effective Date

Section 263(a) and (b) of Pub.L. 93–415, as amended Pub.L. 94–273, § 32(a), Apr. 21, 1976, 90 Stat. 380; Pub.L.95–115, § 6(d)(1), Oct. 3, 1977, 91 Stat. 1158, which set forth Sept. 7, 1974 as effective date of provisions of Pub.L. 93–415, with exceptions, was repealed by Pub.L. 100–690, Title VII, §§ 7266(2), 7296(a), Nov. 18, 1988, 102 Stat. 4449, 4463, eff. Oct. 1, 1988.

Short Title of 1994 Amendments

Pub.L. 103–322, Title XVII, § 170301, Sept. 13, 1994, 108 Stat. 2043, provided that: "This subtitle [enacting section 5776a of this title and provisions set out as a note under section 5776a of this title] may be cited as the 'Morgan P. Hardiman Task Force on Missing and Exploited Children Act'."

Short Title of 1992 Amendments

Section 5(a) of Pub.L. 102–586, provided in part that: "This title [enacting subchapter V of this chapter and enacting provisions set out as a note under section 5781 of this title] may be cited as the 'Incentive Grants for Local Delinquency Prevention Programs Act'."

Short Title of 1988 Amendment

Pub.L. 100–690, Title VII, § 7250(a), Nov. 18, 1988, 102 Stat. 4434, provided that: "This subtitle [enacting sections 5617, 5662, 5665, 5665a, 5668, 5669, 5673–5676, 5712a–5712c, 5714–1, 5714–2, 5732, 5733, and 5778 of this title, amending sections 5603, 5611, 5614, 5616, 5631–5633, 5651–5654, 5659–5661, 5671, 5672, 5711–5714, 5714a, 5714b, 5715, 5716, 5731, 5751, 5773, 5775, 5776, and 5777 of this title and sections 5315 and 5316 of Title 5, Government Organization and Employees, repealing sections 5634–5639, 5656, 5657, and 5774 of this title, enacting provisions set out as notes under this section and section 5617 of this title, and repealing provisions set out as a note under this section] may be cited as the 'Juvenile Justice and Delinquency Prevention Amendments of 1988'."

Short Title of 1984 Amendment

Section 610 of Pub.L. 98–473 provided that "This Division [which enacted sections 5714a, 5714b, and 5771 to 5777 of this title; amended sections 5601 to 5603, 5611, 5612, 5614, 5616, 5632 to 5635, 5637, 5638, 5651, 5653, 5654, 5657, 5659, 5661, 5671, 5672, 5702, 5711 to 5714, and 5751 of this title; repealed sections 5617, 5655, and 5741 of this title; and enacted provisions set out as notes under this section] may be cited as the 'Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984'."

Section 401 of Pub.L. 93–415, as added Pub.L. 98–473, Title II, § 660, Oct. 12, 1984, 98 Stat. 2125, as amended Pub.L. 101–204, Title X, § 1004(1), Dec. 7, 1989, 103 Stat. 1828, provided that: "This title [which enacted subch. IV of this chapter (sections 5771 to 5777 of this title)] may be cited as the "Missing Children's Assistance Act"."

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5602. Congressional declaration of purpose and policy

(a) It is the purpose of this chapter—

(1) to provide for the thorough and ongoing evaluation of all federally assisted juvenile justice and delinquency prevention programs;

(2) to provide technical assistance to public and private nonprofit juvenile justice and delinquency prevention programs;

[See main volume for text of (3)]

(4) to establish a centralized research effort on the problems of juvenile delinquency, including the dissemination of the findings of such research and all data related to juvenile delinquency;

[See main volume for text of (5) and (6)]

(7) to establish a Federal assistance program to deal with the problems of runaway and homeless youth;

(8) to strengthen families in which juvenile delinquency has been a problem;

(9) to assist State and local governments in removing juveniles from jails and lockups for adults;

(10) to assist State and local governments in improving the administration of justice and services for juveniles who enter the system; and

(11) to assist States and local communities to prevent youth from entering the justice system to begin with.

(b) It is therefore the further declared policy of Congress to provide the necessary resources, leadership, and coordination (1) to develop and implement effective methods of preventing and reducing juvenile delinquency, including methods with a special focus on preserving and strengthening families so that juveniles may be retained in their homes; (2) to develop and conduct effective programs to prevent delinquency, to divert juveniles from the traditional juvenile justice system and to provide critically needed alternatives to institutionalization; (3) to improve the quality of juvenile justice in the United States; (4) to increase the capacity of State and local governments and public and private agencies to conduct effective juvenile justice and delinquency prevention and rehabilitation programs and to provide research, evaluation, and training services in the field of juvenile delinquency prevention; (5) to encourage parental involvement in treatment and alternative disposition programs; and (6) to provide for coordination of

[Part 2 – p. 40]

services between State, local, and community-based agencies and to promote interagency cooperation in providing such services.

(As amended Pub.L. 98–473, Title II, § 612, Oct. 12, 1984, 98 Stat. 2108; Pub.L. 102–586, § 1(b), Nov. 4, 1992, 106 Stat. 4982.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Subsec. (a)(1). Pub.L. 102–586, § 1(b)(1)(A), substituted "justice and delinquency prevention" for "delinquency".

Subsec. (a)(2). Pub.L. 102–586, § 1(b)(1)(B), substituted "nonprofit juvenile justice and delinquency prevention programs" for "agencies, institutions, and individuals in developing and implementing juvenile delinquency programs".

Subsec. (a)(7). Pub.L. 102–586, § 1(b)(1)(C), struck out "and" following "youth;".

Subsec. (a)(8). Pub.L. 102–586, § 1(b)(1)(D), (E), added par. (8) and redesignated former par. (8) as (9).

Subsec. (a)(9). Pub.L. 102–586, § 1(b)(1)(D), redesignated former par. (8) as (9).

Pub.L. 102–586, § 1(b)(1)(F), substituted "adults;" for "adults.".

Subsec. (a)(10), (11). Pub.L. 102–586, § 1(b)(1)(G), added pars. (10) and (11).

Subsec. (b)(1). Pub.L. 102–586, § 1(b)(2)(A), substituted "preserving and strengthening families" for "maintaining and strengthening the family unit".

Subsec. (b)(5), (6). Pub.L. 102–586, § 1(b)(2)(B), (C), added pars. (5) and (6).

1984 Amendment

Subsec. (a)(1). Pub.L. 98–473, § 612(1), substituted "ongoing" for "prompt" before "evaluation".

Subsec. (a)(4). Pub.L. 98–473, § 612(2), substituted "the dissemination of" for "an information clearinghouse to disseminate" before "the findings of".

Subsec. (a)(7). Pub.L. 98–473, § 612(3), added "and homeless" after "runaway".

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5603. Definitions

For purposes of this chapter—

[See main volume for text of (1) and (2)]

(3) the term "juvenile delinquency program" means any program or activity related to juvenile delinquency prevention, control, diversion, treatment, rehabilitation, planning, education, training, and research, including drug and alcohol abuse programs; the improvement of the juvenile justice system; and any program or activity to help prevent juvenile delinquency;

(4)(A) the term "Bureau of Justice Assistance" means the bureau established by section 3741 of this title;

(B) the term "Office of Justice Programs" means the office established by section 3711 of this title;

[See main volume for text of (C) and (D)]

(5) the term "Administrator" means the agency head designated by section 5611(b) of this title;

(6) the term "law enforcement and criminal justice" means any activity pertaining to crime prevention, control, or reduction or the enforcement of the criminal law, including, but not limited to police efforts to prevent, control, or reduce crime or to apprehend criminals, activities of courts having criminal jurisdiction and related agencies (including prosecutorial and defender services), activities of corrections, probation, or parole authorities, and programs relating to the prevention, control, or reduction of juvenile delinquency or narcotic addiction;

[See main volume for text of (7) to (13)]

(14) the term "serious crime" means criminal homicide, forcible rape or other sex offenses punishable as a felony, mayhem, kidnapping, aggravated assault, robbery, larceny or theft punishable as a felony, motor vehicle theft, burglary or breaking and entering, extortion accompanied by threats of violence, and arson punishable as a felony;

(15) the term "treatment" includes but is not limited to medical, educational, special education, social, psychological, and vocational services, corrective and preventive guidance and training, and other rehabilitative services designed to protect the public, including services designed to benefit addicts and other users by eliminating their dependence on alcohol or other addictive or nonaddictive drugs or by controlling their dependence and susceptibility to addiction or use;

(16) the term "valid court order" means a court order given by a juvenile court judge to a juvenile—

(A) who was brought before the court and made subject to such order;

(B) who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States;

(C) with respect to whom an appropriate public agency (other than a court or law enforcement agency), before the issuance of such order—

(i) reviewed the behavior of such juvenile and the circumstances under which such juvenile was brought before the court and made subject to such order;

(ii) determined the reasons for the behavior that caused such juvenile to be brought before the court and made subject to such order;

(iii) determined that all dispositions (including treatment), other than placement in a secure detention facility or a secure correctional facility, have been exhausted or are clearly inappropriate; and

(iv) submitted to the court a written report stating the results of the review conducted under clause (i) and the determinations made under clauses (ii) and (iii);

(17) the term "Council" means the Coordinating Council on Juvenile Justice and Delinquency Prevention established in section 5616(a)(1) of this title;

(18) the term "Indian Tribe" means—

(A) a federally recognized Indian tribe; or

(B) an Alaskan Native organization;

(19) the term "comprehensive and coordinated system of services" means a system that—

(A) ensures that services and funding for the prevention and treatment of juvenile delinquency are consistent with policy goals of preserving families and providing appropriate services in the least restrictive environment so as to simultaneously protect juveniles and maintain public safety;

(B) identifies, and intervenes early for the benefit of, young children who are at risk of developing emotional or behavioral problems because of physical or mental stress or abuse, and for the benefit of their families;

(C) increases interagency collaboration and family involvement in the prevention and treatment of juvenile delinquency; and

(D) encourages private and public partnerships in the delivery of services for the prevention and treatment of juvenile delinquency;

(20) the term "gender-specific services" means services designed to address needs unique to the gender of the individual to whom such services are provided;

(21) the term "home-based alternative services" means services provided to a juvenile in the home of the juvenile as an alternative to incarcerating the juvenile, and includes home detention;

(22) the term "jail or lockup for adults" means a locked facility that is used by a State, unit of local government, or any law enforcement authority to detain or confine adults—

(i) pending the filing of a charge of violating a criminal law;

(ii) awaiting trial on a criminal charge; or

(iii) convicted of violating a criminal law; and

(23) the term "nonprofit organization" means an organization described in section 501(c)(3) of Title 26 that is exempt from taxation under section 501(a) of Title 26.

(As amended Pub.L. 98–473, Title II, § 613, Oct. 12, 1984, 98 Stat. 2108; Pub.L. 100–690, Title VII, §§ 7251(a), 7252(b)(1), Nov. 18, 1988, 102 Stat. 4435, 4436; Pub.L. 102–586, § 1(c), Nov. 4, 1992, 106 Stat. 4983.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Par. (16). Pub.L. 102–586, § 1(c)(1), amended par. generally, adding subpar. and cl. designations, wherever appearing, and substituting provisions defining term "valid court order" as one given by juvenile court judge to juvenile brought before court and made subject to such order, who received full due process rights guaranteed by Constitution of the United States, and with respect to whom appropriate public agency reviewed behavior of such juvenile and circumstances under which such juvenile was brought before court and made subject to such order, determined reasons for behavior that caused such juvenile to be brought before court and made subject to such order, determined that all dispositions, other than placement in secure detention facility or secure correctional facility, have been exhausted or are clearly inappropriate, and submitted to court written report stating results of review conducted and determinations made, for provisions defining such term as court order given by juvenile court judge to juvenile who was brought before court and made subject to such order, and provisions specifying that use of word "valid" permitted incarceration of juveniles for violation of valid court orders only if they received full due process rights as guaranteed by Constitution of the United States.

Pars. (19)–(23). Pub.L. 102–586, § 1(c)(2)–(4), added pars. (19) through (23).

1988 Amendment

Par. (5). Pub.L. 100–690, § 7252(b)(1), substituted "section 5611(b)" for "section 5611(c)".

Pars. (17), (18). Pub.L. 100–690, § 7251(a), added pars. (17) and (18).

1984 Amendment

Par. (3). Pub.L. 98–473, § 613(1)(A), struck out "for neglected, abandoned, or dependent youth and other youth" before "to help".

Pub.L. 98–473, § 613(1)(B), added "juvenile" after "prevent".

Par. (4)(A). Pub.L. 98–473, § 613(2), substituted " 'Bureau of Justice Assistance' means the bureau established by section 3741 of this title;" for " 'Office of Justice Assistance, Research, and Statistics' means the office established by section 3781(a) of this title;".

Par. (4)(B). Pub.L. 98–473, § 613(2), substituted " 'Office of Justice Programs' means the office established by section 3711 of this title;" for " 'Law Enforcement Assistance Administration' means the administration established by section 3711 of this title;".

Par. (6). Pub.L. 98–473, § 613(3), substituted "services)," for "services," after "activities of".

Par. (14). Pub.L. 98–473, § 613(4)(A), added "or other sex offenses punishable as a felony" after "rape".

Par. (16). Pub.L. 98–473, § 613(6), added par. (16).

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S.Code Cong. and Adm.News, p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

CROSS REFERENCES

Community-based organization, defined as having same meaning as nonprofit organizations for purposes of, Community Schools Youth Services and Supervision Grant Program, see 42 USCA § 13791.

NOTES OF DECISIONS

Delinquent or status offender juveniles 1

1. Delinquent or status offender juveniles

Knowing violation, by status offender involved in crisis intervention, of curfew order imposed by juvenile court could be prosecuted as criminal contempt and effectively elevated juvenile from status offender to delinquent. State in Interest of J.S., N.J.Super.Ch.1993, 629 A.2d 1371, 266 N.J.Super. 423.

SUBCHAPTER II—PROGRAMS AND OFFICES

PART A—JUVENILE JUSTICE AND DELINQUENCY PREVENTION OFFICE

§ 5611. Establishment

(a) Placement within Department of Justice under general authority of Attorney General

There is hereby established an Office of Juvenile Justice and Delinquency Prevention (hereinafter in this subchapter referred to as the "Office") within the Department of Justice under the general authority of the Attorney General.

(b) Administrator; head, appointment, authorities, etc.

The Office shall be headed by an Administrator (hereinafter in this subchapter referred to as the "Administrator") appointed by the President, by and with the advice and consent of the Senate, from among individuals who have had experience in juvenile justice programs. The Administrator is authorized to prescribe regulations consistent with this chapter to award, administer, modify, extend, terminate, monitor, evaluate, reject, or deny all grants and contracts from, and applications for, funds made available under this subchapter. The Administrator shall have the same reporting relationship with the Attorney General as the directors of other offices and bureaus within the Office of Justice Programs have.

(c) Deputy Administrator; appointment, functions, etc.

There shall be in the Office a Deputy Administrator who shall be appointed by the Attorney General. The Deputy Administrator shall perform such functions as the Administrator may from time to time assign or delegate and shall act as the Administrator during the absence or disability of the Administrator.

(As amended Pub.L. 98–473, Title II, § 620, Oct. 12, 1984, 98 Stat. 2108; Pub.L. 100–690, Title VII, § 7252(a), Nov. 18, 1988, 102 Stat. 4436; Pub.L. 102–586, § 2(a), Nov. 4, 1992, 106 Stat. 4984.)

HISTORICAL AND STATUTORY NOTES

Codification

In subsec. (a), "this subchapter" was in the original "this division", probably meaning Division B of Chapter VI of Title II, §§ 610 to 613, 620 to 641, 650 to 656, and 660, of Pub.L. 98–473, and was translated as "this subchapter" as the probable intent of Congress.

1992 Amendments

Subsec. (b). Pub.L. 102–586, § 2(a), substituted "The Administrator shall have the same reporting relationship with the Attorney General as the directors of other offices and bureaus within the Office of Justice Programs have." for "The Administrator shall report to the Attorney General through the Assistant Attorney General who heads the Office of Justice Programs under part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968.".

1988 Amendment

Subsec. (c). Pub.L. 100–690, § 7252(a)(1), (2), struck from the first sentence following "Attorney General" text reading "and whose function shall be to supervise and direct the National Institute for Juvenile Justice and Delinquency Prevention established by section 5651 of this title" and from the second sentence "also" in the phrase "shall also perform".

1984 Amendment

Subsec. (a). Pub.L. 98–473 substituted provisions relating to the establishment of the Office of Juvenile Justice and Delinquency Prevention for former provisions which also provided for the establishment of the Office and its administration by an Administrator.

Subsec. (b). Pub.L. 98–473 substituted provisions relating to the functions and duties of the Administrator for former provisions which related to administration of the program.

Subsec. (c). Pub.L. 98–473 substituted provisions relating to the Deputy Administrator for former provisions which related to the nomination of the Administrator by the President.

Subsec. (d). Pub.L. 98–473 struck out subsec. (d) which related to the powers of the Administrator. See subsec. (b) of this section.

Subsec. (e). Pub.L. 98–473 struck out subsec. (e) which related to the Deputy Administrator. See subsec. (c) of this section.

Subsec. (f). Pub.L. 98–473 struck out subsec. (f) which related to supervision of the National Institute for Juvenile Justice and Delinquency Prevention.

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S.Code Cong. and Adm.News, p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5612. Personnel

(a) Selection; employment; compensation

The Administrator is authorized to select, employ, and fix the compensation of such officers and employees, including attorneys, as are necessary to perform the functions vested in the Administrator and to prescribe their functions.

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(b) Special personnel

The Administrator is authorized to select, appoint, and employ not to exceed three officers and to fix their compensation at rates not to exceed the rate now or hereafter payable under section 5376 of Title 5.

(c) Personnel from other agencies

Upon the request of the Administrator, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of its personnel to the Administrator to assist the Administrator in carrying out the functions of the Administrator under this subchapter.

(d) Experts and consultants

The Administrator may obtain services as authorized by section 3109 of Title 5, at rates not to exceed the rate now or hereafter payable under section 5376 of Title 5.

(As amended Pub.L. 98–473, Title II, § 621, Oct. 12, 1984, 98 Stat. 2109; Pub.L. 102–586, § 2(b), Nov. 4, 1992, 106 Stat. 4984.)

HISTORICAL AND STATUTORY NOTES

Codification

Section 2(b)(1) of Pub.L. 102–586, directing that subsec. (b) of this section be amended by substituting "payable under section 5376" for "prescribes for GS–18 of the General Schedule by section 5332", was incapable of literal execution as term "prescribes" did not appear; amendment was executed by substituting "payable under section 5376" for "prescribed for GS–18 of the General Schedule by section 5332", as the probable intent of Congress.

1992 Amendments

Subsec. (b). Pub.L. 102–586, § 2(b)(1), substituted "payable under section 5376" for "prescribed for GS–18 of the General Schedule by section 5332". See Codification note set out under this section.

Subsec. (c). Pub.L. 102–586, § 2(b)(2), substituted "subchapter" for "chapter".

Subsec. (d). Pub.L. 102–586, § 2(b)(3), substituted "payable under section 5376" for "prescribed for GS–18 of the General Schedule by section 5332".

1984 Amendment

Subsec. (a). Pub.L. 98–473, § 621(a), substituted "the Administrator" for "him" before "and to prescribe".

Subsec. (c). Pub.L. 98–473, § 621(b)(1), substituted "the Administrator" for "him" before "in carrying out".

Pub.L. 98–473, § 621(b)(2), substituted "the functions of the Administrator" for "his functions" before "under this chapter".

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5614. Concentration of Federal efforts

(a) Implementation of policy by Administrator; consultation with Council and Advisory Committee

(1) The Administrator shall develop objectives, priorities, and a long-term plan, and implement overall policy and a strategy to carry out such plan, for all Federal juvenile delinquency programs and activities relating to prevention, diversion, training, treatment, rehabilitation, evaluation, research, and improvement of the juvenile justice system in the United States. In carrying out the functions of the Administrator, the Administrator shall consult with the Council.

(2)(A) The plan described in paragraph (1) shall—

(i) contain specific goals and criteria for making grants and contracts, for conducting research, and for carrying out other activities under this subchapter; and

(ii) provide for coordinating the administration programs and activities under this subchapter with the administration of all other Federal juvenile delinquency programs and activities, including proposals for joint funding to be coordinated by the Administrator.

(B) The Administrator shall review the plan described in paragraph (1) annually, revise the plan as the Administrator considers appropriate, and publish the plan in the Federal Register—

(i) not later than 240 days after November 4, 1992, in the case of the initial plan required by paragraph (1); and

(ii) except as provided in clause (i), in the 30–day period ending on October 1 of each year.

(b) Duties of Administrator

In carrying out the purposes of this chapter, the Administrator shall—

(1) advise the President through the Attorney General as to all matters relating to federally assisted juvenile delinquency programs and Federal policies regarding juvenile delinquency;

(2) assist operating agencies which have direct responsibilities for the prevention and treatment of juvenile delinquency in the development and promulgation of regulations, guidelines, requirements, criteria, standards, procedures, and budget requests in accordance with the policies, priorities, and objectives the Administrator establishes;

[See main volume for text of (3)]

(4) implement Federal juvenile delinquency programs and activities among Federal departments and agencies and between Federal juvenile delinquency programs and activities and other Federal programs and activities which the Administrator determines may have an important bearing on the success of the entire Federal juvenile delinquency effort;

(5)(A) develop for each fiscal year, and publish annually in the Federal Register for public comment, a proposed comprehensive plan describing the particular activities which the Administrator intends to carry out under parts C and D of this subchapter in such fiscal year, specifying in detail those activities designed to satisfy the requirements of parts C and D of this subchapter; and

(B) taking into consideration comments received during the 45–day period beginning on the date the proposed plan is published, develop and publish a final plan, before December 31 of such fiscal year, describing the particular activities which the Administrator intends to carry out under parts C and D of this subchapter in such fiscal year, specifying in detail those activities designed to satisfy the requirements of parts C and D of this subchapter;

(6) provide for the auditing of monitoring systems required under section 5633(a)(15) of this title to review the adequacy of such systems; and

(7) not later than 1 year after November 4, 1992, issue model standards for providing health care to incarcerated juveniles.

(c) Information, reports, studies, and surveys from other agencies

The Administrator may require, through appropriate authority, Federal departments and agencies engaged in any activity involving any Federal juvenile delinquency program to provide the Administrator with such information and reports, and to conduct such studies and surveys, as the Administrator may deem to be necessary to carry out the purposes of this part.

(d) Delegation of functions

The Administrator may delegate any of the functions of the Administrator under this subchapter, to any officer or employee of the Office.

(e) Utilization of services and facilities of other agencies; reimbursement

The Administrator is authorized to utilize the services and facilities of any agency of the Federal Government and of any other public agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement as may be agreed upon.

(f) Repealed. Pub.L. 102–586, § 2(c)(4), Nov. 4, 1992, 106 Stat. 4985

(g) Repealed. Pub.L. 102–586, § 2(c)(4), Nov. 4, 1992, 106 Stat. 4985

(h) Coordination of functions of Administrator and Secretary of Health and Human Services

All functions of the Administrator under this subchapter shall be coordinated as appropriate with the functions of the Secretary of Health and Human Services under subchapter III of this chapter.

(i) Annual juvenile delinquency development statements of other agencies; procedure; contents; review by Administrator

(1) The Administrator shall require through appropriate authority each Federal agency which administers a Federal juvenile delinquency program to submit annually to the Council a juvenile delinquency development statement. Such statement shall be in addition to any information, report, study, or survey which the Administrator may require under subsection (c) of this section.

(2) Each juvenile delinquency development statement submitted to the Administrator under paragraph (1) of this subsection shall contain such information, data, and analyses as the Administrator may require. Such analyses shall include an analysis of the extent to which the juvenile delinquency program of the Federal agency submitting such development statement conforms with and furthers Federal juvenile delinquency prevention and treatment goals and policies.

(3) The Administrator shall review and comment upon each juvenile delinquency development statement transmitted to the Administrator under paragraph (1) of this subsection. Such development statement, together with the comments of the Administrator, shall be included by the Federal agency involved in every recommendation or request made by such agency for Federal legislation which significantly affects juvenile delinquency prevention and treatment.

(j) to (*l*) Redesignated (g) to (i)

(m) Repealed. Pub.L. 100–690, Title VII, § 7253(c)(4), Nov. 18, 1988, 102 Stat. 4437

(As amended Pub.L. 98–473, Title II, § 622, Oct. 12, 1984, 98 Stat. 2109; Pub.L. 100–690, Title VII, § 7253, Nov. 18, 1988, 102 Stat. 4436; Pub.L. 102–586, § 2(c), Nov. 4, 1992, 106 Stat. 4984.)

HISTORICAL AND STATUTORY NOTES

Codification

Amendments by section 7253(b) of Pub.L. 100–690 were executed to subsec. (b) of this section, notwithstanding language directing amendment of "Section 204(b) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 3614(b))", as the probable intent of Congress.

1992 Amendments

Subsec. (a)(1). Pub.L. 102–586, § 2(c)(1)(A), redesignated existing provisions as par. (1) and, in par. (1) as so redesignated, substituted "develop objectives, priorities, and a long-term plan, and implement overall policy and a strategy to carry out such plan," for "implement overall policy and develop objectives and priorities".

Subsec. (a)(2). Pub.L. 102–586, § 2(c)(1)(B), added par. (2).

Subsec. (b)(7). Pub.L. 102–586, § 2(c)(2), (3), added par. (7).

Subsec. (f). Pub.L. 102–586, § 2(c)(4), struck out subsec. (f), which related to transfer of funds to other agencies.

Subsec. (g). Pub.L. 102–586, § 2(c)(4), struck out subsec. (g), which related to grants and contracts to other agencies, organizations, institutions and individuals.

1988 Amendment

Subsec. (a). Pub.L. 100–690, § 7253(a), substituted "consult with the Council" for "consult with the Council and the National Advisory Committee for Juvenile Justice and Delinquency Prevention".

Subsec. (b)(5). Pub.L. 100–690, § 7253(b)(1), substituted subpars. (A) and (B) for provisions which read "develop annually with the assistance of the Advisory Committee and the Coordinating Council and submit to the President and the Congress, after the first year following October 3, 1977, prior to December 31, an analysis and evaluation of Federal juvenile delinquency programs conducted and assisted by Federal departments and agencies, the expenditures made, the results achieved, the plans developed, and problems in the operations and coordination of such programs and a brief but precise comprehensive plan for Federal juvenile delinquency programs, with particular emphasis on the prevention of juvenile delinquency and the development of programs and services which will encourage increased diversion of juveniles from the traditional juvenile justice system, which analysis and evaluation shall include recommendations for modifications in organization, management, personnel, standards, budget requests, and implementation plans necessary to increase the effectiveness of these programs".

Subsec. (b)(6). Pub.L. 100–690, § 7253(b)(2), (3), struck par. (6) which required the Administrator to provide technical assistance and training assistance to Federal, State, and local governments, courts, public and private agencies, institutions, and individuals, in the planning, establishment, funding, operation, or evaluation of juvenile delinquency programs; and redesignated par. (7) as (6).

Subsec. (b)(7). Pub.L. 100–690, § 7253(b)(3), redesignated par. (7) as (6).

Subsec. (c). Pub.L. 100–690, § 7253(c)(1), (3), struck subsec. (c), which provided for submission of a report by the President to the Congress and the Council, including time of its submission; and redesignated subsec. (f) as subsec. (c).

Subsec. (d). Pub.L. 100–690, § 7253(c)(1), (3), struck subsec. (d), which provided for submission of first and second annual reports by the

Administrator, including the contents thereof; and redesignated subsec. (g) as subsec. (d).

Subsec. (e). Pub.L. 100–690, § 7253(c)(1), (3), struck subsec. (e), which provided for submission of a third annual report by the Administrator, including the contents thereof; and redesignated subsec. (h) as subsec. (e).

Subsecs. (f) to (h). Pub.L. 100–690, § 7253(c)(3), redesignated subsecs. (l) to (k) as subsecs. (f) to (h). Former subsecs. (f) to (h) redesignated (e) to (e).

Subsec. (i). Pub.L. 100–690, § 7253(c)(2)(A)(i), (ii), (B)(i), (ii), (3), in par. (1), struck following "Federal juvenile delinquency program" the clause "which meets any criterion developed by the Administrator under subsection (d)(1) of this section" and substituted "subsection (c)" for "subsection (f)"; struck in par. (2) "shall be submitted in accordance with procedures established by the Administrator under subsection (e) of this section" preceding "and shall contain" and "under subsection (e) of this section" following "may require"; and redesignated subsec. (*l*), as above amended, as subsec. (i). Former subsec. (i) redesignated (f).

Subsecs. (j), (k). Pub.L. 100–690, § 7253(c)(3), redesignated subsecs. (j) and (k) as subsecs. (g) and (h).

Subsec. (*l*). Pub.L. 100–690, § 7253(c)(3), redesignated subsec. (*l*) as amended by Pub.L. 100–690, § 7253(c)(2), as subsec. (i).

Subsec. (m). Pub.L. 100–690, § 7253(c)(4), struck subsec. (m), which, to carry out the purposes of this section, authorized appropriation for each fiscal year of an amount which did not exceed 7.5 percent of the total amount appropriated to carry out this subch. II.

1984 Amendment

Subsec. (a). Pub.L. 98–473, § 622(a), substituted "the functions of the Administrator" for "his functions" after "In carrying out".

Subsec. (b)(2). Pub.L. 98–473, § 622(b)(1), substituted "the Administrator" for "he" before "establishes".

Subsec. (b)(4). Pub.L. 98–473, § 622(b)(2), substituted "the Administrator" for "he" before "determines may have".

Subsec. (b)(7). Pub.L. 98–473, § 622(b)(5), added par. (7).

Subsec. (e). Pub.L. 98–473, § 622(c), removed quotation marks erroneously placed around "(*l*)" by Pub.L. 99–415. The error had been editorially corrected so that the amendment by Pub.L. 98–473 resulted in no change in text.

Subsec. (f). Pub.L. 98–473, § 622(d)(1), substituted "the Administrator" for "him" before "with such information".

Pub.L. 98–473, § 622(d)(2), substituted "the Administrator" for "he" before "may deem to be".

Subsec. (g). Pub.L. 98–473, § 622(e), substituted "the functions of the Administrator" for "his functions" before "under this subchapter".

Subsec. (i). Pub.L. 98–473, § 622(f)(1), substituted "section" for "subchapter" before "to any agency".

Pub.L. 98–473, § 622(f)(2), substituted "the Administrator" for "he" before "finds there exists".

Subsec. (*l*)(1). Pub.L. 98–473, § 622(g)(1)(A), substituted "subsection (d)(1) of this section" for "section 5614(d)(1)". Substitution had already been made editorially so that the amendment by Pub.L. 98–473 resulted in no change in text.

Pub.L. 98–473, § 622(g)(1)(B), substituted "subsection (f) of this section" for "section 5614(f)". Substitution had already been made editorially so that the amendment by Pub.L. 98–473 resulted in no change in text.

Subsec. (*l*)(2). Pub.L. 98–473, § 622(g)(2)(A), substituted "paragraph (1) of this subsection" for "this subsection", before "shall be submitted".

Pub.L. 98–473, § 622(g)(2)(B), substituted "subsection (e) of this section" for "section 5614(e)" in two places. Substitution had already been made editorially so that the amendment made by Pub.L. 98–473 resulted in no change in text.

Subsec. (*l*)(3). Pub.L. 98–473, § 622(g)(3)(A), substituted "the Administrator" for "him" before "under this subsection".

Pub.L. 98–473, § 622(g)(3)(B), substituted "paragraph (1) of this subsection" for "this subsection" after "transmitted to him under".

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, except that amendment by section 7253(b)(1) of Pub.L. 100–690 not to apply with respect to fiscal year 1989, see section 7296 of Pub.L. 100–690, as amended, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S. Code Cong. and Adm. News p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

NOTES OF DECISIONS

1. Detention of juvenile aliens

Treatment of juvenile aliens following their arrival in the United States was unduly harsh and their detention in facilities was not suited to juvenile custody or rehabilitation, and there was thereby an abuse of discretion by federal officials responsible for their custody; status of the juveniles as aliens subject to exclusion did not warrant deprivation of the protections and benefits offered to other juveniles in the United States. Diaz v. Haig, D.C.Wyo.1981, 594 F.Supp. 1.

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§ 5616. Coordinating Council on Juvenile Justice and Delinquency Prevention

(a) Establishment; membership

(1) There is hereby established, as an independent organization in the executive branch of the Federal Government a Coordinating Council on Juvenile Justice and Delinquency Prevention composed of the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, the Commissioner of Immigration and Naturalization, such other officers of Federal agencies who hold significant decisionmaking authority as the President may designate, and individuals appointed under paragraph (2).

(2)(A) Nine members shall be appointed, without regard to political affiliation, to the Council in accordance with this paragraph from among individuals who are practitioners in the field of juvenile justice and who are not officers or employees of the United States.

(B)(i) Three members shall be appointed by the Speaker of the House of Representatives, after consultation with the minority leader of the House of Representatives.

(ii) Three members shall be appointed by the majority leader of the Senate, after consultation with the minority leader of the Senate.

(iii) Three members shall be appointed by the President.

(C)(i) Of the members appointed under each of clauses (i), (ii), and (iii)—

(I) 1 shall be appointed for a term of 1 year;

(II) 1 shall be appointed for a term of 2 years; and

(III) 1 shall be appointed for a term of 3 years;

as designated at the time of appointment.

(ii) Except as provided in clause (iii), a vacancy arising during the term for which an appointment is made may be filled only for the remainder of such term.

(iii) After the expiration of the term for which a member is appointed, such member may continue to serve until a successor is appointed.

[See main volume for text of (b)]

(c) Functions

(1) The function of the Council shall be to coordinate all Federal juvenile delinquency programs (in cooperation with State and local juvenile justice programs) all Federal programs and activities that detain or care for unaccompanied juveniles, and all Federal programs relating to missing and exploited children. The Council shall examine how the separate programs can be coordinated among Federal, State, and local governments to better serve at-risk children and juveniles shall make recommendations to the President, and to the Congress, at least annually with respect to the coordination of overall policy, and development of objectives and priorities for all Federal juvenile delinquency programs and activities and all Federal programs and activities that detain or care for unaccompanied juveniles. The Council shall review the programs and practices of Federal agencies and report on the degree to which Federal agency funds are used for purposes which are consistent or inconsistent with the mandates of paragraphs (12)(A); (13) and (14) of section 5633(a) of this title. The Council shall review, and make recommendations with respect to, any joint funding proposal undertaken by the Office of Juvenile Justice and Delinquency Prevention and any agency represented on the Council. The Council shall review the reasons why Federal agencies take juveniles into custody and shall make recommendations regarding how to improve Federal practices and facilities for holding juveniles in custody.

(2) In addition to performing their functions as members of the Council, the members appointed under subsection (a)(2) of this section shall collectively—

(A) make recommendations regarding the development of the objectives, priorities, and the long-term plan, and the implementation of overall policy and the strategy to carry out such plan, referred to in section section 5614(a)(1) of this title; and

(B) not later than 180 days after November 4, 1992, submit such recommendations to the Administrator, the Chairman of the Committee on Education and Labor of the House of Representatives, and the Chairman of the Committee on the Judiciary of the Senate.

(d) Meetings

The Council shall meet at least quarterly.

(e) Appointment of personnel or staff support by Administrator

The Administrator shall, with the approval of the Council, appoint such personnel or staff support as the Administrator considers necessary to carry out the purposes of this subchapter.

(f) Expenses of Council members; reimbursement

Members appointed under subsection (a)(2) of this section shall serve without compensation. Members of the Council shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Council.

(g) Authorization of appropriations

Of sums available to carry out this part, not more than $200,000 shall be available to carry out this section.

(As amended Pub.L. 98–473, Title II, § 623, Oct. 12, 1984, 98 Stat. 2110; Pub.L. 100–690, Title VII, §§ 7251(b), 7252(b)(2), 7254, Nov. 18, 1988, 102 Stat. 4435–4437; Pub.L. 102–586, § 2(d), Nov. 4, 1992, 106 Stat. 4985; Pub.L. 103–82, Title IV, § 405(k), Sept. 21, 1993, 107 Stat. 922.)

HISTORICAL AND STATUTORY NOTES

1993 Amendments

Subsec. (a)(1). Pub.L. 103–82, § 405(k), substituted "the Chief Executive Officer of the Corporation for National and Community Service" for "the director of the ACTION Agency".

1992 Amendments

Subsec. (a)(1). Pub.L. 102–586, § 2(d)(1)(A), substituted provisions relating to Director of Office of National Drug Control Policy, Commissioner of Immigration and Naturalization, other officers of agencies holding significant decisionmaking authority as President may designate, and individuals appointed under par. (2), for provisions relating to Director of Office of Community Service, Director of Office of Drug Abuse Policy, Director of Bureau of Prisons, Commissioner of Bureau of Indian Affairs, Director for Office of Special Education and Rehabilitation Services, Commissioner for Administration for Children, Youth, and Families, Director of Youth Development Bureau, Assistant Attorney General heading Office of Justice Programs, Director of Bureau of Justice Assistance, Director of National Institute of Justice, and representatives of other agencies designated by President.

Subsec. (a)(2). Pub.L. 102–586, § 2(d)(1)(B), amended par. generally, inserting subpar., cl., and subcl. designations, wherever appearing, and substituting provisions relating to appointment of 9 additional members, terms of offices, vacancies, and service after expiration of terms, for provisions requiring individuals designated under this section to be selected from individuals holding significant decisionmaking authority in Federal agency involved.

Subsec. (c). Pub.L. 102–586, § 2(d)(2), redesignated existing provisions as par. (1), in par. (1), as so redesignated, inserted "(in cooperation with State and local juvenile justice programs) all Federal programs and activities that detain or care for unaccompanied juveniles," preceding "and all Federal programs relating", "shall examine how the separate programs can be coordinated among Federal, State, and local governments to better serve at–risk children and juveniles and" preceding "shall make recommendations to the President", and "and all Federal programs and activities that detain or care for unaccompanied juveniles" following "priorities for all Federal juvenile delinquency programs and activities", and added par. (2).

Subsec. (f). Pub.L. 102–586, § 2(d)(3), added "Members appointed under subsection (a)(2) of this section shall serve without compensation." preceding "Members of the Council", and struck out "who are employed by the Federal government full time" preceding "shall be".

1988 Amendment

Subsec. (a)(1). Pub.L. 100–690, §§ 7251(b), 7252(b)(2), struck out after "Coordinating Council on Juvenile Justice and Delinquency Prevention" the parenthetical phrase "(hereinafter referred to as the 'Council')" and "the Deputy Administrator of the Institute for Juvenile Justice and Delinquency Prevention," after "Administrator of the Office of Juvenile Justice and Delinquency Prevention,".

Subsec. (c). Pub.L. 100–690, § 7254(a)(1), (2)(A), (B), (3), substituted: in the first sentence, "all Federal programs" for ", in consultation with the Advisory Board on Missing Children, all Federal programs", and, in the third sen-

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tence, "shall review" for "is authorized to review" and "paragraphs (12)(A), (13), and (14) of section 5633 of this title" for "section 5633(a)(12)(A) and (13) of this title"; and added the sentence "The Council shall review the reasons why Federal agencies take juveniles into custody and shall make recommendations regarding how to improve Federal practices and facilities for holding juveniles in custody.".

Subsec. (d). Pub.L. 100–690, § 7254(b), struck out the provision that the annual report required by section 5614(b)(5) of this title include a description of the activities of the Council.

Subsec. (g). Pub.L. 100–690, § 7254(c), substituted "Of sums available to carry out this part, not more than $200,000 shall be available to carry out this section" for "To carry out the purposes of this section, there is authorized to be appropriated such sums as may be necessary, not to exceed $200,000 for each fiscal year".

1984 Amendment

Subsec. (a)(1). Pub.L. 98–473, § 623(a)(1), substituted "Office of Community Services" for "Community Services Administration" before "the Director of the".

Pub.L. 98–473, § 623(a)(2), substituted "Assistant Attorney General who heads the Office of Justice Programs," for "Director of the Office of Justice Assistance, Research, and Statistics".

Pub.L. 98–473, § 623(a)(3), substituted "Director of the Bureau of Justice Assistance" for "Administrator of the Law Enforcement Assistance Administration" before "the Administrator of the Office of Juvenile Justice and Delinquency Prevention,".

Subsec. (c). Pub.L. 98–473, § 623(b), substituted "delinquency programs and, in consultation with the Advisory Board on Missing Children, all Federal programs relating to missing and exploited children" for "delinquency programs" at the end of the first sentence.

Subsec. (e). Pub.L. 98–473, § 623(c), substituted "the Administrator" for "he" before "considers necessary".

Subsec. (g). Pub.L. 98–473, § 623(d), substituted "$200,000" for "$500,000" before "for each fiscal year".

Effective Date of 1993 Amendments

Amendment by section 405(k) of Pub.L. 103–82 effective Apr. 4, 1994, see section 406(b) of Pub.L. 103–82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S. Code Cong. and Adm. News, p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229; Pub.L. 103–82, 1993 U.S. Code Cong. and Adm. News, p. 1710.

§ 5617. Annual report

Not later than 180 days after the end of a fiscal year, the Administrator shall submit to the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate a report that contains the following with respect to such fiscal year:

(1) A detailed summary and analysis of the most recent data available regarding the number of juveniles taken into custody, the rate at which juveniles are taken into custody, and the trends demonstrated by the data required by subparagraphs (A), (B), and (C). Such summary and analysis shall set out the information required by subparagraphs (A), (B), (C), and (D) separately for juvenile nonoffenders, juvenile status offenders, and other juvenile offenders. Such summary and analysis shall separately address with respect to each category of juveniles specified in the preceding sentence—

(A) the types of offenses with which the juveniles are charged;

(B) the race and gender of the juveniles;

(C) the ages of the juveniles;

(D) the types of facilities used to hold the juveniles (including juveniles treated as adults for purposes of prosecution) in custody, including secure detention facilities, secure correctional facilities, jails, and lockups;

(E) the number of juveniles who died while in custody and the circumstances under which they died; and

(F) the educational status of juveniles, including information relating to learning disabilities, failing performance, grade retention, and dropping out of school.

(2) A description of the activities for which funds are expended under this part, including the objectives, priorities, accomplishments, and recommendations of the Council.

(3) A description, based on the most recent data available of the extent to which each State complies with section 5633 of this title and with the plan submitted under such section by the State for such fiscal year.

(4) A summary of each program or activity for which assistance is provided under part C or D of this subchapter, an evaluation of the results of such program or activity, and a determination of the feasibility and advisability of replicating such program or activity in other locations.

(5) A description of selected exemplary delinquency prevention programs for which assistance is provided under this title, with particular attention to community-based juvenile delinquency prevention programs that involve and assist families of juveniles.

(Pub.L. 100–690, Title VII, § 7255, Nov. 18, 1988, 102 Stat. 4437; Pub.L. 102–586, § 2(e), Nov. 4, 1992, 106 Stat. 4986.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 5617, Pub.L. 93–415, Title II, § 207, as added Pub.L. 96–509, § 9, Dec. 8, 1980, 94 Stat. 2753, which related to the National Advisory Council for Juvenile Justice and Delinquency Prevention, was repealed by Pub.L. 98–473, Title II, § 624, Oct. 12, 1984, 98 Stat. 2111.

Another prior section 5617, Pub.L. 93–415, Title II, § 207, Sept. 7, 1974, 88 Stat. 1117; Pub.L. 95–115, § 3(e), Oct. 3, 1977, 91 Stat. 1050, which related to same subject matter, was repealed by Pub.L. 96–509, § 9, Dec. 8, 1980, 94 Stat. 2753.

1992 Amendments

Par. (1)(D). Pub.L. 102–586, § 2(e)(1)(A), inserted provisions relating to juveniles treated as adults for purposes of prosecution.

Par. (1)(F). Pub.L. 102–486, § 2(e)(1)(B), (2), (3), added subpar. (F).

Effective Date

Section effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Submission of Report With Respect to Fiscal Year 1988

Notwithstanding the 180–day period provided in this section, report required by this section to be submitted with respect to fiscal year 1988 to be submitted not later than Aug. 1, 1989, see section 7296(b)(3) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Use of Court Orders to Place Juveniles in Secure Facilities, Jails and Lockups for Adults; Investigation and Report

Section 7295 of Pub.L. 100–690 directed the Comptroller General of the United States to conduct an investigation of the extent to which valid court orders, and court orders other than valid court orders, were used in the 5–year period ending on December 31, 1988, to place juveniles in secure detention facilities, in secure correctional facilities, and in jails and lockups for adults, and, not later than 3 years after Nov. 18, 1988, to submit a report to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate containing a description, and a summary of the results of the investigation.

Legislative History

For legislative history and purpose of Pub.L. 100–690, see 1988 U.S. Code Cong. and Adm. News, p. 5937. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

PART B—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

HISTORICAL AND STATUTORY NOTES

1988 Amendment

Pub.L. 100–690, Title VII, § 7263(a)(1)(A), Nov. 18, 1988, 102 Stat. 4443, struck out subpart I "Formula Grants" heading.

§ 5631. Authority to make grants and contracts

(a) The Administrator is authorized to make grants to States and units of general local government or combinations thereof to assist them in planning, establishing, operating, coordinating, and evaluating projects directly or through grants and contracts with public and private agencies for the development of more effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency and programs to improve the juvenile justice system.

out the second sentence providing that "Funds appropriated for fiscal year 1975 may be obligated in accordance with subsection (a) of this section until June 30, 1976, after which they may be reallocated."

1984 Amendment

Subsec. (b). Pub.L. 98–473, § 625(b)(1), substituted "the Trust Territory" for "and the Trust Territory" after "American Samoa".

Pub.L. 98–473, § 625(b)(2), added ", and the Commonwealth of the Northern Mariana Islands" after "Pacific Islands".

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S.Code Cong. and Adm. News, p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5633. State plans

(a) Requirements

In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs and challenge activities subsequent to State participation in part E. The State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall—

(1) designate the State agency described in section 5671(c)(1) of this title as the sole agency for supervising the preparation and administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) has or will have authority, by legislation if necessary, to implement such plan in conformity with this part;

(3) provide for an advisory group, which—

(A) shall consist of not less than 15 and not more than 33 members appointed by the chief executive officer of the State—

(i) which members have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice;

(ii) which members include—

(I) at least 1 locally elected official representing general purpose local government;

(II) representatives of law enforcement and juvenile justice agencies, including juvenile and family court judges, prosecutors, counsel for children and youth, and probation workers;

(III) representatives of public agencies concerned with delinquency prevention or treatment, such as welfare, social services, mental health, education, special education, recreation, and youth services;

(IV) representatives of private nonprofit organizations, including persons with a special focus on preserving and strengthening families, parent groups and parent self-help groups, youth development, delinquency prevention and treatment, neglected or dependent children, the quality of juvenile justice, education, and social services for children;

(V) volunteers who work with delinquents or potential delinquents;

(VI) youth workers involved with programs that are alternatives to incarceration, including programs providing organized recreation activities;

(VII) persons with special experience and competence in addressing problems related to school violence and vandalism and alternatives to suspension and expulsion; and

(VIII) persons with special experience and competence in addressing problems related to learning disabilities, emotional difficulties, child abuse and neglect, and youth violence;

(iii) a majority of which members (including the chairperson) shall not be full-time employees of the Federal, State, or local government;

(iv) at least one-fifth of which members shall be under the age of 24 at the time of appointment; and

(v) at least 3 members who have been or are currently under the jurisdiction of the juvenile justice system;

(B) shall participate in the development and review of the State's juvenile justice plan prior to submission to the supervisory board for final action;

(C) shall be afforded the opportunity to review and comment, not later than 30 days after their submission to the advisory group, on all juvenile justice and delinquency prevention grant applications submitted to the State agency designated under paragraph (1);

(D) shall, consistent with this subchapter—

(i) advise the State agency designated under paragraph (1) and its supervisory board;

(ii) submit to the chief executive officer and the legislature of the State at least annually recommendations regarding State compliance with the requirements of paragraphs (12), (13), and (14) and with progress relating to challenge activities carried out pursuant to part E; and

(iii) contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system; and

(E) may, consistent with this subchapter—

(i) advise on State supervisory board and local criminal justice advisory board composition;

(ii) review progress and accomplishments of projects funded under the State plan.

[See main volume for text of (4)]

(5) unless the provisions of this paragraph are waived at the discretion of the Administrator for any State in which the services for delinquent or other youth are organized primarily on a statewide basis, provide that at least 66⅔ per centum of funds received by the State under section 5632 of this title, other than funds made available to the State advisory group under section 5632(d) of this title, shall be expended—

(A) through programs of units of general local government or combinations thereof, to the extent such programs are consistent with the State plan;

(B) through programs of local private agencies, to the extent such programs are consistent with the State plan, except that direct funding of any local private agency by a State shall be permitted only if such agency requests such funding after it has applied for and been denied funding by any unit of general local government or combination thereof; and

(C) to provide funds for programs of Indian tribes that perform law enforcement functions (as determined by the Secretary of the Interior) and that agree to attempt to comply with the requirements specified in paragraphs (12)(A), (13), and (14), applicable to the detention and confinement of juveniles, an amount that bears the same ratio to the aggregate amount to be expended through programs referred to in subparagraphs (A) and (B) as the population under 18 years of age in the geographical areas in which such tribes perform such functions bears to the State population under 18 years of age,

[See main volume for text of (6) and (7)]

(8)(A) provide for (i) an analysis of juvenile crime problems (including the joining of gangs that commit crimes) and juvenile justice and delinquency prevention needs (including educational needs) within the relevant jurisdiction (including any geographical area in which an Indian tribe performs law enforcement functions), a description of the services to be provided, and a description of performance goals and priorities, including a specific statement of the manner in which programs are

expected to meet the identified juvenile crime problems (including the joining of gangs that commit crimes) and juvenile justice and delinquency prevention needs of the jurisdiction; (ii) an indication of the manner in which the programs relate to other similar State or local programs which are intended to address the same or similar problems; and (iii) a plan for the concentration of State efforts which shall coordinate all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities, including provision for regular meetings of State officials with responsibility in the area of juvenile justice and delinquency prevention;

(B) contain—

(i) an analysis of gender-specific services for the prevention and treatment of juvenile delinquency, including the types of such services available and the need for such services for females; and

(ii) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency;

(C) contain—

(i) an analysis of services for the prevention and treatment of juvenile delinquency in rural areas, including the need for such services, the types of such services available in rural areas, and geographically unique barriers to providing such services; and

(ii) a plan for providing needed services for the prevention and treatment of juvenile delinquency in rural areas; and

(D) contain—

(i) an analysis of mental health services available to juveniles in the juvenile justice system (including an assessment of the appropriateness of the particular placements of juveniles in order to receive such services) and of barriers to access to such services; and

(ii) a plan for providing needed mental health services to juveniles in the juvenile justice system;

(9) provide for the active consultation with and participation of private agencies in the development and execution of the State plan; and provide for coordination and maximum utilization of existing juvenile delinquency programs and other related programs, such as education, special education, recreation, health, and welfare within the State;

(10) provide that not less than 75 percent of the funds available to the State under section 5632 of this title, other than funds made available to the State advisory group under section 5632(d) of this title, whether expended directly by the State, by the unit of general local government, or by a combination thereof, or through grants and contracts with public or private nonprofit agencies, shall be used for—

(A) community-based alternatives (including home-based alternatives) to incarceration and institutionalization, specifically—

(i) for youth who can remain at home with assistance: home probation and programs providing professional supervised group activities or individualized mentoring relationships with adults that involve the family and provide counseling and other supportive services;

(ii) for youth who need temporary placement: crisis intervention, shelter, and after-care; and

(iii) for youth who need residential placement: a continuum of foster care or group home alternatives that provide access to a comprehensive array of services;

(B) community-based programs and services to work with—

(i) parents and other family members to strengthen families, including parent self-help groups, so that juveniles may be retained in their homes;

(ii) juveniles during their incarceration, and with their families, to ensure the safe return of such juveniles to their homes and to strengthen the families; and

(iii) parents with limited English-speaking ability, particularly in areas where there is a large population of families with limited-English speaking ability;

(C) comprehensive juvenile justice and delinquency prevention programs that meet the needs of youth through the collaboration of the many local systems before which a youth may appear, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies, and private nonprofit agencies offering youth services;

(D) projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth affected by the juvenile justice system;

(E) educational programs or supportive services for delinquent or other juveniles, provided equitably regardless of sex, race, or family income, designed to—

(i) encourage juveniles to remain in elementary and secondary schools or in alternative learning situations, including—

(I) education in settings that promote experiential, individualized learning and exploration of academic and career options;

(II) assistance in making the transition to the world of work and self-sufficiency;

(III) alternatives to suspension and expulsion; and

(IV) programs to counsel delinquent juveniles and other juveniles regarding the opportunities that education provides; and

(ii) enhance coordination with the local schools that such juveniles would otherwise attend, to ensure that—

(I) the instruction that juveniles receive outside school is closely aligned with the instruction provided in school; and

(II) information regarding any learning problems identified in such alternative learning situations are communicated to the schools;

(F) expanded use of home probation and recruitment and training of home probation officers, other professional and paraprofessional personnel, and volunteers to work effectively to allow youth to remain at home with their families as an alternative to incarceration or institutionalization;

(G) youth-initiated outreach programs designed to assist youth (including youth with limited proficiency in English) who otherwise would not be reached by traditional youth assistance programs;

(H) programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist community services, law enforcement, and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped youth;

(I) projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of youth;

(J) programs and projects designed to provide for the treatment of youths' dependence on or abuse of alcohol or other addictive or nonaddictive drugs;

(K) law-related education programs (and projects) for delinquent and at-risk youth designed to prevent juvenile delinquency;

(L) programs for positive youth development that assist delinquent and other at-risk youth in obtaining—

(i) a sense of safety and structure;

(ii) a sense of belonging and membership;

(iii) a sense of self-worth and social contribution;

(iv) a sense of independence and control over one's life;

(v) a sense of closeness in interpersonal relationships; and

(vi) a sense of competence and mastery including health and physical competence, personal and social competence, cognitive and creative competence, vocational competence, and citizenship competence, including ethics and participation;

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(M) programs that, in recognition of varying degrees of the seriousness of delinquent behavior and the corresponding gradations in the responses of the juvenile justice system in response to that behavior, are designed to—

(i) encourage courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting (including expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, boot camps and similar programs, and secure community-based treatment facilities linked to other support services such as health, mental health, education (remedial and special), job training, and recreation); and

(ii) assist in the provision by the provision by the Administrator of information and technical assistance, including technology transfer, to States in the design and utilization of risk assessment mechanisms to aid juvenile justice personnel in determining appropriate sanctions for delinquent behavior;

(N) programs designed to prevent and reduce hate crimes committed by juveniles, including educational programs and sentencing programs designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration; and

(O) programs (including referral to literacy programs and social service programs) to assist families with limited English-speaking ability that include delinquent juveniles to overcome language and cultural barriers that may prevent the complete treatment of such juveniles and the preservation of their families.

[See main volume for text of (11)]

(12)(A) provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses (other than an offense that constitutes a violation of a valid court order or a violation of section 922(x) of Title 18 or a similar State law), or alien juveniles in custody, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities; and

[See main volume for text of (B)]

(13) provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges or with the part-time or full-time security staff (including management) or direct-care staff of a jail or lockup for adults;

(14) provide that no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall, through 1997, promulgate regulations which make exceptions with regard to the detention of juveniles accused of non-status offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within twenty-four hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas that are in compliance with paragraph (13) and—

(A)(i) are outside a Standard Metropolitan Statistical Area; and

(ii) have no existing acceptable alternative placement available;

(B) are located where, conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, so that a brief (not to exceed 48 hours) delay is excusable; or

(C) are located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel;

[See main volume for text of (15)]

(16) provide assurance that youth in the juvenile justice system are treated equitably on the basis of gender, race, family income, and mentally, emotionally, or physically handicapping conditions;

(17) provide assurance that consideration will be given to and that assistance will be available for approaches designed to strengthen the families of delinquent and other youth to prevent juvenile delinquency (which approaches should include the involvement of grandparents or other extended family members when possible and appropriate and the provision of family counseling during the incarceration of juvenile family members and coordination of family services when appropriate and feasible);

(18) provide for procedures to be established for protecting the rights of recipients of services and for assuring appropriate privacy with regard to records relating to such services provided to any individual under the State plan;

(19) provide that fair and equitable arrangements shall be made to protect the interests of employees affected by assistance under this chapter and shall provide for the terms and conditions of such protective arrangements established pursuant to this section, and such protective arrangements shall, to the maximum extent feasible, include, without being limited to, such provisions as may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements or otherwise;

(B) the continuation of collective-bargaining rights;

(C) the protection of individual employees against a worsening of their positions with respect to their employment;

(D) assurances of employment to employees of any State or political subdivision thereof who will be affected by any program funded in whole or in part under provisions of this chapter; and

(E) training or retraining programs;

(20) provide for such fiscal control and fund accounting procedures necessary to assure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter;

(21) provide reasonable assurance that Federal funds made available under this part for any period will be so used as to supplement and increase (but not supplant) the level of the State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs described in this part, and will in no event replace such State, local, and other non-Federal funds;

(22) provide that the State agency designated under paragraph (1) will from time to time, but not less often than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, which it considers necessary;

(23) address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population;

(24) contain such other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of the programs assisted under this subchapter; and

(25) provide an assurance that if the State receives under section 5632 of this title for any fiscal year an amount that exceeds 105 percent of the amount the State received under such section for fiscal year 1992, all of such excess shall be expended through or for programs that are part of a comprehensive and coordinated community system of services.

(b) Approval by State criminal justice council

The State agency designated under subsection (a)(1) of this section, after receiving and considering the advice and recommendations of the advisory group referred to in subsection (a) of this section, shall approve the State plan and any modification thereof prior to submission to the Administrator.

(c) Approval by Administrator; compliance with statutory requirements

(1) Subject to paragraph (2), the Administrator shall approve any State plan and any modification thereof that meets the requirements of this section.

(2) Failure to achieve compliance with the subsection (a)(12)(A) of this section requirement within the 3-year time limitation shall terminate any State's eligibility for funding under this part for a fiscal year beginning before January 1, 1993, unless the Administrator determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 percent of such juveniles or through removal of 100 percent of such juveniles from secure correctional facilities, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding 2 additional years.

(3) If a State fails to comply with the requirements of subsection (a), (12)(A), (13), (14), or (23) of this section in any fiscal year beginning after January 1, 1993—

(A) subject to subparagraph (B), the amount allotted under section 5632 of this title to the State for that fiscal year shall be reduced by 25 percent for each such paragraph with respect to which noncompliance occurs; and

(B) the State shall be ineligible to receive any allotment under that section for such fiscal year unless—

(i) the State agrees to expend all the remaining funds the State receives under this part (excluding funds required to be expended to comply with section 5632(c) and (d) of this title and with subsection (a)(5)(C) of this section) for that fiscal year only to achieve compliance with any such paragraph with respect to which the State is in noncompliance; or

(ii) the Administrator determines, in the discretion of the Administrator, that the State—

(I) has achieved substantial compliance with each such paragraph with respect to which the State was not in compliance; and

(II) has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time.

(d) Nonsubmission or nonqualification of plan; expenditure of allotted funds; availability of reallocated funds

In the event that any State chooses not to submit a plan, fails to submit a plan, or submits a plan or any modification thereof, which the Administrator, after reasonable notice and opportunity for hearing, in accordance with sections 3783, 3784, and 3785 of this title, determines does not meet the requirements of this section, the Administrator shall endeavor to make that State's allotment under the provisions of section 5632(a) of this title, excluding funds the Administrator shall make available to satisfy the requirement specified in section 222(d) of this title, available to local public and private nonprofit agencies within such State for use in carrying out activities of the kinds described in subsection (a)(12)(A), (13), (14) and (23) of this section. The Administrator shall make funds which remain available after disbursements are made by the Administrator under the preceding sentence, and any other unobligated funds, available on an equitable basis and to those States that have achieved full compliance with the requirements under subsection (a)(12)(A), (13), (14) and (23) of this of this section.

(As amended Pub.L. 98–473, Title II, § 626, Oct. 12, 1984, 98 Stat. 2111; Pub.L. 100–690, Title VII, §§ 7258, 7263(b)(1), Nov. 18, 1988, 102 Stat. 4439, 4447; Pub.L. 102–586, § 2(f)(3)(A), Nov. 4, 1992, 106 Stat. 4988; Pub.L. 103–322, Title XI, § 110201(d), Sept. 13, 1994, 108 Stat. 2012.)

HISTORICAL AND STATUTORY NOTES

Codification

Section 2(f)(3)(A)(i)(IX)(aa) of Pub.L. 102–586, directing that subsec. (a)(14) of this section be amended by striking out "; beginning after the five-year period following December 8, 1980,", was executed by striking phrase ", beginning after the five-year period following December 8, 1980,", as the probable intent of Congress.

1992 Amendments

Subsec. (a). Pub.L. 102–586, § 2(f)(3)(A)(i)(I), substituted "programs and challenge activities subsequent to State participation in part E. The State" for "programs, and the State".

Subsec. (a)(1). Pub.L. 102–586, § 2(f)(3)(A)(i)(II), substituted "section 299(e)(1)", which, for purposes of codification, was changed to "section 5671(e)(1)", for "section 299(e)(1)", which, for purposes of codification, had been changed to "section 5671(e)(1)", thereby requiring no further change in text.

Subsec. (a)(3). Pub.L. 102–586, § 2(f)(3)(A)(i)(III), amended par. generally, inserting provisions relating to parent groups, parent self-help groups, youth development, emotional difficulties, and child abuse and neglect.

Subsec. (a)(8)(A). Pub.L. 102–586, § 2(f)(3)(A)(i)(IV)(aa)–(ee), redesignated existing provisions as subpar. (A), and in subpar. (A), as so redesignated, inserted "(including educational needs)" following "delinquency prevention needs", wherever appearing, and redesignated former subpars. (A), (B) and (C) as cls. (i), (ii) and (iii), respectively.

Subsec. (a)(8)(B)–(D). Pub.L. 102–586, § 2(f)(3)(A)(i)(IV)(ff), added subpars. (B) through (D).

Subsec. (a)(9). Pub.L. 102–586, § 2(f)(3)(A)(i)(V), inserted "recreation," following "special education,".

Subsec. (a)(10). Pub.L. 102–586, § 2(f)(3)(A)(i)(VI), amended par. generally, in matter preceding subpar. (A), striking out provisions relating to advanced techniques, in subpar. (A), substituting provisions relating to community-based alternatives for provisions relating to community-based programs and services, in subpar. (B), inserting provisions relating to incarcerated juveniles and parents with limited English-speaking abilities, in subpar. (C), substituting provisions relating to prevention programs for provisions relating to youth service bureaus and other community-based programs, in subpar. (E), inserting provisions relating to equitable provision of programs and services and provisions relating to coordination with schools, in subpar. (F), substituting provisions relating to home probation for provisions relating to probation, in subpar. (G), inserting provisions relating to youth with limited proficiency in English, in subpar. (H), substituting provisions relating to projects relating to juvenile delinquency and learning disabilities for provisions relating to statewide programs involving subsidies and other incentives to local government, in subpar. (I), substituting provisions relating to gang for provisions relating to projects relating to juvenile delinquency and learning disabilities, in subpar. (J), substituting provisions relating to drugs and alcohol for provisions relating to gangs, in subpar. (K), substituting provisions relating to law-related programs for provisions relating to drugs and alcohol, in subpar. (L), substituting provisions relating to positive youth development for provisions relating to law-related programs, and adding subpars. (M) through (O).

Subsec. (a)(12)(A). Pub.L. 102–586, § 2(f)(3)(A)(i)(VII), inserted "or alien juveniles in custody," following "court orders,".

Subsec. (a)(13). Pub.L. 102–586, § 2(f)(3)(A)(i)(VIII), inserted "or with the part-time or full-time security staff (including management) or direct-care staff of a jail or lockup for adults" following "criminal charges", and struck out "regular" preceding "contact with".

Subsec. (a)(14). Pub.L. 102–586, § 2(f)(3)(A)(i)(IX)(aa), struck out ", beginning after the five-year period following December 8, 1980," following "provide that". See Codification note set out under this section.

Pub.L. 102–586, § 2(f)(3)(A)(i)(IX)(bb), substituted "1997" for "1993".

Pub.L. 102–586, § 2(f)(3)(A)(i)(IX)(cc), substituted "areas that are in compliance with paragraph (13) and—" for "areas which—".

Subsec. (a)(14)(A)–(C). Pub.L. 102–586, § 2(f)(3)(A)(i)(IX)(cc), redesignated former subpars. (A) and (B) as (A)(i) and (ii), respectively, added subpar. (B), and, in subpar. (C), substituted provisions relating to delays caused by reasons of safety for provisions relating to compliance with par. (13).

Subsec. (a)(16). Pub.L. 102–586, § 2(f)(3)(A)(i)(X), substituted "provide assurance that youth in the juvenile justice system are treated equitably on the basis of gender, race, family income, and mentally, emotionally, or physically handicapping conditions" for "provide assurance that assistance will be available on an equitable basis to deal with disadvantaged youth including, but not limited to, females, minority youth, and mentally retarded and emotionally or physically handicapped youth".

Subsec. (a)(17). Pub.L. 102–586, § 2(f)(3)(A)(i)(XI), inserted "and the provision of family counseling during the incarceration of juvenile family members and coordination of family services when appropriate and feasible)" following "when possible and appropriate", and substituted "the families" for "and maintain the family units" and "delinquency (which" for "delinquency. Such".

Subsec. (a)(25). Pub.L. 102–586, § 2(f)(3)(A)(i)(XII)–(XIV), added par. (25).

Subsec. (c). Pub.L. 102–586, § 2(f)(3)(A)(ii), inserted provisions relating to par. (2) in par. (1), redesignated portions of par. (1), with minor changes, as par. (2), struck out former par. (2), relating to failure to achieve requirements of subsec. (a)(14) of this section within 5-year time limitation, in par. (3), substituted provisions relating to failure to comply with requirements of subsec. (a), (12)(A), (13), (14) or (23) in any fiscal year beginning after Jan. 1, 1993 for provisions relating to failure to achieve compliance with subsec. (a)(14) of this section after Dec. 8, 1985, and struck out par. (4), which related to demonstration by State that it was in substantial compliance with subsec. (a)(14) of this section under former par. (2)(A)(i)(II).

Subsec. (d). Pub.L. 102–586, § 2(f)(3)(A)(iii), inserted provisions relating to exclusion of funds Administrator shall make available to satisfy requirement specified in section 5632(d) of this title, and substituted provisions relating to activities of kinds described in subsec. (a)(12)(A), (13), (14) and (23) of this section for provisions relating to purposes of subsec. (a)(12)(A) of this section, subsec. (a)(13) of this section, or subsec. (a)(14) of this section, and provisions relating to requirements under subsec. (a)(12)(A), (13), (14) and (23) of this section for provisions relating to requirements under subsec. (a)(12)(A) of this section and subsec. (a)(13) of this section.

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1988 Amendment

Subsec. (a)(1). Pub.L. 100–690, § 7263(b)(1), substituted "section 291(c)(1)" for "section 261(c)(1)", codified as "section 5671(c)(1)".

Subsec. (a)(5). Pub.L. 100–690, § 7258(a)(1)(A), (B)(i), (ii), (C)(i), (ii), (D), substituted in introductory text "shall be expended" for "shall be expended through"; substituted in subpar. (A) "through programs" for "programs" and struck "and" at the end thereof; substituted in subpar. (B) "through programs" for "programs" and inserted "and" after the semicolon; and added subpar. (C).

Subsec. (a)(8)(A). Pub.L. 100–690, § 7258(a)(2)(A), (B), substituted "relevant jurisdiction (including any geographical area in which an Indian tribe performs law enforcement functions)" for "relevant jurisdiction" and "juvenile crime problems (including the joining of gangs that commit crimes)" for "juvenile crime problems" in two instances.

Subsec. (a)(14). Pub.L. 100–690, § 7258(b)(1)–(3), substituted "1993" for "1989"; substituted a semicolon for the period at the end of subpar. (iii); and redesignated subpars. (i), (ii), and (iii) as amended, as subpars. (A) to (C).

Subsec. (a)(22). Pub.L. 100–690, § 7258(c)(1), struck "and" at the end of par. (22).

Subsec. (a)(23). Pub.L. 100–690, § 7258(c)(3), added par. (23). Former par. (23) redesignated (24).

Subsec. (a)(24). Pub.L. 100–690, § 7258(c)(2), redesignated par. (23) as (24).

Subsec. (c)(1). Pub.L. 100–690, § 7258(d)(1)–(3), substituted "part" for "subpart"; designated existing provisions as par. (1); and struck out existing last sentence, which read: "Failure to achieve compliance with the requirements of subsection (a)(14) of this section within the 5–year time limitation shall terminate any State's eligibility for funding under this subpart, unless the Administrator determines that (1) the State is in substantial compliance with such requirements through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the State has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed 3 additional years."

Subsec. (c)(2) to (4). Pub.L. 100–690, § 7258(d)(4), added pars. (2) to (4).

1984 Amendment

Subsec. (a)(1). Pub.L. 98–473, § 626(a)(1), substituted "agency described in section 5671(c)(1) of this title" for "criminal justice council established by the State under section 3742(b)(1) of this title".

Subsec. (a)(2). Pub.L. 98–473, § 626(a)(2), struck out "(hereafter referred to in this part as the 'State criminal justice council')" before "has or will have authority".

Subsec. (a)(3)(C). Pub.L. 98–473, § 626(a)(3)(A), designated the matter following "representatives of private organizations" as cl. (i), in cl. (i) as so designated added ", including those with a special focus on maintaining and strengthening the family unit", designated the matter following "which utilize" as cl. (ii), in cl. (ii) as so designated added "representatives of organizations which", added cl. (iii), designated the matter following "business groups" as cl. (iv), designated the remainder of subpar. (C) as cl. (v) and in cl. (v) as so designated substituted "family, school violence and vandalism, and learning disabilities," for "school violence and vandalism and the problem of learning disabilities; and organizations which represent employees affected by this chapter,".

Subsec. (a)(3)(F). Pub.L. 98–473, § 626(a)(3)(B)(i), substituted "agency designated under paragraph (1)" for "criminal justice council" wherever appearing.

Subsec. (a)(3)(F)(ii). Pub.L. 98–473, § 626(a)(3)(B)(ii), substituted "paragraphs (12), (13), and (14)" for "paragraphs (12)(A) and paragraph (13)" at the end thereof.

Subsec. (a)(3)(F)(iv). Pub.L. 98–473, § 626(a)(3)(B)(iii)(I), substituted "paragraphs (12), (13), and (14)" for "paragraphs (12)(A) and paragraph (13)".

Pub.L. 98–473, § 626(a)(3)(B)(iii)(II), struck out "in advising on the State's maintenance of effort under section 3793a of this title," before "and in review".

Subsec. (a)(9). Pub.L. 98–488, § 626(a)(4), added "special education" after "education".

Subsec. (a)(10) prec. (A). Pub.L. 98–473, § 626(a)(5)(A)(i), substituted "programs for juveniles, including those processed in the criminal justice system," for "programs for juveniles" before "who have committed serious crimes".

Pub.L. 98–473, § 626(a)(5)(A)(ii), substituted "provide for effective rehabilitation, and facilitate the coordination of services between the juvenile justice and criminal justice systems" for "and provide for effective rehabilitation" after "for informed dispositions".

Subsec. (a)(10)(E). Pub.L. 98–473, § 626(a)(5)(B), added ", including programs to counsel delinquent youth and other youth regarding the opportunities which education provides" before the semicolon at the end thereof.

Subsec. (a)(10)(F). Pub.L. 98–473, § 626(a)(5)(C), added "and their families" before the semicolon at the end thereof.

Subsec. (a)(10)(H)(iii). Pub.L. 98–473, § 626(a)(5)(D)(i), substituted "National Advisory Committee for Juvenile Justice and Delinquency Prevention made before October 12, 1984, standards for the improvement of juvenile justice within the State;" for "Advisory Committee, standards for the improvement of juvenile justice within the State;".

Subsec. (a)(10)(H)(v). Pub.L. 98–473, § 626(a)(5)(D)(iii), added cl. (v).

Subsec. (a)(10)(I). Pub.L. 98–473, § 626(a)(5)(E), struck out "and" at the end thereof.

Subsec. (a)(10)(J). Pub.L. 98–473, § 626(a)(5)(F), struck out "juvenile gangs and their members" and added "gangs whose membership is substantially composed of juveniles" at the end thereof.

Subsec. (a)(10)(K), (L). Pub.L. 98–473, § 626(a)(5)(G), added subpars. (K) and (L).

Subsec. (a)(14). Pub.L. 98–473, § 626(a)(6), added ", through 1989," after "shall" and substituted provisions relating to exceptions for former provisions which related to the special needs of areas characterized by low population density with respect to the detention of juveniles and exceptions for temporary detention in adult facilities of juveniles accused of serious crimes against persons.

Subsec. (a)(17). Pub.L. 98–473, § 626(a)(12), added par. (17).

Pub.L. 98–473, § 626(a)(11), redesignated former par. (17) as (18).

Subsec. (a)(18) to (23). Pub.L. 98–473, § 626(a)(11), redesignated former pars. (17), (18), (19), (20), (21), and (22) as pars. (18), (19), (20), (21), (22), and (23) respectively.

Subsec. (a)(19). Pub.L. 98–473, § 626(a)(7)(A), substituted "shall be" for "are" after "arrangements".

Pub.L. 98–473, § 626(a)(7)(B), substituted "and shall provide for the terms and conditions of such protective arrangements established pursuant to this section, and such" for ". Such" after "chapter".

Subsec. (a)(19)(D). Pub.L. 98–473, § 626(a)(7)(C), added "and" at the end thereof.

Subsec. (a)(19)(E). Pub.L. 98–473, § 626(a)(7)(D), substituted a semicolon for the period at the end thereof.

Subsec. (a)(19) foll. (E). Pub.L. 98–473, § 626(a)(7)(E), struck out "The State plan shall provide for the terms and conditions of the protection arrangements established pursuant to this section;".

Subsec. (a)(22). Pub.L. 98–473, § 626(a)(8), substituted "agency designated under paragraph (1)" for "criminal justice council" after "State".

Subsec. (a) foll. (23). Pub.L. 98–473, § 626(a)(9), struck out "Such plan may at the discretion of the Associate Administrator be incorporated into the plan specified in section 3743 of this title."

Pub.L. 98–473, § 626(a)(10), struck out "Such plan shall be modified by the State, as soon as practicable after December 8, 1980, in order to comply with the requirements of paragraph (14)."

Subsec. (b). Pub.L. 98–473, § 626(b)(1), substituted "agency designated under subsection (a)(1) of this section" for "criminal justice council designated pursuant to subsection (a) of this section" after "State".

Pub.L. 98–473, § 626(b)(2), substituted "subsection (a) of this section" for "section 5633(a)". Substitution had already been made editorially so that the amendment by Pub.L. 98–473 resulted in no change in text.

Subsec. (c). Pub.L. 98–473, § 626(c), substituted "3" for "2" before "additional years".

Subsec. (d). Pub.L. 98–473, § 626(d), substituted, in the original, "sections 802, 803, and 804" for "sections 803, 804, and 805". Provision had been translated as "sections 3783, 3784, and 3785 of this title" and resulted in no change in text.

Effective Date of 1988 Amendment; Applicability

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, and inapplicable to a State with respect to a fiscal year beginning before Nov. 18, 1988, if the State plan is approved before such date for such fiscal year, pursuant to section 7296(a), (b)(1) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Savings Provisions

Section 2(f)(3)(B) of Pub.L. 102–586 provided that: "Notwithstanding the amendment made by subparagraph (A)(ii) [amending subsec. (c) of this section], section 223(c)(3) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(c)(3) [subsec. (c)(3) of this section]), as in effect on the day prior to the date of enactment of this Act [Nov. 4, 1992], shall remain in effect to the extent that it provides the Administrator authority to grant a waiver with respect to a fiscal year prior to a fiscal year beginning before January 1, 1993."

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S. Code Cong. and Adm. News, p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229; Pub.L. 103–322, 1994 U.S. Code Cong. and Adm. News, p. 1801.

NOTES OF DECISIONS

1. Private right of action

Even if Juvenile Justice Act did not create private right of action, Act created federally protected rights which could be enforced through private actions under § 1983. Grenier By and Through Grenier on Behalf of Grenier v. Kennebec County, Me., D.Me.1990, 748 F.Supp. 908.

Juvenile Justice and Delinquency Prevention Act, providing that in order to obtain federal funding made available thereunder state must not incarcerate juveniles in any institution in which they would have regular contact with adults, was intended to provide private right of action only against state and/or local agencies eligible for funding under Act and could not serve as basis for juvenile arrestee's civil rights claim against arresting officers. Doe v. Borough of Clifton Heights, E.D.Pa.1989, 719 F.Supp. 382, affirmed 902 F.2d 1558, 1559, certiorari denied 111 S.Ct. 348, 498 U.S. 941, 112 L.Ed.2d 312.

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Juvenile Justice and Delinquency Prevention Act does not provide an express right of action and its purpose and history do not give rise to an implied right of action, nor does it form the basis for a civil rights action. Doe v. McFaul, D.C.Ohio 1984, 599 F.Supp. 1421.

2. Removal of juveniles from jails

In order to remedy state's noncompliance with provision of Juvenile Justice and Delinquency Prevention Act requiring removal of juvenile offenders from adult jails, state would be required to submit plan for achieving combination of policy changes and reduction in rate of juvenile jailing which would place state in compliance with the Act by end of year. Hendrickson v. Griggs, N.D.Iowa 1987, 672 F.Supp. 1126, appeal dismissed 856 F.2d 1041.

3. Issues reviewable

District court order directing state officials to submit plan for achieving compliance with Juvenile Justice and Delinquency Prevention Act did not contain injunctive relief apart from requirement that state submit plan and did not grant portion of relief sought in connection with plan or specify nature or extent of relief plan would afford and was thus nonappealable interlocutory order; order did not expressly require state to seek new legislation, did not preclude state from withdrawing from federal grant program and did not specify method for achieving compliance, other than incorporating general funding conditions of Act. Hendrickson v. Griggs, C.A.8 (Iowa) 1988, 856 F.2d 1041.

4. Waiver of sovereign immunity

Federal Juvenile Justice and Delinquency Prevention Act does not waive state's Eleventh Amendment immunity from suit in federal court; Act is silent on issue of Eleventh Amendment immunity and fails to provide for private cause of action. Grenier By and Through Grenier v. Kennebec County, Me., D.Me.1990, 733 F.Supp. 455, amended on other grounds 749 F.Supp. 28.

§§ 5634 to 5639. Repealed. Pub.L. 100–690, Title VII, § 7263(a)(1)(B), Nov. 18, 1988, 102 Stat. 4443

HISTORICAL AND STATUTORY NOTES

Section 5634, Pub.L. 93–415, Title II, § 224, Sept. 7, 1974, 88 Stat. 1122; Pub.L. 95–115, § 4(d), Oct. 3, 1977, 91 Stat. 1054; Pub.L. 96–509, §§ 12, 19(h), Dec. 8, 1980, 94 Stat. 2759, 2765; Pub.L. 98–473, Title II, § 627, Oct. 12, 1984, 98 Stat. 2114, related to funding of special emphasis prevention and treatment programs.

Section 5635, Pub.L. 93–415, Title II, § 225, Sept. 7, 1974, 88 Stat. 1123; Pub.L. 94–503, Title I, § 130(c), Oct. 15, 1976, 90 Stat. 2425; Pub.L. 95–115, § 4(e), Oct. 3, 1977, 91 Stat. 1055; Pub.L. 98–473, Title II, § 628, Oct. 12, 1984, 98 Stat. 2116, related to applications for grants and contracts under section 5635 of this title.

Section 5636, Pub.L. 93–415, Title II, § 226, Sept. 7, 1974, 88 Stat. 1124, provided for proceedings by Administrator in the case of noncompliance of program or activity with this subchapter.

Section 5637, Pub.L. 93–415, Title II, § 227, Sept. 7, 1974, 88 Stat. 1124; Pub.L. 95–115, § 4(f), Oct. 3, 1977, 91 Stat. 1055; Pub.L. 96–509, § 13(a), Dec. 8, 1980, 94 Stat. 2759; Pub.L. 98–473, Title II, § 629, Oct. 12, 1984, 98 Stat. 2117, related to use of funds paid pursuant to this subchapter.

Section 5638, Pub.L. 93–415, Title II, § 228, Sept. 7, 1974, 88 Stat. 1124; Pub.L. 95–115, § 4(g)(1), (2), (3)(A), Oct. 3, 1977, 91 Stat. 1055, 1056; Pub.L. 96–509, §§ 14, 19(i), Dec. 8, 1980, 94 Stat. 2760, 2765; Pub.L. 98–473, Title II, § 630, Oct. 12, 1984, 98 Stat. 2117, related to continuing financial assistance for programs.

Section 5639, Pub.L. 93–415, Title II, § 229, as added Pub.L. 95–115, § 4(h), Oct. 3, 1977, 91 Stat. 1056, provided for confidentiality of program records.

Effective Date of Repeal

Repeal of sections 5634 to 5639 effective Oct. 1, 1988, see section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

PART C—NATIONAL PROGRAMS

Subpart I—National Institute for Juvenile Justice and Delinquency Prevention

HISTORICAL AND STATUTORY NOTES

1988 Amendment

Pub.L. 100–690, Title VII, § 7263(a)(2)(A), (B), Nov. 18, 1988, 102 Stat. 4443, substituted Part C heading "NATIONAL PROGRAMS" for "NATIONAL INSTITUTE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION"; and enacted the latter as Subpart I heading.

§ 5651. Institute structure and operation

(a) Establishment

There is hereby established within the Juvenile Justice and Delinquency Prevention Office a National Institute for Juvenile Justice and Delinquency Prevention.

(b) Deputy Administrator as head; Administrator to supervise and direct

The National Institute for Juvenile Justice and Delinquency Prevention shall be under the supervision and direction of the Administrator.

[See main volume for text of (c)]

(d) Purpose of Institute

It shall be the purpose of the Institute to provide—

(1) a coordinating center for the collection, preparation, and dissemination of useful data regarding the prevention, treatment, and control of juvenile delinquency; and

(2) appropriate training (including training designed to strengthen and maintain the family unit) for representatives of Federal, State, local law enforcement officers, teachers and special education personnel, recreation and park personnel, family counselors, child welfare workers, juvenile judges and judicial personnel, probation personnel, prosecutors and defense attorneys, correctional personnel (including volunteer lay personnel), persons associated with law-related education, youth workers, and representatives of private agencies and organizations with specific experience in the prevention, treatment, and control of juvenile delinquency.

(e) Additional powers

In addition to the other powers, express and implied, the Institute may—

[See main volume for text of (1) to (4)]

(5) compensate consultants and members of technical advisory councils who are not in the regular full-time employ of the United States, at a rate now or hereafter payable under section 5376 of Title 5 and while away from home, or regular place of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently; and

(6) assist, through training, the advisory groups established pursuant to section 5633(a)(3) of this title or comparable public or private citizen groups in nonparticipating States in the accomplishment of their objectives consistent with this subchapter.

(f) National conference of member representatives from State advisory groups

(1) The Administrator, acting through the Institute, shall provide technical and financial assistance to an eligible organization composed of member representatives of the State advisory groups appointed under section 5633(a)(3) of this title to assist such organization to carry out the functions specified in paragraph (2).

(2) To be eligible to receive such assistance, such organization shall agree to carry out activities that include—

(A) conducting an annual conference of such member representatives for purposes relating to the activities of such State advisory groups;

(B) disseminating information, data, standards, advanced techniques, and program models developed through the Institute and through programs funded under section 5665 of this title;

(C) reviewing Federal policies regarding juvenile justice and delinquency prevention;

(D) advising the Administrator with respect to particular functions or aspects of the work of the Office; and

(E) advising the President and Congress with regard to State perspectives on the operation of the Office and Federal legislation pertaining to juvenile justice and delinquency prevention.

(g) Cooperation of other Federal agencies

Any Federal agency which receives a request from the Institute under subsection (e)(1) of this section may cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information and advice to the Institute.

(h) Repealed. Pub.L. 100–690, Title VII, § 7259(c), Nov. 18, 1988, 102 Stat. 4441

(As amended Pub.L. 98–473, Title II, § 631(b)–(d), Oct. 12, 1984, 98 Stat. 2118; Pub.L. 100–690, Title VII, § 7259, Nov. 18, 1988, 102 Stat. 4441; Pub.L. 102–586, § 2(g)(1), Nov. 4, 1992, 106 Stat. 4994.)

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HISTORICAL AND STATUTORY NOTES

1992 Amendments

Subsec. (d)(2). Pub.L. 102–586, § 2(g)(1)(A), inserted "recreation and park personnel," and "prosecutors and defense attorneys,".

Subsec. (e)(5). Pub.L. 102–586, § 2(g)(1)(B)(i), substituted "payable under section 5376" for "prescribed for GS-18 of the General Schedule by section 5332".

Subsec. (e)(6). Pub.L. 102–586, § 2(g)(1)(B)(ii), substituted "subchapter" for "chapter".

1988 Amendment

Subsec. (b). Pub.L. 100–690, § 7259(a), struck provision directing the Institute to be headed by a Deputy Administrator of the Office appointed under section 5611(c) of this title.

Subsec. (f)(1). Pub.L. 100–690, § 7259(b)(3), (4), designated introductory text as par. (1); and substituted therein "shall provide technical and financial assistance to an eligible organization composed of member representatives of the State advisory groups appointed under section 5633(a)(3) of this title to assist such organization to carry out the functions specified in paragraph (2)." for "shall provide, not less frequently than once every 2 years, for a national conference of member representatives from State advisory groups for the purpose of—".

Subsec. (f)(2)(A). Pub.L. 100–690, § 7259(b)(4), added par. (2) and subpar. (A).

Subsec. (f)(2)(B) to (E). Pub.L. 100–690, § 7259(b)(1), (2), substituted in subpar. (B) when designated par. (1) "section 5665" for "section 5634"; and redesignated former pars. (1)–(4) as subpars. (B)–(E).

Subsec. (h). Pub.L. 100–690, § 7259(c), struck subsec. (h), which subjected the authorities of the Institute to the terms and conditions of section 5635(d) of this title.

1984 Amendment

Subsec. (b). Pub.L. 98–473, § 631(b), substituted "section 5611(c) of this title" for "section 5611(f) of this title" at the end thereof.

Subsec. (d). Pub.L. 98–473, § 631(c), designated the matter between "a coordinating center" and "juvenile delinquency" as par. (1), designated the remainder of the former provisions as par. (2), and in par. (2) as so designated, struck out "and it shall also be the purpose of the Institute to provide", added "appropriate" before "training", added "(including training designed to strengthen and maintain the family unit)" before "for representatives", and substituted "special education personnel, family counselors, child welfare workers, juvenile judges and judicial personnel, probation personnel, correctional personnel (including volunteer lay personnel), persons associated with law-related education" for "other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation personnel, correctional personnel and other persons, including lay personnel, including persons associated with law-related education programs."

Subsec. (f). Pub.L. 98–473, § 631(d)(2), added subsec. (f). Former subsec. (f) was redesignated subsec. (g).

Subsec. (g). Pub.L. 98–473, § 631(d)(1), redesignated subsec. (f) as subsec. (g).

Subsec. (h). Pub.L. 98–473, § 631(d)(3), added subsec. (h).

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S.Code Cong. and Adm.News, p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5652. Information function of Institute

The Administrator, acting through the National Institute for Juvenile Justice and Delinquency Prevention, shall—

(1) on a continuing basis, review reports, data, and standards relating to the juvenile justice system in the United States;

(2) serve as an information bank by collecting systematically and synthesizing the data and knowledge obtained from studies and research by public and private agencies, institutions, or individuals concerning all aspects of juvenile delinquency, including the prevention and treatment of juvenile delinquency; and

(3) serve as a clearinghouse and information center for the preparation, publication, and dissemination of all information regarding juvenile delinquency, including State and local juvenile delinquency prevention and treatment programs (including drug and alcohol programs and gender-specific programs) and plans, availability of resources, training and educational programs, statistics, and other pertinent data and information.

(As amended Pub.L. 100–690, Title VII, § 7260, Nov. 18, 1988, 102 Stat. 4441; Pub.L. 102–586, § 2(g)(2), Nov. 4, 1992, 106 Stat. 4995.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Par. (3). Pub.L. 102–586, § 2(g)(2), inserted "(including drug and alcohol programs and gender-specific programs)".

1988 Amendment

Introductory text. Pub.L. 100–690, § 7260(1), (2), substituted "The Administrator, acting through the National Institute" for "The National Institute" and "Prevention, shall" for "Prevention is authorized to".

Par. (1). Pub.L. 100–690, § 7260(5), added par. (1). Former par. (1) redesignated (2).

Par. (2). Pub.L. 100–690, § 7260(3), (4), inserted "and" after the semicolon in par. (1) and redesignated such par. as par. (2). Former par. (2) redesignated (3).

Par. (3). Pub.L. 100–690, § 7260(4), redesignated par. (2) as (3).

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100–690, see 1988 U.S. Code Cong. and Adm. News, p. 5937; See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5653. Research, demonstration, and evaluation functions of Institute

(a) The Administrator, acting through the National Institute for Juvenile Justice and Delinquency Prevention, is authorized to—

(1) conduct, encourage, and coordinate research and evaluation into any aspect of juvenile delinquency, particularly with regard to new programs and methods which seek to strengthen and preserve families or which show promise of making a contribution toward the prevention and treatment of juvenile delinquency;

[See main volume for text of (2)]

(3) establish or expand programs that, in recognition of varying degrees of the seriousness of delinquent behavior and the corresponding gradations in the responses of the juvenile justice system in response to that behavior, are designed to—

(i) encourage courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting (including expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, boot camps and similar programs, and secure community-based treatment facilities linked to other support services such as health, mental health, education (remedial and special), job training, and recreation); and

(ii) assist in the provision by the Administrator of information and technical assistance, including technology transfer, to States in the design and utilization of risk assessment mechanisms to aid juvenile justice personnel in determining appropriate sanctions for delinquent behavior;

(4) Encourage the development of programs which, in addition to helping youth take responsibility for their behavior, take into consideration life experiences which may have contributed to their delinquency when developing intervention and treatment programs;

(5) encourage the development and establishment of programs to enhance the States' ability to identify chronic serious and violent juvenile offenders who commit crimes such as rape, murder, firearms offenses, gang-related crimes, violent felonies, and serious drug offenses;

(5)[1] provide for the evaluation of all juvenile delinquency programs assisted under this subchapter in order to determine the results and the effectiveness of such programs;

(6) provide for the evaluation of any other Federal, State, or local juvenile delinquency program;

(7) prepare, in cooperation with educational institutions, with Federal, State, and local agencies, and with appropriate individuals and private agencies, such studies as it considers to be necessary with respect to the prevention and treatment of juvenile delinquency and the improvement of the juvenile justice system, including—

(A) recommendations designed to promote effective prevention and treatment, particularly by strengthening and maintaining the family unit;

(B) assessments regarding the role of family violence, sexual abuse or exploitation, media violence, the improper handling of youth placed in one State by another State, the effectiveness of family-centered treatment programs, special education, remedial education, and recreation, and the extent to which youth in the juvenile system are treated differently on the basis of sex, race, or family income and the ramifications of such treatment;

(C) examinations of the treatment of juveniles processed in the criminal justice system; and

(D) recommendations as to effective means for detering [2] involvement in illegal activities or promoting involvement in lawful activities (including the productive use of discretionary time through organized recreational [3] on the part of gangs whose membership is substantially composed of juveniles;

(8) disseminate the results of such evaluations and research and demonstration activities particularly to persons actively working in the field of juvenile delinquency;

(9) disseminate pertinent data and studies to individuals, agencies, and organizations concerned with the prevention and treatment of juvenile delinquency;

(10) develop and support model State legislation consistent with the mandates of this subchapter and the standards developed by the National Advisory Committee for Juvenile Justice and Delinquency Prevention before October 12, 1984;

(11) support research relating to reducing the excessive proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups; and

(12) support independent and collaborative research, research training, and consultation on social, psychological, educational, economic, and legal issues affecting children and families;

(13) support research related to achieving a better understanding of the commission of hate crimes by juveniles and designed to identify educational programs best suited to prevent and reduce the incidence of hate crimes committed by juveniles; and

(14) routinely collect, analyze, compile, publish, and disseminate uniform national statistics concerning—

(A) all aspects of juveniles as victims and offenders;

(B) the processing and treatment, in the juvenile justice system, of juveniles who are status offenders, delinquent, neglected, or abused; and

(C) the processing and treatment of such juveniles who are treated as adults for purposes of the criminal justice system.

(b) The Administrator shall make available to the public—

(1) the results of evaluations and research and demonstration activities referred to in subsection (a)(8) of this section; and

(2) the data and studies referred to in subsection (a)(9) of this section; that the Administrator is authorized to disseminate under subsection (a) of this section.

(As amended Pub.L. 98–473, Title II, § 632, Oct. 12, 1984, 98 Stat. 2119; Pub.L. 100–690, Title VII, § 7261, Nov. 18, 1988, 102 Stat. 444; Pub.L. 102–586, § 2(g)(3), Nov. 4, 1992, 106 Stat. 4995.)

[1] So in original. See codification note below.

[2] So in original.

[3] So in original. Probably should be "recreational activities)".

HISTORICAL AND STATUTORY NOTES

Codification

Amendment of subsec. (a) by section 2(g)(3)(C), (D) of Pub.L. 102–586 resulted in two par. (5).

1992 Amendments

Subsec. (a). Pub.L. 102–586, § 2(g)(3)(A), designated existing provisions as subsec. (a).

Subsec. (a)(1). Pub.L. 102–586, § 2(g)(3)(B), substituted "preserve families" for "maintain the family unit".

Subsec. (a)(3), (4). Pub.L. 102–586, § 2(g)(3)(D), added pars. (3) and (4). Former pars. (3) and (4) were redesignated (5) and (6), respectively.

Subsec. (a)(5). Pub.L. 102–586, § 2(g)(3)(D), added par. (5) relating to enhancement of States' ability to identify chronic serious and violent juvenile offenders who commit crimes such as rape, murder, firearms offenses, gang-related crimes, violent felonies, and serious drug offenses. Former par. (5) was redesignated (7).

Subsec. (a)(6). Pub.L. 102–586, § 2(g)(3)(C), redesignated par. (4) as (6). Former par. (6) was redesignated (8).

Subsec. (a)(7). Pub.L. 102–586, § 2(g)(3)(C), redesignated par. (5) as (7). Former par. (7) was redesignated (9).

Subsec. (a)(7)(D). Pub.L. 102–586, § 2(g)(3)(E), inserted "(including the productive use of discretionary time through organized recreational".

Subsec. (a)(8) to (11). Pub.L. 102–586, § 2(g)(3)(C), redesignated pars. (6) to (9) as (8) to (11), respectively.

Subsec. (a)(12) to (14). Pub.L. 102–586, § 2(g)(3)(F)–(H), added pars. (12), (13), and (14).

Subsec. (b). Pub.L. 102–586, § 2(g)(3)(H), added subsec. (b).

1988 Amendment

Introductory text. Pub.L. 100–690, § 7261(1), substituted "Administrator, acting through the National Institute for Juvenile Justice and Delinquency Prevention," for "National Institute for Juvenile Justice and Delinquency Prevention".

Par. (4). Pub.L. 100–690, § 7261(2), struck the phrase ", upon the request of the Deputy Administrator" following "program".

Par. (5). Pub.L. 100–690, § 7261(3)(A)–(D), substituted in the introductory text "the improvement of the juvenile justice system" for "related matters"; struck "and" at the end of subpar. (A); in subpar. (B), substituted "effectiveness of family centered treatment programs" for "possible ameliorating roles of familial relationships"; and, in subpar. (D), substituted a semicolon for the period.

Pars. (6), (7). Pub.L. 100–690, § 7261(4), (5), struck "and" at the end of par. (6) and, in par. (7), substituted a semicolon for the period.

Pars. (8), (9). Pub.L. 100–690, § 7261(6), added pars. (8) and (9).

1984 Amendment

Par. (1). Pub.L. 98–473, § 632(1), added "which seek to strengthen and maintain the family unit or" after "methods".

Par. (4). Pub.L. 98–473, § 632(2), substituted "Deputy" for "Associate" before "Administrator".

Par. (5). Pub.L. 98–473, § 632(3), designated the matter following "recommendations" as subpar. (A), in subpar. (A) as so designated added ", particularly by strengthening and maintaining the family unit; and", designated the matter following "assessments" as subpar. (B), in subpar. (B) as so designated substituted "media violence, the improper handling of youth placed in one State by another State, the possible ameliorating roles of familial relationships, special education, remedial education, and recreation, and the extent to which youth in the juvenile system are treated differently on the basis of sex, race, or family income and the ramifications of such treatment;" for "and media violence and delinquency, the improper handling of youth placed in one State by another State, the possible ameliorating roles of recreation and the arts, and the extent to which youth in the juvenile system are treated differently on the basis of sex and the ramifications of such practices;" and added subpars. (C) and (D).

Par. (7). Pub.L. 98–473, § 632(4), struck out "(including a periodic journal)" before "to individuals".

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Model Juvenile Handgun Legislation

Pub.L. 103–322, Title XI, § 110201(e), Sept. 13, 1994, 108 Stat. 2012, provided that: "The Attorney General, acting through the Director of the National Institute for Juvenile Justice and Delinquency Prevention, shall—

"(1) evaluate existing and proposed juvenile handgun legislation in each State;

"(2) develop model juvenile handgun legislation that is constitutional and enforceable;

"(3) prepare and disseminate to State authorities the findings made as the result of the evaluation; and

"(4) report to Congress by December 31, 1995, findings and recommendations concerning the need or appropriateness of further action by the Federal Government."

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S. Code Cong. and Adm. News, p. 5937, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5654. Technical assistance and training functions

The Administrator, acting through the National Institute for Juvenile Justice and Delinquency Prevention is authorized to—

(1) provide technical assistance and training assistance to Federal, State, and local governments and to courts, public and private agencies, institutions, and individuals in the planning, establishment, funding, operation, and evaluation of juvenile delinquency programs;

(2) develop, conduct, and provide for training programs for the training of professional, paraprofessional, and volunteer personnel, and other persons who are

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working with or preparing to work with juveniles, juvenile offenders (including juveniles who commit hate crimes), and their families;

(3) develop, conduct, and provide for seminars, workshops, and training programs in the latest proven effective techniques and methods of preventing and treating juvenile delinquency for law enforcement officers, juvenile judges, prosecutors and defense attorneys, and other court personnel, probation officers, correctional personnel, and other Federal, State, and local government personnel who are engaged in work relating to juvenile delinquency;

(4) develop technical training teams to aid in the development of training programs in the States and to assist State and local agencies which work directly with juveniles and juvenile offenders; and

(5) provide technical assistance and training to assist States and units of general local government to adopt the model standards issued under section 5614(b)(7) of this title.

(As amended Pub.L. 98–473, Title II, § 633, Oct. 12, 1984, 98 Stat. 2119; Pub.L. 100–690, Title VII, § 7262, Nov. 18, 1988, 102 Stat. 4442; Pub.L. 102–586, § 2(g)(3), Nov. 4, 1992, 106 Stat. 4996.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Par. (2). Pub.L. 102–586, § 2(g)(3)(A), inserted "(including juveniles who commit hate crimes)".

Par. (3). Pub.L. 102–586, § 2(g)(3)(B)(i), inserted "prosecutors and defense attorneys,".

Par. (5). Pub.L. 102–586, § 2(g)(3)(B)(ii), (C), (D), added par. (5).

1988 Amendment

Heading. Pub.L. 100–690, § 7262(1), substituted "Technical assistance and training functions" for "Training function of Institute".

Introductory text. Pub.L. 100–690, § 7262(2), substituted "Administrator, acting through the National Institute" for "National Institute".

Par. (1). Pub.L. 100–690, § 7262(6), added par. (1). Former par. (1) redesignated (2).

Par. (2). Pub.L. 100–690, § 7262(5), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Par. (3). Pub.L. 100–690, § 7262(3)–(5), struck par. (3), which authorized the National Institute to devise and conduct a training program, in accordance with the provisions of sections 5659, 5660, and 5661 of this title, of short-term instruction in the latest proven-effective methods of prevention, control, and treatment of juvenile delinquency for correctional and law enforcement personnel, teachers and special education personnel, family counselors, child welfare workers, juvenile judges and judicial personnel, probation personnel (including volunteer lay personnel), persons associated with law-related education, youth workers, and organizations with specific experience in the prevention and treatment of juvenile delinquency; inserted "and" at the end of par. (2); and redesignated par. (2), as amended, as par. (3).

1984 Amendment

Par. (1). Pub.L. 98–473, § 633(1)(A), substituted "working with or" for "or who are" before "preparing to work".

Pub.L. 98–473, § 633(1)(B), substituted "juvenile offenders, and their families" for "and juvenile offenders" at the end thereof.

Par. (2). Pub.L. 98–473, § 633(2), substituted "workshops" for "workshop" before ", and training programs".

Par. (3). Pub.L. 98–473, § 633(3), substituted "teachers and special education personnel, family counselors, child welfare workers, juvenile judges and judicial personnel, probation personnel (including volunteer lay personnel), persons associated with law-related education, youth workers, and organizations with specific experience in the prevention and treatment of juvenile delinquency; and" for "teachers and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation officers, and other persons (including lay personnel, including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations) connected with the prevention and treatment of juvenile delinquency; and".

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L 100–690, 1988 U.S. Code Cong. and Adm. News, p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5655. Repealed. Pub.L. 98–473, Title II, § 634, Oct. 12, 1984, 98 Stat. 2119

HISTORICAL AND STATUTORY NOTES

Section, Acts Pub.L. 93–415, Title II, § 245, Sept. 7, 1974, 88 Stat. 1127; Pub.L. 95–115, § 5(c), Oct. 3, 1977, 91 Stat. 1057; Pub.L. 96–509, § 19(1), Dec. 8, 1980, 94 Stat. 2765 related to the functions of the Advisory Committee.

Effective Date of Repeal

Section repealed effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

§§ 5656, 5657. Repealed. Pub.L. 100–690, Title VII, § 7263(a)(2)(C), Nov. 18, 1988, 102 Stat. 4443

HISTORICAL AND STATUTORY NOTES

Section 5656, Pub.L. 93–415, Title II, § 245, formerly § 246, Sept. 7, 1974, 88 Stat. 1127; Pub.L. 94–273, § 2(27), Apr. 21, 1976, 90 Stat. 376; Pub.L. 95–115, § 3(a)(3), (5), Oct. 3, 1977, 91 Stat. 1048, 1049; Pub.L. 96–509, § 19(m), Dec. 8, 1980, 94 Stat. 2765; renumbered Pub.L. 98–473, Title II, § 635, Oct. 12, 1984, 98 Stat. 2120, related to annual report by Deputy Administrator on programs funded under this subchapter.

Section 5657, Pub.L. 93–415, Title II, § 246, formerly § 247, Sept. 7, 1974, 88 Stat. 1127; Pub.L. 95–115, § 5(d), Oct. 3, 1977, 91 Stat. 1057; renumbered and amended Pub.L. 98–473, Title II, § 636, Oct. 12, 1984, 98 Stat. 2120, set forth additional functions of the Institute for Juvenile Justice and Delinquency Prevention.

Effective Date of Repeal

Repeal of sections 5656 and 5657 effective Oct. 1, 1988, see section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

§ 5659. Training program; establishment; purpose; utilization of State and local facilities, personnel, etc.; enrollees

(a) The Administrator shall establish within the Institute a training program designed to train enrollees with respect to methods and techniques for the prevention and treatment of juvenile delinquency, including methods and techniques specifically designed to prevent and reduce the incidence of hate crimes committed by juveniles. In carrying out this program the Administrator is authorized to make use of available State and local services, equipment, personnel, facilities, and the like.

(b) Enrollees in the training program established under this section shall be drawn from law enforcement and correctional personnel (including volunteer lay personnel), teachers and special education personnel, family counselors, child welfare workers, juvenile judges and judicial personnel, persons associated with law-related education, youth workers, and representatives of private agencies and organizations with specific experience in the prevention and treatment of juvenile delinquency.

(Pub.L. 93–415, Title II, § 245, formerly § 249, Sept. 7, 1974, 88 Stat. 1128, renumbered § 248 and amended Pub.L. 95–115, §§ 3(a)(3)(B), 5(e)(1), (f), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub.L. 96–509, § 19(n), Dec. 8, 1980, 94 Stat. 2765; renumbered § 247 and amended Pub.L. 98–473, Title II, § 637, Oct. 12, 1984, 98 Stat. 2120; renumbered § 245 Pub.L. 100–690, Title VII, § 7263(a)(2)(E), 102 Stat. 4448, and amended Pub.L. 102–586, § 2(g)(4), Nov. 4, 1992, 106 Stat. 4996.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Subsec. (a). Pub.L. 102–586, § 2(g)(4), inserted ", including methods and techniques specifically designed to prevent and reduce the incidence of hate crimes committed by juveniles".

1984 Amendment

Subsec. (b). Pub.L. 98–473, § 637(a), substituted "law enforcement and correctional personnel (including volunteer lay personnel), teachers and special education personnel, family counselors, child welfare workers, juvenile judges and judicial personnel, persons associated with law-related education, youth workers, and representatives of private agencies and organizations with specific experience in the prevention and treatment of juvenile delinquency." for "correctional and law enforcement personnel, teachers and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation officers, and other persons (including lay personnel, including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations) connected with the prevention and treatment of juvenile delinquency."

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S. Code Cong. and Adm. News, p. 5937;

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Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5660. Curriculum for training program

The Administrator shall design and supervise a curriculum for the training program established by section 5659 of this title which shall utilize an interdisciplinary approach with respect to the prevention of juvenile delinquency, the treatment of juvenile delinquents, and the diversion of youths from the juvenile justice system. Such curriculum shall be appropriate to the needs of the enrollees of the training program and shall include training designed to prevent juveniles from committing hate crimes.

(Pub.L. 93–415, Title II, § 246, formerly § 250, Sept. 7, 1974, 88 Stat. 1128, renumbered § 249 and amended Pub.L. 95–115, §§ 3(a)(3)(B), 5(e)(1), (2)(A), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub.L. 96–509, § 19(o), Dec. 8, 1980, 94 Stat. 2765, renumbered § 248 Pub.L. 98–473, Title II, § 638, Oct. 12, 1984, 98 Stat. 2120; renumbered § 246 and amended Pub.L. 100–690, Title VII, § 7263(a)(2)(E), (b)(2), Nov. 18, 1988, 102 Stat. 4443, 4447; Pub.L. 102–586, § 2(g)(5), Nov. 4, 1992, 106 Stat. 4996.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Pub.L. 102–586, § 2(g)(5), inserted "and shall include training designed to prevent juveniles from committing hate crimes".

1988 Amendment

Pub.L. 100–690 substituted "section 245" for "section 248", codified as "section 5659".

Legislative History

For legislative history and purpose of Pub.L. 100–690, see 1988 U.S. Code Cong. and Adm. News, p. 5987. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5661. Participation in training program and State advisory group conferences

[See main volume for text of (a) and (b)]

(c) Travel expenses and per diem allowance

While participating as a trainee in the program established under section 5659 of this title or while participating in any conference held under section 5651(f) of this title, and while traveling in connection with such participation, each person so participating shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed travel expenses under section 5703 of Title 5. No consultation fee may be paid to such person for such participation.

(Pub.L. 93–415, Title II, § 247, formerly § 251, Sept. 7, 1974, 88 Stat. 1128, renumbered § 250 and amended Pub.L. 95–115, §§ 3(a)(3)(B), 5(e)(1), (2)(B), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub.L. 96–509, § 19(p), Dec. 8, 1980, 94 Stat. 2765; renumbered § 249 and amended Pub.L. 98–473, Title II, § 639(b), (c), Oct. 12, 1984, 98 Stat. 2120; renumbered § 247 and amended Pub.L. 100–690, Title VII, § 7263(a)(2)(D), (E), Nov. 18, 1988, 102 Stat. 4443.)

HISTORICAL AND STATUTORY NOTES

1988 Amendment

Pub.L. 100–690, § 7263(a)(2)(D)(i) to (iii), substituted: in subsec. (a), "section 245" for "section 248", codified as "section 5659 of this title"; in subsec. (b), "section 245(b)" for "section 248(b)", codified as "section 5659(b) of this title"; and, in subsec. (c), "section 245" for "section 246", codified as "section 5659 of this title".

1984 Amendment

Subsec. (c). Pub.L. 98–473, § 639(b), struck out references to the National Institute of Juvenile Justice and Delinquency Prevention and added "No consultation fee may be paid to such person for such participation."

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S.Code Cong. and Adm.News, p. 5987.

§ 5662. Special studies and reports

(a) Pursuant to 1988 amendments

(1) Not later than 1 year after November 18, 1988, the Administrator shall begin to conduct a study with respect to the juvenile justice system—

(A) to review—

(i) conditions in detention and correctional facilities for juveniles; and

(ii) the extent to which such facilities meet recognized national professional standards; and

(B) to make recommendations to improve conditions in such facilities.

(2)(A) Not later than 1 year after November 18, 1988, the Administrator shall begin to conduct a study to determine—

(i) how juveniles who are American Indians and Alaskan Natives and who are accused of committing offenses on and near Indian reservations and Alaskan Native villages, respectively, are treated under the systems of justice administered by Indian tribes and Alaskan Native organizations, respectively, that perform law enforcement functions;

(ii) the amount of financial resources (including financial assistance provided by governmental entities) available to Indian tribes and Alaskan Native organizations that perform law enforcement functions, to support community-based alternatives to incarcerating juveniles; and

(iii) the extent to which such tribes and organizations comply with the requirements specified in paragraphs (12)(A), (13), and (14) of section 5633(a) of this title, applicable to the detention and confinement of juveniles.

(B)(i) for purposes of section 450e(b) of Title 25, any contract, subcontract, grant, or subgrant made under paragraph (1) shall be deemed to be a contract, subcontract, grant, or subgrant made for the benefit of Indians.

(ii) for purposes of section 450e(b) of Title 25 and subparagraph (A) of this paragraph, references to Indians and Indian organizations shall be deemed to include Alaskan Natives and Alaskan Native organizations, respectively.

(3) Not later than 3 years after November 18, 1988, the Administrator shall submit a report to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate containing a description, and a summary of the results, of the study conducted under paragraph (1) or (2), as the case may be.

(b) Pursuant to 1992 amendments

(1) Not later than 1 year after November 4, 1992, the Comptroller General shall—

(A) conduct a study with respect to juveniles waived to adult court that reviews—

(i) the frequency and extent to which juveniles have been transferred, certified, or waived to criminal court for prosecution during the 5–year period ending December 1992;

(ii) conditions of confinement in adult detention and correctional facilities for juveniles waived to adult court; and

(iii) sentencing patterns, comparing juveniles waived to adult court with juveniles who have committed similar offenses but have not been waived; and

(B) submit to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report (including a compilation of State waiver statutes) on the findings made in the study and recommendations to improve conditions for juveniles waived to adult court.

(2) Not later than 1 year after November 4, 1992, the Comptroller General shall—

(A) conduct a study with respect to admissions of juveniles for behavior disorders to private psychiatric hospitals, and to other residential and nonresidential programs that serve juveniles admitted for behavior disorders, that reviews—

(i) the frequency with which juveniles have been admitted to such hospitals and programs during the 5–year period ending December 1992; and

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(ii) conditions of confinement, the average length of stay, and methods of payment for the residential care of such juveniles; and

(B) submit to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings made in the study and recommendations to improve procedural protections and conditions for juveniles with behavior disorders admitted to such hospitals and programs.

(3) Not later than 1 year after November 4, 1992, the Comptroller General shall—

(A) conduct a study of gender bias within State juvenile justice systems that reviews—

(i) the frequency with which females have been detained for status offenses (such as frequently running away, truancy, and sexual activity), as compared with the frequency with which males have been detained for such offenses during the 5-year period ending December 1992; and

(ii) the appropriateness of the placement and conditions of confinement for females; and

(B) submit to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings made in the study and recommendations to combat gender bias in juvenile justice and provide appropriate services for females who enter the juvenile justice system.

(4) Not later than 1 year after November 4, 1992, the Comptroller General shall—

(A) conduct a study of the Native American pass-through grant program authorized under section 5633(a)(5)(C) of this title that reviews the cost-effectiveness of the funding formula utilized; and

(B) submit to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings made in the study and recommendations to improve the Native American pass-through grant program.

(5) Not later than 1 year after November 4, 1992, the Comptroller General shall—

(A) conduct a study of access to counsel in juvenile court proceedings that reviews—

(i) the frequency with which and the extent to which juveniles in juvenile court proceedings either have waived counsel or have obtained access to counsel during the 5-year period ending December 1992; and

(ii) a comparison of access to and the quality of counsel afforded juveniles charged in adult court proceedings with those of juveniles charged in juvenile court proceedings; and

(B) submit to Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings made in the study and recommendations to improve access to counsel for juveniles in juvenile court proceedings.

(6)(A) Not later than 180 days after November 4, 1992, the Administrator shall begin to conduct a study and continue any pending study of the incidence of violence committed by or against juveniles in urban and rural areas in the United States.

(B) The urban areas shall include—

(i) the District of Columbia;

(ii) Los Angeles, California;

(iii) Milwaukee, Wisconsin;

(iv) Denver, Colorado;

(v) Pittsburgh, Pennsylvania;

(vi) Rochester, New York; and

(vii) such other cities as the Administrator determines to be appropriate.

(C) At least one rural area shall be included.

(D) With respect to each urban and rural area included in the study, the objectives of the study shall be—

(i) to identify characteristics and patterns of behavior of juveniles who are at risk of becoming violent or victims of homicide;

(ii) to identify factors particularly indigenous to such area that contribute to violence committed by or against juveniles;

(iii) to determine the accessibility of firearms, and the use of firearms by or against juveniles;

(iv) to determine the conditions that cause any increase in violence committed by or against juveniles;

(v) to identify existing and new diversion, prevention, and control programs to ameliorate such conditions;

(vi) to improve current systems to prevent and control violence by or against juveniles; and

(vii) to develop a plan to assist State and local governments to establish viable ways to reduce homicide committed by or against juveniles.

(E) Not later than 3 years after November 4, 1992, the Administrator shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate detailing the results of the study addressing each objective specified in subparagraph (D).

(7)(A) Not later than 1 year after November 4, 1992, the Administrator shall—

(i) conduct a study described in subparagraph (B); and

(ii) submit to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate the results of the study.

(B) The study required by subparagraph (A) shall assess—

(i) the characteristics of juveniles who commit hate crimes, including a profile of such juveniles based on—

(I) the motives for committing hate crimes;

(II) the age, sex, race, ethnicity, education level, locality, and family income of such juveniles; and

(III) whether such juveniles are familiar with publications or organized groups that encourage the commission of hate crimes;

(ii) the characteristics of hate crimes committed by juveniles, including—

(I) the types of hate crimes committed;

(II) the frequency with which institutions and natural persons, separately determined, were the targets of such crimes;

(III) the number of persons who participated with juveniles in committing such crimes;

(IV) the types of law enforcement investigations conducted with respect to such crimes;

(V) the law enforcement proceedings commenced against juveniles for committing hate crimes; and

(VI) the penalties imposed on such juveniles as a result of such proceedings; and

(iii) the characteristics of the victims of hate crimes committed by juveniles, including—

(I) the age, sex, race, ethnicity, locality of the victims and their familiarity with the offender; and

(II) the motivation behind the attack.

(Pub.L. 93-415, Title II, § 248, as added Pub.L. 100-690, Title VII, § 7264, Nov. 18, 1988, 102 Stat. 4447, and amended Pub.L. 102-586, § 2(g)(6), Nov. 4, 1992, 106 Stat. 4997.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Subsec. (a). Pub.L. 102-586, § 2(g)(6)(A)-(M), redesignated existing subsecs. (a), (b), and (c) as pars. (1), (2), and (3) of subsec. (a) and made conforming changes in paragraph, subparagraph, and clause designations under which existing lettered subsection designations became numbered paragraph designations, existing numbered paragraph designations became lettered subparagraph designations, and existing lettered subparagraph designations became roman clause designations.

Subsec. (b). Pub.L. 102-586, § 2(g)(6)(N), added subsec. (b).

Effective Date

Section effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100-690, set out as a note under section 5601 of this title.

[Part 2 – p. 57]

Legislative History

For legislative history and purpose of Pub.L. 100-690, see 1988 U.S.Code Cong. and Adm. News, p. 5937. See, also, Pub.L. 102-586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

LIBRARY REFERENCES

Infants ⇐131 et seq.
United States ⇐41.
C.J.S. Infants §§ 31 to 54.
C.J.S. United States § 41.
WESTLAW Topic Nos. 211, 393.

Subpart II—Special Emphasis Prevention and Treatment Programs

§ 5665. Authority to make grants and contracts

(a) Purposes of grants and contracts

Except as provided in subsection (f) of this section, the Administrator shall, by making grants to and entering into contracts with public and private nonprofit agencies, organizations, institutions, and individuals provide for each of the following during each fiscal year:

(1) Establishing or maintaining community-based alternatives (including home-based treatment programs) to traditional forms of institutionalization of juvenile offenders.

(2) Establishing or implementing effective means of diverting juveniles from the traditional juvenile justice and correctional system, including restitution and reconciliation projects which test and validate selected arbitration models, such as neighborhood courts or panels, and increase victim satisfaction while providing alternatives to incarceration for detained or adjudicated delinquents.

(3) Establishing or supporting advocacy programs and services that encourage the improvement of due process available to juveniles in the juvenile justice system and the quality of legal representation for such juveniles.

(4) Establishing or supporting programs stressing advocacy activities aimed at improving services to juveniles affected by the juvenile justice system, including services that provide for the appointment of special advocates by courts for such juveniles.

(5) Developing or supporting model programs (including self-help programs for parents) to strengthen and maintain the family unit in order to prevent or treat juvenile delinquency, including programs that work with families during the incarceration of juvenile family members and which take into consideration the special needs of families with limited-English speaking ability.

(6) Establishing or implementing special emphasis prevention and treatment programs relating to juveniles who commit serious crimes (including such crimes committed in schools), including programs designed to deter involvement in illegal activities or to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of juveniles.

(7) Developing or implementing further a coordinated, national law-related education program of—

(A) delinquency prevention in elementary and secondary schools, and other local sites;

(B) training for persons responsible for the implementation of law-related education programs; and

(C) disseminating information regarding model, innovative, law-related education programs to juvenile delinquency programs, including those that are community based, and to law enforcement and criminal justice agencies for activities related to juveniles, that targets juveniles who have had contact with the juvenile justice system or who are likely to have contact with the system.

(8) Addressing efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population.

(9) Establishing or supporting programs designed to prevent and to reduce the incidence of hate crimes by juveniles, including—

(A) model educational programs that are designed to reduce the incidence of hate crimes by means such as—

(i) addressing the specific prejudicial attitude of each offender;

(ii) developing an awareness in the offender of the effect of the hate crime on the victim; and

(iii) educating the offender about the importance of tolerance in our society; and

(B) sentencing programs that are designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration.

(b) Development and implementation of new approaches, techniques, and methods

Except as provided in subsection (f) of this section, the Administrator is authorized, by making grants to and entering into contracts with public and private nonprofit agencies, organizations, institutions, and individuals, to develop and implement new approaches, techniques, and methods designed to—

(1) improve the capability of public and private agencies and organizations to provide services for delinquents and other juveniles to help prevent juvenile delinquency;

(2) develop and implement, in coordination with the Secretary of Education, model programs and methods to keep students in elementary and secondary schools to assist in identifying learning difficulties (including learning disabilities), to prevent unwarranted and arbitrary suspensions and expulsions, and to encourage new approaches and techniques with respect to the prevention of school violence and vandalism;

(3) develop, implement, and support, in conjunction with the Secretary of Labor, other public and private agencies, organizations, business, and industry, programs for the employment of juveniles;

(4) develop and support programs designed to encourage and assist State legislatures to consider and establish policies consistent with this subchapter, both by amending State laws, if necessary, and devoting greater resources to effectuate such policies;

(5) develop and implement programs relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist law enforcement personnel, community service personnel, and juvenile justice personnel to more effectively recognize and provide for learning-disabled and other handicapped juveniles;

(6) develop statewide programs through the use of subsidies or other financial incentives designed to—

(A) remove juveniles from jails and lockups for adults;

(B) replicate juvenile programs designated as exemplary by the National Institute of Justice; or

(C) establish and adopt, based upon the recommendations of the National Advisory Committee for Juvenile Justice and Delinquency Prevention made before October 12, 1984, standards for the improvement of juvenile justice within each State involved; and

(7) develop and implement model programs, relating to the special education needs of delinquent and other juveniles, which develop locally coordinated policies and programs among education, juvenile justice, and social service agencies.

(c) Private nonprofit agencies, organizations, and institutions with experience in dealing with juveniles

Not less than 30 percent of the funds available for grants and contracts under this section shall be available for grants to and contracts with private nonprofit agencies, organizations, and institutions which have experience in dealing with juveniles.

(d) Female, minority, and disadvantaged juveniles

Assistance provided under this section shall be available on an equitable basis to deal with female, minority, and disadvantaged juveniles, including juveniles who are mentally, emotionally, or physically handicapped.

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(e) Special needs and problems of juvenile delinquency in certain areas

Not less than 5 percent of the funds available for grants and contracts under this section shall be available for grants, and contracts designed to address the special needs and problems of juvenile delinquency in the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(f) Department of Justice or related entity as recipient

The Administrator shall not make a grant or a contract under subsection (a) or (b) of this section to the Department of Justice or to any administrative unit or other entity that is part of the Department of Justice.

(Pub.L. 93–415, Title II, § 261, as added Pub.L. 100–690, Title VII, § 7263(a)(2)(F), Nov. 18, 1988, 102 Stat. 4443, and amended Pub.L. 102–586, § 2(g)(7), Nov. 4, 1992, 106 Stat. 5000.)

HISTORICAL AND STATUTORY NOTES

Codification

Amendment by Pub.L. 102–586, § 2(g)(7)(A)(vi), which directed that par. (4), as redesignated, be amended by inserting "(including self-help programs for parents)" after "programs"; and by inserting ", including programs that work with families during the incarceration of juvenile family members and which take into consideration the special needs of families with limited-English speaking ability" before the period at the end, was executed to par. (5), as redesignated, as the probable intent of Congress.

Amendment to subsec. (b)(5) by Pub.L. 102–586, § 2(g)(7)(B), which directed the insertion of "community service personnel," after "law enforcement personnel," was executed by inserting ", community service personnel," after "law enforcement personnel", as the probable intent of Congress.

1992 Amendments

Subsec. (a). Pub.L. 102–586, § 2(g)(7(A)(i), substituted "Except as provided in subsection (f) of this section, the" for "The" at the beginning of the provisions preceding par. (1).

Subsec. (a)(1). Pub.L. 192–586, § 2(g)(7)(A)(ii), inserted "(including home-based treatment programs".

Subsec. (a)(3). Pub.L. 102–586, § 2(g)(7)(A)(iii), substituted "Establishing or supporting advocacy programs and services that encourage the improvement of due process available to juveniles in the juvenile justice system and the quality of legal representation for such juveniles" for "Establishing or supporting programs stressing advocacy activities aimed at improving services to juveniles impacted by the juvenile justice system, including services which encourage the improvement of due process available to juveniles in the juvenile justice system, which improve the quality of legal representation of such juveniles, and which provide for the appointment of special advocates by courts for such juveniles".

Subsec. (a)(4). Pub.L. 102–586, § 2(g)(7)(A)(v), added par. (4). Former par. (4) was redesignated (5).

Subsec. (a)(5). Pub.L. 102–586, § 2(g)(7)(A)(iv), (vi), redesignated par. (4) as (5) and, in par. (5) as so redesignated, inserted "(including self-help programs for parents)" and ", including programs that work with families during the incarceration of juvenile family members and which take into consideration the special needs of families with limited-English speaking ability".

Subsec. (a)(6), (7). Pub.L. 102–586, § 2(g)(7)(A)(iv), redesignated pars. (5) and (6) as (6) and (7), respectively. Former pars. (6) and (7) were redesignated (7) and (8), respectively.

Subsec. (a)(8). Pub.L. 102–586, § 2(g)(7)(A)(iv), (vii), redesignated par. (7) as (8) and, in par. (8) as so redesignated, inserted "that targets juveniles who have had contact with the juvenile justice system or who are likely to have contact with the system".

Subsec. (a)(9). Pub.L. 102–586, § 2(g)(7)(A)(viii), added par. (9).

Subsec. (b). Pub.L. 102–586, § 2(g)(7)(C)(i), substituted "Except as provided in subsection (f) of this section, the" for "The" in the provisions preceding par. (1).

Subsec. (b)(2). Pub.L. 102–586, § 2(g)(7)(C)(ii), inserted "to assist in identifying learning difficulties (including learning disabilities),".

Subsec. (b)(5). Pub.L. 102–586, § 2(g)(7)(B), inserted "community service personnel,".

Subsec. (f). Pub.L. 102–586, § 2(g)(7)(D), added subsec. (f).

Effective Date

Section effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100–690, see 1988 U.S.Code Cong. and Adm. News, p. 5937. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5665a. Considerations for approval of applications

(a) In general

Any agency, institution, or individual desiring to receive a grant, or enter into a contract, under this part shall submit an application at such time, in such manner, and containing or accompanied by such information as the Administrator may prescribe.

(b) Contents of application

In accordance with guidelines established by the Administrator, each application for assistance under this part shall—

(1) set forth a program for carrying out one or more of the purposes set forth in this part and specifically identify each such purpose such program is designed to carry out;

(2) provide that such program shall be administered by or under the supervision of the applicant;

(3) provide for the proper and efficient administration of such program;

(4) provide for regular evaluation of such program;

(5) certify that the applicant has requested the State planning agency and local agency designated in section 5633 of this title, if any to review and comment on such application and indicate the responses of such State planning agency and local agency to such request;

(6) attach a copy of the responses of such State planning agency and local agency to such request;

(7) provide that regular reports on such program shall be sent to the Administrator and to such State planning agency and local agency; and

(8) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter.

(c) Factors considered

In determining whether or not to approve applications for grants and for contracts under this part, the Administrator shall consider—

(1) the relative cost and effectiveness of the proposed program in carrying out this part;

(2) the extent to which such program will incorporate new or innovative techniques;

(3) if a State plan has been approved by the Administrator under section 5633(c) of this title, the extent to which such program meets the objectives and priorities of the State plan, taking into consideration the location and scope of such program;

(4) the increase in capacity of the public and private agency, institution, or individual involved to provide services to address juvenile delinquency and juvenile delinquency prevention;

(5) the extent to which such program serves communities which have high rates of juvenile unemployment, school dropout, and delinquency; and

(6) the adverse impact that may result from the restriction of eligibility, based upon population, for cities with a population greater than 40,000 located within States which have no city with a population over 250,000.

(d) Competitive selection process; review of proposed programs; expedited consideration of proposed programs

(1)(A) Programs selected for assistance through grants or contracts under this part (other than section 5651(f) of this title) shall be selected through a competitive process to be established by rule by the Administrator. As part of such a process, the Administrator shall announce in the Federal Register—

(i) the availability of funds for such assistance;

(ii) the general criteria applicable to the selection of applicants to receive such assistance; and

(iii) a description of the procedures applicable to submitting and reviewing applications for such assistance.

(B) The competitive process described in subparagraph (A) shall not be required if the Administrator makes a written determination waiving the competitive process—

(i) with respect to programs to be carried out in areas with respect to which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C.A. § 5121 et seq.] that a major disaster or emergency exists; or

(ii) with respect to a particular program described in this part that is uniquely qualified.

(C) Repealed. Pub.L. 102–586, § 2(h)(2), Nov. 4, 1992, 106 Stat. 5001

(2)(A) Programs selected for assistance through grants or contracts under this part (other than section 5651(f) of this title) shall be reviewed before selection, and thereafter as appropriate, through a formal peer review process utilizing experts (other than officers and employees of the Department of Justice) in fields related to the subject matter of the proposed program.

(B) Such process shall be established by the Administrator in consultation with the Directors and other appropriate officials of the National Science Foundation and the National Institute of Mental Health. Before implementation of such process, the Administrator shall submit such process to such Directors, each of whom shall prepare and furnish to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate a final report containing their comments on such process as proposed to be established.

(3) The Administrator, in establishing the processes required under paragraphs (1) and (2), shall provide for emergency expedited consideration of the proposed programs if necessary to avoid any delay which would preclude carrying out such programs.

(e) City population as basis of denial

A city shall not be denied assistance under this part solely on the basis of its population.

(f) Transmission of notification to Committee chairmen

Notification of grants and contracts made under this part (and the applications submitted for such grants and contracts) shall, upon being made, be transmitted by the Administrator, to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate.

(Pub.L. 93–415, Title II, § 262, as added Pub.L. 100–690, Title VII, § 7263(a)(2)(F), Nov. 18, 1988, 102 Stat. 4445; Pub.L. 102–586, § 2(h), Nov. 4, 1992, 106 Stat. 5001.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (d)(1)(B), is Pub.L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (section 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

1992 Amendments

Subsec. (d)(1)(B). Pub.L. 102–586, § 2(h)(1), substituted provisions directing waiver of competitive process described in subpar. (A) if Administrator makes written determination with respect to programs in areas which are declared a major disaster or emergency, or with respect to a particular program described in this part, for provisions directing waiver of such competitive process if Administrator makes written determination that proposed program in not within scope of any announcement regarding availability of funds, but can be supported by grant or contract in accordance with this part and such program is of outstanding merit, or applicant is uniquely qualified to provide training services under section 5654 of this title is not capable of providing such services.

Subsec. (d)(1)(C). Pub.L. 102–586, § 2(h)(2), struck out former subpar. (C), which related to notification of Congress regarding programs selected for assistance without competition.

Effective Date

Section effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100–690, see 1988 U.S. Code Cong. and Adm. News, p. 5937. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

PART D—GANG-FREE SCHOOLS AND COMMUNITIES; COMMUNITY-BASED GANG INTERVENTION

HISTORICAL AND STATUTORY NOTES

1988 Amendment

Pub.L. 100–690, Title VII, § 7267, Nov. 18, 1988, 102 Stat. 4451, enacted part D heading.

Former part D heading redesignated part E and is set out preceding section 5671 of this title.

Subpart I—Gang-Free Schools and Communities

§ 5667. Authority to make grants and contracts

(a) The Administrator shall make grants to or enter into contracts with public agencies (including local educational agencies) and private nonprofit agencies, organizations, and institutions to establish and support programs and activities that involve families and communities and that are designed to carry out any of the following purposes:

(1) To prevent and to reduce the participation of juveniles in the activities of gangs that commit crimes. Such programs and activities may include—

(A) individual, peer, family, and group counseling, including the provision of life skills training and preparation for living independently, which shall include cooperation with social services, welfare, and health care programs;

(B) education and social services designed to address the social and developmental needs of juveniles which such juveniles would otherwise seek to have met through membership in gangs;

(C) crisis intervention and counseling to juveniles, who are particularly at risk of gang involvement, and their families, including assistance from social service, welfare, health care, mental health, and substance abuse prevention and treatment agencies where necessary;

(D) the organization of neighborhood and community groups to work closely with parents, schools, law enforcement, and other public and private agencies in the community; and

(E) training and assistance to adults who have significant relationships with juveniles who are or may become members of gangs, to assist such adults in providing constructive alternatives to participating in the activities of gangs.

(2) To develop within the juvenile adjudicatory and correctional systems new and innovative means to address the problems of juveniles convicted of serious drug-related and gang-related offenses.

(3) To target elementary school students, with the purpose of steering students away from gang involvement.

(4) To provide treatment to juveniles who are members of such gangs, including members who are accused of committing a serious crime and members who have been adjudicated as being delinquent.

(5) To promote the involvement of juveniles in lawful activities in geographical areas in which gangs commit crimes.

(6) To promote and support, with the cooperation of community-based organizations experienced in providing services to juveniles engaged in gang-related activities and the cooperation of local law enforcement agencies, the development of policies and activities in public elementary and secondary schools which will assist such schools in maintaining a safe environment conducive to learning.

(7) To assist juveniles who are or may become members of gangs to obtain appropriate educational instruction, in or outside a regular school program, including the provision of counseling and other services to promote and support the continued participation of such juveniles in such instructional programs.

(8) To expand the availability of prevention and treatment services relating to the illegal use of controlled substances and controlled substances analogues (as defined in paragraphs (6) and (32) of section 802 of Title 21) by juveniles, provided through State and local health and social services agencies.

(9) To provide services to prevent juveniles from coming into contact with the juvenile justice system again as a result of gang-related activity.

(10) To provide services authorized in this section at a special location in a school or housing project.

(11) To support activities to inform juveniles of the availability of treatment and services for which financial assistance is available under this subpart.

(b) From not more than 15 percent of the amount appropriated to carry out this part in each fiscal year, the Administrator may make grants to and enter into contracts with public agencies and private nonprofit agencies, organizations, and institutions—

(1) to conduct research on issues related to juvenile gangs;

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(2) to evaluate the effectiveness of programs and activities funded under subsection (a) of this section; and

(3) to increase the knowledge of the public (including public and private agencies that operate or desire to operate gang prevention and intervention programs) by disseminating information on research and on effective programs and activities funded under this subpart.

(Pub.L. 93–415, Title II, § 281, as added Pub.L. 102–586, § 2(i), Nov. 4, 1992, 106 Stat. 5002.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 5667, Pub.L. 93–415, Title II, § 281, as added Pub.L. 100–690, Title VII, § 7267, Nov. 18, 1988, 102 Stat. 4451, which related to the authorization of grants and contracts for prevention and treatment programs relating to juvenile gang-related drug crimes, was omitted in the general revision of this part by section 2(i) of Pub.L. 102–586.

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

LIBRARY REFERENCES

Schools ⇐19(1).
C.J.S. Schools and School Districts §§ 19, 21.
WESTLAW Topic No. 345.

§ 5667–1. Approval of applications

(a) Submission of applications

Any agency, organization, or institution desiring to receive a grant, or to enter into a contract, under this subpart shall submit an application at such time, in such manner, and containing such information as the Administrator may prescribe.

(b) Contents of applications

In accordance with guidelines established by the Administrator, each application submitted under subsection (a) of this section shall—

(1) set forth a program or activity for carrying out one or more of the purposes specified in section 5667 of this title and specifically identify each such purpose such program or activity is designed to carry out;

(2) provide that such program or activity shall be administered by or under the supervision of the applicant;

(3) provide for the proper and efficient administration of such program or activity;

(4) provide for regular evaluation of such program or activity;

(5) provide an assurance that the proposed program or activity will supplement, not supplant, similar programs and activities already available in the community;

(6) describe how such program or activity is coordinated with programs, activities, and services available locally under parts B or C of this subchapter, and under chapter 1 of subtitle B of title III of the Anti–Drug Abuse Act of 1988 [42 U.S.C.A. § 11801 et seq.];

(7) certify that the applicant has requested the State planning agency to review and comment on such application and summarizes the responses of such State planning agency to such request;

(8) provide that regular reports on such program or activity shall be sent to the Administrator and to such State planning agency; and

(9) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subpart.

(c) Priority

In reviewing applications for grants and contracts under section 5667(a) of this title, the Administrator shall give priority to applications—

(1) submitted by, or substantially involving, local educational agencies (as defined in section 2891 of Title 20);

(2) based on the incidence and severity of crimes committed by gangs whose membership is composed primarily of juveniles in the geographical area in which the applicants propose to carry out the programs and activities for which such grants and contracts are requested; and

(3) for assistance for programs and activities that—

(A) are broadly supported by public and private non-profit agencies, organizations, and institutions located in such geographical area; and

(B) will substantially involve the families of juvenile gang members in carrying out such programs or activities.

(Pub.L. 93–415, Title II, § 281A, as added Pub.L. 102–586, § 2(i), Nov. 4, 1992, 106 Stat. 5003.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Anti–Drug Abuse Act of 1988, referred to in subsec. (b)(6), is Pub.L. 100–690, Nov. 18, 1988, 102 Stat. 4181. Chapter 1 of subtitle B of title III of the Anti–Drug Abuse Act of 1988 is classified to subchapter I (section 11801 et seq.) of chapter 123 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 21, Food and Drugs, and Tables.

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

Subpart II—Community-Based Gang Intervention

§ 5667a. Authority to make grants and contracts

(a) The Administrator shall make grants to or enter into contracts with public and private nonprofit agencies, organizations, and institutions to carry out programs and activities—

(1) to reduce the participation of juveniles in the illegal activities of gangs;

(2) to develop regional task forces involving State, local, and community-based organizations to coordinate enforcement, intervention, and treatment efforts for juvenile gang members and to curtail interstate activities of gangs; and

(3) to facilitate coordination and cooperation among—

(A) local education, juvenile justice, employment, and social service agencies; and

(B) community-based programs with a proven record of effectively providing intervention services to juvenile gang members for the purpose of reducing the participation of juveniles in illegal gang activities; and

(4) to support programs that, in recognition of varying degrees of the seriousness of delinquent behavior and the corresponding gradations in the responses of the juvenile justice system in response to that behavior, are designed to—

(A) encourage courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting (including expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, boot camps and similar programs, and secure community-based treatment facilities linked to other support services such as health, mental health, education (remedial and special), job training, and recreation); and

(B) assist in the provision by the provision by the Administrator of information and technical assistance, including technology transfer, to States in the design and utilization of risk assessment mechanisms to aid juvenile justice personnel in determining appropriate sanctions for delinquent behavior.

(b) Programs and activities for which grants and contracts are to be made under subsection (a) of this section may include—

(1) developing within the juvenile adjudicatory and correctional systems new and innovative means to address the problems of juveniles convicted of serious drug-related and gang-related offenses;

(2) providing treatment to juveniles who are members of such gangs, including members who are accused of committing a serious crime and members who have been adjudicated as being delinquent;

(3) promoting the involvement of juveniles in lawful activities in geographical areas in which gangs commit crimes;

(4) expanding the availability of prevention and treatment services relating to the illegal use of controlled substances and controlled substances analogues (as defined in paragraphs (6) and (32) of section 802 of Title 21) by juveniles, provided through State and local health and social services agencies;

(5) providing services to prevent juveniles from coming into contact with the juvenile justice system again as a result of gang-related activity; or

(6) supporting activities to inform juveniles of the availability of treatment and services for which financial assistance is available under this subpart.

(Pub.L. 93–415, Title II, § 282, as added Pub.L. 102–586, § 2(i), Nov. 4, 1992, 106 Stat. 5004.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 5667a, Pub.L. 93–415, Title II, § 282, as added Pub.L. 100–690, Title VII, § 7267, Nov. 18, 1988, 102 Stat. 4451, which related to approval of applications for grants, was omitted in the general revision of this part by section 2(i) of Pub.L. 102–586.

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667a–1. Approval of applications

(a) Submission of applications

Any agency, organization, or institution desiring to receive a grant, or to enter into a contract, under this subpart shall submit an application at such time, in such manner, and containing such information as the Administrator may prescribe.

(b) Contents of applications

In accordance with guidelines established by the Administrator, each application submitted under subsection (a) of this section shall—

(1) set forth a program or activity for carrying out one or more of the purposes specified in section 5667a of this title and specifically identify each such purpose such program or activity is designed to carry out;

(2) provide that such program or activity shall be administered by or under the supervision of the applicant;

(3) provide for the proper and efficient administration of such program or activity;

(4) provide for regular evaluation of such program or activity;

(5) provide an assurance that the proposed program or activity will supplement, not supplant, similar programs and activities already available in the community;

(6) describe how such program or activity is coordinated with programs, activities, and services available locally under parts B or C of this subchapter, and under chapter 1 of subtitle B of title III of the Anti–Drug Abuse Act of 1988 [42 U.S.C.A. § 11801 et seq.];

(7) certify that the applicant has requested the State planning agency to review and comment on such application and summarizes the responses of such State planning agency to such request;

(8) provide that regular reports on such program or activity shall be sent to the Administrator and to such State planning agency; and

(9) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subpart.

(c) Priority

In reviewing applications for grants and contracts under section 5667c(a) of this title, the Administrator shall give priority to applications—

(1) submitted by, or substantially involving, community-based organizations experienced in providing services to juveniles;

(2) based on the incidence and severity of crimes committed by gangs whose membership is composed primarily of juveniles in the geographical area in which the applicants propose to carry out the programs and activities for which such grants and contracts are requested; and

(3) for assistance for programs and activities that—

(A) are broadly supported by public and private non-profit agencies, organizations, and institutions located in such geographical area; and

(B) will substantially involve the families of juvenile gang members in carrying out such programs or activities.

(Pub.L. 93–415, Title II, 282A, as added Pub.L. 102–586, § 2(i), Nov. 4, 1992, 106 Stat. 5005.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Anti–Drug Abuse Act of 1988, referred to in subsec. (b)(6), is Pub.L. 100–690, Nov. 18, 1988, 102 Stat. 4181. Chapter 1 of subtitle B of title III of the Anti–Drug Abuse Act of 1988 is classified to subchapter I (section 11801 et seq.) of chapter 123 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 21, Food and Drugs, and Tables.

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

Subpart III—General Provisions

§ 5667b. Definition

For purposes of this part, the term "juvenile" means an individual who is less than 22 years of age.

(Pub.L. 93–415, Title II, § 283, as added Pub.L. 102–586, § 2(i), Nov. 4, 1992, 106 Stat. 5006.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

PART E—STATE CHALLENGE ACTIVITIES

§ 5667c. Establishment of program

(a) In general

The Administrator may make a grant to a State that receives an allocation under section 5632 of this title, in the amount of 10 percent of the amount of the allocation, for each challenge activity in which the State participates for the purpose of funding the activity.

(b) Definitions

For purposes of this part—

(1) the term "case review system" means a procedure for ensuring that—

(A) each youth has a case plan, based on the use of objective criteria for determining a youth's danger to the community or himself or herself, that is designed to achieve appropriate placement in the least restrictive and most family-like setting available in close proximity to the parents' home, consistent with the best interests and special needs of the youth;

(B) the status of each youth is reviewed periodically but not less frequently than once every 3 months, by a court or by administrative review, in order to determine the continuing necessity for and appropriateness of the placement;

(C) with respect to each youth, procedural safeguards will be applied to ensure that a dispositional hearing is held to consider the future status of each youth under State supervision, in a juvenile or family court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, not later than 12 months after the

original placement of the youth and periodically thereafter during the continuation of out-of-home placement; and

(D) a youth's health, mental health, and education record is reviewed and updated periodically; and

(2) the term "challenge activity" means a program maintained for 1 of the following purposes:

(A) Developing and adopting policies and programs to provide basic health, mental health, and appropriate education services, including special education, for youth in the juvenile justice system as specified in standards developed by the National Advisory Committee for Juvenile Justice and Delinquency Prevention prior to October 12, 1984.

(B) Developing and adopting policies and programs to provide access to counsel for all juveniles in the justice system to ensure that juveniles consult with counsel before waiving the right to counsel.

(C) Increasing community-based alternatives to incarceration by establishing programs (such as expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, and electronic monitoring) and developing and adopting a set of objective criteria for the appropriate placement of juveniles in detention and secure confinement.

(D) Developing and adopting policies and programs to provide secure settings for the placement of violent juvenile offenders by closing down traditional training schools and replacing them with secure settings with capacities of no more than 50 violent juvenile offenders with ratios of staff to youth great enough to ensure adequate supervision and treatment.

(E) Developing and adopting policies to prohibit gender bias in placement and treatment and establishing programs to ensure that female youth have access to the full range of health and mental health services, treatment for physical or sexual assault and abuse, self defense instruction, education in parenting, education in general, and other training and vocational services.

(F) Establishing and operating, either directly or by contract or arrangement with a public agency or other appropriate private nonprofit organization (other than an agency or organization that is responsible for licensing or certifying out-of-home care services for youth), a State ombudsman office for children, youth, and families to investigate and resolve complaints relating to action, inaction, or decisions of providers of out-of-home care to children and youth (including secure detention and correctional facilities, residential care facilities, public agencies, and social service agencies) that may adversely affect the health, safety, welfare, or rights of resident children and youth.

(G) Developing and adopting policies and programs designed to remove, where appropriate, status offenders from the jurisdiction of the juvenile court to prevent the placement in secure detention facilities or secure correctional facilities of juveniles who are nonoffenders or who are charged with or who have committed offenses that would not be criminal if committed by an adult.

(H) Developing and adopting policies and programs designed to serve as alternatives to suspension and expulsion from school.

(I) Increasing aftercare services for juveniles involved in the justice system by establishing programs and developing and adopting policies to provide comprehensive health, mental health, education, and vocational services and services that preserve and strengthen the families of such juveniles.

(J) Developing and adopting policies to establish—

(i) a State administrative structure to coordinate program and fiscal policies for children who have emotional and behavioral problems and their families among the major child serving systems, including schools, social services, health services, mental health services, and the juvenile justice system; and

(ii) a statewide case review system.

(Pub.L. 93–415, Title II, § 285, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5006.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

PART F—TREATMENT FOR JUVENILE OFFENDERS WHO ARE VICTIMS OF CHILD ABUSE OR NEGLECT

§ 5667d. Definition

For the purposes of this part, the term "juvenile" means a person who is less than 18 years of age.

(Pub.L. 93–415, Title II, § 287, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5008.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667d–1. Authority to make grants

The Administrator, in consultation with the Secretary of Health and Human Services, shall make grants to public and nonprofit private organizations to develop, establish, and support projects that—

(1) provide treatment to juvenile offenders who are victims of child abuse or neglect and to their families so as to reduce the likelihood that the juvenile offenders will commit subsequent violations of law;

(2) based on the best interests of juvenile offenders who receive treatment for child abuse or neglect, provide transitional services (including individual, group, and family counseling) to juvenile offenders—

(A) to strengthen the relationships of juvenile offenders with their families and encourage the resolution of intrafamily problems related to the abuse or neglect;

(B) to facilitate their alternative placement; and

(C) to prepare juveniles aged 16 years and older to live independently; and

(3) carry out research (including surveys of existing transitional services, identification of exemplary treatment modalities, and evaluation of treatment and transitional services) provided with grants made under this section.

(Pub.L. 93–415, Title II, § 287A, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5008.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667d–2. Administrative requirements

The Administrator shall administer this part subject to the requirements of sections 5665a, 5673, and 5676 of this title.

(Pub.L. 93–415, Title II, § 287B, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5009.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667d–3. Priority

In making grants under section 5667d–1 of this title, the Administrator—

(1) shall give priority to applicants that have experience in treating juveniles who are victims of child abuse or neglect; and

(2) may not disapprove an application solely because the applicant proposes to provide treatment or transitional services to juveniles who are adjudicated to be delinquent for having committed offenses that are not serious crimes.

(Pub.L. 93–415, Title II, § 287C, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5009.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

PART G—MENTORING

§ 5667e. Purposes

The purposes of this part are—

(1) to reduce juvenile delinquency and gang participation;

(2) to improve academic performance; and

(3) to reduce the dropout rate,

through the use of mentors for at-risk youth.

(Pub.L. 93–415, Title II, § 288, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5009.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667e–1. Definitions

For purposes of this part—

(1) the term "at-risk youth" means a youth at risk of educational failure or dropping out of school or involvement in delinquent activities; and

(2) the term "mentor" means a person who works with an at-risk youth on a one-to-one basis, establishing a supportive relationship with the youth and providing the youth with academic assistance and exposure to new experiences that enhance the youth's ability to become a responsible citizen.

(Pub.L. 93–415, Title II, § 288A, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5009.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667e–2. Grants

The Administrator shall, by making grants to and entering into contracts with local educational agencies (each of which agency shall be in partnership with a public or private agency, institution, or business), establish and support programs and activities for the purpose of implementing mentoring programs that—

(1) are designed to link at-risk children, particularly children living in high crime areas and children experiencing educational failure, with responsible adults such as law enforcement officers, persons working with local businesses, and adults working for community-based organizations and agencies; and

(2) are intended to achieve 1 or more of the following goals:

(A) Provide general guidance to at-risk youth.

(B) Promote personal and social responsibility among at-risk youth.

(C) Increase at-risk youth's participation in and enhance their ability to benefit from elementary and secondary education.

(D) Discourage at-risk youth's use of illegal drugs, violence, and dangerous weapons, and other criminal activity.

(E) Discourage involvement of at-risk youth in gangs.

(F) Encourage at-risk youth's participation in community service and community activities.

(Pub.L. 93–415, Title II, § 288B, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5010.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667e–3. Regulations and guidelines

(a) Program guidelines

The administrator shall issue program guidelines to implement this part. The program guidelines shall be effective only after a period for public notice and comment.

(b) Model screening guidelines

The administrator shall develop and distribute to program participants specific model guidelines for the screening of prospective program mentors.

(Pub.L. 93–415, Title II, § 288C, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5010, and amended Pub.L. 103–322, Title XV, § 150006, Sept. 13, 1994, 108 Stat. 2035.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229. See, also, Pub.L. 103–322, 1994 U.S. Code Cong. and Adm. News, p. 1801.

§ 5667e–4. Use of grants

(a) Permitted uses

Grants awarded pursuant to this part shall be used to implement mentoring programs, including—

(1) hiring of mentoring coordinators and support staff;

(2) recruitment, screening, and training of adult mentors;

(3) reimbursement of mentors for reasonable incidental expenditures such as transportation that are directly associated with mentoring; and

(4) such other purposes as the Administrator may reasonably prescribe by regulation.

(b) Prohibited uses

Grants awarded pursuant to this part shall not be used—

(1) to directly compensate mentors, except as provided pursuant to subsection (a)(3) of this section;

(2) to obtain educational or other materials or equipment that would otherwise be used in the ordinary course of the grantee's operations;

(3) to support litigation of any kind; or

(4) for any other purpose reasonably prohibited by the Administrator by regulation.

(Pub.L. 93–415, Title II, § 288D, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5010.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667e–5. Priority

(a) In general

In making grants under this part, the Administrator shall give priority for awarding grants to applicants that—

(1) serve at-risk youth in high crime areas;

(2) have 60 percent or more of their youth eligible to receive funds under the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6301 et seq.]; and

(3) have a considerable number of youth who drop out of school each year.

(b) Other considerations

In making grants under this part, the Administrator shall give consideration to—

(1) the geographic distribution (urban and rural) of applications;

(2) the quality of a mentoring plan, including—

(A) the resources, if any, that will be dedicated to providing participating youth with opportunities for job training or postsecondary education; and

(B) the degree to which parents, teachers, community-based organizations, and the local community participate in the design and implementation of the mentoring plan; and

(3) the capability of the applicant to effectively implement the mentoring plan.

(Pub.L. 93–415, Title II, § 288E, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5011, and amended Pub.L. 103–382, Title III, § 391(t), Oct. 20, 1994, 108 Stat. 4025.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(2), is Pub.L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub.L. 103–382, Title I, § 101, Oct. 20, 1994, 108 Stat. 3519. Such Act is classified generally to chapter 70 (section 6301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229. See, also, Pub.L. 103–382, 1994 U.S. Code Cong. and Adm. News, p. 2807.

§ 5667e–6. Applications

An application for assistance under this part shall include—

(1) information on the youth expected to be served by the program;

(2) a provision for a mechanism for matching youth with mentors based on the needs of the youth;

(3) an assurance that no mentor will be assigned to more than one youth, so as to ensure a one-to-one relationship;

(4) an assurance that projects operated in secondary schools will provide youth with a variety of experiences and support, including—

(A) an opportunity to spend time in a work environment and, when possible, participate in the work environment;

(B) an opportunity to witness the job skills that will be required for youth to obtain employment upon graduation;

(C) assistance with homework assignments; and

(D) exposure to experiences that youth might not otherwise encounter;

(5) an assurance that projects operated in elementary schools will provide youth with—

(A) academic assistance;

(B) exposure to new experiences and activities that youth might not encounter on their own; and

(C) emotional support;

(6) an assurance that projects will be monitored to ensure that each youth benefits from a mentor relationship, with provision for a new mentor assignment if the relationship is not beneficial to the youth;

(7) the method by which mentors and youth will be recruited to the project;

(8) the method by which prospective mentors will be screened; and

(9) the training that will be provided to mentors.

(Pub.L. 93–415, Title II, § 288F, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5011.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667e–7. Grant cycles

Grants under this part shall be made for 3–year periods.

(Pub.L. 93–415, Title II, § 288G, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5012.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667e–8. Reports

Not later than 120 days after the completion of the first cycle of grants under this part, the Administrator shall submit to Congress a report regarding the success and effectiveness of the grant program in reducing juvenile delinquency and gang participation, improving academic performance, and reducing the dropout rate.

(Pub.L. 93–415, Title II, § 288H, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5012.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

PART H—BOOT CAMPS

§ 5667f. Establishment of program

(a) In general

The Administrator may make grants to the appropriate agencies of 1 or more States for the purpose of establishing up to 10 military-style boot camps for juvenile delinquents (referred to as 'boot camps').

(b) Location

(1) The boot camps shall be located on existing or closed military installations on sites to be chosen by the agencies in one or more States, or in other facilities designated by the agencies on such sites, after consultation with the Secretary of Defense, if appropriate, and the Administrator.

(2) The Administrator shall—

(A) try to achieve to the extent possible equitable geographic distribution in approving boot camp sites; and

(B) give priority to grants where more than one State enters into formal cooperative arrangements to jointly administer a boot camp; and

(c) Regimen

The boot camps shall provide—

(1) a highly regimented schedule of discipline, physical training, work, drill, and ceremony characteristic of military basic training;

(2) regular, remedial, special, and vocational education; and

(3) counseling and treatment for substance abuse and other health and mental health problems.

(Pub.L. 93–415, Title II, § 289, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5012.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667f–1. Capacity

Each boot camp shall be designed to accommodate between 150 and 250 juveniles for such time as the grant recipient agency deems to be appropriate.

(Pub.L. 93–415, Title II, § 289A, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5012.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667f–2. Eligibility and placement

(a) Eligibility

A person shall be eligible for assignment to a boot camp if he or she—

(1) is considered to be a juvenile under the laws of the State of jurisdiction; and

(2) has been adjudicated to be delinquent in the State of jurisdiction or, upon approval of the court, voluntarily agrees to the boot camp assignment without a delinquency adjudication.

(b) Placement

Prior to being placed in a boot camp, an assessment of a juvenile shall be performed to determine that—

(1) the boot camp is the least restrictive environment that is appropriate for the juvenile considering the seriousness of the juvenile's delinquent behavior and the juvenile's treatment need; and

(2) the juvenile is physically and emotionally capable of participating in the boot camp regimen.

(Pub.L. 93–415, Title II, § 289B, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5013.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667f–3. Post-release supervision

A State that seeks to establish a boot camp, or participate in the joint administration of a boot camp, shall submit to the Administrator a plan describing—

(1) the provisions that the State will make for the continued supervision of juveniles following release; and

(2) provisions for educational and vocational training, drug or other counseling and treatment, and other support services.

(Pub.L. 93–415, Title II, § 289C, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5013.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

PART I—WHITE HOUSE CONFERENCE ON JUVENILE JUSTICE

HISTORICAL AND STATUTORY NOTES

Codification

Another part I [sections 5671 to 5676 of this title], formerly part E, resulted from a redesignation by Pub.L. 102–586, § 2(i)(1)(A), Nov. 4, 1992, 106 Stat. 5006.

§ 5667g. National White House Conference on Juvenile Justice

(a) In general

The President may call and conduct a National White House Conference on Juvenile Justice (referred to as the "Conference") in accordance with this part.

(b) Purposes of conference

The purposes of the Conference shall be—

(1) to increase public awareness of the problems of juvenile offenders and the juvenile justice system;

(2) to examine the status of minors currently in the juvenile and adult justice systems;

(3) to examine the increasing number of violent crimes committed by juveniles;

(4) to examine the growing phenomena of youth gangs, including the number of young women who are involved;

(5) to assemble persons involved in policies and programs related to juvenile delinquency prevention and juvenile justice enforcement;

(6) to examine the need for improving services for girls in the juvenile justice system;

(7) to create a forum in which persons and organizations from diverse regions may share information regarding successes and failures of policy in their juvenile justice and juvenile delinquency prevention programs; and

(8) to develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate to address the problems of juvenile delinquency and juvenile justice.

(c) Schedule of conferences

The Conference under this part shall be concluded not later than 18 months after November 4, 1992.

(d) Prior State and regional conferences

(1) In general

Participants in the Conference and other interested persons and organizations may conduct conferences and other activities at the State and regional levels prior to the date of the Conference, subject to the approval of the executive director of the Conference.

(2) Purpose of State and regional conferences

State and regional conferences and activities shall be directed toward the consideration of the purposes of this part. State conferences shall elect delegates to the National Conferences.

[Part 2 – p. 66]

(3) Admittance

No person involved in administering State juvenile justice programs or in providing services to or advocacy of juvenile offenders may be denied admission to a State or regional conference.

(Pub.L. 93–415, Title II, § 291, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5013.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667g–1. Conference participants

(a) In general

The Conference shall bring together persons concerned with issues and programs, both public and private, relating to juvenile justice, and juvenile delinquency prevention.

(b) Selection

(1) State conferences

Delegates, including alternates, to the National Conference shall be elected by participants at the State conferences.

(2) Delegates

(A) In addition to delegates elected pursuant to paragraph (1)—

(i) each Governor may appoint 1 delegate and 1 alternate;

(ii) the majority leader of the Senate, in consultation with the minority leader, may appoint 10 delegates and 3 alternates;

(iii) the Speaker of the House of Representatives, in consultation with the minority leader, may appoint 10 delegates and 3 alternates;

(iv) the President may appoint 20 delegates and 5 alternates;

(v) the chief law enforcement official and the chief juvenile corrections official of each State may appoint 1 delegate and 1 alternate each; and

(vi) the Chairperson of the Juvenile Justice and Delinquency Prevention Advisory Committee of each State, or his or her designate, may appoint 1 delegate.

(B) Only persons involved in administering State juvenile justice programs or in providing services to or advocacy of juvenile offenders shall be eligible for appointment as a delegate.

(c) Participant expenses

Each participant in the Conference shall be responsible for his or her expenses related to attending the Conference and shall not be reimbursed from funds appropriated pursuant to this chapter.

(d) No fees

No fee may be imposed on a person who attends a Conference except a registration fee of not to exceed $10.

(Pub.L. 93–415, Title II, § 291A, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5014.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667g–2. Staff and executive branch

(a) In general

The President may appoint and compensate an executive director of the National White House Conference on Juvenile Justice and such other directors and personnel for the Conference as the President may deem to be advisable, without regard to the provisions of Title 5, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that Title relating to classification and General Schedule pay rates. The staff of the Conference may not exceed 20, including the executive director.

(b) Detailees

Upon request by the executive director, the heads of the executive and military departments may detail employees to work with the executive director in planning and administering the Conference without regard to section 3341 of Title 5.

(Pub.L. 93–415, Title II, § 291B, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5015.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667g–3. Planning and administration of conference

(a) Federal agency support

All Federal departments, agencies, and instrumentalities shall provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

(b) Duties of the executive director

In carrying out this part, the executive director of the White House Conference on Juvenile Justice—

(1) shall provide such assistance as may be necessary for the organization and conduct of conferences at the State and regional levels authorized by section 5667g(d) of this title;

(2) may enter into contracts and agreements with public and private agencies and organizations and academic institutions to assist in carrying out this part; and

(3) shall prepare and provide background materials for use by participants in the Conference and by participants in State and regional conferences.

(Pub.L. 93–415, Title II, § 291C, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5015.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667g–4. Reports

(a) In general

Not later than 6 months after the date on which a National Conference is convened, a final report of the Conference shall be submitted to the President and the Congress.

(b) Contents

A report described in subsection (a) of this section—

(1) shall include the findings and recommendations of the Conference and proposals for any legislative action necessary to implement the recommendations of the Conference; and

(2) shall be made available to the public.

(Pub.L. 93–415, Title II, § 291D, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5015.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5667g–5. Oversight

The Administrator shall report to the Congress annually during the 3–year period following the submission of the final report of a Conference on the status and implementation of the findings and recommendations of the Conference.

(Pub.L. 93–415, Title II, § 291E, as added Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5015.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

PART I—GENERAL AND ADMINISTRATIVE PROVISIONS

HISTORICAL AND STATUTORY NOTES

Codification

Another part I, sections 5667g to 5667g–5 of this title, was enacted by Pub.L. 102–586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5006.

1992 Amendment

Pub.L. 102–586, § 2(i)(1)(A), Nov. 4, 1992, 106 Stat. 5006, redesignated Part E as Part I.

1988 Amendment

Pub.L. 100–690, Title VII, § 7266(1), Nov. 18, 1988, 102 Stat. 4449, redesignated "PART D—ADMINISTRATIVE PROVISIONS" as "PART E—GENERAL AND ADMINISTRATIVE PROVISIONS".

§ 5671. Authorization of appropriations

(a) Amounts; availability of funds

(1) To carry out the purposes of this subchapter (other than parts D, E, F, G, H, and I) there are authorized to be appropriated $150,000,000 for fiscal years 1993, 1994, 1995, and 1996. Funds appropriated for any fiscal year shall remain available for obligation until expended.

(2)(A) Subject to subparagraph (B), to carry out part D, there are authorized to be appropriated—

(i) to carry out subpart 1, $25,000,000 for fiscal year 1993 and such sums as are necessary for fiscal years 1994, 1995, and 1996; and

(ii) to carry out subpart 2, $25,000,000 for fiscal year 1993 and such sums as are necessary for fiscal years 1994, 1995, and 1996.

(B) No funds may be appropriated to carry out part D, E, F, G, or I of this subchapter or subchapter V or VI [1] of this chapter for a fiscal year unless the aggregate amount appropriated to carry out this subchapter (other than part D, E, F, G, or I of this subchapter or subchapter V or VI [1] of this chapter) for the fiscal year is not less than the aggregate amount appropriated to carry out this subchapter (other than part D, E, F, G, or I of this subchapter or subchapter V or VI [1] of this chapter) for the preceding fiscal year.

(3) To carry out part E, there are authorized to be appropriated $50,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, and 1996.

(4)(A) Subject to subparagraph (B), there are authorized to be appropriated to carry out part F—

(i) $15,000,000 for fiscal year 1993; and

(ii) such sums as are necessary for fiscal years 1994, 1995, and 1996.

(B) No amount is authorized to be appropriated for a fiscal year to carry out part F unless the aggregate amount appropriated to carry out this subchapter for that fiscal year is not less than the aggregate amount appropriated to carry out this subchapter for the preceding fiscal year.

(C) From the amount appropriated to carry out part F in a fiscal year, the Administrator shall use—

(i) not less than 85 percent to make grants for treatment and transitional services;

(ii) not to exceed 10 percent for grants for research; and

(iii) not to exceed 5 percent for salaries and expenses of the Office of Juvenile Justice and Delinquency Prevention related to administering part F.

(5) (A)[2] Subject to subparagraph (B), there are authorized to be appropriated to carry out part G such sums as are necessary for fiscal years 1993, 1994, 1995, and 1996.

(6)(A) There are authorized to be appropriated to carry out part H such sums as are necessary for fiscal year 1993, to remain available until expended, of which—

(i) not more than $12,500,000 shall be used to convert any 1 closed military base or to modify any 1 existing military base or other designated facility to a boot camp; and

(ii) not more than $2,500,000 shall be used to operate any 1 boot camp during a fiscal year.

(B) No amount is authorized to be appropriated for a fiscal year to carry out part H unless the aggregate amount appropriated to carry out parts A, B, and C of this subchapter for that fiscal year is not less than 120 percent of the aggregate amount appropriated to carry out those parts for fiscal year 1992.

(7)(A) There are authorized to be appropriated such sums as are necessary for each National Conference and associated State and regional conferences under part I, to remain available until expended.

(B) New spending authority or authority to enter into contracts under part I shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

(C) No funds appropriated to carry out this chapter shall be made available to carry out part I other than funds appropriated specifically for the purpose of conducting the Conference.

(D) Any funds remaining unexpended at the termination of the Conference under part I, including submission of the report pursuant to section 5667g–4 of this title, shall be returned to the Treasury of the United States and credited as miscellaneous receipts.

(b) Percentages available for programs

Of such sums as are appropriated to carry out the purposes of this subchapter (other than part D)—

(1) not to exceed 5 percent shall be available to carry out part A;

(2) not less than 70 percent shall be available to carry out part B; and

(3) 25 percent shall be available to carry out part C.

(c) Approval of State agency and establishment of supervisory board

Notwithstanding any other provision of law, the Administrator shall—

(1) establish appropriate administrative and supervisory board membership requirements for a State agency responsible for supervising the preparation and administration of the State plan submitted under section 5633 of this title and permit the State advisory group appointed under section 5633(a)(3) of this title to operate as the supervisory board for such agency, at the discretion of the Governor; and

(2) approve any appropriate State agency designated by the Governor of the State involved in accordance with paragraph (1).

(d) Experimentation on individuals; prohibition; "behavior control" defined

No funds appropriated to carry out the purposes of this subchapter may be used for any bio-medical or behavior control experimentation on individuals or any research

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involving such experimentation. For the purpose of this subsection, the term "behavior control" refers to experimentation or research employing methods which involve a substantial risk of physical or psychological harm to the individual subject and which are intended to modify or alter criminal and other anti-social behavior, including aversive conditioning therapy, drug therapy or chemotherapy (except as part of routine clinical care), physical therapy of mental disorders, electroconvulsive therapy, or physical punishment. The term does not apply to a limited class of programs generally recognized as involving no such risk, including methadone maintenance and certain alcohol treatment programs, psychological counseling, parent training, behavior contracting, survival skills training, restitution, or community service, if safeguards are established for the informed consent of subjects (including parents or guardians of minors).

(e) Reservation of monies for previously unfunded programs

Of such sums as are appropriated to carry out section 5665(a)(6) of this title, not less than 20 percent shall be reserved by the Administrator for each of fiscal years 1993, 1994, 1995, and 1996, for not less than 2 programs that have not received funds under subpart II of part C prior to October 1, 1992, which shall be selected through the application and approval process set forth in section 5665a of this title.

(Pub.L. 93–415, Title II, § 299, formerly § 261, Sept. 7, 1974, 88 Stat. 1129; Pub.L. 94–273, § 32(b), Apr. 21, 1976, 90 Stat. 380; Pub.L. 94–503, Title I, § 130(a), Oct. 15, 1976, 90 Stat. 2425; Pub.L. 95–115, § 6(b), Oct. 3, 1977, 91 Stat. 1058; Pub.L. 96–509, §§ 2(a), 15, Dec. 8, 1980, 94 Stat. 2750, 2760; Pub.L. 98–473, Title II, § 640, Oct. 12, 1984, 98 Stat. 2121; renumbered § 291 and amended, Pub.L. 100–690, Title VII, §§ 7265, 7266(3), Nov. 18, 1988, 102 Stat. 4448, 4449; Pub.L. 100–690, Title VII, § 7265(a)(4), as amended Pub.L. 101–204, Title X, § 1001(e)(1), Dec. 7, 1989, 103 Stat. 1827; Pub.L. 101–204, Title X, § 1002, Dec. 7, 1989, 103 Stat. 1827; renumbered § 299 and amended, Pub.L. 102–586, § 2(i)(1)(B), (j), Nov. 4, 1992, 106 Stat. 5006, 5016.)

[1] So in original. This chapter contains no subchapter VI.

[2] So in original. No subparagraph (B) has been enacted.

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in subsec. (a)(7)(C), was in the original, this Act, meaning Pub.L. 93–514, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5402 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

Codifications

Pub.L. 101–204, § 1001(e)(1), amended the directory language of Pub.L. 100–690, § 7265(a)(4), resulting in no change in text.

1992 Amendments

Subsec. (a). Pub.L. 102–586, § 2(j)(1), generally amended subsec., substituting provisions authorizing to be appropriated, for the purposes of this subchapter, other than parts D, E, F, G, H, and I, $150,000,000 for fiscal years 1993, 1994, 1995, and 1996, subject to appropriations for preceding fiscal year and other specifications, for provisions authorizing to be appropriated, to carry out the purposes of this subchapter, other than part D, such sums as may be necessary for fiscal years 1989, 1990, 1991, and 1992, and, subject to preceding fiscal year appropriations, to carry out part D of this subchapter, $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of fiscal years 1990, 1991, and 1992.

Subsec. (e). Pub.L. 102–586, § 2(j)(2), added subsec. (e).

1989 Amendment

Subsec. (a)(1). Pub.L. 101–204, § 1002, substituted "there are authorized" for "there is authorized".

1988 Amendment

Subsec. (a)(1). Pub.L. 100–690, § 7265(a)(1) to (4), designated existing provision as par. (1); substituted therein "this subchapter (other than part D)" for "this subchapter"; struck out "1985, 1986, 1987, and 1988" following "fiscal years"; and inserted "1989, 1990, 1991, and 1992" following such "fiscal years".

Subsec. (a)(2). Pub.L. 100–690, § 7265(a)(5), added par. (2).

Subsec. (b). Pub.L. 100–690, § 7265(b)(1)–(4), substituted: in the opening phrase "this subchapter (other than part D)" for "this subchapter"; in par. (1), "5 percent" for "7.5 percent"; in par. (2), "70 percent" for "81.5 percent"; and, in par. (3), "25 percent" for "11 percent".

1984 Amendment

Subsec. (a). Pub.L. 98–473 substituted provisions relating to authorization of appropriations for fiscal years 1985 to 1988 for former provisions which also authorized appropriations for fiscal years 1981 to 1984.

Subsec. (b). Pub.L. 98–473 substituted provisions which set forth specific percentages of appropriations for parts A, B and C for former provisions which also set forth appropriation percentages for juvenile delinquency programs.

Subsec. (c). Pub.L. 98–473 substituted ", the Administrator shall" for "if the Administrator determines, in his discretion, that sufficient funds have not been appropriated for any fiscal year for the activities authorized in part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C.A. § 3741 et seq.], then the Administrator is authorized to" in the matter preceding par. (1), redesignated par. (2) as par. (1), in par. (1) as so redesignated substituted "a State agency responsible for supervising the preparation and administration of the State plan submitted under section 5633 of this title" for "for any agency designated in accordance with paragraph (1)," redesignated par. (1) as par. (2), and in par. (2) as so redesignated substituted "in accordance with paragraph (1)" for "the sole agency responsible for supervising the preparation and administration of the State plan submitted under section 5633 of this title".

Subsec. (d). Pub.L. 98–473 added subsec. (d).

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S. Code Cong. and Adm. News, p. 5937; Pub.L. 101–204, 1989 U.S. Code Cong. and Adm. News, p. 1238; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5672. Administrative authority

(a) Authority of Administrator

The Office shall be administered by the Administrator under the general authority of the Attorney General.

(b) Certain crime control provisions applicable

Sections 3789d(c), 3789f(a), 3789f(b), 3789f(c), 3789g(a), 3789g(b), and 3789g(d) of this title shall apply with respect to the administration of and compliance with this chapter, except that for purposes of this chapter—

(1) any reference to the Office of Justice Programs in such sections shall be deemed to be a reference to the Assistant Attorney General who heads the Office of Justice Programs; and

(2) the term "this chapter" as it appears in such sections shall be deemed to be a reference to this chapter.

(c) Certain other crime control provisions applicable

Sections 3782(a), 3782(c), and 3789a of this title shall apply with respect to the administration of and compliance with this chapter, except that for purposes of this chapter—

(1) any reference to the Attorney General, the Assistant Attorney General who heads the Office of Justice Programs, the Director of the National Institute of Justice, the Director of the Bureau of Justice Statistics, or the Director of the Bureau of Justice Assistance shall be deemed to be a reference to the Administrator;

(2) any reference to the Office of Justice Programs, the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics shall be deemed to be a reference to the Office of Juvenile Justice and Delinquency Prevention; and

(3) the term "this chapter" as it appears in such sections shall be deemed to be a reference to this chapter.

(d) Rules, regulations, and procedures

The Administrator is authorized, after appropriate consultation with representatives of States and units of local government, to establish such rules, regulations, and procedures as are necessary for the exercise of the functions of the Office and as are consistent with the purpose of this chapter.

(Pub.L. 93–415, Title II, § 299A, formerly § 262, Sept. 7, 1974, 88 Stat. 1129; Pub.L. 95–115, § 6(c), Oct. 3, 1977, 91 Stat. 1058; Pub.L. 96–509, § 16, Dec. 8, 1980, 94 Stat. 2761; Pub.L. 98–473, Title II,

§ 641, Oct. 12, 1984, 98 Stat. 2122; renumbered § 292, Pub.L. 100–690, Title VII, § 7266(3), Nov. 18, 1988, 102 Stat. 4449; renumbered § 299A, Pub.L. 102–586, § 2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006.)

HISTORICAL AND STATUTORY NOTES

References in Text

This chapter, referred to in text in the original read "this Act" meaning Pub.L. 93–415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

1984 Amendment

Subsec. (a). Pub.L. 98–473 substituted provisions setting forth the administrative authority of the Office for former provisions which incorporated other administrative provisions into this chapter as well as construing certain references as authorizing the Administrator of the Office of Juvenile Justice and Delinquency Prevention to perform the same actions as other officials.

Subsec. (b). Pub.L. 98–473 substituted provisions relating to the applicability of other provisions to this chapter as well as defining certain references therein for former provisions which directed the Office of Justice Assistance, Research and Statistics to provide staff support and coordinate the activities of the Office of Juvenile Justice and Delinquency Prevention.

Subsecs. (c), (d). Pub.L. 98–473 added subsecs. (c) and (d).

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

LAW REVIEW COMMENTARIES

Enforcing the hidden U.S. equal rights law. Ann Fagan Ginger, 20 Golden Gate U.L.Rev. 385 (1990).

LIBRARY REFERENCES

C.J.S. Civil Rights § 46 et seq.

§ 5673. Withholding

Whenever the Administrator, after giving reasonable notice and opportunity for hearing to a recipient of financial assistance under this subchapter, finds that—

(1) the program or activity for which the grant or contract involved was made has been so changed that it no longer complies with this subchapter; or

(2) in the operation of such program or activity there is failure to comply substantially with any provision of this subchapter;

the Administrator shall initiate such proceedings as are appropriate.

(Pub.L. 93–415, Title II, § 299B, formerly § 293, as added Pub.L. 100–690, Title VII, § 7266(4), Nov. 18, 1988, 102 Stat. 4449; renumbered § 299B, Pub.L. 102–586, § 2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006.)

HISTORICAL AND STATUTORY NOTES

Effective Date

Section effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100–690, see 1988 U.S. Code Cong. and Adm. News, p. 5937. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

LIBRARY REFERENCES

Infants ⇐131 et seq.
United States ⇐82(1).
C.J.S. Infants §§ 31 to 54.
C.J.S. United States § 41.
WESTLAW Topic Nos. 211, 393.

§ 5674. Use of funds

(a) In general

Funds paid pursuant to this subchapter to any public or private agency, organization, or institution, or to any individual (either directly or through a State planning agency) may be used for—

(1) planning, developing, or operating the program designed to carry out this subchapter; and

(2) not more than 50 per centum of the cost of the construction of any innovative community-based facility for fewer than 20 persons which, in the judgment of the Administrator, is necessary to carry out this subchapter.

(b) Prohibition against use of funds in construction

Except as provided in subsection (a) of this section, no funds paid to any public or private agency, or institution or to any individual under this subchapter (either directly or through a State agency or local agency) may be used for construction.

(c) Funds paid pursuant to sections 5633(a)(10) and 5665(a)(3) of this title

(1) Funds paid pursuant to section 5633(a)(10)(D) of this title and section 5665(a)(3) of this title to any public or private agency, organization, or institution or to any individual shall not be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device intended or designed to influence a Member of Congress or any other Federal, State, or local elected official to favor or oppose any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body, except that this paragraph shall not preclude such funds from being used in connection with communications to Federal, State, or local elected officials, upon the request of such officials through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved.

(2) The Administrator shall take such action as may be necessary to ensure that no funds paid under section 5633(a)(10)(D) of this title or section 5671(a)(3) of this title are used either directly or indirectly in any manner prohibited in this paragraph.

(Pub.L. 93–415, Title II, § 299C, formerly § 294, as added Pub.L. 100–690, Title VII, § 7266(4), Nov. 18, 1988, 102 Stat. 4449; renumbered § 299C, Pub.L. 102–586, § 2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006.)

HISTORICAL AND STATUTORY NOTES

Effective Date

Section effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100–690, see 1988 U.S. Code Cong. and Adm. News, p. 5937. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5675. Payments

(a) In general

Payments under this subchapter, pursuant to a grant or contract, may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions as the Administrator may determine.

(b) Percentage of approved costs

Except as provided in the second sentence of section 5632(c) of this title, financial assistance extended under this subchapter shall be 100 per centum of the approved costs of the program or activity involved.

(c) Increase of grants to Indian tribes; waiver of liability

(1) In the case of a grant under this subchapter to an Indian tribe, if the Administrator determines that the tribe does not have sufficient funds available to meet the local

share of the cost of any program or activity to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent the Administrator deems necessary.

(2) If a State does not have an adequate forum to enforce grant provisions imposing any liability on Indian tribes, the Administrator may waive State liability attributable to the liability of such tribes and may pursue such legal remedies as are necessary.

(d) Reallocation of unrequired or statutorily available funds

If the Administrator determines, on the basis of information available to the Administrator during any fiscal year, that a portion of the funds granted to an applicant under part C of this subchapter for such fiscal year will not be required by the applicant or will become available by virtue of the application of the provisions of section 3783 of this title, as amended from time to time, that portion shall be available for reallocation in an equitable manner to States which comply with the requirements in paragraphs (12)(A) and (13) of section 5633(a) of this title, under section 5665(b)(6) of this title.

(Pub.L. 93–415, Title II, § 299D, formerly § 295, as added Pub.L. 100–690, Title VII, § 7266(4), Nov. 18, 1988, 102 Stat. 4450; renumbered § 299D, Pub.L. 102–586, § 2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006.)

HISTORICAL AND STATUTORY NOTES

Effective Date

Section effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100–690, see 1988 U.S. Code Cong. and Adm. News, p. 5937. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5676. Confidentiality of program records

Except as authorized by law, program records containing the identity of individual juveniles gathered for purposes pursuant to this subchapter may not be disclosed without the consent of the service recipient or legally authorized representative, or as may be necessary to carry out this subchapter. Under no circumstances may program reports or findings available for public dissemination contain the actual names of individual service recipients.

(Pub.L. 93–415, Title II, § 299E, formerly § 296, as added Pub.L. 100–690, Title VII, § 7266(4), Nov. 18, 1988, 102 Stat. 4450; renumbered § 299E, Pub.L. 102–586, § 2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006.)

HISTORICAL AND STATUTORY NOTES

Effective Date

Section effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100–690, see 1988 U.S. Code Cong. and Adm. News, p. 5937. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

SUBCHAPTER III—RUNAWAY AND HOMELESS YOUTH

§ 5701. Congressional statement of findings

The Congress hereby finds that—

(1) juveniles who have become homeless or who leave and remain away from home without parental permission, are at risk of developing serious health and other problems because they lack sufficient resources to obtain care and may live on the street for extended periods thereby endangering themselves and creating a substantial law enforcement problem for communities in which they congregate;

[See main volume for text of (2) and (3)]

(4) the problem of locating, detaining, and returning runaway children should not be the responsibility of already overburdened police departments and juvenile justice authorities;

(5) in view of the interstate nature of the problem, it is the responsibility of the Federal Government to develop accurate reporting of the problem nationally and to develop an effective system of care (including preventive services, emergency shelter services, and extended residential shelter) outside the welfare system and the law enforcement system;

(6) runaway and homeless youth have a disproportionate share of health, behavioral, and emotional problems compared to the general population of youth, but have less access to health care and other appropriate services and therefore may need access to longer periods of residential care, more intensive aftercare service, and other assistance;

(7) to make a successful transition to adulthood, runaway youth, homeless youth, and other street youth need opportunities to complete high school or earn a general equivalency degree, learn job skills, and obtain employment;

(8) in view of the interstate nature of the problem, it is the responsibility of the Federal Government to develop an accurate national reporting system and to develop an effective system of care including prevention, emergency shelter services, and longer residential care outside the public welfare and law enforcement structures;

(9) early intervention services (such as home-based services) are needed to prevent runaway and homeless youth from becoming involved in the juvenile justice system and other law enforcement systems; and

(10) street-based services that target runaway and homeless youth where they congregate are needed to reach youth who require assistance but who would not otherwise avail themselves of such assistance or services without street-based outreach.

(As amended Pub.L. 102–586, § 3(a), Nov. 4, 1992, 106 Stat. 5017.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Pub.L. 102–586, § 3(a)(1), substituted findings relating to juveniles who become homeless or leave home without parental permission being at risk for health and other problems and thereby creating law enforcement problems for communities in which they congregate, for findings relating to alarming increase in number of juveniles who leave home without parental permission and create law enforcement problems for communities inundated and endanger themselves by living on the street.

Par. (5). Pub.L. 102–586, § 3(a)(2), (3), directed Federal Government to develop an effective system of care for juveniles who lease home without parental permission, including preventive services, emergency shelter services, and extended residential shelter, outside the welfare and law enforcement systems, rather than developing an effective system of temporary care outside the law enforcement structure.

Pars. (6)–(10). Pub.L. 102–586, § 3(a)(4), added pars. (6) to (10).

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5702. Promulgation of rules

The Secretary of Health and Human Services (hereinafter in this subchapter referred to as the "Secretary") may issue such rules as the Secretary considers necessary or appropriate to carry out the purposes of this subchapter.

(As amended Pub.L. 98–473, Title II, § 650, Oct. 12, 1984, 98 Stat. 2122.)

HISTORICAL AND STATUTORY NOTES

1984 Amendment

Pub.L. 98–473 substituted "issue such rules as the Secretary" for "prescribe such rules as he".

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182.

PART A—RUNAWAY AND HOMELESS YOUTH GRANT PROGRAM

HISTORICAL AND STATUTORY NOTES

1988 Amendment

Pub.L. 100–690, Title VII, § 7272(1), Nov. 18, 1988, 102 Stat. 4454, substituted in part (A) "RUNAWAY AND HOMELESS YOUTH GRANT PROGRAM" for "GRANTS PROGRAM".

§ 5711. Authority to make grants

(a) Establishment and operation of runaway and homeless youth centers

The Secretary shall make grants to public and private entities (and combinations of such entities) to establish and operate (including renovation) local runaway and homeless youth centers to provide services to deal primarily with the immediate needs of runaway or otherwise homeless youth, and their families, in a manner which is outside the law enforcement system, the child welfare system, the mental health system, and the juvenile justice system.

(b) Allotment of funds for grants; priority given to certain private entities

(1) Subject to paragraph (2) and in accordance with regulations promulgated under this subchapter, funds for grants under subsection (a) of this section shall be allotted annually with respect to the States on the basis of their relative population of individuals who are less than 18 years of age.

(2) Subject to paragraph (3), the amount allotted under paragraph (1) with respect to each State for a fiscal year shall be not less than $100,000, except that the amount allotted to the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands shall be not less than $45,000 each.

(3) If, as a result of paragraph (2), the amount allotted under paragraph (1) with respect to a State for a fiscal year would be less than the aggregate amount of grants made under this part to recipients in such State for fiscal year 1992, then the amounts allotted to satisfy the requirements of such paragraph shall be reduced pro rata to the extent necessary to allot under paragraph (1) with respect to such State for the fiscal year an amount equal to the aggregate amount of grants made under this part to recipients in such State for fiscal year 1992.

(4) In selecting among applicants for grants under subsection (a) of this section, the Secretary shall give priority to private entities that have experience in providing the services described in such subsection.

(c) Street-based services

(1) If for a fiscal year the amount appropriated under section 5751(a)(1) of this title exceeds $50,000,000, the Secretary may make grants under this subsection for that fiscal year to entities that receive grants under subsection (a) of this section to establish and operate street-based service projects for runaway and homeless youth.

(2) For purposes of this part, the term "street-based services" includes—

(i) street-based crisis intervention and counseling;

(ii) information and referral for housing;

(iii) information and referral for transitional living and health care services; and

(iv) advocacy, education, and prevention services for—

(I) alcohol and drug abuse;

(II) sexually transmitted diseases including HIV/AIDS infection; and

(III) physical and sexual assault.

(d) Home-based services

(1) If for a fiscal year the amount appropriated under section 5751(a)(1) of this title exceeds $50,000,000, the Secretary may make grants for that fiscal year to entities that receive grants under subsection (a) of this section to establish and operate home-based service projects for families that are separated, or at risk of separation, as a result of the physical absence of a runaway youth or youth at risk of family separation.

(2) For purposes of this part—

(A) the term "home-based service project" means a project that provides—

(i) case management; and

(ii) in the family residence (to the maximum extent practicable)—

(I) intensive, time-limited, family and individual counseling;

(II) training relating to life skills and parenting; and

(III) other services;

designed to prevent youth from running away from their families or to cause runaway youth to return to their families;

(B) the term "youth at risk of family separation" means an individual—

(i) who is less than 18 years of age; and

(ii)(I) who has a history of running away from the family of such individual;

(II) whose parent, guardian, or custodian is not willing to provide for the basic needs of such individual; or

(III) who is at risk of entering the child welfare system or juvenile justice system, as a result of the lack of services available to the family to meet such needs; and

(C) the term "time-limited" means for a period not to exceed 6 months.

(As amended Pub.L. 98–473, Title II, § 651, Oct. 12, 1984, 98 Stat. 2123; Pub.L. 100–690, Title VII, § 7271(a), (b), Nov. 18, 1988, 102 Stat. 4452; Pub.L. 102–586, § 3(b), Nov. 4, 1992, 106 Stat. 5018.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Subsec. (a). Pub.L. 102–586, § 3(b)(1), directed Secretary to make grants relating to needs of runaway or homeless youth in a manner which is outside law enforcement system, child welfare system, mental health system, and juvenile system, rather than in a manner which is outside law enforcement structure and juvenile justice system.

Subsec. (b)(2). Pub.L. 102–586, § 3(b)(2)(A), directed that amount allotted under par. (1) with respect to each State for a fiscal year shall be not less than $100,000, rather than $75,000, except that the amount allotted to various territories shall be not less than $45,000, rather than $30,000.

Subsec. (b)(3). Pub.L. 102–586, § 3(b)(2)(B), substituted "1992" for "1988" wherever appearing.

Subsecs. (c), (d). Pub.L. 102–586, § 3(b)(3), added subsecs. (c) and (d).

1988 Amendment

Heading. Pub.L. 100–690, § 7271(a), substituted "Authority to make grants" for "Grants and technical assistance".

Subsec. (a). Pub.L. 100–690, § 7271(b), enacted subsec. (a), incorporating the first and part of the second sentence of former subsec. (a) which provided that "The Secretary is authorized to make grants and to provide technical assistance and short-term training to States, localities and private entities and coordinated networks of such entities in accordance with the provisions of this part and assistance to their families. Grants under this part shall be made equitably among the States based upon their respective populations of youth under 18 years of age for the purpose of developing local facilities to deal primarily with the immediate needs of runaway youth or otherwise homeless youth, and their families, in a manner which is outside the law enforcement structure and juvenile justice system."; and struck former third to fifth sentences, the third and fifth sentences being incorporated in subsec. (b)(2) and (4), and the fourth sentence providing that "Grants also may be made for the provision of a national communications system for the purpose of assisting runaway and homeless youth in communicating with their families and with service providers."

Subsec. (b). Pub.L. 100–690, § 7271(b), struck former subsec. (b) which provided supplemental grants to runaway centers developing model programs.

Subsec. (b)(1). Pub.L. 100–690, § 7271(b), enacted par. (1), incorporating part of second sentence of former subsec. (a) which provided that "Grants under this part shall be made equitably among the States based upon their respective populations of youth under 18 years of age for the purpose of developing local facilities to deal primarily with the immediate needs of runaway youth or otherwise homeless youth, and their families, in a manner which is outside the law enforcement structure and juvenile justice system."

Subsec. (b)(2), (3). Pub.L. 100–690, § 7271(b) enacted pars. (2) and (3), par. (2) expanding upon the third sentence of former subsec. (a) which provided that "The size of such grant shall be determined by the number of such youth in the community and the existing availability of services.

Subsec. (b)(4). Pub.L. 100–690, § 7271(b), enacted par. (4), incorporating fifth sentence of former subsec. (a) which provided that "Among applicants priority shall be given to private organizations or institutions which have had past experience in dealing with such youth."

1984 Amendment

Subsec. (a). Pub.L. 98–473, § 651(a)(1), added "and assistance to their families" before the period at the end of the first sentence.

Pub.L. 98–473, § 651(a)(2), substituted "private entities and coordinated networks of such

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entities" for "nonprofit private agencies and coordinated networks of such agencies" before "in accordance with" in the first sentence.

Subsec. (b). Pub.L. 98–473, § 651(b), added "and to the families of such juveniles" before the period at the end thereof.

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S. Code Cong. and Adm. News, p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5712. Eligibility; plan requirements

(a) Runaway and homeless youth center; project providing temporary shelter; counseling services

To be eligible for assistance under section 5711(a) of this title, an applicant shall propose to establish, strengthen, or fund an existing or proposed runaway and homeless youth center, a locally controlled project (including a host family home) that provides temporary shelter, and counseling services to juveniles who have left home without permission of their parents or guardians or to other homeless juveniles.

(b) Provisions of plan

In order to qualify for assistance under section 5711(a) of this title, an applicant shall submit a plan to the Secretary including assurances that the applicant—

(1) shall operate a runaway and homeless youth center located in an area which is demonstrably frequented by or easily reachable by runaway and homeless youth;

(2) shall use such assistance to establish, to strengthen, or to fund a runaway and homeless youth center, or a locally controlled facility providing temporary shelter, that has—

(A) a maximum capacity of not more than 20 youth; and

(B) a ratio of staff to youth that is sufficient to ensure adequate supervision and treatment;

(3) shall develop adequate plans for contacting the parents or other relatives of the youth and ensuring the safe return of the youth according to the best interests of the youth, for contacting local government officials pursuant to informal arrangements established with such officials by the runaway and homeless youth center and for providing for other appropriate alternative living arrangements;

(4) shall develop an adequate plan for ensuring—

(A) proper relations with law enforcement personnel, health and mental health care personnel, social service personnel, school system personnel, and welfare personnel;

(B) coordination with personnel of the schools to which runaway and homeless youth will return, to assist such youth to stay current with the curricula of those schools; and

(C) the return of runaway and homeless youth from correctional institutions;

(5) shall develop an adequate plan for providing counseling and aftercare services to such youth, for encouraging the involvement of their parents or legal guardians in counseling, and for ensuring, as possible, that aftercare services will be provided to those youth who are returned beyond the State in which the runaway and homeless youth center is located;

(6) shall develop an adequate plan for establishing or coordinating with outreach programs designed to attract persons (including, where applicable, persons who are members of a cultural minority and persons with limited ability to speak English) who are eligible to receive services for which a grant under subsection (a) of this section may be expended;

(7) shall keep adequate statistical records profiling the youth and family members whom it serves (including youth who are not referred to out-of-home shelter services), except that records maintained on individual runaway and homeless youth shall not be disclosed without the consent of the individual youth and parent or legal

guardian to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual runaway and homeless youth, and reports or other documents based on such statistical records shall not disclose the identity of individual runaway and homeless youth;

(8) shall submit annual reports to the Secretary detailing how the center has been able to meet the goals of its plans and reporting the statistical summaries required by paragraph (6)[1];

(9) shall demonstrate its ability to operate under accounting procedures and fiscal control devices as required by the Secretary;

(10) shall submit a budget estimate with respect to the plan submitted by such center under this subsection; and

(11) shall supply such other information as the Secretary reasonably deems necessary.

(c) Street-based service project

To be eligible for assistance under section 5711(c) of this title, an applicant shall propose to establish, strengthen, or fund a street-based service project for runaway and homeless youth and shall submit to the Secretary a plan in which the applicant agrees, as part of the project—

(1) to provide qualified supervision of staff, including onstreet supervision by appropriately trained staff;

(2) to provide backup personnel for on-street staff;

(3) to provide informational and health educational material to runaway and homeless youth in need of services;

(4) to provide initial and periodic training of staff who provide services under the project;

(5) to carry out outreach activities for runaway and homeless youth and to collect statistical information on runaway and homeless youth contacted through such activities;

(6) to develop referral relationships with agencies and organizations that provide services or assistance to runaway and homeless youth, including law enforcement, education, social services, vocational education and training, public welfare, legal assistance, mental health and health care;

(7) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds received under section 5711(c) of this title, the achievements of the project under section 5711(c) of this title carried out by the applicant, and statistical summaries describing the number and the characteristics of the runaway and homeless youth who participate in such project in the year for which the report is submitted;

(8) to implement such accounting procedures and fiscal control devices as the Secretary may require;

(9) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under section 5711(c) of this title;

(10) to keep adequate statistical records that profile runaway and homeless youth whom it serves and not to disclose the identity of such youth in reports or other documents based on such statistical records;

(11) not to disclose records maintained on an individual runaway and homeless youth without the informed consent of the youth, to any person other than an agency compiling statistical records; and

(12) to provide to the Secretary such other information as the Secretary may reasonably require.

(d) Home-based service project

To be eligible for assistance under section 5711(d) of this title, an applicant shall propose to establish, strengthen, or fund a home-based service project for runaway youth or youth at risk of family separation and shall submit to the Secretary a plan in which the applicant agrees, as part of the project—

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(1) to provide counseling and information services needed by runaway youth, youth at risk of family separation, and the family (including unrelated individuals in the family household) of such youth, including services relating to basic life skills, interpersonal skill building, educational advancement, job attainment skills, mental and physical health care, parent training, financial planning, and referral to sources of other needed services;

(2) to provide directly, or through an arrangement made by the applicant, 24-hour service to respond to family crises (including immediate access to temporary shelter for runaway youth and youth at risk of family separation affected by family crises);

(3) to establish in partnership with the families of runaway youth and youth at risk of family separation, objectives and measures of success to be achieved as a result of participating in such project;

(4) to provide informational and health educational material to runaway youth and youth at risk of family separation in need of services;

(5) to provide initial and periodic training of staff who provide services under the project;

(6) to carry out outreach activities for runaway youth and youth at risk of family separation, and to collect statistical information on runaway youth and youth at risk of family separation contacted through such activities;

(7) to ensure that—

(i) caseloads will remain sufficiently low to allow for intensive (5 to 20 hours per week) involvement with each family participating in such project; and

(ii) qualified supervision will be provided to staff who provide services under the project;

(8) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds under section 5711(d) of this title, the achievements of the project under this part carried out by the applicant and statistical summaries describing the number and the characteristics of the runaway youth and youth at risk of family separation who participate in such project in the year for which the report is submitted;

(9) to implement such accounting procedures and fiscal control devices as the Secretary may require;

(10) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under section 5711(d) of this title;

(11) to keep adequate statistical records that profile runaway youth and youth at risk of family separation whom it serves and not to disclose the identity of such youth in reports or other documents based on such statistical records;

(12) not to disclose records maintained on an individual runaway youth or youth at risk of family separation without the informed consent of the youth, to any person other than an agency compiling statistical records; and

(13) to provide to the Secretary such other information as the Secretary may reasonably require.

(As amended Pub.L. 98–473, Title II, § 652, Oct. 12, 1984, 98 Stat. 2123; Pub.L. 100–690, Title VII, § 7271(c)(1)–(3), Nov. 18, 1988, 102 Stat. 4453; Pub.L. 102–586, § 3(c), Nov. 4, 1992, 106 Stat. 5019.)

1 So in original. Probably should read "(7)".

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Subsec. (a). Pub.L. 102–586, § 3(c)(1), substituted "project (including a host family home) that provides" for "facility providing".

Subsec. (b)(2). Pub.L. 102–586, § 3(c)(2)(A), directed that in order to qualify for assistance an applicant shall assure that such assistance shall be used to establish, strengthen, or fund runaway homeless youth center or temporary center that has a maximum capacity of not more than 20 youths and a sufficient ratio of staff to youth to ensure adequate supervision and treatment, rather than assuring that such applicant shall have maximum capacity of no more than twenty children, with sufficient ratio of staff to children to ensure adequate supervision and treatment.

Subsec. (b)(3). Pub.L. 102–586, § 3(c)(2)(B), substituted reference to contacting the parents or other relatives of the youth and ensuring safe return of youth according to the best interests of youth, for reference to contacting the child's parents or relatives and assuring safe return of child according to the best interests of child.

Subsec. (b)(4). Pub.L. 102–586, § 3(c)(2)(C), directed applicant to develop adequate plan for ensuring proper relations with personnel from law enforcement, health and mental health care, social services and welfare, and coordination with school personnel to assist runaway youth to stay current with curricula, and return of runaway and homeless youth from correctional institutions, rather than directing applicant to develop adequate plan for assuring proper relations with personnel from law enforcement, social services, school systems, and welfare, and the return of runaway and homeless youth from correctional institutions.

Subsec. (b)(5). Pub.L. 102–586, § 3(c)(2)(D), directed applicant to develop adequate plan for aftercare services and counseling, with parental or guardian involvement, for runaway and homeless youth, and ensure such services will be provided to youth who are returned beyond Sate in which runaway center is located, rather than directing applicant to develop adequate plan for aftercare counseling involving runaway and homeless youth and their families within State in which runaway youth center is located, and for assuring that aftercare services will be provided those children who are returned beyond State in which runaway center is located.

Subsec. (b)(6). Pub.L. 102–586, § 3(c)(2)(G), added par. (6). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub.L. 102–586, § 3(c)(2)(E), (F), redesignated former par. (6) as (7), and, as so redesignated, directed applicant to keep adequate statistical records profiling the youth and family members whom it serves, including youth who are not referred to out-of-home shelter services, rather than directing applicant to keep adequate statistical records profiling the children and family members which it serves.

Subsec. (b)(8)–(11). Pub.L. 102–586, § 3(c)(2)(F), redesignated former pars. (7) to (10) as (8) to (11), respectively.

Subsecs. (c), (d). Pub.L. 102–586, § 3(c)(2)(H), added subsecs. (c) and (d).

1988 Amendment

Subsec. (a). Pub.L. 100–690, § 7271(c)(1), (2), substituted "section 5711(a) of this title" for "this part" and "runaway and homeless youth center" for "runaway center".

Subsec. (b). Introductory text. Pub.L. 100–690, § 7271(c)(1), (3)(A), substituted "section 5711(a) of this title" for "this part" and "including assurances that the applicant" for "meeting the following requirements and including the following information. Each center".

Subsec. (b)(1). Pub.L. 100–690, § 7271(c)(3)(B)(i), (ii), substituted "shall operate a runaway and homeless youth center" for "shall be" and "runaway and homeless youth" for "runaway youth".

Subsec. (b)(3). Pub.L. 100–690, § 7271(c)(3)(C), substituted "runaway and homeless youth center" for "runaway center".

Subsec. (b)(4). Pub.L. 100–690, § 7271(c)(3)(D), substituted "runaway and homeless youth" for "runaway youths".

Subsec. (b)(5). Pub.L. 100–690, § 7271(c)(3)(C), (E), substituted "runaway and homeless youth center" for "runaway center" in two instances and "runaway and homeless youth" for "runaway youth".

Subsec. (b)(6). Pub.L. 100–690, § 7271(c)(3)(D), (E), substituted "individual runaway and homeless youth" for "individual runaway youths" in two instances and "against an individual runaway and homeless youth" for "against an individual runaway youth" in one instance.

1984 Amendment

Subsec. (b)(2). Pub.L. 98–473, § 652(1), substituted "proportion" for "portion" before "to assure".

Subsec. (b)(3). Pub.L. 98–473, § 652(2), struck out "(if such action is required by State law)" before "and assuring".

Subsec. (b)(4). Pub.L. 98–473 added "school system personnel" after "social service personnel,".

Subsec. (b)(5). Pub.L. 98–473, § 652(4), substituted "families" for "parents" before "within the State".

Subsec. (b)(6). Pub.L. 98–473, § 652(5), substituted "family members" for "parents" before "which it serves".

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S. Code Cong. and Adm. News, p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5712a. Repealed. Pub.L. 102–586, § 3(g)(2)(A), Nov. 4, 1992, 106 Stat. 5025

HISTORICAL AND STATUTORY NOTES

Section, Pub.L. 98–415, Title III, § 313, as added Pub.L. 100–690, Title VII, § 7275(b), Nov. 18, 1988, 102 Stat. 4457, related to grants for a national communication system to assist runaway and homeless youths.

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Repealed

§ 5712b. Repealed. Pub.L. 102–586, § 3(g)(2)(B), Nov. 4, 1992, 106 Stat. 5025

HISTORICAL AND STATUTORY NOTES

Section, Pub.L. 93–415, Title III, § 314, as added Pub.L. 100–690, Title VII, § 7276, Nov. 18, 1988, 102 Stat. 4457, related to grants for technical assistance and training to public and private entities for the establishment and operation of runaway and homeless youth centers.

§ 5712c. Repealed. Pub.L. 102–586, § 3(g)(2)(C), Nov. 4, 1992, 106 Stat. 5025

HISTORICAL AND STATUTORY NOTES

Section, Pub.L. 93–415, Title III, § 315, as added Pub.L. 100–690, Title VII, § 7277, Nov. 18, 1988, 102 Stat. 4458, related to the authority of the Secretary to make grants for research, demonstration, and service projects.

§ 5712d. Grants for prevention of sexual abuse and exploitation

(a) In general

The Secretary shall make grants under this section to private, nonprofit agencies for street-based outreach and education, including treatment, counseling, provision of information, and referral for runaway, homeless, and street youth who have been subjected to or are at risk of being subjected to sexual abuse.

(b) Priority

In selecting among applicants for grants under subsection (a) of this section, the Secretary shall give priority to agencies that have experience in providing services to runaway, homeless, and street youth.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) $7,000,000 for fiscal year 1996;

(2) $8,000,000 for fiscal year 1997; and

(3) $15,000,000 for fiscal year 1998.

(d) Definitions

For the purposes of this section—

(1) the term "street–based outreach and education" includes education and prevention efforts directed at offenses committed by offenders who are not known to the victim as well as offenders who are known to the victim; and

(2) the term "street youth" means a juvenile who spends a significant amount of time on the street or in other areas of exposure to encounters that may lead to sexual abuse.

(Pub.L. 93–415, Title III, § 316, as added Pub.L. 103–322, Title IV, § 40155(2), Sept. 13, 1994, 108 Stat. 1922.)

HISTORICAL AND STATUTORY NOTES

Codification

Section 40155(1) of Pub.L. 103–322 directed the redesignation of sections 316 and 317 of Pub.L. 93–415 as sections 317 and 318, respectively. Such directive could not be executed as section 3(g)(2)(D) of Pub.L. 102–586 had previously redesignated sections 316 and 317 of Pub.L. 93–415 as sections 313 and 314, respectively. Such sections are classified to sections 5713 and 5714 of this title.

Legislative History

For legislative history and purpose of Pub.L. 103–322, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

LIBRARY REFERENCES

Infants ⇐13.
C.J.S. Infants §§ 5, 92 to 98.
WESTLAW Topic No. 211.

§ 5713. Approval of application by Secretary; priority

An application by a State, locality, or private entity for a grant under section 5711(a), (c), or (d) of this title may be approved by the Secretary only if it is consistent with the

applicable provisions of section 5711(a), (c), or (d) of this title and meets the requirements set forth in section 5712 of this title. Priority shall be given to grants smaller than $200,000. In considering grant applications under section 5711(a) of this title, priority shall be given to organizations which have a demonstrated experience in the provision of service to runaway and homeless youth and their families.

(Pub.L. 93–415, Title III, § 313, formerly § 316, formerly § 313, Sept. 7, 1974, 88 Stat. 1131; Pub.L. 95–115, § 7(a)(4), Oct. 3, 1977, 91 Stat. 1058; Pub.L. 96–509, § 18(e), Dec. 8, 1980, 94 Stat. 2762; Pub.L. 98–473, Title II, § 653, Oct. 12, 1984, 98 Stat. 2123; renumbered § 316 and amended Pub.L. 100–690, Title VII, §§ 7271(c)(1), 7275(a), Nov. 18, 1988, 102 Stat. 4453, 4457; renumbered § 313 and amended Pub.L. 102–586, § 3(d), (g)(2)(D), Nov. 4, 1992, 106 Stat. 5022, 5025.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Pub.L. 102–586, § 3(d), substituted "section 5711(a), (c), or (d) of this title" for "section 5711(a) of this title" wherever appearing and "$200,000" for "$150,000".

1988 Amendment

Pub.L. 100–690, § 7271(c)(1), substituted "section 5711(a) of this title" for "this part" in three instances.

1984 Amendment

Pub.L. 98–473 substituted "private entity" for "nonprofit private agency" before "for a grant".

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p . 3182. See, also, Pub.L. 100–690, 1988 U.S.Code Cong. and Adm. News, p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5714. Grants to private entities; staffing

Nothing in this subchapter shall be construed to deny grants to private entities which are fully controlled by private boards or persons but which in other respects meet the requirements of this part and agree to be legally responsible for the operation of the runaway and homeless youth center and the programs, projects, and activities they carry out under this subchapter. Nothing in this subchapter shall give the Federal Government control over the staffing and personnel decisions of facilities receiving Federal funds under this subchapter.

(Pub.L. 93–415, Title III, § 314, formerly § 317, formerly § 314, Sept. 7, 1974, 88 Stat. 1131; Pub.L. 98–473, Title II, § 654(2), Oct. 12, 1984, 98 Stat. 2123; renumbered § 317 and amended Pub.L. 100–690, Title VII, §§ 7271(c)(4), 7275(a), Nov. 18, 1988, 102 Stat. 4453, 4457; renumbered § 314 and amended Pub.L. 102–586, § 3(e), (g)(2)(D), Nov. 4, 1992, 106 Stat. 5022, 5025.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Pub.L. 102–586, § 3(e), substituted "subchapter" for "part" wherever appearing, added references to programs, projects, and activities carried out under this subchapter by runaway and homeless youth centers, and qualified facilities receiving Federal funds as those facilities receiving such funds under this subchapter.

1988 Amendment

Pub.L. 100–690, § 7271(c)(4), substituted "runaway and homeless youth center" for "runaway center".

1984 Amendment

Pub.L. 98–473, § 654(2)(A), substituted "private entities" for "nonprofit private agencies" before "which are fully controlled".

Pub.L. 98–473, § 654(2)(B), substituted "center" for "house" after "runaway".

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub.L. 98–473 effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S.Code Cong. and Adm. News, p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

PART B—TRANSITIONAL LIVING GRANT PROGRAM

HISTORICAL AND STATUTORY NOTES

1988 Amendment

Pub.L. 100–690, Title VII, §§ 7272(2), 7273(f), Nov. 18, 1988, 102 Stat. 4454, 4455, struck out "PART B—RECORDS" heading, set out preceding section 5731 of this title; and enacted "PART B—TRANSITIONAL LIVING GRANT PROGRAM" heading, set out above.

§ 5714–1. Purpose and authority for program

(a) The Secretary is authorized to make grants and to provide technical assistance to public and nonprofit private entities to establish and operate transitional living youth projects for homeless youth.

(b) For purposes of this part—

(1) the term "homeless youth" means any individual—

(A) who is not less than 16 years of age and not more than 21 years of age;

(B) for whom it is not possible to live in a safe environment with a relative; and

(C) who has no other safe alternative living arrangement; and

(2) the term "transitional living youth project" means a project that provides shelter and services designed to promote a transition to self-sufficient living and to prevent long-term dependency on social services.

(Pub.L. 93–415, Title III, § 321, as added Pub.L. 100–690, Title VII, § 7273(f), Nov. 18, 1988, 102 Stat. 4455.)

HISTORICAL AND STATUTORY NOTES

Effective Date

Section effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100–690, see 1988 U.S.Code Cong. and Adm. News, p. 5937.

LIBRARY REFERENCES

Infants ⇐131 et seq.
United States ⇐82.
C.J.S. Infants §§ 31 to 54.
C.J.S. United States § 122.
WESTLAW Topic Nos. 211, 393.

§ 5714–2. Eligibility

(a) To be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund a transitional living youth project for homeless youth and shall submit to the Secretary a plan in which such applicant agrees, as part of such project—

(1) to provide, directly or indirectly, shelter (such as group homes, host family homes, and supervised apartments) and services (including information and counseling services in basic life skills which shall include money management, budgeting, consumer education, and use of credit, interpersonal skill building, educational advancement, job attainment skills, and mental and physical health care) to homeless youth;

(2) to provide such shelter and such services to individual homeless youth throughout a continuous period not to exceed 540 days;

(3) to provide, directly or indirectly, on-site supervision at each shelter facility that is not a family home;

(4) that such shelter facility used to carry out such project shall have the capacity to accommodate not more than 20 individuals (excluding staff);

(5) to provide a number of staff sufficient to ensure that all homeless youth participating in such project receive adequate supervision and services;

(6) to provide a written transitional living plan to each youth based on an assessment of such youth's needs, designed to help the transition from supervised participation in such project to independent living or another appropriate living arrangement;

(7) to develop an adequate plan to ensure proper referral of homeless youth to social service, law enforcement, educational, vocational, training, welfare, legal

service, and health care programs and to help integrate and coordinate such services for youths;

(8) to provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the project;

(9) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds under this part, the achievements of the project under this part carried out by the applicant and statistical summaries describing the number and the characteristics of the homeless youth who participate in such project in the year for which the report is submitted;

(10) to implement such accounting procedures and fiscal control devices as the Secretary may require;

(11) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under this part;

(12) to keep adequate statistical records profiling homeless youth which it serves and not to disclose the identity of individual homeless youth in reports or other documents based on such statistical records;

(13) not to disclose records maintained on individual homeless youth without the informed consent of the individual youth to anyone other than an agency compiling statistical records; and

(14) to provide to the Secretary such other information as the Secretary may reasonably require.

(b) In selecting eligible applicants to receive grants under this part, the Secretary shall give priority to entities that have experience in providing to homeless youth shelter and services of the types described in subsection (a)(1) of this section.

(Pub.L. 93–415, Title III, § 322, as added Pub.L. 100–690, Title VII, § 7273(f), Nov. 18, 1988, 102 Stat. 4456, and amended Pub.L. 102–586, § 3(f), Nov. 4, 1992, 106 Stat. 5022.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Subsec. (a)(1). Pub.L. 102–586, § 3(f)(1), added reference to money management, budgeting, consumer education, and use of credit to information and counseling services in basic life skills provided to homeless youth.

Subsec. (a)(13). Pub.L. 102–586, § 3(f)(2), directed applicant not to disclose records maintained on individual homeless youth without informed consent of the individual youth to anyone other than an agency compiling statistical records, rather than directing applicant not to disclose records maintained on individual homeless youth without consent of the individual youth and parent or legal guardian to anyone other than an agency compiling statistical records or a government agency involved in disposition of criminal charges against youth.

Effective Date

Section effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100–690, see 1988 U.S. Code Cong. and Adm. News, p. 5937. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

PART C—NATIONAL COMMUNICATIONS SYSTEM

§ 5714–11. Authority to make grants

With funds reserved under section 5751(a)(3) of this title, the Secretary shall make grants for a national communication system to assist runaway and homeless youth in communicating with their families and with service providers. The Secretary shall give priority to grant applicants that have experience in providing telephone services to runaway and homeless youth.

(Pub.L. 93–415, Title III, § 331, as added Pub.L. 102–586, § 3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5023.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

[Part 2 – p. 76]

PART D—COORDINATING, TRAINING, RESEARCH, AND OTHER ACTIVITIES

§ 5714–21. Coordination

With respect to matters relating to the health, education, employment, and housing of runaway and homeless youth, the Secretary shall coordinate the activities of agencies of the Department of Health and Human Services with the activities of other Federal entities and with the activities of entities that are eligible to receive grants under this subchapter.

(Pub.L. 93–415, Title III, § 341, as added Pub.L. 102–586, § 3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5023.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5714–22. Grants for technical assistance and training

The Secretary may make grants to statewide and regional nonprofit organizations (and combinations of such organizations) to provide technical assistance and training to public and private entities (and combinations of such entities) that are eligible to receive grants under this subchapter, for the purpose of carrying out the programs, projects, or activities for which such grants are made.

(Pub.L. 93–415, Title III, § 342, as added Pub.L. 102–586, § 3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5023.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5714–23. Authority to make grants for research, demonstration, and service projects

(a) Authorization; purposes

The Secretary may make grants to States, localities, and private entities (and combinations of such entities) to carry out research, demonstration, and service projects designed to increase knowledge concerning, and to improve services for, runaway youth and homeless youth.

(b) Selection factors; special considerations

In selecting among applications for grants under subsection (a) of this section, the Secretary shall give special consideration to proposed projects relating to—

(1) youth who repeatedly leave and remain away from their homes;

(2) home-based and street-based services for, and outreach to, runaway youth and homeless youth;

(3) transportation of runaway youth and homeless youth in connection with services authorized to be provided under this subchapter;

(4) the special needs of runaway youth and homeless youth programs in rural areas;

(5) the special needs of programs that place runaway youth and homeless youth in host family homes;

(6) staff training in—

(A) the behavioral and emotional effects of sexual abuse and assault;

(B) responding to youth who are showing effects of sexual abuse and assault; and

(C) agency-wide strategies for working with runaway and homeless youth who have been sexually victimized;

(7) innovative methods of developing resources that enhance the establishment or operation of runaway and homeless youth centers;

(8) training for runaway youth and homeless youth, and staff training, related to preventing and obtaining treatment for infection by the human immunodeficiency virus (HIV);

(9) increasing access to health care (including mental health care) for runaway youth and homeless youth; and

(10) increasing access to education for runaway youth and homeless youth.

(c) Priority

In selecting among applicants for grants under subsection (a) of this section, the Secretary shall give priority to applicants who have experience working with runaway youth or homeless youth.

(Pub.L. 93–415, Title III, § 343, as added Pub.L. 102–586, § 3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5023.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5714–24. Temporary demonstration projects to provide services to youth in rural areas

(a)(1) With funds appropriated under section 5751(c) of this title, the Secretary may make grants on a competitive basis to States, localities, and private entities (and combinations of such entities) to provide services (including transportation) authorized to be provided under part A of this subchapter, to runaway and homeless youth in rural areas.

(2)(A) Each grant made under paragraph (1) may not exceed $100,000.

(B) In each fiscal year for which funds are appropriated to carry out this section, grants shall be made under paragraph (1) to eligible applicants to carry out projects in not fewer than 10 States.

(C) Not more than 2 grants may be made under paragraph (1) in each fiscal year to carry out projects in a particular State.

(3) Each eligible applicant that receives a grant for a fiscal year to carry out a project under this section shall have priority to receive a grant for the subsequent fiscal year to carry out a project under this section.

(b) To be eligible to receive a grant under subsection (a) of this section, an applicant shall—

(1) submit to the Secretary an application in such form and containing such information and assurances as the Secretary may require by rule; and

(2) propose to carry out such project in a geographical area that—

(A) has a population under 20,000;

(B) is located outside a Standard Metropolitan Statistical Area; and

(C) agree to provide to the Secretary an annual report identifying—

(i) the number of runaway and homeless youth who receive services under the project carried out by the applicant;

(ii) the types of services authorized under part A of this subchapter that were needed by, but not provided to, such youth in the geographical area served by the project;

(iii) the reasons the services identified under clause (ii) were not provided by the project; and

(iv) such other information as the Secretary may require.

(Pub.L. 93–415, Title III, § 344, as added Pub.L. 102–586, § 3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5024.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

[Part 2 – p. 77]

PART E—GENERAL PROVISIONS

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Pub.L. 102–586, § 3(g)(1)(B)(i), Nov. 4, 1992, 106 Stat. 5022, substituted "PART E" for "PART C".

1988 Amendment

Pub.L. 100–690, Title VII, §§ 7272(2), 7273(e)(1), Nov. 18, 1988, 102 Stat. 4454, 4455, struck out "PART C—AUTHORIZATION OF APPROPRIATIONS" heading, set out preceding section 5751 of this title; and enacted "PART C—GENERAL PROVISIONS" heading, set out above.

§ 5714a. Assistance to potential grantees

The Secretary shall provide informational assistance to potential grantees interested in establishing runaway and homeless youth centers and transitional living youth projects. Such assistance shall consist of information on—

(1) steps necessary to establish a runaway and homeless youth center or transitional living youth project, including information on securing space for such center or such project, obtaining insurance, staffing, and establishing operating procedures;

(2) securing local private or public financial support for the operation of such center or such project, including information on procedures utilized by grantees under this subchapter; and

(3) the need for the establishment of additional runaway and homeless youth centers in the geographical area identified by the potential grantee involved.

(Pub.L. 93–415, Title III, § 371, formerly § 315, as added Pub.L. 98–473, Title II, § 655(2), Oct. 12, 1984, 98 Stat. 2124; renumbered § 341 and amended Pub.L. 100–690, Title VII, § 7273(a), (e)(2), Nov. 18, 1988, 102 Stat. 4454, 4455; renumbered § 371, Pub.L. 102–586, § 3(g)(1)(B)(ii), Nov. 4, 1992, 106 Stat. 5022.)

HISTORICAL AND STATUTORY NOTES

1988 Amendment

Pub.L. 100–690, § 7273(a)(1) to (4), substituted: in the introductory text, "runaway and homeless youth centers and transitional living youth projects" for "runaway and homeless youth centers"; in par. (1), "runaway and homeless youth center or transitional living youth project" for "runaway and homeless youth center"; in pars. (1) and (2), "such center or such project" for "such center"; and, in par. (3), "runaway and homeless youth centers" for "runaway youth centers".

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date

Section effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S.Code Cong. and Adm. News, p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5714b. Lease of surplus Federal facilities for use as runaway and homeless youth centers or as transitional living youth shelter facilities

(a) Conditions of lease arrangements

The Secretary may enter into cooperative lease arrangements with States, localities, and nonprofit private agencies to provide for the use of appropriate surplus Federal facilities transferred by the General Services Administration to the Department of Health and Human Services for use as runaway and homeless youth centers or as transitional living youth shelter facilities if the Secretary determines that—

(1) the applicant involved has suitable financial support necessary to operate a runaway and homeless youth center or transitional living youth project, as the case may be, under this subchapter;

(2) the applicant is able to demonstrate the program expertise required to operate such center in compliance with this subchapter, whether or not the applicant is receiving a grant under this part; and

(3) the applicant has consulted with and obtained the approval of the chief executive officer of the unit of general local government in which the facility is located.

(b) Period of availability; rent-free use; structural changes; Federal ownership and consent

(1) Each facility made available under this section shall be made available for a period of not less than 2 years, and no rent or fee shall be charged to the applicant in connection with use of such facility.

(2) Any structural modifications or additions to facilities made available under this section shall become the property of the United States. All such modifications or additions may be made only after receiving the prior written consent of the Secretary or other appropriate officer of the Department of Health and Human Services.

(Pub.L. 93–415, Title III, § 372, formerly § 316, as added Pub.L. 98–473, Title II, § 655(2), Oct. 12, 1984, 98 Stat. 2124; renumbered § 342 and amended Pub.L. 100–690, Title VII, § 7273(b), (e)(2), Nov. 18, 1988, 102 Stat. 4454, 4455; renumbered § 372, Pub.L. 102–586, § 3(g)(1)(B)(ii), Nov. 4, 1992, 106 Stat. 5022.)

HISTORICAL AND STATUTORY NOTES

1988 Amendment

Heading. Pub.L. 100–690, § 7273(b)(1), substituted "runaway and homeless youth centers or as transitional living youth shelter facilities" for "runaway and homeless youth centers".

Subsec. (a). Pub.L. 100–690, § 7273(b)(2)(A), (B), substituted: in the introductory text, "runaway and homeless youth centers or as transitional living youth shelter facilities" for "runaway and homeless youth centers"; and, in par. (1), "runaway and homeless youth center or transitional living youth project, as the case may be, under this subchapter" for "runaway and homeless youth center".

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date

Section effective Oct. 12, 1984, see section 670(a) of Pub.L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690 1988 U.S.Code Cong. and Adm. News, p. 5937; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

PART F—ADMINISTRATIVE PROVISIONS

HISTORICAL AND STATUTORY NOTES

1992 Amendment

Pub.L. 102–586, § 3(g)(1)(A)(i), Nov. 4, 1992, 106 Stat. 5022, substituted "PART F" for "PART D".

1988 Amendment

Pub.L. 100–690, Title VII, § 7272(3), Nov. 18, 1988, 102 Stat. 4454, added "PART D—ADMINISTRATIVE PROVISIONS" heading.

§ 5715. Reports

(a) Not later than 180 days after the end of each fiscal year, the Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate on the status, activities, and accomplishments of the runaway and homeless youth centers that are funded under parts A, B, C, D, and E of this subchapter, with particular attention to—

(1) in the case of centers funded under part A of this subchapter—

(A) their effectiveness in alleviating the problems of runaway and homeless youth;

(B) their ability to reunite children with their families and to encourage the resolution of intrafamily problems through counseling and other services;

(C) their effectiveness in strengthening family relationships and encouraging stable living conditions for children; and

(D) their effectiveness in helping youth decide upon a future course of action; and

(2) in the case of centers funded under part B of this subchapter—

Effective Date; Applicability

Section effective Oct. 1, 1988, and inapplicable with respect to fiscal year 1989, pursuant to section 7296(a), (b)(2) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100–690, see 1988 U.S. Code Cong. and Adm. News, p. 5937. See, also, Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5733. Repealed. Pub.L. 102–586, § 3(g)(2)(E), Nov. 4, 1992, 106 Stat. 5025

HISTORICAL AND STATUTORY NOTES

Section, Pub.L. 93–415, Title III, § 365, as added Pub.L. 100–690, Title VII, § 7279, Nov. 18, 1988, 102 Stat. 4458, related to the Secretary's obligation to coordinate the activities of health agencies with the activities of entities eligible to receive grants.

§ 5741. Repealed. Pub.L. 98–473, Title II, § 656, Oct. 12, 1984, 98 Stat. 2124

HISTORICAL AND STATUTORY NOTES

Section, Pub. L. 93–415, Title III, § 331, as added Pub. L. 95–115, § 7(c), Oct. 3, 1977, 91 Stat. 1059, and amended Pub. L. 96–88, Title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, authorized the President to submit to the Congress after April 30, 1978, a reorganization plan for establishment of an Office of Youth Assistance, subject to Congressional resolution of disapproval.

Effective Date of Repeal

Section repealed effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

§ 5751. Authorization of appropriations

(a) Part A of this subchapter

(1) There are authorized to be appropriated to carry out this subchapter (other than part B of this subchapter and section 5714–24 of this title) $75,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996.

(2) Not less than 90 percent of the funds appropriated under paragraph (1) for a fiscal year shall be available to carry out section 5711(a) of this title in such fiscal year.

(3) After making the allocation required by paragraph (2), the Secretary shall reserve for the purpose of carrying out section 5714–11 of this title—

(A) for fiscal year 1993 not less than $912,500, of which $125,000 shall be available for the acquisition of communications equipment;

(B) for fiscal year 1994 not less than $826,900;

(C) for fiscal year 1995 not less than $868,300; and

(D) for fiscal year 1996 not less than $911,700.

(4) In the use of funds appropriated under paragraph (1) that are in excess of $38,000,000 but less than $42,600,000, priority may be given to awarding enhancement grants to programs (with priority to programs that receive grants of less than $85,000), for the purpose of allowing such programs to achieve higher performance standards, including—

(A) increasing and retaining trained staff;

(B) strengthening family reunification efforts;

(C) improving aftercare services;

(D) fostering better coordination of services with public and private entities;

(E) providing comprehensive services, including health and mental health care, education, prevention and crisis intervention, and vocational services; and

(F) improving data collection efforts.

(5) In the use of funds appropriated under paragraph (1) that are in excess of $42,599,999—

(A) 50 percent may be targeted at developing new programs in unserved or underserved communities; and

(B) 50 percent may be targeted at program enhancement activities described in paragraph (3).

(b) Part B of this subchapter

(1) Subject to paragraph (2), there are authorized to be appropriated to carry out (B)[1] $25,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996.

(2) No funds may be appropriated to carry out part B of this subchapter for a fiscal year unless the aggregate amount appropriated for such fiscal year to carry out part A of this subchapter exceeds $26,900,000.

(c) Temporary demonstration projects

There is authorized to be appropriated to carry out section 5714–24 of this title $1,000,000 for each of fiscal years 1993, 1994, 1995, and 1996.

(d) Consultative and coordinating requirements

The Secretary (through the Office of Youth Development which shall administer this subchapter) shall consult with the Attorney General (through the Administrator of the Office of Juvenile Justice and Delinquency Prevention) for the purpose of coordinating the development and implementation of programs and activities funded under this subchapter with those related programs and activities funded under subchapter II of this chapter and under the Omnibus Crime Control and Safe Streets Act of 1968, as amended [42 U.S.C.A. § 3701 et seq.].

(e) Conditions for use of funds

No funds appropriated to carry out the purposes of this subchapter—

(1) may be used for any program or activity which is not specifically authorized by this subchapter; or

(2) may be combined with funds appropriated under any other Act if the purpose of combining such funds is to make a single discretionary grant or a single discretionary payment unless such funds are separately identified in all grants and contracts and are used for the purposes specified in this subchapter.

(Pub.L. 93–415, Title III, § 385, formerly § 341, Sept. 7, 1974, 88 Stat. 1132; Pub.L. 94–273, § 32(c), Apr. 21, 1976, 90 Stat. 380, renumbered § 341, and amended Pub.L. 95–115, § 7(c), (d), Oct. 3, 1977, 91 Stat. 1059, 1060; Pub.L. 96–509, § 2(b), Dec. 8, 1980, 94 Stat. 2750; renumbered § 331, and amended Pub.L. 98–473, Title II, § 657(b)–(d), (f), Oct. 12, 1984, 98 Stat. 2125; renumbered § 366 and amended Pub.L. 100–690, Title VII, §§ 7273(d), (e)(2), 7280, Nov. 18, 1988, 102 Stat. 4455, 4459; Pub.L. 100–690, Title VII, § 7280(2), as amended Pub.L. 101–204, Title X, § 1001(e)(2), Dec. 7, 1989, 103 Stat. 1827; Pub.L. 101–204, Title X, § 1003(3), Dec. 7, 1989, 103 Stat. 1827; renumbered § 385 and amended Pub.L. 102–586, § 3(g)(1)(A)(ii), (i), Nov. 4, 1992, 106 Stat. 5022, 5026.)

[1] So in original. Probably should be "part B".

HISTORICAL AND STATUTORY NOTES

References in Text

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (d), is Pub.L. 90–351, June 19, 1968, 82 Stat. 197, as amended, Title I of which is classified principally to chapter 46 (§ 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under § 3701 of this title and Tables.

Codifications

Pub.L. 101–204, § 1001(e)(2), amended the directory language of Pub.L. 100–690, § 7280(2), resulting in no change in text.

1992 Amendments

Subsec. (a)(1). Pub.L. 102–586, § 3(i)(1)(A), substituted provisions authorizing to be appropriated to carry out this subchapter, other than part B and section 5714-24 of this title, $75,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996, for provisions authorizing to be appropriated to carry out the purposes of part A of this subchapter such sums as may be necessary for fiscal years 1989, 1990, 1991, and 1992.

Subsec. (a)(3)–(5). Pub.L. 102–586, § 3(i)(1)(B), added pars. (3) to (5).

Subsec. (b)(1). Pub.L. 102–586, § 3(i)(2), substituted provisions authorizing to be appropriated to carry out part B of this subchapter $25,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996, for provisions authorizing to be appropriated to carry out part B of this subchapter $5,000,000 for fiscal year 1989 and such sums as may be necessary for each of fiscal year 1990, 1991, and 1992.

Subsec. (c). Pub.L. 102–586, § 3(i)(4), added subsec. (c). Former subsec. (c) redesignated (d).

Subsecs. (d), (e). Pub.L. 102–586, § 3(i)(3), redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1989 Amend...

Subsec. (a)(1). Pub.L. 101–204, § 1003(3), substituted "there are authorized" for "there is authorized".

1988 Amendment

Subsec. (a)(1). Pub.L. 100–690, § 7280(1) to (3), in striking "1985, 1986, 1987, and 1988" and in inserting "1989, 1990, 1991, and 1992", substituted appropriations authorization of necessary sums for fiscal years 1989 through 1992 for former such authorizations for fiscal years 1985 through 1988, and designated the provisions as par. (1).

Subsec. (a)(2). Pub.L. 100–690, § 7280(4), added par. (2).

Subsec. (b). Pub.L. 100–690, § 7273(d)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsecs. (c), (d). Pub.L. 100–690, § 7273(d)(1), redesignated subsecs. (b) and (c) as (c) and (d).

1984 Amendment

Subsec. (a). Pub. L. 98–473, § 657(b), substituted "such sums as may be necessary for fiscal years 1985, 1986, 1987, and 1988." for "for each of the fiscal years ending September 30, 1981, September 30, 1982, September 30, 1983, and September 30, 1984 the sum of $25,000,000."

Subsec. (b). Pub. L. 98–473, § 657(c), struck out "Associate" before "Administrator".

Subsec. (c). Pub. L. 98–473, § 657(d), added subsec. (c).

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, except that enactment of subsec. (c)(2) by Pub. L. 98–473 shall not apply with respect to any grant or payment made before Oct. 12, 1984, see section 670 of Pub. L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Repeals

Pub.L. 100–690, Title VII, § 7272(2), Nov. 18, 1988, 102 Stat. 4454, struck out "PART C—AUTHORIZATION OF APPROPRIATIONS" heading, set out preceding this section.

Legislative History

For legislative history and purpose of Pub. L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S. Code Cong. and Adm. News, p. 5937; Pub.L. 101–204, 1989 U.S. Code Cong. and Adm. News, p. 1238; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229.

SUBCHAPTER IV—MISSING CHILDREN

§ 5771. Congressional findings

The Congress hereby finds that—

(1) each year thousands of children are abducted or removed from the control of a parent having legal custody without such parent's consent, under circumstances which immediately place them in grave danger;

(2) many of these children are never reunited with their families;

(3) often there are no clues to the whereabouts of these children;

(4) many missing children are at great risk of both physical harm and sexual exploitation;

(5) in many cases, parents and local law enforcement officials have neither the resources nor the expertise to mount expanded search efforts;

(6) abducted children are frequently moved from one locality to another, requiring the cooperation and coordination of local, State, and Federal law enforcement efforts;

(7) on frequent occasions, law enforcement authorities quickly exhaust all leads in missing children cases, and require assistance from distant communities where the child may be located; and

(8) Federal assistance is urgently needed to coordinate and assist in this interstate problem.

(Pub. L. 93–415, Title IV, § 402, as added Pub. L. 98–473, Title II, § 660, Oct. 12, 1984, 98 Stat. 2125.)

HISTORICAL AND STATUTORY NOTES

Effective Date

Section effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Short Title

For short title of Title IV of Pub. L. 98–415, which enacted this subchapter, as the "Missing Children's Assistance Act", see section 401 of Pub. L. 98–473, set out as a Short Title note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub. L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182.

§ 5772. Definitions

For the purpose of this subchapter—

(1) the term "missing child" means any individual less than 18 years of age whose whereabouts are unknown to such individual's legal custodian if—

(A) the circumstances surrounding such individual's disappearance indicate that such individual may possibly have been removed by another from the control of such individual's legal custodian without such custodian's consent; or

(B) the circumstances of the case strongly indicate that such individual is likely to be abused or sexually exploited; and

(2) the term "Administrator" means the Administrator of the Office of Juvenile Justice and Delinquency Prevention.

(Pub. L. 93–415, Title IV, § 403, as added Pub. L. 98–473, Title II, § 660, Oct. 12, 1984, 98 Stat. 2126.)

HISTORICAL AND STATUTORY NOTES

Effective Date

Section effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub. L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182.

§ 5773. Duties and functions of the Administrator

(a) Description of activities

The Administrator shall—

(1) issue such rules as the Administrator considers necessary or appropriate to carry out this subchapter;

(2) make such arrangements as may be necessary and appropriate to facilitate effective coordination among all federally funded programs relating to missing children (including the preparation of an annual comprehensive plan for facilitating such coordination);

(3) provide for the furnishing of information derived from the national toll-free telephone line, established under subsection (b)(1) of this section, to appropriate entities;

(4) provide adequate staff and agency resources which are necessary to properly carry out the responsibilities pursuant to this subchapter; and

(5) not later than 180 days after the end of each fiscal year, submit a report to the President, Speaker of the House of Representatives, and the President pro tempore of the Senate—

(A) containing a comprehensive plan for facilitating cooperation and coordination in the succeeding fiscal year among all agencies and organizations with responsibilities related to missing children;

(B) identifying and summarizing effective models of Federal, State, and local coordination and cooperation in locating and recovering missing children;

(C) identifying and summarizing effective program models that provide treatment, counseling, or other aid to parents of missing children or to children who have been the victims of abduction;

(D) describing how the Administrator satisfied the requirements of paragraph (4) in the preceding fiscal year;

(E) describing in detail the number and types of telephone calls received in the preceding fiscal year over the national toll-free telephone line established under subsection (b)(1)(A) of this section and the number and types of communications referred to the national communications system established under section 5712a of this title;

describing in detail the activities in the preceding fiscal year of the national resource center and clearinghouse established under subsection (b)(2) of this section;

(G) describing all the programs for which assistance was provided under section 5775 of this title in the preceding fiscal year;

(H) summarizing the results of all research completed in the preceding year for which assistance was provided at any time under this subchapter; and

(I)(i) identifying each clearinghouse with respect to which assistance is provided under section 5775(a)(9) of this title in the preceding fiscal year;

(ii) describing the activities carried out by such clearinghouse in such fiscal year;

(iii) specifying the types and amounts of assistance (other than assistance under section 5775(a)(9) of this title) received by such clearinghouse in such fiscal year; and

(iv) specifying the number and types of missing children cases handled (and the number of such cases resolved) by such clearinghouse in such fiscal year and summarizing the circumstances of each such cases.[1]

(b) Establishment of toll-free telephone line and national resource center and clearinghouse; national incidence studies; use of school records and birth certificates

The Administrator, either by making grants to or entering into contracts with public agencies or nonprofit private agencies, shall—

(1)(A) establish and operate a national 24-hour toll-free telephone line by which individuals may report information regarding the location of any missing child, or other child 13 years of age or younger whose whereabouts are unknown to such child's legal custodian, and request information pertaining to procedures necessary to reunite such child with such child's legal custodian; and

(B) coordinating[2] the operation of such telephone line with the operation of the national communications system established under section 5712a of this title;

(2) establish and operate a national resource center and clearinghouse designed—

(A) to provide to State and local governments, public and private nonprofit agencies, and individuals information regarding—

(i) free or low-cost legal, restaurant, lodging, and transportation services that are available for the benefit of missing children and their families; and

(ii) the existence and nature of programs being carried out by Federal agencies to assist missing children and their families;

(B) to coordinate public and private programs which locate, recover, or reunite missing children with their legal custodians;

(C) to disseminate nationally information about innovative and model missing childrens' programs, services, and legislation; and

(D) to provide technical assistance and training to law enforcement agencies, State and local governments, elements of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of the missing and exploited child case and in locating and recovering missing children; and

(3) periodically conduct national incidence studies to determine for a given year the actual number of children reported missing each year, the number of children who are victims of abduction by strangers, the number of children who are the victims of parental kidnapings, and the number of children who are recovered each year; and

(4) provide to State and local governments, public and private nonprofit agencies, and individuals information to facilitate the lawful use of school records and birth certificates to identify and locate missing children.

(c) Independent status of other Federal agencies

Nothing contained in this subchapter shall be construed to grant to the Administrator any law enforcement responsibility or supervisory authority over any other Federal agency.

(Pub. L. 93-415, Title IV, § 404, as added Pub. L. 98-473, Title II, § 660, Oct. 12, 1984, 98 Stat. 2126, and amended Pub.L. 100-690, Title VII, § 7285, Nov. 18, 1988, 102 Stat. 4459; Pub.L. 101-204, Title X, § 1004(2), Dec. 7, 1989, 103 Stat. 1828.)

1 So in original. Probably should be "case".

2 So in original. Probably should be "coordinate".

HISTORICAL AND STATUTORY NOTES

1989 Amendment

Subsec. (a)(5)(C). Pub.L. 101-204, § 1004(2)(A), substituted "victims of abduction;" for "victims of abduction,".

Subsec. (b)(2)(A). Pub.L. 101-204, § 1004(2)(B), substituted "to provide to State" for "provide to State", in material preceding cl. (i).

1988 Amendment

Subsec. (a)(3). Pub.L. 100-690, § 7285(a)(1), substituted "appropriate entities" for "appropriate law enforcement entities".

Subsec. (a)(4). Pub.L. 100-690, § 7285(a)(2), inserted "and" at the end of par. (4).

Subsec. (a)(5). Pub.L. 100-690, § 7285(a)(3), substituted provisions for submitting a report to the President, Speaker of the House of Representatives, and the President Pro Tempore of the Senate containing items described in subpars. (A) to (I) for former requirement that the Administrator analyze, compile, publish, and disseminate an annual summary of recently completed research, research being conducted, and Federal, State, and local demonstration projects relating to missing children with particular emphasis on effective models of local, State, and Federal coordination and cooperation in locating missing children; effective programs designed to promote community awareness of the problem of missing children; effective programs to prevent the abduction and sexual exploitation of children (including parent, child, and community education); and effective program models which provide treatment, counseling, or other aid to parents of missing children or to children who have been the victims of abduction or sexual exploitation.

Subsec. (a)(6). Pub.L. 100-690, § 5773(a)(4), struck par. (6) requiring the Administrator to prepare, in conjunction with and with the final approval of the Advisory Board on Missing Children, an annual comprehensive plan for facilitating cooperation and coordination among all agencies and organizations with responsibilities related to missing children. See subsec. (a)(5)(A) of this section.

Subsec. (b)(1)(A). Pub.L. 100-690, § 7285(b)(1)(A)-(C), designated existing provision as subpar. (A); substituted "national 24-hour toll-free telephone line" for "national toll-free telephone line"; and added "and" after the semicolon.

Subsec. (b)(1)(B). Pub.L. 100-690, § 7285(b)(1)(D), added subpar. (B).

Subsec. (b)(2)(A). Pub.L. 100-690, § 7285(b)(2)(A), substituted provision for furnishing information regarding listed services and existence of programs carried out by Federal agencies to assist missing children and their families for provision respecting establishment and operation of a national resource and clearinghouse center designed to provide technical assistance to local and State governments, public and private nonprofit agencies, and individuals in locating and recovering missing children.

Subsec. (b)(2)(D). Pub.L. 100-690, § 7285(b)(2)(B)(i), (ii), substituted "technical assistance and training" for "technical assistance"; and required such assistance in locating and recovering missing children.

Subsec. (b)(3). Pub.L. 100-690, § 7285(b)(3), substituted "; and" for the period at the end of par. (3).

Subsec. (b)(4). Pub.L. 100-690, § 7285(b)(4), added par. (4).

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100-690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100-690, set out as a note under section 5601 of this title.

Effective Date

Section effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Submission of Report With Respect to Fiscal Year 1988

Notwithstanding the 180-day period provided in this section, report required by this section to be submitted with respect to fiscal year 1988 to be submitted not later than Aug. 1, 1989, see section 7296(b)(3) of Pub.L. 100-690, set out as a note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub. L. 98-473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100-690, 1988 U.S.Code Cong. and Adm.News, p. 5937; Pub.L. 101-204, 1989 U.S.Code Cong. and Adm.News, p. 1238.

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Repealed

§ 5774. Re[illegible]ed. Pub.L. 100–690, Title VII, § 7286, Nov. 18, 1988, 102 Stat. 4460

HISTORICAL AND STATUTORY NOTES

Section, Pub.L. 98–415, Title IV, § 405, as added Pub.L. 98–473, Title II, § 660, Oct. 12, 1984, 98 Stat. 2127, provided for an Advisory Board on Missing Children.

Effective Date of Repeal

Repeal of this section effective Oct. 1, 1988, see section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

§ 5775. Grant and contract authority

(a) Authority of Administrator; description of research, demonstration projects, and service programs

The Administrator is authorized to make grants to and enter into contracts with public agencies or nonprofit private organizations, or combinations thereof, for research, demonstration projects, or service programs designed—

(1) to educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;

(2) to provide information to assist in the locating and return of missing children;

(3) to aid communities in the collection of materials which would be useful to parents in assisting others in the identification of missing children;

(4) to increase knowledge of and develop effective treatment pertaining to the psychological consequences, on both parents and children, of—

(A) the abduction of a child, both during the period of disappearance and after the child is recovered; and

(B) the sexual exploitation of a missing child;

(5) to collect detailed data from selected States or localities on the actual investigative practices utilized by law enforcement agencies in missing children's cases;

(6) to address the particular needs of missing children by minimizing the negative impact of judicial and law enforcement procedures on children who are victims of abuse or sexual exploitation and by promoting the active participation of children and their families in cases involving abuse or sexual exploitation of children;

(7) to address the needs of missing children (as defined in section 5772(1)(A) of this title) and their families following the recovery of such children;

(8) to reduce the likelihood that individuals under 18 years of age will be removed from the control of such individuals' legal custodians without such custodians' consent; and

(9) to establish or operate[1] statewide clearinghouse to assist in locating and recovering missing children.

(b) Priorities of grant applicants

In considering grant applications under this subchapter, the Administrator shall give priority to applicants who—

(1) have demonstrated or demonstrate ability in—

(A) locating missing children or locating and reuniting missing children with their legal custodians;

(B) providing other services to missing children or their families; or

(C) conducting research relating to missing children; and

(2) with respect to subparagraphs (A) and (B) of paragraph (1), substantially utilize volunteer assistance.

The Administrator shall give first priority to applicants qualifying under subparagraphs (A) and (B) of paragraph (1).

(c) Non-Federal fund expenditures requisite for receipt of Federal assistance

In order to receive assistance under this subchapter for a fiscal year, applicants shall give assurance that they will expend, to the greatest extent practicable, for such fiscal year an amount of funds (without regard to any funds received under any Federal law)

that is not less than the amount of funds they received in the preceding fiscal year from State, local, and private sources.

(Pub.L. 98–415, Title IV, § 405, formerly § 406, as added Pub.L. 98–473, Title II, § 660, Oct. 12, 1984, 98 Stat. 2128, renumbered § 405 and amended Pub.L. 100–690, Title VII, §§ 7287, 7290(a), Nov. 18, 1988, 102 Stat. 4460, 4461; Pub.L. 101–204, Title X, § 1004(3), Dec. 7, 1989, 103 Stat. 1828.)

[1] So in original. Probably should be followed by "a".

HISTORICAL AND STATUTORY NOTES

1989 Amendment

Subsec. (a)(9). Pub.L. 101–204 substituted "clearinghouses to assist" for "clearinghouse to assist".

1988 Amendment

Subsec. (a)(5) to (9). Pub.L. 100–690, § 7287(1)–(3), struck "and" at the end of par. (5); substituted a semicolon for the period in par. (6); and added pars. (7) to (9).

Effective Date of 1988 Amendment

Amendment of this section Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date

Section effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub. L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S.Code Cong. and Adm.News, p. 5937; Pub.L. 101–204, 1989 U.S.Code Cong. and Adm. News, p. 1238.

§ 5776. Criteria for grants

(a) Establishment of priorities and criteria; publication in Federal Register

In carrying out the programs authorized by this subchapter, the Administrator shall establish—

(1) annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 5775 of this title; and

(2) criteria based on merit for making such grants and contracts.

Not less than 60 days before establishing such priorities and criteria, the Administrator shall publish in the Federal Register for public comment a statement of such proposed priorities and criteria.

(b) Competitive selection process for grant or contract exceeding $50,000

No grant or contract exceeding $50,000 shall be made under this subchapter unless the grantee or contractor has been selected by a competitive process which includes public announcement of the availability of funds for such grant or contract, general criteria for the selection of recipients or contractors, and a description of the application process and application review process.

(c) Multiple grants or contracts to same grantee or contractor

Multiple grants or contracts to the same grantee or contractor within any 1 year to support activities having the same general purpose shall be deemed to be a single grant for the purpose of this subsection, but multiple grants or contracts to the same grantee or contractor to support clearly distinct activities shall be considered separate grants or contractors.[1]

(Pub.L. 98–415, Title IV, § 406, formerly § 407, as added Pub.L. 98–473, Title II, § 660, Oct. 12, 1984, 98 Stat. 2129, renumbered § 406 and amended Pub.L. 100–690, Title VII, §§ 7288, 7290, Nov. 18, 1988, 102 Stat. 4461.)

[1] So in original. Probably should be "contracts".

HISTORICAL AND STATUTORY NOTES

1988 Amendment

Heading. Pub.L. 100–690, § 7288, substituted "grants" for "grants and contracts".

Subsec. (a). Pub.L. 100–690, § 7288, designated existing provisions as subsec. (a); incorporated in par. (1) and the second sentence existing text which provided that "The Administrator, in consultation with the Advisory Board, shall establish annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 5775 of this title and, not less than 60 days before establishing such priorities, shall publish in the Federal Register for public comment a statement of such proposed priorities."; and enacted par. (2).

[Part 2 – p. 82]

Pub.L. 100- § 7290(b), substituted "section 405" for "section 406", codified as "section 5775 of this title".

Subsecs. (b), (c). Pub.L. 100-690, § 7288, added subsecs. (b) and (c).

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100-690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100-690, set out as a note under section 5601 of this title.

Effective Date

Section effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub. L. 98-473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100-690, 1988 U.S.Code Cong. and Adm.News, p. 5937.

§ 5776a. Missing and Exploited Children's Task Force

(a) Establishment

There is established a Missing and Exploited Children's Task Force (referred to as the "Task Force").

(b) Membership

(1) In general

The Task Force shall include at least 2 members from each of—

(A) the Federal Bureau of Investigation;

(B) the Secret Service;

(C) the Bureau of Alcohol, Tobacco and Firearms;

(D) the United States Customs Service;

(E) the Postal Inspection Service;

(F) the United States Marshals Service; and

(G) the Drug Enforcement Administration.

(2) Chief

A representative of the Federal Bureau of Investigation (in addition to the members of the Task Force selected under paragraph (1)(A)) shall act as chief of the Task Force.

(3) Selection

(A) The Director of the Federal Bureau of Investigation shall select the chief of the Task Force.

(B) The heads of the agencies described in paragraph (1) shall submit to the chief of the Task Force a list of at least 5 prospective Task Force members, and the chief shall select 2, or such greater number as may be agreeable to an agency head, as Task Force members.

(4) Professional qualifications

The members of the Task Force shall be law enforcement personnel selected for their expertise that would enable them to assist in the investigation of cases of missing and exploited children.

(5) Status

A member of the Task Force shall remain an employee of his or her respective agency for all purposes (including the purpose of performance review), and his or her service on the Task Force shall be without interruption or loss of civil service privilege or status and shall be on a nonreimbursable basis.

(6) Period of service

(A) Subject to subparagraph (B), 1 member from each agency shall initially serve a 1-year term, and the other member from the same agency shall serve a 1-year term, and may be selected to a renewal of service for 1 additional year; thereafter, each new member to serve on the Task Force shall serve for a 2-year period with the member's term of service beginning and ending in alternate years with the other member from the same agency; the period of service for the chief of the Task Force shall be 3 years.

(B) The chief of the Task Force may at any time request the head of an agency described in paragraph (1) to submit a list of 5 prospective Task Force members to replace a member of the Task Force, for the purpose of maintaining a Task Force membership that will be able to meet the demands of its caseload.

(c) Support

(1) In general

The Administrator of the General Services Administration, in coordination with the heads of the agencies described in subsection (b)(1) of this section, shall provide the Task Force office space and administrative and support services, such office space to be in close proximity to the office of the Center, so as to enable the Task Force to coordinate its activities with that of the Center on a day-to-day basis.

(2) Legal guidance

The Attorney General shall assign an attorney to provide legal guidance, as needed, to members of the Task Force.

(d) Purpose

(1) In general

The purpose of the Task Force shall be to make available the combined resources and expertise of the agencies described in paragraph (1) to assist State and local governments in the most difficult missing and exploited child cases nationwide, as identified by the chief of the Task Force from time to time, in consultation with the Center, and as many additional cases as resources permit, including the provision of assistance to State and local investigators on location in the field.

(2) Technical assistance

The role of the Task Force in any investigation shall be to provide advice and technical assistance and to make available the resources of the agencies described in subsection (b)(1) of this section; the Task Force shall not take a leadership role in any such investigation.

(e) Cross-designation of Task Force members

The attorney general may cross-designate the members of the Task Force with jurisdiction to enforce Federal law related to child abduction to the extent necessary to accomplish the purposes of this section.

(Pub.L. 98-415, Title IV, § 407, as added Pub.L. 103-322, Title XVII, § 170303(2), Sept. 13, 1994, 108 Stat. 2043.)

HISTORICAL AND STATUTORY NOTES

Purpose

Section 170302 of Pub.L. 103-322 provided that: "The purpose of this subtitle [enacting this section] is to establish a task force comprised of law enforcement officers from pertinent Federal agencies to work with the National Center for Missing and Exploited Children (referred to as the 'Center') and coordinate the provision of Federal law enforcement resources to assist State and local authorities in investigating the most difficult cases of missing and exploited children."

Legislative History

For legislative history and purpose of Pub.L. 103-322, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

§ 5777. Authorization of appropriations

To carry out the provisions of this subchapter, there are authorized to be appropriated such sums as may be necessary for fiscal years 1993, 1994, 1995, and 1996.

(Pub.L. 98-415, Title IV, § 408, formerly § 408, as added Pub.L. 98-473, Title II, § 660, Oct. 12, 1984, 98 Stat. 2129, renumbered § 407 and amended Pub.L. 100-690, Title VII, §§ 7289, 7290(a), Nov. 18, 1988, 102 Stat. 4461; Pub.L. 100-690, Title VII, § 7289(3), as amended Pub.L. 101-204, Title X, § 1001(e)(3), Dec. 7, 1989, 103 Stat. 1827; Pub.L. 102-586, § 4, Nov. 4, 1992, 106 Stat. 5027; renumbered § 408, Pub.L. 103-322, Title XVII, § 170303(1), Sept. 13, 1994, 108 Stat. 2043.)

[Part 2 – p. 83]

HISTORICAL AND STATUTORY NOTES

Codification

Pub.L. 101–204, § 1001(e)(3), amended the directory language of Pub.L. 100–690, § 7289(3), resulting in no change in text.

1992 Amendments

Pub.L. 102–586, § 4, substituted "fiscal years 1993, 1994, 1995, and 1996" for "fiscal years 1989, 1990, 1991, and 1992".

1988 Amendment

Pub.L. 100–690, § 7289(1)–(3), in striking "$10,000,000 for fiscal year 1985, and" and "1986, 1987, and 1988" and inserting "1989, 1990, 1991, and 1992", substituted appropriations authorization of necessary sums for fiscal years 1989 through 1992 for former authorization of $10,000,000 for fiscal year 1985, and necessary sums for fiscal years 1986 through 1988.

Effective Date of 1988 Amendment

Amendment of this section by Pub.L. 100–690 effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Effective Date

Section effective Oct. 12, 1984, see section 670(a) of Pub. L. 98–473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub. L. 98–473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100–690, 1988 U.S. Code Cong. and Adm. News, p. 5937; Pub.L. 101–204, 1989 U.S. Code Cong. and Adm. News, p. 1238; Pub.L. 102–586, 1992 U.S. Code Cong. and Adm. News, p. 4229; Pub.L. 103–322, 1994 U.S. Code Cong. and Adm. News, p. 1801.

§ 5778. Special study and report

(a) Not later than 1 year after November 18, 1988, the Administrator shall begin to conduct a study to determine the obstacles that prevent or impede individuals who have legal custody of children from recovering such children from parents who have removed such children from such individuals in violation of law.

(b) Not later than 3 years after November 18, 1988, the Secretary shall submit a report to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate containing a description, and a summary of the results, of the study conducted under subsection (a) of this section.

(Pub.L. 93–415, Title IV, § 409, formerly § 408, as added Pub.L. 100–690, Title VII, § 7291, Nov. 18, 1988, 102 Stat. 4461; renumbered § 409, Pub.L. 103–322, Title XVII, § 170303(1), Sept. 13, 1994, 108 Stat. 2043.)

HISTORICAL AND STATUTORY NOTES

Effective Date

Section effective Oct. 1, 1988, pursuant to section 7296(a) of Pub.L. 100–690, set out as a note under section 5601 of this title.

Legislative History

For legislative history and purpose of Pub.L. 100–690, see 1988 U.S. Code Cong. and Adm. News, p. 5937. See, also, Pub.L. 103–322, 1994 U.S. Code Cong. and Adm. News, p. 1801.

LIBRARY REFERENCES

Infants ⇐131 et seq.
United States ⇐41.
C.J.S. Infants §§ 31 to 54.
C.J.S. United States § 41.
WESTLAW Topic Nos. 211, 393.

§ 5779. Reporting requirement

(a) In general

Each Federal, State, and local law enforcement agency shall report each case of a missing child under the age of 18 reported to such agency to the National Crime Information Center of the Department of Justice.

(b) Guidelines

The Attorney General may establish guidelines for the collection of such reports including procedures for carrying out the purposes of this Act.

(c) Annual summary

The Attorney General shall publish an annual statistical summary of the reports received under this section and section 5780 of this title.

(Pub.L. 101–647, Title XXXVII, § 3701, Nov. 29, 1990, 104 Stat. 4966.)

HISTORICAL AND STATUTORY NOTES

References in Text

This Act, referred to in subsec. (b), is Pub.L. 101–647, Nov. 29, 1990, 104 Stat. 4789, popularly known as the Crime Control Act of 1990. For complete distribution of this Act to the Code, see Short Title note set out under section 1 of Title 18, Crimes and Criminal Procedure, and Tables.

Codification

Section was enacted as part of the Crime Control Act of 1990, and not as part of the Missing Children's Assistance Act, which comprises this subchapter.

Short Title

Title XXXVII of Pub.L. 101–647, which is classified to this section and section 5780 of this title, cited the sections as the National Child Search Assistance Act of 1990.

Legislative History

For legislative history and purpose of Pub.L. 101–647, see 1990 U.S.Code Cong. and Adm. News, p. 6472.

LIBRARY REFERENCES

Infants ⇐13.
C.J.S. Infants §§ 5, 92 to 98.
WESTLAW Topic No. 211.

§ 5780. State requirements

Each State reporting under the provisions of this section and section 5779 of this title shall—

(1) ensure that no law enforcement agency within the State establishes or maintains any policy that requires the observance of any waiting period before accepting a missing child or unidentified person report;

(2) provide that each such report and all necessary and available information, which, with respect to each missing child report, shall include—

(A) the name, date of birth, sex, race, height, weight, and eye and hair color of the child;

(B) the date and location of the last known contact with the child; and

(C) the category under which the child is reported missing;

is entered immediately into the State law enforcement system and the National Crime Information Center computer networks and made available to the Missing Children Information Clearinghouse within the State or other agency designated within the State to receive such reports; and

(3) provide that after receiving reports as provided in paragraph (2), the law enforcement agency that entered the report into the National Crime Information Center shall—

(A) no later than 60 days after the original entry of the record into the State law enforcement system and National Crime Information Center computer networks, verify and update such record with any additional information, including, where available, medical and dental records;

(B) institute or assist with appropriate search and investigative procedures; and

(C) maintain close liaison with the National Center for Missing and Exploited Children for the exchange of information and technical assistance in the missing children cases.

(Pub.L. 101–647, Title XXXVII, § 3702, Nov. 29, 1990, 104 Stat. 4967.)

HISTORICAL AND STATUTORY NOTES

Codification

Section was enacted as part of the Crime Control Act of 1990, and not as part of the Missing Children's Assistance Act, which comprises this subchapter.

Legislative History

For legislative history and purpose of Pub.L. 101–647, see 1990 U.S.Code Cong. and Adm. News, p. 6472.

[Part 2 – p. 84]

SUBCHAPTER V—INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS

§ 5781. Findings

The Congress finds that—

(1) approximately 700,000 youth enter the juvenile justice system every year;

(2) Federal, State, and local governments spend close to $2,000,000,000 a year confining many of those youth;

(3) it is more effective in both human and fiscal terms to prevent delinquency than to attempt to control or change it after the fact;

(4) half or more of all States are unable to spend any juvenile justice formula grant funds on delinquency prevention because of other priorities;

(5) few Federal resources are dedicated to delinquency prevention; and

(6) Federal incentives are needed to assist States and local communities in mobilizing delinquency prevention policies and programs.

(Pub.L. 93–415, Title V, § 502, as added Pub.L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5027.)

HISTORICAL AND STATUTORY NOTES

Short Title

This subchapter known as the "Incentive Grants for Local Delinquency Prevention Programs Act", see part of section 5(a) of Pub.L. 102–586, set out as a Short Title of 1992 Amendment note under section 5601 of this title.

Study

Section 5(b) of Pub.L. 102–586 provided that: "After the program established by subsection (a) has been funded for two years, the General Accounting Office shall prepare and submit to Congress a study of the effects of the program in encouraging States and units of general local government to comply with the requirements of part B of title II [part B of subchapter II of this chapter]."

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5782. Definition

In this subchapter, the term "State advisory group" means the advisory group appointed by the chief executive officer of a State under a plan described in section 5633(a) of this title.

(Pub.L. 93–415, Title V, § 503, as added Pub.L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5027.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5783. Duties and functions of the Administrator

The Administrator shall—

(1) issue such rules as are necessary or appropriate to carry out this subchapter;

(2) make such arrangements as are necessary and appropriate to facilitate coordination and policy development among all activities funded through the Department of Justice relating to delinquency prevention (including the preparation of an annual comprehensive plan for facilitating such coordination and policy development);

(3) provide adequate staff and resources necessary to properly carry out this subchapter; and

(4) not later than 180 days after the end of each fiscal year, submit a report to the Chairman of the Committee on Education and Labor of the House of Representatives and the Chairman of the Committee on the Judiciary of the Senate—

(A) describing activities and accomplishments of grant activities funded under this subchapter;

(B) describing procedures followed to disseminate grant activity products and research findings;

(C) describing activities conducted to develop policy and to coordinate Federal agency and interagency efforts related to delinquency prevention; and

(D) identifying successful approaches and making recommendations for future activities to be conducted under this subchapter.

(Pub.L. 93–415, Title V, § 504, as added Pub.L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5027.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5784. Grants for prevention programs

(a) Purposes

The Administrator may make grants to a State, to be transmitted through the State advisory group to units of general local government that meet the requirements of subsection (b) of this section, for delinquency prevention programs and activities for youth who have had contact with the juvenile justice system or who are likely to have contact with the juvenile justice system, including the provision to children, youth, and families of—

(1) recreation services;

(2) tutoring and remedial education;

(3) assistance in the development of work awareness skills;

(4) child and adolescent health and mental health services;

(5) alcohol and substance abuse prevention services;

(6) leadership development activities; and

(7) the teaching that people are and should be held accountable for their actions.

(b) Eligibility

The requirements of this subsection are met with respect to a unit of general local government if—

(1) the unit is in compliance with the requirements of part B of subchapter II of this chapter;

(2) the unit has submitted to the State advisory group a 3–year plan outlining the unit's local front end plans for investment for delinquency prevention and early intervention activities;

(3) the unit has included in its application to the Administrator for formula grant funds a summary of the 3–year plan described in paragraph (2);

(4) pursuant to its 3–year plan, the unit has appointed a local policy board of no fewer than 15 and no more than 21 members with balanced representation of public agencies and private, nonprofit organizations serving children, youth, and families and business and industry;

(5) the unit has, in order to aid in the prevention of delinquency, included in its application a plan for the coordination of services to at-risk youth and their families, including such programs as nutrition, energy assistance, and housing;

(6) the local policy board is empowered to make all recommendations for distribution of funds and evaluation of activities funded under this subchapter; and

(7) the unit or State has agreed to provide a 50 percent match of the amount of the grant, including the value of in-kind contributions, to fund the activity.

(c) Priority

In considering grant applications under this section, the Administrator shall give priority to applicants that demonstrate ability in—

(1) plans for service and agency coordination and collaboration including the colocation of services;

(2) innovative ways to involve the private nonprofit and business sector in delinquency prevention activities; and

(3) developing or enhancing a statewide subsidy program to local governments that is dedicated to early intervention and delinquency prevention.

(Pub.L. 93–415, Title V, § 505, as added Pub.L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5028.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

§ 5785. Authorization of appropriations

To carry out this subchapter, there are authorized to be appropriated $30,000,000 for fiscal year 1993 and such sums as are necessary for fiscal years 1994, 1995, and 1996.

(Pub.L. 93–415, Title V, § 506, as added Pub.L. 102–586, § 5(a), Nov. 4, 1992, 106 Stat. 5029.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 102–586, see 1992 U.S. Code Cong. and Adm. News, p. 4229.

CHAPTER 73—DEVELOPMENT OF ENERGY SOURCES

SUBCHAPTER II—NUCLEAR REGULATORY COMMISSION; NUCLEAR WHISTLEBLOWER PROTECTION

Sec.
5851. Employee protection.
(a) to (g) *[See main volume for text].*
(h) Nonpreemption.
(i) Posting requirement.
(j) Investigation of allegations.

§ 5801. Congressional declaration of policy and purpose

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 11834

Ex.Ord. No. 11834, Jan. 15, 1975, 40 F.R. 2971, which related to the activation of the Energy Research and Development Administration and the Nuclear Regulatory Commission, was revoked by Ex.Ord. No. 12553, Feb. 25, 1986, 41 F.R. 7237.

LAW REVIEW COMMENTARIES

The nuclear regulatory commission's regulation of radiation hazards in the workplace: Present problems and new approaches to reproductive health. Neal Smith and Michael Baram, 18 Ecology L.Q. 879 (1987).

NOTES OF DECISIONS

State regulation or control 1

1. **State regulation or control**

State authority over nuclear energy extends to imposition of liability for radiation-induced injuries, unless there is irreconcilable conflict between state and federal standards or imposition of state standard in damages action would frustrate objectives of federal law. Aldns v. Sacramento Mun. Utility Dist., Cal.App. 3 Dist. 1992, 8 Cal.Rptr.2d 785, 6 Cal.App.4th 1605.

SUBCHAPTER I—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

§ 5811. Establishment of Energy Research and Development Administration

WEST'S FEDERAL PRACTICE MANUAL

Energy law, government organization, see § 4366 et seq.

§ 5813. Responsibilities of Administrator

The responsibilities of the Administrator shall include, but not be limited to—

[See main volume for text of (1) to (6)]

(7) creating and encouraging the development of general information to the public on all energy conservation technologies and energy sources as they become available for general use, and the Administrator, in conjunction with the Administrator of the Federal Energy Administration shall, to the extent practicable, disseminate such information through the use of mass communications;

(8) encouraging and conducting research and development in energy conservation, which shall be directed toward the goals of reducing total energy consumption to the maximum extent practicable, and toward maximum possible improvement in the efficiency of energy use. Development of new and improved conservation measures shall be conducted with the goal of the most expeditious possible application of these measures;

(9) encouraging and participating in international cooperation in energy and related environmental research and development;

(10) helping to assure an adequate supply of manpower for the accomplishment of energy research and development programs, by sponsoring and assisting in education and training activities in institutions of higher education, vocational schools, and other institutions, and by assuring the collection, analysis, and dissemination of necessary manpower supply and demand data;

(11) encouraging and conducting research and development in clean and renewable energy sources.

(As amended Pub.L. 102–486, Title I, § 143(b), Oct. 24, 1992, 106 Stat. 2843.)

HISTORICAL AND STATUTORY NOTES

1992 Amendments

Pars. (7)–(12). Pub.L. 102–486, § 143(b), redesignated former pars. (8) through (12) as (7) through (11), respectively, and struck out former par. (7), which included establishment of an Energy Extension Service as responsibility of Administrator.

Legislative History

For legislative history and purpose of Pub.L. 102–486, see 1992 U.S. Code Cong. and Adm. News, p. 1953.

§ 5814. Abolition and transfers

[See main volume for text of (a) to (d)]

(e) Transfer to Administrator of certain functions of Secretary of Interior and Department of Interior; study of potential energy application of helium; report to President and Congress

There are hereby transferred to and vested in the Administrator such functions of the Secretary of the Interior, the Department of the Interior, and officers and components of such department—

[See main volume for text of (1)]

(2) as relate to or are utilized in connection with fossil fuel energy research and development programs and related activities conducted by the United States Bureau of Mines "energy centers" and synthane plant to provide greater efficiency in the extraction, processing, and utilization of energy resources for the purpose of conserving those resources, developing alternative energy resources, such as oil and gas secondary and tertiary recovery, oil shale and synthetic fuels, improving methods of managing energy-related wastes and pollutants, and providing technical guidance needed to establish and administer national energy policies; and

[See main volume for text of (3)]

The Administrator shall conduct a study of the potential energy applications of helium and, within six months from October 11, 1974, report to the President and Congress his

[Part 2 – p. 86]

PART 3:

THE FORMULA GRANT REGULATION AND RELATED FEDERAL REGISTERS

§ 30.10 How does the Attorney General make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Attorney General either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision, in such form as the Attorney General in his or her discretion deems appropriate. The Attorney General may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Attorney General informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Attorney General has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

§ 30.11 What are the Attorney General's obligations in interstate situations?

(a) The Attorney General is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity;

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity; and

(4) Responding pursuant to § 30.10 if the Attorney General receives a recommendation from a designated areawide agency transmitted by a single point of contact in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Attorney General uses the procedures in § 30.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 30.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

(1) *Simplify* means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) *Consolidate* means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) *Substitute* means that a state may use a plan or other document that it has developed for its own purposes to meet federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Attorney General.

(c) The Attorney General reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

§ 30.13 May the Attorney General waive any provision of these regulations?

In an emergency, the Attorney General may waive any provision of these regulations.

PART 31—FORMULA GRANTS

Subpart A—General Provisions

Sec.

AUTHORITY: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 *et seq.*)

SOURCE: 50 FR 25555, June 20, 1985, unless otherwise noted.

Subpart A—General Provisions

§31.1 General.

This part defines eligibility and sets forth requirements for application for and administration of formula grants to State governments authorized by part B, subpart I, of the Juvenile Justice and Delinquency Prevention Act.

§31.2 Statutory authority.

The Statute establishing the Office of Juvenile Justice and Delinquency Prevention and giving authority to make grants for juvenile justice and delinquency prevention improvement programs is the *Juvenile Justice and Delinquency Prevention Act of 1974*, as amended (42 U.S.C. 5601 *et seq.*).

§31.3 Submission date.

Formula Grant Applications for each of Fiscal Year should be submitted to OJJDP by August 1st (60 days prior to the beginning of the fiscal year) or within 60 days after the States are officially notified of the fiscal year formula grant allocations.

Subpart B—Eligible Applicants

§31.100 Eligibility.

All States as defined by section 103(7) of the JJDP Act.

§31.101 Designation of State agency.

The Chief Executive of each State which chooses to apply for a formula grant shall establish or designate a State agency as the sole agency for supervising the preparation and administration of the plan. The plan must demonstrate compliance with administrative and supervisory board membership requirements established by the OJJDP Administrator pursuant to section 261(c) of the JJDP Act. States must have available for review a copy of the State law or executive order establishing the State agency and its authority.

§31.102 State agency structure.

The State agency may be a discrete unit of State government or a division or other component of an existing State crime commission, planning agency or other appropriate unit of State government. Details of organization and structure are matters of State discretion, provided that the agency:

(a) Is a definable entity in the executive branch with the requisite authority to carry out the responsibilities imposed by the JJDP Act;

(b) Has a supervisory board (i.e., a board of directors, commission, committee, council, or other policy board) which has responsibility for supervising the preparation and administration of the plan and its implementation; and

(c) Has sufficient staff and staff capability to carry out the board's policies and the agency's duties and responsibilities to administer the program, develop the plan, process applications, administer grants awarded under the plan, monitor and evaluate programs and projects, provide administration/support services, and perform such accountability functions as are necessary

to the administration of Federal funds, such as grant close-out and audit of subgrant and contract funds.

§ 31.103 Membership of supervisory board.

The State advisory group appointed under section 223(a)(3) may operate as the supervisory board for the State agency, at the discretion of the Governor. Where, however, a State has continuously maintained a broad-based law enforcement and criminal justice supervisory board (council) meeting all the requirements of section 402(b)(2) of the Justice System Improvement Act of 1979, and wishes to maintain such a board, such composition shall continue to be acceptable provided that the board's membership includes the chairman and at least two additional citizen members of the State advisory group. For purposes of this requirement a citizen member is defined as any person who is not a full-time government employee or elected official. Any executive committee of such a board must include the same proportion of juvenile justice advisory group members as are included in the total board membership. Any other proposed supervisory board membership is subject to case by case review and approval of the OJJDP Administrator and will require, at a minimum, "balanced representation" of juvenile justice interests.

Subpart C—General Requirements

§ 31.200 General.

This subpart sets forth general requirements applicable to formula grant recipients under the JJDP Act of 1974, as amended. Applicants must assure compliance or submit necessary information on these requirements.

§ 31.201 Audit.

The State must assure that it adheres to the audit requirements enumerated in the "Financial and Administrative Guide for Grants", Guideline Manual 7100.1 (current edition). Chapter 8 of the Manual contains a comprehensive statement of audit policies and requirements relative to grantees and subgrantees.

§ 31.202 Civil rights.

(a) To carry out the State's Federal civil rights responsibilities the plan must:

(1) Designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as liaison in all civil rights matters with OJJDP and the OJP Office of Civil Rights Compliance (OCRC); and

(2) Provide the Council's Equal Employment Opportunity Program (EEOP), if required to maintain one under 28 CFR 42.301, *et seq.*, where the application is for $500,000 or more.

(b) The application must provide assurance that the State will:

(1) Require that every applicant required to formulate an EEOP in accordance with 28 CFR 42.201 *et seq.*, submit a certification to the State that it has a current EEOP on file, which meets the requirement therein;

(2) Require that every criminal or juvenile justice agency applying for a grant of $500,000 or more submit a copy of its EEOP (if required to maintain one under 28 CFR 42.301, *et seq.*) to OCRC at the time it submits its application to the State;

(3) Inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with OCRC for investigation;

(4) Cooperate with OCRC during compliance reviews of recipients located within the State; and

(5) Comply, and that its subgrantees and contractors will comply with the requirement that, in the event that a Federal or State court or administrative agency makes a finding of discrimination on the basis of race, color, religion, national origin, or sex (after a due process hearing) against a State or a subgrantee or contractor, the affected recipient or contractor will forward a copy of the finding to OCRC.

§ 31.203 Open meetings and public access to records.

The State must assure that the State agency and its supervisory board established pursuant to section 261(c)(1) and the State advisory group established pursuant to section 223(a)(3) will follow applicable State open meeting and pub-

lic access laws and regulations in the conduct of meetings and the maintenance of records relating to their functions.

Subpart D—Juvenile Justice Act Requirements

§ 31.300 General.

This subpart sets forth specific JJDP Act requirements for application and receipt of formula grants.

§ 31.301 Funding.

(a) *Allocation to states.* Each state receives a base allocation of $325,000, and each territory receives a base allocation of $75,000 when the title II appropriation is less than $75 million (other than part D). When the title II appropriation equals or exceeds $75 million (other than part D), each state receives a base allocation of $400,000, and each territory receives a base allocation of $100,000. To the extent necessary, each state and territory's base allocation will be reduced proportionately to ensure that no state receives less than it was allocated in Fiscal Year 1988.

(b) *Funds for local use.* At least two-thirds of the formula grant allocation to the state (other than the section 222(d) State Advisory Group set aside) must be used for programs by local government, local private agencies, and eligible Indian Tribes, unless the State applies for and is granted a waiver by the OJJDP. The proportion of pass-through funds to be made available to eligible Indian tribes shall be based upon that proportion of the state youth population under 18 years of age who reside in geographical areas where tribes perform law enforcement functions. Pursuant to section 223(a)(5)(C) of the JJDP Act, each of the standards set forth in paragraphs (b)(1) (i) through (iii) of this section must be met in order to establish the eligibility of Indian tribes to receive pass through funds:

(1)(i) The tribal entity must be recognized by the Secretary of the Interior as an Indian tribe that performs law enforcement functions as defined in paragraph (b)(2) of this section.

(ii) The tribal entity must agree to attempt to comply with the requirements of section 223(a)(12)(A), (13), and (14) of the JJDP Act; and

(iii) The tribal entity must identify the juvenile justice needs to be served by these funds within the geographical area where the tribe performs law enforcement functions.

(2) "Law enforcement functions" are deemed to include those activities pertaining to the custody of children, including, but not limited to, police efforts to prevent, control, or reduce crime and delinquency or to apprehend criminal and delinquent offenders, and/or activities of adult and juvenile corrections, probation, or parole authorities.

(3) To carry out this requirement, OJJDP will annually provide each state with the most recent Bureau of Census statistics on the number of persons under age 18 living within the state, and the number of persons under age 18 who reside in geographical areas where Indian tribes perform law enforcement functions.

(4) Pass-through funds available to tribal entities under section 223(a)(5)(C) shall be made available within states to Indian tribes, combinations of Indian tribes, or to an organization or organizations designated by such tribe(s), that meet the standards set forth in paragraphs (b)(1) (i)–(iii) of this section. Where the relative number of persons under age 18 within a geographic area where an Indian tribe performs law enforcement functions is too small to warrant an individual subgrant or subgrants, the state may, after consultation with the eligible tribe(s), make pass-through funds available to a combination of eligible tribes within the state, or to an organization or organizations designated by and representing a group of qualifying tribes, or target the funds on the larger tribal jurisdictions within the state.

(5) Consistent with section 223(a)(4) of the JJDP Act, the state must provide for consultation with Indian tribes or a combination of eligible tribes within the state, or an organization or organizations designated by qualifying tribes, in the development of a state plan which adequately takes into account the juvenile justice needs and requests of those Indian tribes within the state.

(c) *Match.* Formula grants under the JJDP Act shall be 100%, of approved costs, with the exception of planning and administration funds, which require a 100% cash match (dollar for dollar), and construction projects funded under section 227(a)(2) which also require a 100% cash match.

(d) *Funds for administration.* Not more than 7.5% of the total annual formula grant award may be utilized to develop the annual juvenile justice plan and pay for administrative expenses, including project monitoring evaluation. These funds are to be matched on a dollar for dollar basis. The State shall make available needed funds for planning and administration to units of local government or combinations on an equitable basis. Each annual application must identify uses of such funds.

(e) *Nonparticipating states.* Pursuant to section 223(d), the OJJDP Administrator shall endeavor to make the fund allotment under section 222(a), of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, directly available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of achieving deinstitutionalization of status offenders and nonoffenders, separation of juveniles from incarcerated adults, and/or removal of juveniles from adult jails and lockups. Absent the demonstration of compelling circumstances justifying the reallocation of formula grant funds back to the State to which the funds were initially allocated, or the pendency of administrative hearing proceedings under section 223(d), formula grant funds will be reallocated on October 1 following the fiscal year for which the funds were appropriated. Reallocated funds will be competitively awarded to eligible recipients pursuant to program announcements published in the FEDERAL REGISTER.

[50 FR 25555, June 20, 1985, as amended at 54 FR 32621, Aug. 8, 1989]

§ 31.302 Applicant State agency.

(a) Pursuant to section 223(a)(1), section 223(a)(2) and section 261(c) of the JJDP Act, the State must assure that the State agency approved under section 261(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.

(b) *Advisory group.* Pursuant to section 223(a)(3) of the JJDP Act, the Chief Executive:

(1) Shall establish an advisory group pursuant to section 223(a)(3) of the JJDP Act. The State shall provide a list of all current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in this section of the Act.

(2) Should consider, in meeting the statutory membership requirements of section 223(a)(3) (A) to (E), appointing at least one member who represents each of the following: A law enforcement officer such as a police officer; a juvenile or family court judge; a probation officer; a corrections official; a prosecutor; a representative from an organization, such as a parents group, concerned with teenage drug and alcohol abuse; and a high school principal.

(c) The State shall assure that it complies with the Advisory Group Financial support requirement of section 222(d) and the composition and function requirements of section 223(a)(3) of the JJDP Act.

§ 31.303 Substantive requirements.

(a) *Assurances.* The State must certify through the provision of assurances that it has complied and will comply (as appropriate) with section 223(a) (4), (5), (6), (7), (8)(C), (9), (10), (11), (16), (17), (18), (19), (20), and (21), and sections 229 and 261(d), in formulating and implementing the State plan. The Formula Grant Application Kit can be used as a reference in providing these assurances.

(b) *Serious juvenile offender emphasis.* Pursuant to sections 101(a)(8) and 223(a)(10) of the JJDP Act, the Office encourages States that have identified serious and violent juvenile offenders as a priority problem to allocate formula grant funds to programs designed for serious and violent juvenile offenders at a level consistent with the extent of the problem as identified through the State planning process.

Particular attention should be given to improving prosecution, sentencing procedures, providing resources necessary for informed dispositions, providing for effective rehabilitation, and facilitating the coordination of services between the juvenile justice and criminal justice systems.

(c) *Deinstitutionalization of status offenders and non-offenders.* Pursuant to section 223(a)(12)(A) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable covering the three-year planning cycle, for assuring that the requirements of this section are met. Refer to §31.303(f)(3) for the rules related to the valid court order exception to this Act requirement.

(2) Describe the barriers the State faces in achieving full compliance with the provisions of this requirement.

(3) For those States that have achieved "substantial compliance", as outlined in section 223(c) of the Act, document the unequivocal commitment to achieving full compliance.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(12)(A) may, in lieu of addressing paragraphs (c) (1), (2), and (3) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(5) Submit the report required under section 223(a)(12)(B) of the Act as part of the annual monitoring report required by section 223(a)(15) of the Act.

(d) *Contact with incarcerated adults.* (1) Pursuant to section 223(a)(13) of the JJDP Act the State shall:

(i) Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term *regular contact* is defined as sight and sound contact with incarcerated adults, including inmate trustees. This prohibition seeks as complete a separation as possible and permits no more than haphazard or accidental contact between juveniles and incarcerated adults. In addition, include a timetable for compliance and justify any deviation from a previously approved timetable.

(ii) In those isolated instances where juvenile criminal-type offenders remain confined in adult facilities or facilities in which adults are confined, the State must set forth the procedures for assuring no regular sight and sound contact between such juveniles and adults.

(iii) Describe the barriers which may hinder the separation of alleged or adjudicated criminal-type offenders, status offenders and non-offenders from incarcerated adults in any particular jail, lockup, detention or correctional facility.

(iv) Those States which, based upon the most recently submitted monitoring report, have been found to be in compliance with section 223(a)(13) may, in lieu of addressing paragraphs (d)(1) (i), (ii), and (iii) of this section, provide an assurance that adequate plans and resources are available to maintain compliance.

(v) Assure that adjudicated offenders are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of segregating adults and juveniles in correctional facilities. This does not prohibit or restrict waiver of juveniles to criminal court for prosecution, according to State law. It does, however, preclude a State from administratively transferring a juvenile offender to an adult correctional authority or a transfer within a mixed juvenile and adult facility for placement with adult criminals either before or after a juvenile reaches the statutory age of majority. It also precludes a State from transferring adult offenders to juvenile correctional authority for placement.

(2) *Implementation.* The requirement of this provision is to be planned and implemented immediately by each State in light of identified constraints on immediate implementation. Immediate compliance is required where no constraints exist. Where constraints exist, the designated date of compliance in the latest approved plan is the compliance deadline. Those States not in compliance must show annual progress toward achieving compliance until compliance is reached.

(e) *Removal of juveniles from adult jails and lockups.* Pursuant to section 223(a)(14) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable for assuring that requirements of this section will be met beginning after December 8, 1985. Refer to § 31.303(f)(4) to determine the regulatory exception to this requirement.

(2) Describe the barriers which the State faces in removing all juveniles from adult jails and lockups. This requirement excepts only those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

(3)(i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. In circumstances where the juvenile and adult facilities are located in the same building or on the same grounds, each of the following four requirements initially set forth in the January 17, 1984 FEDERAL REGISTER (49 FR 2054–2055) must be met in order to ensure the requisite separateness of the two facilities. The requirements are:

(A) Total separation between juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities.

(B) Total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities.

(C) Separate juvenile and adult staff, including management, security staff, and direct care staff such as recreation, education, and counseling. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juvenile and adults, can serve both.

(D) In States that have established State standards or licensing requirements for secure juvenile detention facilities, the juvenile facility meets the standards and is licensed as appropriate.

(ii) The State must initially determine that the four requirements are fully met. Upon such determination, the State must submit to OJJDP a request to concur with the State finding that a separate juvenile facility exists. To enable OJJDP to assess the separateness of the two facilities, sufficient documentation must accompany the request to demonstrate that each requirement is met.

(4) For those States that have achieved "substantial compliance" with section 223(a)(14) as specified in section 223(c) of the Act, document the unequivocal commitment to achieving full compliance.

(5) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(14) may, in lieu of addressing paragraphs (e) (1), (2), and (4) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(f) *Monitoring of jails, detention facilities and correctional facilities.* (1) Pursuant to section 223(a)(15) of the JJDP Act, and except as provided by paragraph (f)(7) of this section, the State shall:

(i) Describe its plan, procedure, and timetable for annually monitoring jails, lockups, detention facilities, correctional facilities and non-secure facilities. The plan must at a minimum describe in detail each of the following tasks including the identification of the specific agency(s) responsible for each task.

(A) *Identification of monitoring universe:* This refers to the identification of all residential facilities which might hold juveniles pursuant to public authority and thus must be classified to determine if it should be included in the monitoring effort. This includes those facilities owned or operated by public and private agencies.

(B) *Classification of the monitoring universe:* This is the classification of all facilities to determine which ones should be considered as a secure detention or correctional facility, adult correctional institution, jail, lockup, or other type of secure or nonsecure facility.

(C) *Inspection of facilities:* Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and record keeping. The inspection must include:

(*1*) A review of the physical accommodations to determine whether it is a secure or non-secure facility or whether adequqte sight and sound separation between juvenile and adult offenders exists *and* (*2*) a review of the record keeping system to determine whether sufficient data are maintained to determine compliance with section 223(a)(12), (13) and/or (14).

(D) *Data collection and data verification:* This is the actual collection and reporting of data to determine whether the facility is in compliance with the applicable requirement(s) of section 223(a)(12), (13) and/or (14). The length of the reporting period should be 12 months of data, but in no case less than 6 months. If the data is self-reproted by the facility or is collected and reported by an agency other than the State agency designated pursuant to section 223(a)(1) of the JJDP Act, the plan must describe a statistically valid procedure used to verify the reported data.

(ii) Provide a description of the barriers which the State faces in implementing and maintaining a monitoring system to report the level of compliance with section 223(a)(12), (13), and (14) and how it plans to overcome such barriers.

(iii) Describe procedures established for receiving, investigating, and reporting complaints of violation of section 223(a)(12), (13), and (14). This should include both legislative and administrative procedures and sanctions.

(2) For the purpose of monitoring for compliance with section 223(a)(12)(A) of the Act a secure detention or correctional facility is any secure public or private facility used for the lawful custody of *accused* or adjudicated juvenile offenders or non-offenders, *or* used for the lawful custody of accused or convicted adult criminal offenders.

(3) *Valid court order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to the juvenile's attorney and/or legal guardian in writing and be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for portective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juveniles may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceeding;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3) (i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.

(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

(4) *Removal exception (section 223(a)(14))*. The following conditions must be met in order for an accused juvenile criminal-type offender, awaiting an initial court appearance, to be detained up to 24 hours (excluding weekends and holidays) in an adult jail or lockup:

(i) The State must have an enforceable State law requiring an initial court appearance within 24 hours after being taken into custody (excluding weekends and holidays);

(ii) The geographic area having jurisdiction over the juvenile is outside a metropolitan statistical area pursuant to the Bureau of Census' current designation;

(iii) A determination must be made that there is no existing acceptable alternative placement for the juvenile pursuant to criteria developed by the State and approved by OJJDP;

(iv) The adult jail or lockup must have been certified by the State to provide for the sight and sound separation of juveniles and incarcerated adults; and

(v) The State must provide documentation that the conditions in paragraphs (f)(4) (i) through (iv) of this section have been met and received prior approval from OJJDP. In addition, OJJDP strongly recommends that jails and lockups which incarcerate juveniles pursuant to this exception be required to provide continuous visual supervision of juveniles incarcerated pursuant to this exception.

(vi) Pursuant to section 223(a)(14) of the JJDP Act, the nonMSA (low population density) exception to the jail and lockup removal requirement described in paragraphs (f)(4) (i) through (v) of this section shall remain in effect through 1993.

(5) *Reporting requirement*. The State shall report annually to the Administrator of OJJDP on the results of monitoring for section 223(a) (12), (13), and (14) of the JJDP Act. The reporting period should provide 12 months of data, but shall not be less than 6 months. Three copies of the report shall be submitted to the Administrator of OJJDP no later than December 31 of each year.

(i) To demonstrate the extent of compliance with section 223(a)(12)(A) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Dates of baseline and current reporting period.

(B) Total number of public and private secure detention and correctional facilities AND the number inspected on-site.

(C) Total number of accused status offenders and non-offenders held in any secure detention or correctional facility as defined in paragraph (f)(2) of this section for longer than 24 hours (not including weekends and holidays), excluding those held pursuant to the valid court order provision as defined in paragraph (f)(3) of this section.

(D) Total number of adjudicated status offenders and non-offenders held in any secure detention or correctional facility as defined in paragraph (f)(2), excluding those held pursuant to the valid court order provision as defined in paragraph (f)(3) of this section.

(E) Total number of status offenders held in any secure detention or correctional facility pursuant to a judicial determination that the juvenile violated a valid court order as defined in paragraph (f)(3) of this section.

(ii) To demonstrate the extent to which the provisions of section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and non-offenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the progress toward and extent of compliance with section 223(a)(13) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Designated date for achieving full compliance.

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months AND the number inspected on-site.

(C) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide adequate separation.

(D) The total number of juvenile offenders and non-offenders NOT adequately separated in facilities used for the secure detention and confinement of both juveniles and adults.

(iv) To demonstrate the progress toward and extent of compliance with section 223(a)(14) of the JJDP Act the report must at least include the following information for the baseline and current reporting periods:

(A) Dates of baseline and current reporting period.

(B) Total number of adult jails in the State AND the number inspected on-site.

(C) Total number of adult lockups in the State AND the number inspected on-site.

(D) Total number of adult jails holding juveniles during the past twelve months.

(E) Total number of adult lockups holding juveniles during the past twelve months.

(F) Total number of adult jails and lockups in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which it is located.

(G) Total number of juvenile criminal-type offenders held in adult jails in excess of six hours.

(H) Total number of juvenile criminal-type offenders held in adult lockups in excess of six hours.

(I) Total number of accused and adjudicated status offenders and non-offenders held in any adult jail or lockup.

(J) Total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than 24 hours in adult jails and lock-ups in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section.

(6) *Compliance.* The State must demonstrate the extent to which the requirements of section 223(a) (12)(A), (13), and (14) of the Act are met. Should the State fail to demonstrate compliance with the requirements of this section within designated time frames, eligibility for formula grant funding shall terminate. The compliance levels are:

(i) *Substantial compliance* with section 223(a)(12)(A) requires within three years of initial plan submission achievement of a 75% reduction in the aggregate number of status offenders and non-offenders held in secure detention or correctional facilities or removal of 100% of such offenders from secure correctional facilities only. In addition, the State must make an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within two additional years. *Full compliance* is achieved when a State has removed 100% of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with *de minimis* exceptions pursuant to the policy criteria contained in the FEDERAL REGISTER of January 9, 1981 (46 FR 2566-2569).

(ii) *Compliance* with section 223(a)(13) has been achieved when a State can demonstrate that:

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of section 223(a)(13); or

(B)(*1*) State law, regulation, court rule, or other established executive or judicial policy clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of section 223(a)(13);

(*2*) All instances of noncompliance reported in the last submitted monitoring report were in violation of, or departures from, the State law, rule, or policy referred to in paragraph (f)(6)(ii)(B)(*1*) of this section;

(*3*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances; and

(*4*) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (f)(6)(ii)(B)(*1*) of this section are such that the instances of noncompliance are unlikely to recur in the future.

(iii)(A) Substantial compliance with section 223(a)(14) requires:

(*1*) The achievement of a 75% reduction in the number of juveniles held in adult jails and lockups after December 8, 1985; or

(*2*) That a state demonstrate it has met each of the standards set forth in paragraphs (f)(6)(iii)(A)(*2*) (*i*)–(*iv*) of this section:

(*i*) Removed all status and nonoffender juveniles from adult jails and lockups. Compliance with this standard requires that the last submitted monitoring report demonstrate that no status offender (including those accused of or adjudicated for violating a valid court order) or nonoffender juveniles were securely detained in adult jails or lockups for any length of time; or, that all status offenders and nonoffenders securely detained in adult jails and lockups for any length of time were held in violation of an enforceable state law and did not constitute a pattern or practice within the state;

(*ii*) Made meaningful progress in removing other juveniles from adult jails and lockups. Compliance with this standard requires the state to document a significant reduction in the number of jurisdictions securely detaining juvenile criminal-type offenders in violation of section 223(a)(14) of the JJDP Act; or, a significant reduction in the number of facilities securely detaining such juveniles; or, a significant reduction in the number of juvenile criminal-type offenders securely detained in violation of section 223(a)(14) of the JJDP Act; or, a significant reduction in the average length of time each juvenile criminal-type offender is securely detained in an adult jail or lockup; or, that state legislation has recently been enacted and taken effect and which the state demonstrates will significantly impact the secure detention of juvenile criminal-type offenders in adult jails and lockups;

(*iii*) Diligently carried out the state's jail and lockup removal plan approved by OJJDP. Compliance with this standard requires that actions have been undertaken to achieve the state's jail and lockup removal goals and objectives within approved timelines, and that the State Advisory Group, required by section 223(a)(3) of the JJDP Act, has maintained an appropriate involvement in developing and/or implementing the state's plan;

(*iv*) Historically expended and continues to expend an appropriate and significant share of its Formula Grant funds to comply with section 223(a)(14). Compliance with this standard requires that, based on an average from two (2) Formula Grant Awards, a minimum of 40 percent of the program funds was expended to support jail and lockup removal programs; or that the state provides a justification which supports the conclusion that a lesser amount constituted an appropriate and significant share because the state's existent jail and lockup removal barriers did not require a larger expenditure of Formula Grant Program funds; and

(*3*) The state has made an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within a reasonable time but in no event may such time extend beyond December 8, 1988.

(B) Full compliance is achieved when a state demonstrates that the last submitted monitoring report, covering 12 months of actual data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of section 223(a)(14).

(C) Full compliance with de minimis exceptions is achieved when a state demonstrates that it has met the standard set forth in either of paragraphs (f)(6)(iii)(C) (*1*) or (*2*) of this section:

(*1*) *Substantive De Minimis Standard.* To comply with this standard the state must demonstrate that each of the following requirements have been met:

(*i*) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of section 223(a)(14);

(*ii*) All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from, the state law, rule, or policy referred to in paragraph (f)(6)(iii)(C)(*1*)(*i*) of this section;

(*iii*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;

(*iv*) Existing mechanisms for the enforcement of the state law, rule or policy referred to in paragraph (f)(6)(iii)(C)(*1*)(*i*) of this section are such that the instances of noncompliance are unlikely to recur in the future; and

(*v*) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(C)(*1*)(*iv*) of this section.

(*2*) *Numerical De Minimis Standard.* To comply with this standard the state must demonstrate that each of the following requirements under paragraphs (f)(6) (iii)(C)(*2*) (*i*) and (*ii*) of this section have been met:

(*i*) The incidents of noncompliance reported in the state's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the state;

(*ii*) An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of state law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

(*iii*) *Exception.* When the annual rate for a state exceeds 9 incidents of noncompliance per 100,000 juvenile population, the state will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis standard unless the state has recently enacted changes in state law which have gone into effect and which the state demonstrates can reasonably be expected to have a substantial, significant and positive impact on the state's achieving full (100%) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

(*iv*) *Progress.* Beginning with the monitoring report due by December 31, 1990, any state whose prior full compliance status is based on having met the numerical de minimis standard set forth in paragraph (f)(6)(iii)(C)(*2*)(*i*) of § 31.303, must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100%) compliance in order to maintain eligibility for a continued finding of full compliance with de minimis exceptions.

(*v*) *Request submission.* Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the monitoring report due by December 31 of each calendar year. Any state reporting less than full (100%) compliance in any annual monitoring report may request a finding of full compliance with de minimis exceptions under paragraph (*f*)(6)(iii)(C) (*1*) or (*2*) of this section. The request may be submitted in conjunction with the monitoring report, as soon thereafter as all information required for a determination is available, or be included in the annual state plan and application for the state's Formula Grant Award.

(D) *Waiver.* (*1*) Failure to achieve substantial compliance as defined in this section shall terminate any state's eligibility for Formula Grant funds unless the Administrator of OJJDP waives termination of the state's eligibility.

In order to be eligible for a waiver of termination, a state must submit a waiver request which demonstrates that it meets the standards set forth in paragraph (f)(6)(iii)(D)(*1*) (*i*)–(*v*) of this section:

(*i*) Agrees to expend all of its Formula Grant Award except planning and administration, advisory group set aside, and Indian-tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(*ii*) Diligently carried out the state's jail and lockup removal plan as set forth in paragraph (f)(6)(iii)(A)(*2*)(*iii*) of this section; and

(*iii*) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the state, to eliminate noncompliant incidents; and

(*iv*) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(*v*) Demonstrates a commitment, through appropriate executive or legislative action, to achieving full compliance.

(*2*) Failure to achieve full compliance as defined in this section shall terminate any state's eligibility for Formula Grant funds unless the Administrator of OJJDP waives termination of the state's eligibility. In order to be eligible for this waiver of termination, a state must request a waiver and demonstrate that it meets the standards set forth in paragraphs (f)(6)(iii)(D)(*2*) (*i*)–(*vii*) of this section:

(*i*) Agrees to expend all of its Formula Grant Award except planning and administration, advisory group set aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(*ii*) Removed all status and nonoffender juveniles from adult jails and lockups as set forth in paragraph (f)(6)(iii)(A)(*2*)(*i*) of this section; and

(*iii*) Made meaningful progress in removing other juveniles from adult jails and lockups as set forth in paragraphs (f)(6)(iii)(A)(*2*)(*ii*) of this section; and

(*iv*) Diligently carried out the state's jail and lockup removal plan as set forth in paragraph (f)(6)(iii)(A)(*2*)(*iii*) of this section; and

(*v*) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the state, to eliminate noncompliant incidents; and

(*vi*) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(*vii*) Demonstrates a commitment, through appropriate executive or legislative action, to achieving full compliance.

(E) *Waiver maximum.* A state may receive a waiver of termination of eligibility from the Administrator under paragraph (f)(6)(iii)(D) (*1*) and (*2*) of this section for a combined maximum of three Formula Grant Awards. No additional waivers will be granted.

(7) *Monitoring report exceptions.* States which have been determined by the OJJDP Administrator to have achieved full compliance with section 223(a)(12)(A) and compliance with section 223(a)(13) of the JJDP and which wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

(i) The State provides for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to enable an annual determination of State compliance with section 223(a) (12)(A), (13), and (14) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of section 223(a) (12)(A) and (13) of the JJDP Act; and

(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

(A) Authority for enforcement of the statute is assigned;

(B) Time frames for monitoring compliance with the statute are specified; and

(C) Adequate sanctions and penalties that will result in enforcement of statute and procedures for remedying violations are set forth.

(g) *Juvenile crime analysis.* Pursuant to section 223(a)(8) (A) and (B), the state must conduct an analysis of juvenile crime problems, including juvenile gangs that commit crimes, and juvenile justice and delinquency prevention needs within the state, including those geographical areas in which an Indian tribe performs law enforcement functions.

(1) *Analysis.* The analysis must be provided in the multiyear application. A suggested format for the analysis is provided in the Formula Grant Application Kit.

(2) *Product.* The product of the analysis is a series of brief written problem statements set forth in the application that define and describe the priority problems.

(3) *Programs.* Applications are to include descriptions of programs to be supported with JJDP Act formula grant funds. A suggested format for these programs is included in the application kit.

(4) *Performance indicators.* A list of performance indicators must be developed and set forth for each program. These indicators show what data will be collected at the program level to measure whether objectives and performance goals have been achieved and should relate to the measures used in the problem statement and statement of program objectives.

(h) *Annual performance report.* Pursuant to section 223(a) and section 223(a)(22) the State plan shall provide for submission of an annual performance report. The State shall report on its progress in the implementation of the approved programs, described in the three-year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals. The annual performance report shall describe progress made in addressing the problem of serious juvenile crime, as documented in the juvenile crime analysis pursuant to section 223(a)(8)(A).

(i) *Technical assistance.* States shall include, within their plan, a description of technical assistance needs. Specific direction regarding the development and inclusion of all technical assistance needs and priorities will be provided in the "Application Kit for Formula Grants under the JJDPA."

(j) *Minority detention and confinement.* Pursuant to section 223(a)(23) of the JJDP Act, states must address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population, viz., youth at risk for secure confinement. It is important for states to approach this in a comprehensive manner. Compliance with this provision is achieved when a state has met the requirements set forth in paragraphs (j) (1)–(3) of this section:

(1) Provide documentation in the State Plan Juvenile Crime Analysis to indicate whether minority juveniles are disproportionately detained or confined in secure detention or correctional facilities, jails, or lockups in relation to their proportion of the at risk youth population;

(2) Where documentation is unavailable, or demonstrates that minorities are disproportionately detained or confined in relation to their proportion in the at risk youth population, states must provide a strategy for addressing the disproportionate representation of minority juveniles in the juvenile justice system, including but not limited to:

(i) Assessing the differences in arrest, diversion, and adjudication rates, court dispositions other than incarceration, and the rates and periods of commitment to secure facilities of minority youth and non-minority youth in the juvenile justice system;

(ii) Increasing the availability and improving the quality of diversion programs for minorities who come in contact with the juvenile justice system such as police diversion programs;

(iii) Providing support for prevention programs in communities with a high percentage of minority residents with emphasis upon support for community-based organizations that serve minority youth;

(iv) Providing support for reintegration programs designed to facilitate reintegration and reduce recidivism of minority youths;

(v) Initiate or improve the usefulness of relevant information systems and disseminate information regarding minorities in the juvenile justice system.

(3) Each state is required to submit a supplement to the 1988 Multi-Year Plan for addressing the extent of disproportionate representation of minorities in the juvenile justice system. This supplement, which will be submitted as a

component of the 1989 Formula Grant Application and Multi-Year Plan Update, must include the state's assessment of disproportionate minority representation, and a workplan for addressing this issue programmatically. Where data is insufficient to make a complete assessment, the workplan must include provisions for improving the information collection systems. The workplan, once approved by OJJDP, is to be implemented as a component of the state's 1990 Formula Grant Plan.

(4) For purposes of this plan requirement, minority populations are defined as members of the following groups: Asian Pacific Islanders; Blacks; Hispanics; and, American Indians.

(k) Pursuant to section 223(a)(24) of the JJDP Act, states shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the Formula Grant.

[50 FR 25555, June 20, 1985, as amended at 53 FR 44371, Nov. 2, 1988; 54 FR 32622, Aug. 8, 1989]

§ 31.304 Definitions.

(a) *Private agency.* A private non-profit agency, organization or institution is:

(1) Any corporation, foundation, trust, association, cooperative, or accredited institution of higher education not under public supervision or control; and

(2) Any other agency, organization or institution which operates primarily for scientific, education, service, charitable, or similar public purposes, but which is not under public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax-exempt under the provisions of section 501(c)(3) of the 1954 Internal Revenue Code.

(b) *Secure.* As used to define a detention or correctional facility this term includes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

(c) *Facility.* A place, an institution, a building or part thereof, set of buildings or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.

(d) *Juvenile who is accused of having committed an offense.* A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

(e) *Juvenile who has been adjudicated as having committed an offense.* A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.

(f) *Juvenile offender.* An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations by defined as State law, i.e., a criminal-type offender or a status offender.

(g) *Criminal-type offender.* A juvenile offender who has been charged with or adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(h) *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(i) *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

(j) *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

(k) *Other individual accused of having committed a criminal offense.* An individual, adult or juvenile, who has been charged with committing a criminal

offense in a court exercising criminal jurisdiction.

(l) *Other individual convicted of a criminal offense.* An individual, adult or juvenile, who has been convicted of a criminal offense in court exercising criminal jurisdiction.

(m) *Adult jail.* A locked facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

(n) *Adult lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

(o) *Valid court order.* The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word "valid" permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States.

(p) *Local private agency.* For the purposes of the pass-through requirement of section 223(a)(5), a local private agency is defined as a private non-profit agency or organization that provides program services within an identifiable unit or a combination of units of general local government.

Subpart E—General Conditions and Assurances

§ 31.400 Compliance with statute.

The applicant State must assure and certify that the State and its subgrantees and contractors will comply with applicable provisions of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90–351, as amended, and with the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93–415, as amended, and the provisions of the current edition of OJP Financial and Administrative Guide for Grants, M 7100.1.

§ 31.401 Compliance with other Federal laws, orders, circulars.

The applicant State must further assure and certify that the State and its subgrantees and contractors will adhere to other applicable Federal laws, orders and OMB circulars. These general Federal laws and regulations are described in greater detail in the Financial and Administrative Guide for Grants, M 7100.1, and the Formula Grant Application Kit.

§ 31.402 Application on file.

Any Federal funds awarded pursuant to an application must be distributed and expended pursuant to and in accordance with the programs contained in the applicant State's current approved application. Any departures therefrom, other than to the extent permitted by current program and fiscal regulations and guidelines, must be submitted for advance approval by the Administrator of OJJDP.

§ 31.403 Non-discrimination.

The State assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination requirements, including:

(a) Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and made applicable by section 262(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended;

(b) Title VI of the Civil Rights Act of 1964;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975; and

(f) The Department of Justice Non-discrimination regulations, 28 CFR part 42, subparts C, D, E, and G.

PART 32—PUBLIC SAFETY OFFICERS' DEATH AND DISABILITY BENEFITS

Subpart A—Introduction

SUPPLEMENTARY INFORMATION: In the Matter of Great Lakes Carbon Corporation, a corporation, et al. Codification, appearing at 38 FR 19218, remains unchanged.

List of Subjects in 16 CFR Part 13

Petroleum coke, Trade practices

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry Calvani, Mary L. Azcuenaga

[Docket No. 8805]

In the matter of Great Lakes Carbon Corporation, a corporation, *et al*

Order Reopening and Modifying Order Issued June 5, 1973

By a petition filed on January 3, 1985, respondent Great Lakes Carbon Corporation joined by respondents Standard Oil Company (Indiana), Conoco, Inc., Derby Refining Company, Farmland Industries, Inc., Sun Refining and Marketing Company, Texaco, Inc., and Mobil Oil Corporation (by its separate submission filed on January 7, 1985), request that the Commission reopen the proceeding in Docket No. 8805 and modify Paragraph X of the order to provide that the order terminate immediately. Upon consideration of Great Lakes' petition and other relevant information, the Commission now finds that the public interest warrants reopening the proceeding and modifying Paragraph X of the order as requested.

The record describes an industry in which the respondents' use of long-term sales and purchase contracts by and between the respondents and others for industrial quality petroleum coke would not appear likely to have anticompetitive effects during the next eight years. Changes in the market indicate that the order is no longer necessary and the order has accomplished all it is likely to do. At the same time, the order now appears to be limiting respondents' ability to compete effectively for, among other things, participation in cogeneration and waste heat recovery projects, development of new markets, and export sales. As a result, we conclude that it is in the public interest to set aside this order.

Accordingly, it is ordered that this matter be and it hereby is reopened, and that Paragraph X of the Commission's order issued on June 5, 1973, be modified as follows:

X

This order shall terminate and cease to be effective immediately upon entry of this order reopening and modifying the order issued on June 5, 1973.

By direction of the Commission.

Issued: June 4, 1985.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-14811 Filed 6-19-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 85F-0058]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In FR Doc. 85-13135 beginning on page 23295 in the issue of Monday, June 3, 1985, make the following correction:

§ 178.2010 [Corrected]

On page 23295, in § 178.2010(b), in the table, under the entry for "Substances", second line, "(1H, 3H, 5H)" should have read "(1*H*, 3*H*, 5*H*)".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants for Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of final regulation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing a final regulation to implement the formula grant program authorized by Part B of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984 (Pub. L. 98-473, October 12, 1984). The 1984 Amendments reauthorize and modify the Federal assistance program to State and local governments and private not-for-profit agencies for juvenile justice and delinquency prevention improvements authorized under title II, Part B, Subpart I of the Act (42 U.S.C. 5611 et seq.). The regulation provides guidance to States in the formulation, submission, and implementation of State formula grant plans.

EFFECTIVE DATE: These regulations are effective June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Emily C. Martin, Acting Director, State Relations and Assistance Division, OJJDP, 633 Indiana Avenue, NW., Room 768, Washington, D.C. 20531, telephone 202/724-5921.

SUPPLEMENTARY INFORMATION:

Statutory Amendments

The statutory changes instituted by the new legislation include new programmatic emphasis on programs for juveniles, including those processed in the criminal justice system, who have committed serious crimes, programs which seek to facilitate the coordination of services between the juvenile and criminal justice systems, education and special education programs, involvement of parents and other family members in addressing the delinquency related problems of juveniles, drug and alcohol abuse programs, law-related education, and approaches designed to strengthen and maintain the family units of delinquent and other troubled youth. The regulation implements significant statutory changes related to the jail removal requirement, including a change in the statutory exception and an extension of the date for States to achieve full compliance from December 8, 1987 to December 8, 1988.

The regulation details procedures and requirements for formula grant applications under the revised Act. Additional requirements for grant administration and fund accounting are set forth in the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M 7100.1.

Objectives

OJJDP has revised the regulation to accomplish three objectives:

(1) Implement the 1984 Amendments which affect the formula grant program;

(2) Simplify the regulation, where possible, in order to maximize State flexibility and reduce paperwork, while still providing appropriate Federal guidance, where necessary; and

(3) Simplify and clarify the requirements of section 223(a) (12), (13), (14), And (15) in a way that will permit States the widest possible latitude in meeting these objectives in a manner that is consistent with both Federal law and State law, priorities, and resources.

Description of Major Statutory Changes

Family Programs

The Act places increased emphasis on programs which seek to address the

problem of delinquency and its prevention by strengthening and maintaining the family unit. Section 223(a) (16) and (17) was amended to reflect the role of the family in addressing problems of juvenile delinquency. The State must now provide an assurance that consideration and assistance will be given to programs designed to strengthen and maintain the family unit to prevent delinquency.

Deinstitutionalization

The 1984 Amendments defined "valid court order" in section 103(10). This definition has been incorporated in the regulation but, consistent with Congressional intent, it does not necessitate any change in § 31.303(f)(3) of the regulation.

Jail Removal

Section 223(a)(14) was amended to provide additional clarification and flexibility for the States in complying with the objectives of removing juveniles from adult jails and lockups. The Act was amended to provide an explicit, limited exception. The regulation (§ 31.303(f)(4)) parallels the statutory exception, establishing six conditions which must be met before a juvenile can be detained in an adult jail. They are: (1) The juvenile must be accused of a criminal-type offense; (2) the juvenile is awaiting an initial court appearance; (3) the State in which the juvenile is detained has an enforceable State law requiring an initial court appearance within 24 hours after being taken into custody, excluding Saturdays, Sundays and holidays; (4) the area is outside a Metropolitan Statistical Area; (5) no existing acceptable alternative is available; and (6) the jail or lockup provides sight and sound separation between juvenile and adult offenders.

The statutory amendment and the implementing regulation should be viewed as an attempt to assist States, particularly those with large rural areas, in complying with the jail removal requirement, while at the same time providing for both the protection of the public and the safety of those juveniles who require temporary placement in secure confinement.

Two other exceptions to the jail removal requirement serve this objective. The first excepts juveniles who are under criminal court jurisdiction, i.e. where a juvenile has been waived, transferred, or is subject to original or exclusive criminal court jurisdiction based on age and offense limitations established by State law and felony charges have been filed (See § 31.303(e)(2)). The second exception provides that a juvenile arrested or taken into custody for committing an act which would be a crime if committed by an adult may be temporarily held for up to 6 hours in an adult jail or lockup for purposes of identification, processing, or transfer to other facilities (See § 31.303(f)(5)(iv) (G) and (H)).

Section 223(c) of the JJDP Act was amended to allow States *three* additional years to achieve full compliance with the jail removal requirement if the State achieves a minimum 75 percent reduction in the number of juveniles held in adult jails and lockups and makes an unequivocal commitment to achieving full compliance within the additional three year period. Thus, full compliance must be demonstrated after December 8, 1988.

The regulation establishes, for the first time, criteria which will be applied by OJJDP in determining whether a State has achieved full compliance, with de minimis exceptions, with the jail removal requirement. States requesting a finding of full compliance with de minimis exceptions should submit the request at the time the annual monitoring report is submitted or as soon thereafter as all information required for a determination is available. Additional de minimis criteria, based on the model originally developed to measure full compliance with de minimis exceptions with section 223(a)(12)(A), will be developed by OJJDP after substantial compliance data have been received from the States. These criteria will establish a violation rate per 100,000 juvenile population which will be considered de minimis, thereby providing States with additional flexibility. Determinations of full compliance, with de minimis exceptions, with section 223(a)(14) would then be made annually by OJJDP and individual States required to show progress toward achieving a 100 per cent reduction in order to maintain eligibility for funding.

Audit of State Monitoring Systems

Section 204(b)(7) of the JJDP Act requires the OJJDP Administrator to provide for the auditing of State monitoring systems required under section 223(a)(15) of the Act. The State plan for monitoring compliance with sections 223(a) (12), (13) and (14) is a part of each State's three year plan. The monitoring plan requirements (§ 31.303(l)(1)) have been clarified to ensure that States establish a comprehensive monitoring plan and to enable OJJDP to review the plan for adequacy. The regulation does not expand the requirements for monitoring, rather it clarifies what constitutes an adequate system in order to assist the States in their monitoring efforts. OJJDP will undertake a periodic audit of each State's monitoring system and the reliability and validity of the data submitted in the State's monitoring report. The initial step in this process is to review the plans which States develop to monitor for compliance.

Discussion of Comments

A proposed regulation was published in the Federal Register on February 13, 1985 for public comment. Written comments from some 28 national, regional, and local organizations and individuals were received. All comments have been considered by the OJJDP in the issuance of a final regulation. A majority of the respondents commented favorably upon the regulation.

The following is a summary of the substantive comments and the response by OJJDP.

1. *Comment:* One State raised a concern over the relationship between the State agency head, who is by law responsible for carrying out the agency's functions, and the supervisory board. The concern was whether the agency head would be required, under the regulation, to "divest his authority and responsibility" in violation of State law.

Response: OJJDP has not been presented with a State law that would preclude the type of broad policy establishment, review and approval role that the JJDP Act and implementing regulations contemplate for the State agency supervisory board. Such a law would jeopardize a State's eligibility to participate in the formula grant program.

The supervisory board requirement of the statute, implemented in § 31.102 of the regulation, reflects a congressional judgment that the formula grant planning and funding process will be improved by the establishment of a policy board reflecting the diverse views of individuals involved in the law enforcement, criminal and juvenile justice systems.

Consequently, final decisionmaking authority on such matters as plan priorities, programs, and selection of sub award recipients cannot be vested in a State agency head. Such decisions of necessity involve interplay between and joint action by the policy board and agency staff. Both the policy board and the agency are bound by laws, regulations, by-laws, and executive orders. Where the policy board and the head of the State agency cannot agree on some matter of policy, generally the policy board must prevail. However, the Governor, as the State's Chief Executive, and to the extent he or she reserves the power to resolve any intra-

agency conflicts or to determine major policy issues would be the final decision maker.

2. *Comment:* The submission of a State's formula grant application should be allowed as late as 90 days subsequent to the start of the Federal fiscal year or at such date as mutually agreed to by the State and OJJDP.

Response: Section 31.3 of the regulation "encourages" States to submit their application 60 days prior to the beginning of the fiscal year. This would allow sufficient time for application review and award at the beginning of the fiscal year for which the funds are appropriated. It is OJJDP policy that a State's formula grant allocation remain available for obligation until the end of the fiscal year of appropriation, unless the State officially notifies OJJDP that it does not intend to apply for a formula grant award. Thus flexibility exists for a State and OJJDP to mutually agree upon a date for application submission ranging from 60 days prior to the start of the fiscal year through the end of the fiscal year of appropriation.

3. *Comment:* OJJDP should provide the Formula Grant Application Kit, containing information and instructions for application preparation, to States no later than June 1st of each year.

Response: OJJDP intends to develop and disseminate an updated fiscal year 1985 Application Kit as soon as the final formula grant regulation is published. For those States whose fiscal year 1985 plan has already been submitted, separate instructions for supplementing the FY 1985 multi-year plan to meet any new or modified requirements imposed by the final regulation will also be issued. The fiscal year 1986 Application Kit will be available by July 15, 1985 and the fiscal year 1987 Kit by June 1, 1986 (See § 31.3).

4. *Comment:* Language should be added to the regulation which indicates OJJDP will notify the States of their formula grant allocation within 30 days after the fiscal year appropriation measure has been enacted.

Response: Section 31.301(a) has been modified by adding language specifying that OJJDP will notify States of the respective allocation within 30 days after the annual appropriation bill becomes law.

5. *Comment:* Several commentators expressed concern over OJJDP's explanation of how nonparticipating State funds are reallocated and awarded. These concerns revolve around the identity of the funds upon reallocation (formula or discretionary), their use (authorized purpose or purposes), and eligibility (State, local public and private agencies in the nonparticipating State, or States in full compliance with section 223(a) (12)(A), and (13)). Some confusion may have resulted from a **Federal Register** printing error which was later corrected (47 FR 9679, March 11, 1985).

Response: Although OJJDP sees no need to modify § 31.301(e) of the regulation, a brief clarification should suffice to alleviate the concerns raised.

OJJDP has treated reallocated formula grant funds as if they were discretionary funds since the 1980 Amendments established the current section 223(d) reallocation formula. This is because section 221 limits formula grant awards to "States and units of general local government or combinations thereof" while section 223(d) provides that reallocated formula grant funds may be awarded to "local public and private nonprofit agencies", a separate and distinct group of eligible recipients. However, OJJDP considers these funds to be subject to the following section 223(d) (rather than section 224) fund use limitations:

(1) The OJJDP Administrator must endeavor to make a State's reallocated funds available within that nonparticipating State;

(2) Funds are available only to local public and private nonprofit agencies; and

(3) Fund use is limited to carrying out the purposes of deinstitutionalization, separation, and jail removal.

In all other respects, however, OJJDP considers the award of these funds to be in the nature of discretionary awards under the Special Emphasis Program and, consequently, subject to the requirements of sections 225–229.

It is only after OJJDP has endeavored to make the reallocated funds available in the nonparticipating State that the Administrator can make the remainder (if any) of these funds available, on an equitable basis, to States in full compliance with sections 223(a)(12)(A) and 223(a)(13).

6. *Comment:* The State advisory group composition provision (§ 31.302(b)(2)) does not list all the membership and other statutory requirements related to State advisory group composition.

Response: OJJDP sees no need for the regulation to repeat all of the statutory advisory group composition requirements. However, § 31.302(b)(1) specifies that the advisory group must meet all of the section 223(a)(3) statutory requirements. These requirements will be specified in detail in the Formula Grant Application Kit. Section 31.302(b)(2), on the other hand, merely suggests that the Governor consider appointing representatives of areas and interests that OJJDP believes to be underrepresented on State advisory groups generally and important to a balanced perspective on juvenile justice policy and funding priorities. In addition, these individuals can provide a valuable contribution in assessing the program's market through OJJDP's State Relations and Assistance Division. Several minor clarifying changes have been made to the § 31.302(b)(2) language.

7. *Comment:* The permissive language of the § 31.303(d)(1) serious juvenile offender emphasis provision was endorsed by one commentator because it provides needed discretion to States. Another commentator suggested removal of the "minimum" of 30% language because it interferes with State discretion.

Response: The provision encouraging States to allocate a minimum of 30% of their formula grant award to serious and violent juvenile offender programs was placed in the formula grant regulation in 1981 as a result of the 1980 Amendment's emphasis on serious and violent juvenile crime. Under this provision, the Office has simply "encouraged" the allocation of a minimum of 30% funding for serious and violent juvenile offender programs in States which have identified this as a priority program area. OJJDP sees no need to impliedly limit funding to a 30% level, particularly because as States come into compliance with the requirements of section 223(a) (12) to (14), additional formula grant funds will be available for other priority program needs. Therefore, in the final regulation, States are encouraged to provide a level of funding for serious and violent juvenile offender programs that is both adequate and sufficient to meet the level of need for such programs that has been identified through the State planning process.

OJJDP will continue to assist States in meeting their identified needs in the area as serious and violent juvenile offender programs through the provision of technical assistance, training, and Special Emphasis programming under section 224(a)(5).

8. *Comment:* When OJJDP added the term "felony" in § 31.303(e)(2) it closed an unintended loophole whereby juvenile traffic offenders and violators of other misdemeanor laws could be inappropriately jailed. Limiting this exception to "felony" violations is more restrictive and may increase the number of compliance violations, thereby creating a problem in measuring progress with section 223(a)(14) of the JJDP Act. Thus OJJDP should allow

affected States Flexibility for this particular element of the monitoring report.

Response: Flexibility will be provided to a State which cannot, or chooses not to, reconstruct baseline data consistent with the change in § 31.303(e)(2) *and* is unable to demonstrate substantial compliance with section 223(a)(14) because the current data excepts only "criminal felony charges" while the baseline data excerpts all "criminal charges". Under these circumstances, OJJDP will allow the State, upon request and with OJJDP prior approval, to modify the current data to also except juveniles having any "criminal charges" filed in a court with criminal jurisdiction in lieu of excepting only "criminal felony charges".

9. *Comment:* The establishment, in § 31.303(e)(3), of the four criteria to be used in determining whether or not a facility in which juveniles are detained or confined is an adult jail or lockup, in circumstances where juvenile and adult facilities are located in the same building or on the same grounds, was the subject of several comments which made the following points:

(1) The criteria should mandate the provision of programs and services appropriate to the needs of incarcerated juveniles as determined by law and professional standards of practice; and

(2) The proposed regulation permits "enhanced separation" in lieu of complete removal as intended by Congress. To qualify as a separate facility, a place of juvenile detention or confinement should share no common wall or common roof with an adult jail or lockup.

Response: OJJDP believes it is beyond the office's statutory authority to prescribe the level of programs and services which must be provided in State juvenile facilities. These matters are best left to State law and regulation and State and Federal judicial determination. While OJJDP recognizes that these are important issues, the JJDP Act mandates provide only the framework within which States can continue to evolve a more efficient and effective juvenile justice system.

OJJDP intended the policy statement to be used only as a method to classify facilities as either adult jails and lockups or as separate juvenile detention facilities. It was never intended to be used as a guide to planning for or establishing "enhanced separation" of juvenile and adult offenders in lieu of jail removal. OJJDP had determined that it is entirely appropriate to provide flexibility to States in those situations where a truly separate facility for juveniles is located on the same grounds or in the same building as an adult jail or lockup. It should also be noted that, to date, *no* State has formally requested OJJDP approval of a State's determination of a separate juvenile facility under the terms and conditions of the policy.

OJJDP has learned that several counties are considering new jail construction or the expansion or renovation of existing jails to provide "enhanced separation" for the juvenile area or section of the facility.

OJJDP does not view this as a positive development because it: (1) Stifles consideration of the many viable alternatives to the use of adult jails and lockups which are available to States, counties, and local governments; (2) may lead to increased isolation of juveniles in secure facilities; (3) may lead to a failure to provide needed programs and services; and (4) is clearly not responsive to the thrust of the removal mandate.

OJJDP's primary objective in establishing the policy in the first instance was to permit existing juvenile facilities to continue to operate in circumstances where they are, in fact, separate from an adult jail or lockup. While it is possible that new facilities could come into existence that meet the four minimum requirements to establish that two separate facilities exist, the mere provision of "enhanced separation" of juveniles and adults within an existing facility will not serve to meet the minimum requirements. Consequently, OJJDP will only exempt facilities which fully meet each of the four criteria required to be met in order to establish facility separateness. For this purpose, the regulation continues to provide for an initial State determination that a particular facility meets the four criteria, submission to OJJDP of documentation establishing that the requirements are met for the particular facility, and OJJDP concurrence or nonconcurrence with the State determination.

OJJDP will make staff and technical assistance resources available to States to ensure that the full range of alternatives to the use of adult jails and lockups is considered by those jurisdictions which will need to modify their existing practices in order for the State to meet the applicable statutory deadlines for compliance with the jail removal requirement.

10. *Comment:* The designated State agencies established pursuant to section 223(a)(1) of the JJDP Act should have input into the design of the auditing methodology which OJJDP undertakes pursuant to section 204(b)(7) of the Act and any OJJDP audit activity should be conducted in coordination with State agency juvenile justice staff.

Response: OJJDP intends to involve the designated State agency juvenile justice staff in both the methodology development and actual conduct of any on-site audits of State monitoring systems [see: § 31.303(l)].

11. *Comment:* OJJDP should reconsider the regulation requiring the monitoring of nonsecure facilities. The requirement to identify, classify, and inspect all facilities could be difficult given limited staff, the excessive amount of work involved, and the fact that compliance monitoring should focus on secure facilities. Also, because other State agencies oversee many of these facilities, the regulation would require a duplication of existing efforts.

Response: Section 223(a)(15) of the JJDP Act expressly requires States to monitor jails, detention facilities, correctional facilities and *nonsecure facilities*. Thus, § 31.303(f)(1)(i) of the regulation reflects a statutory requirement which OJJDP cannot waive or delete by regulation. To enable a State to determine which facilities fall under the purview of section 223(a) (12), (13) and (14), all facilities which may hold juveniles must be identified and classified. Only those facilities classified as secure detention facilities, secure correctional facilities, adult jails, or adult lock-ups fall under the data collection and data verification monitoring requirements. Once a facility is classified as nonsecure, the State does not necessarily have to reinspect the facility annually, but should have adequate procedures to ensure its classification as a nonsecure facility remains accurate. Classification review should occur at least every two years. The regulation does not require the State agency designated pursuant to section 223(a)(1) of the JJDP Act to perform all monitoring tasks. If other agencies have monitoring responsibilities, the designated State agency can utilize their information. The regulation requires a description of the monitoring activities and identification of the specific agency responsible for each task. Also, formula grant funds, other than the 7½ allowed for administrative costs pursuant to section 222(c), may be used to pay costs associated with implementing the monitoring requirement of section 223(a)(15).

12. *Comment:* (1) The valid court order regulation (Section 31.303(f)(3)), allowing secure detention of a juvenile who is alleged to have violated a valid court order, provides too much latitude to States. The regulation should clarify that there must be "reasonable grounds" or

"probable cause" before securely detaining a juvenile who has allegedly violated a valid court order. (2) The regulation does not require that the court order be entered *after* the provision of all due process. If the juvenile is not provided with right to counsel at the initial proceeding when the order is entered, then it is not constitutionally "valid." (3) The regulation should prohibit the detention of juveniles for allegedly violating a valid court order until a formal judicial determination (adjudication) has been made that such violation occurred.

Response: OJJDP considered the legal and constitutional issues raised by these commentators in developing the existing valid court order regulation. This development process included hearings held at two sites and the receipt, review and analysis of many written comments. The final regulation was published on August 16, 1982 (47 FR 35686). Since that time, OJJDP has been presented with no allegations or documentation of abuse in the application and/or implementation of the regulation. Consequently, OJJDP sees no basis to consider modification to this section of the regulation.

13. *Comment:* The statutory exception which permits States to jail juveniles in non-MSA areas for up to 24 hours, provided they are sight and sound separated from adults, gives rise to the very isolation problems, such as increased suicides, which motivated Congress to require complete jail removal in the first place. Consequently, the regulation requiring sight and sound separation under the 24 hour non-MSA exception should be strengthened to ensure that no youth is placed in a situation where he or she is placed in "de facto" solitary confinement because of the desire to achieve separation from adult offenders.

Response: Congress established the six specific requirements for this exception. However, OJJDP agrees with the thrust of this comment. Consequently, language has been added to § 31.303(f)(4), which implements the non-MSA statutory exception provision, to strongly recommend the provision of continuous visual supervision for those juveniles held up to 24 hours in an adult jail or lockup, pursuant to the exception, during the period of their incarceration.

14. *Comment:* States have not collected data which parallels the new jail removal exception. Thus, for States demonstrating a good-faith effort in the area of jail removal monitoring, appropriate flexibility by OJJDP is needed.

Response: States which established baseline jail removal data using the original statutory exception for "low population density areas" *and* which fail to demonstrate substantial compliance solely because the current data reflects the revised statutory exception for non-MSA areas, will be permitted to modify their current data by using the original statutory exception, upon request and with OJJDP prior approval (see § 31.303(f)(4)).

15. *Comment:* The word "certify" in § 31.303(f)(4)(iv) should be removed and the regulation require only that a "determination" has been made that the adult jail or lockup provides for the sight and sound separation of juveniles and incarcerated adults.

Response: The use of the term "certify" was intentionally included to require that specific action be taken, both by the State and the facility administration, to ensure the facility provides for sight and sound separation of juveniles and incarcerated adults. Through a certification process, the facility would have to document it provides for both separation and visual supervision. This could be accomplished by the jail administration stating in writing that these requirements are met and agreeing to notify the State if the facility is unable or fails to maintain the required level of separation and supervision.

16. *Comment:* The regulation requirement of "at least 6 months of data" for the annual monitoring report will create problems with data collection and monitoring because of the lack of both staff and resources.

Response: OJJDP will provide assistance and guidance to those States which will need to expand the length of their reporting period to comply with § 31.303(f)(5). With regard to costs associated with accomplishing the monitoring requirement, see Comment 11.

17. *Comment:* The six-hour "grace period" for detaining juveniles in adult jails or lockups is extremely difficult to rationalize and justify and a less restrictive limit would allow the freedom to determine more accurately the needs of a juvenile. Does the six-hour provision preclude placing a juvenile in a jail late at night and releasing him or her the next morning? The six-hour grace period should be extended to 10, 12, or 24 hours because in some remote areas it is impossible to travel the distance necessary, particularly in foul weather, to pick up a youth within six hours.

Response: It is Congress' finding that juvenile offenders and nonoffenders should not be placed in an adult jail or lockup for any period of time. However, for the purpose of monitoring and reporting compliance with the jail removal requirement, the House Committee on Education and Labor stated, in its Committee Report on the 1980 Amendments, that it would be permissible for OJJDP to permit States to exclude, for monitoring purposes, those juveniles alleged to have committed an act which would be a crime if committed by an adult (criminal type offenders) and who are held in an adult jail or lockup for up to six hours. This six hour period would be limited to the temporary holding in an adult jail or lockup by police for the specific purpose of identification, processing, and transfer to juvenile court officials or to juvenile shelter or detention facilities. Any such holding of a juvenile criminal type offender must be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, and in no case overnight. Even where such a temporary holding is permitted, the section 223(a)(13) separation requirement would operate to prohibit the accused juvenile criminal-type offender from being in sight or sound contact with an adult offender during this brief holding period. Under no circumstances does the allowance of a six-hour "grace period" applicable to juvenile criminal-type offenders permit a juvenile status offender or nonoffender be detained even temporarily in an adult jail or lockup under section 223(a)(14). In monitoring for compliance with section 223(a)(14), section 31.303(f)(5)(iv) of the regulation requires States to report the number of juvenile criminal-type offenders held in adult jails and lockups in excess of six hours. However, it should be noted that the six hours does not include time involved in transporting a juvenile to or from an adult jail or lockup.

18. *Comment:* The revised definition of the term "secure" in § 31.304(b), which clarified that "staff secure" facilities are outside the scope of the statutory definition, was the subject of several comments. Some commentators found the clarification helpful, recognizing the need to provide for the safety and protection of all juveniles in appropriate circumstances through therapeutic intervention. However, a number of others felt that better definitions of related terms such as "limited", "reasonable" and "for their own protection and safety" required further study, particularly in view of the due process and liberty interest implications of the staff secure concept, a perceived potential for abuse, and the need to identify effective staff secure programs in order to properly define the concept

Response: OJJDP found these comments helpful. The use of the word "secure" in "staff secure" in the draft regulation apparently caused some confusion. Perhaps "staff restrictive" would have been a better descriptor. In any event, OJJDP has eliminated the use of the term "staff secure" in the final regulation. However, the office will continue to work with individuals and organizations in the field of juvenile justice to define this concept in the context of effective programs that use staff control techniques, which include procedures or methods other than the use of construction fixtures, that may physically restrict the movements and activities of individual facility residents. The objective is to insure that juveniles will remain in residential facilities to receive the care and treatment that is necessary to carry out the juvenile or family court custody order.

The JJDP Act defines the terms "secure detention facility" and "secure correctional facility" in sections 103 (12) and (13). In this context, the terms are expressly defined to include only those public or private residential facilities which "include(s) construction fixtures designed to physically restrict the movements and activities of juveniles . . .". The plain meaning of this statutory language is that facility features other than "construction fixtures", such as the use of staff to restrict physically or procedurally the movements and activities of juveniles, are not within the scope of the definition.

Executive Order 12291

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This final rule does not have "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96–354).

Paperwork Reduction Act

The collection of information requirements for compliance monitoring contained in this regulation have been approved by the Office of Management and Budget (Data Collection #1121–0089, expiration date June 30, 1986) under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 28 CFR Part 31

Grant programs, Juvenile delinquency.

Accordingly, 28 CFR Part 31 is revised to read as follows:

PART 31—FORMULA GRANTS

Subpart A—General Provisions

Sec.
31.1 General.
31.2 Statutory authority.
31.3 Submission date.

Subpart B—Eligible Applicants

31.100 Eligibility.
31.101 Designation of State agency.
31.102 State agency structure.
31.103 Membership of supervisory board.

Subpart C—General Requirements

31.200 General.
31.201 Audit.
31.202 Civil rights.
31.203 Open meetings and public access to records.

Subpart D—Juvenile Justice Act Requirements

31.300 General.
31.301 Funding.
31.302 Applicant State agency.
31.303 Substantive requirements.
31.304 Definitions.

Subpart E—General Conditions and Assurances

31.400 Compliance with statute.
31.401 Compliance with other Federal laws, orders, circulars.
31.402 Application on file.
31.403 Non-discrimination.

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 et seq.)

Subpart A—General Provisions

§ 31.1 General.

This part defines eligibility and sets forth requirements for application for and administration of formula grants to State governments authorized by Part B, Subpart I, of the Juvenile Justice and Delinquency Prevention Act.

§ 31.2 Statutory authority.

The Statute establishing the Office of Juvenile Justice and Delinquency Prevention and giving authority to make grants for juvenile justice and delinquency prevention improvement programs is the *Juvenile Justice and Delinquency Prevention Act of 1974*, as amended (42 U.S.C. 5601 et seq.).

§ 31.3 Submission date.

Formula Grant Applications for each of Fiscal Year should be submitted to OJJDP by August 1st (60 days prior to the beginning of the fiscal year) or within 60 days after the States are officially notified of the fiscal year formula grant allocations.

Subpart B—Eligible Applicants

§ 31.100 Eligibility.

All States as defined by section 103(7) of the JJDP Act.

§ 31.101 Designation of State agency.

The Chief Executive of each State which chooses to apply for a formula grant shall establish or designate a State agency as the sole agency for supervising the preparation and administration of the plan. The plan must demonstrate compliance with administrative and supervisory board membership requirements established by the OJJDP Administrator pursuant to Section 261(c) of the JJDP Act. States must have available for review a copy of the State law or executive order establishing the State agency and its authority.

§ 31.102 State agency structure.

The State agency may be a discrete unit of State government or a division or other component of an existing State crime commission, planning agency or other appropriate unit of State government. Details of organization and structure are matters of State discretion, provided that the agency: (a) Is a definable entity in the executive branch with the requisite authority to carry out the responsibilities imposed by the JJDP Act; (b) has a supervisory board (i.e., a board of directors, commission, committee, council, or other policy board) which has responsibility for supervising the preparation and administration of the plan and its implementation; and (c) has sufficient staff and staff capability to carry out the board's policies and the agency's duties and responsibilities to administer the program, develop the plan, process applications, administer grants awarded under the plan, monitor and evaluate programs and projects, provide administration/support services, and perform such accountability functions as are necessary to the administration of Federal funds, such as grant close-out and audit of subgrant and contract funds.

§ 31.103 Membership of Supervisory Board.

The State advisory group appointed under section 223(a)(3) may operate as the supervisory board for the State agency, at the discretion of the Governor. Where, however, a State has continuously maintained a broad-based law enforcement and criminal justice supervisory board (council) meeting all the requirements of section 402(b)(2) of the Justice System Improvement Act of 1979, and wishes to maintain such a

board such composition shall be acceptable provided that the board's membership includes the Chairman and at least two (2) local citizen members of the State advisory group. For purposes of this requirement a citizen member is defined as any person who is not a full-time government employee or elected official. Any executive committee of such a board must include the same proportion of juvenile justice advisory group members as are included in the total board membership. Any other proposed supervisory board membership is subject to case by case review and approval of the OJJDP Administrator and will require, at a minimum, "balanced representation" of juvenile justice interests.

Subpart C—General Requirements

§ 31.200 General.

This subpart sets forth general requirements applicable to formula grant recipients under the JJDP Act of 1974 as amended. Applicants must assure compliance or submit necessary information on these requirements.

§ 31.201 Audit.

The State must assure that it adheres to the audit requirements enumerated in the "Financial and Administrative Guide for Grants" Guideline Manual 7100.1 (current edition). Chapter 8 of the Manual contains a comprehensive statement of audit policies and requirements relative to grantees and subgrantees.

§ 31.202 Civil rights.

(a) To carry out the State's Federal civil rights responsibilities the plan must:

(1) Designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as liaison in all civil rights matters with OJJDP and the OJP Office of Civil Rights Compliance (OCRC); and

(2) Provide the Council's Equal Employment Opportunity Program (EEOP), if required to maintain one under 28 CFR 42.301, *et seq.*, where the application is for $500,000 or more.

(b) The application must provide assurance that the State will:

(1) Require that every applicant required to formulate an EEOP in accordance with 28 CFR 42.201 et seq., submit a certification to the State that it has a current EEOP on file which meets the requirement therein;

(2) Require that every criminal or juvenile justice agency applying for a grant of $500,000 or more submit a copy of its EEOP (if required to maintain one under 28 CFR 42.301, et seq.) to OCRC at the time it submits its application to the State;

(3) Inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with OCRC for investigation;

(4) Cooperate with OCRC during compliance reviews of recipients located within the State; and

(5) Comply, and that its subgrantees and contractors will comply with the requirement that, in the event that a Federal or State court or administrative agency makes a finding of discrimination on the basis of race, color, religion, national origin, or sex (after a due process hearing) against a State or a subgrantee or contractor, the affected recipient or contractor will forward a copy of the finding to OCRC.

§ 31.203 Open meetings and public access to records.

The State must assure that the State agency and its supervisory board established pursuant to section 261(c)(1) and the State advisory group established pursuant to section 223(a)(3) will follow applicable State open meeting and public access laws and regulations in the conduct of meetings and the maintenance of records relating to their functions.

Subpart D—Juvenile Justice Act Requirements

§ 31.300 General.

This subpart sets forth specific JJDP Act requirements for application and receipt of formula grants.

§ 31.301 Funding.

(a) *Allocation to States.* Each State receives a base allotment of $225,000 except for the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands where the base amount is $56,250. Funds are allocated among the States on the basis of relative population under 18 years of age. OJJDP will officially notify the States and territories of their respective allocation within 30 days after the appropriation bill for the applicable fiscal year becomes law.

(b) *Funds for Local Use.* At least two-thirds of the formula grant allocation to the State must be used for programs by local government, or local private agencies unless the State applies for and is granted a waiver by the Office of Juvenile Justice and Delinquency Prevention.

(c) *Match.* Formula grants under the JJDP Act shall be 100% of approved costs, with the exception of planning and administration funds, which require a 100% cash match (dollar for dollar), and construction projects funded under section 227(a)(2) which also require a 100% cash match.

(d) *Funds for Administration.* Not more than 7.5% of the total annual formula grant award may be utilized to develop the annual juvenile justice plan and pay for administrative expenses, including project monitoring evaluation. These funds are to be matched on a dollar for dollar basis. The State shall make available needed funds for planning and administration to units of local government or combinations on an equitable basis. Each annual application must identify uses of such funds.

(e) *Nonparticipating States.* Pursuant to section 223(d), the OJJDP Administrator shall endeavor to make the fund allotment under section 222(a), of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, directly available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of achieving deinstitutionalization of status offenders and nonoffenders, separation of juveniles from incarcerated adults, and/or removal of juveniles from adult jails and lockups. Absent the demonstration of compelling circumstances justifying the reallocation of formula grant funds back to the State to which the funds were initially allocated, or the pendency of administrative hearing proceedings under section 223(d), formula grant funds will be reallocated on October 1 following the fiscal year for which the funds were appropriated. Reallocated funds will be competitively awarded to eligible recipients pursuant to program announcements published in the Federal Register.

§ 31.302 Applicant State agency.

(a) Pursuant to section 223(a)(1), section 223(a)(2) and section 261(c) of the JJDP Act, the State must assure that the State agency approved under Section 261(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.

(b) *Advisory Group.* Pursuant to section 223(a)(3) of the JJDP Act, the Chief Executive:

(1) Shall establish an advisory group pursuant to section 223(a)(3) of the JJDP Act. The State shall provide a list of all

current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in this section of the Act.

(2) Should consider, in meeting the statutory membership requirements of section 223(a)(3) (A) to (E), appointing at least one member who represents each of the following: A law enforcement officer such as a police officer; a juvenile or family court judge; a probation officer; a corrections official; a prosecutor; a representative from an organization, such as a parents group, concerned with teenage drug and alcohol abuse; and a high school principal.

(c) The State shall assure that it complies with the Advisory Group Financial support requirement of section 222(d) and the composition and function requirements of section 223(a)(3) of the JJDP Act.

31.303 Substantive requirements.

(a) *Assurances.* The State must certify through the provision of assurances that it has complied and will comply (as appropriate) with section 223(a) (4), (5), (6), (7), (8)(C), (9), (10), (11), (16), (17), (18), (19), (20), and (21), and sections 229 and 261(d), in formulating and implementing the State plan. The Formula Grant Application Kit can be used as a reference in providing these assurances.

(b) *Serious Juvenile Offender Emphasis.* Pursuant to sections 101(a)(8) and 223(a)(10) of the JJDP Act, the Office encourages States that have identified serious and violent juvenile offenders as a priority problem to allocate formula grant funds to programs designed for serious and violent juvenile offenders at a level consistent with the extent of the problem as identified through the State planning process. Particular attention should be given to improving prosecution, sentencing procedures, providing resources necessary for informed dispositions, providing for effective rehabilitation, and facilitating the coordination of services between the juvenile justice and criminal justice systems.

(c) *Deinstitutionalization of Status Offenders and Non-Offenders.* Pursuant to section 223(a)(12)(A) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable covering the three-year planning cycle, for assuring that the requirements of this section are met. Refer to § 31.303(f)(3) for the rules related to the valid court order exception to this Act requirement.

(2) Describe the barriers the State faces in achieving full compliance with the provisions of this requirement.

(3) For those States that have achieved "substantial compliance", as outlined in section 223(c) of the Act, document the unequivocal commitment to achieving full compliance.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(12)(A) may, in lieu of addressing paragraphs (c)(1), (2), and (3) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(5) Submit the report required under section 223(a)(12)(B) of the Act as part of the annual monitoring report required by section 223(a)(15) of the Act.

(d) *Contact with Incarcerated Adults.* (1) Pursuant to section 223(a)(13) of the JJDP Act the State shall:

(i) Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term *regular contact* is defined as sight and sound contact with incarcerated adults, including inmate trustees. This prohibition seeks as complete a separation as possible and permits no more than haphazard or accidental contact between juveniles and incarcerated adults. In addition, include a timetable for compliance and justify any deviation from a previously approved timetable.

(ii) In those isolated instances where juvenile criminal-type offenders remain confined in adult facilities or facilities in which adults are confined, the State must set forth the procedures for assuring no regular sight and sound contact between such juveniles and adults.

(iii) Describe the barriers which may hinder the separation of alleged or adjudicated criminal-type offenders, status offenders and non-offenders from incarcerated adults in any particular jail, lockup, detention or correctional facility.

(iv) Those States which, based upon the most recently submitted monitoring report, have been found to be in compliance with section 223(a)(13) may, in lieu of addressing paragraphs (d) (i), (ii), and (iii) of this section, provide an assurance that adequate plans and resources are available to maintain compliance.

(v) Assure that adjudicated offenders are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of segregating adults and juveniles in correctional facilities. This does not prohibit or restrict waiver of juveniles to criminal court for prosecution, according to State law. It does, however, preclude a State from administratively transferring a juvenile offender to an adult correctional authority or a transfer within a mixed juvenile and adult facility for placement with adult criminals either before or after a juvenile reaches the statutory age of majority. It also precludes a State from transferring adult offenders to juvenile correctional authority for placement.

(2) *Implementation.* The requirement of this provision is to be planned and implemented immediately by each State in light of identified constraints on immediate implementation. Immediate compliance is required where no constraints exist. Where constraints exist, the designated date of compliance in the latest approved plan is the compliance deadline. Those States not in compliance must show annual progress toward achieving compliance until compliance is reached.

(e) *Removal of Juveniles From Adult Jails and Lockups.* Pursuant to section 223(a)(14) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable for assuring that requirements of this section will be met beginning after December 8, 1985. Refer to § 31.303(f)(4) to determine the regulatory exception to this requirement.

(2) Describe the barriers which the State faces in removing all juveniles from adult jails and lockups. This requirement excepts only those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

(3)(i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. In circumstances where the juvenile and adult facilities are located in the same building or on the same grounds, each of the following four requirements initially set forth in the January 17, 1984 Federal Register (49 FR 2054-2055) must be met in order to ensure the requisite separateness of the two facilities. The requirements are:

(A) Total separation between juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities.

(B) Total separation in all juvenile and adult program activities within the

facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities.

(C) Separate juvenile and adult staff, including management, security staff, and direct care staff such as recreation, education, and counseling. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juvenile and adults, can serve both.

(D) In States that have established State standards or licensing requirements for secure juvenile detention facilities, the juvenile facility meets the standards and is licensed as appropriate.

(ii) The State must initially determine that the four requirements are fully met. Upon such determination, the State must submit to OJJDP a request to concur with the State finding that a separate juvenile facility exists. To enable OJJDP to assess the separateness of the two facilities, sufficient documentation must accompany the request to demonstrate that each requirement is met.

(4) For those States that have achieved "substantial compliance" with section 223(a)(14) as specified in section 223(a) of the Act, the requirement for achieving full compliance.

(5) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(14) may, in lieu of addressing paragraphs (e) (1), (2), and (4) of this Section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(f) *Monitoring of Jails, Detention Facilities and Correctional Facilities.* (1) Pursuant to section 223(a)(15) of the JJDP Act, and except as provided by paragraph (f)(5) of this section, the State shall:

(i) Describe its plan, procedure, and timetable for annually monitoring jails, lockups, detention facilities, correctional facilities and non-secure facilities. The plan must at a minimum describe in detail each of the following tasks including the identification of the specific agency(s) responsible for each task.

(A) *Identification of Monitoring Universe.* This refers to the identification of all residential facilities which might hold juveniles pursuant to public authority and thus must be classified to determine if it should be included in the monitoring effort. This includes those facilities owned or operated by public and private agencies.

(B) *Classification of the Monitoring Universe.* This is the classification of all facilities to determine which ones should be considered as a secure detention or correctional facility, adult correctional institution, jail, lockup, or other type of secure or nonsecure facility.

(C) *Inspection of facilities.* Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and record keeping. The inspection must include: (1) A review of the physical accommodations to determine whether it is a secure or non-secure facility or whether adequate sight and sound separation between juvenile and adult offenders exists *and* (2) a review of the record keeping system to determine whether sufficient data are maintained to determine compliance with section 223(a) (12), (13) and/or (14).

(D) *Data Collection and Data Verification.* This is the actual collection and reporting of data to determine whether the facility is in compliance with the applicable requirement(s) of section 223(a) (12), (13) and/or (14). The length of the reporting period should be 12 months of data, but in no case less than 6 months. If the data is self-reported by the facility or is collected and reported by an agency other than the State agency designated pursuant to section 223(a)(1) of the JJDP Act, the plan must describe a statistically valid procedure used to verify the reported data.

(ii) Provide a description of the barriers which the State faces in implementing and maintaining a monitoring system to report the level of compliance with section 223(a) (12), (13), and (14) and how it plans to overcome such barriers.

(iii) Describe procedures established for receiving, investigating, and reporting complaints of violation of section 223(a) (12), (13), and (14). This should include both legislative and administrative procedures and sanctions.

(2) For the purpose of monitoring for compliance with section 223(a)(12)(A) of the Act a secure detention or correctional facility is any secure public or private facility used for the lawful custody of *accused* or adjudicated juvenile offenders or non-offenders, *or* used for the lawful custody of accused or convicted adult criminal offenders.

(3) *Valid Court Order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to the juvenile's attorney and/or legal guardian in writing and be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juveniles may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceeding;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3) (i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.

(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

(4) *Removal Exception (Section 223(a)(14)).* The following conditions must be met in order for an accused juvenile criminal-type offender, awaiting an initial court appearance, to be detained up to 24 hours (excluding weekends and holidays) in an adult jail or lockup:

(i) The State must have an enforceable State law requiring an initial court appearance within 24 hours after being taken into custody (excluding weekends and holidays);

(ii) The geographic area having jurisdiction over the juvenile is outside a metropolitan statistical area pursuant to the Bureau of Census' current designation;

(iii) A determination must be made that there is no existing acceptable alternative placement for the juvenile pursuant to criteria developed by the State and approved by OJJDP;

(iv) The adult jail or lockup must have been certified by the State to provide for the sight and sound separation of juveniles and incarcerated adults; and

(v) The State must provide documentation that the conditions in paragraphs (f)(4) (i) thru (iv) of this Section have been met and received prior approval from OJJDP. In addition, OJJDP strongly recommends that jails and lockups which incarcerate juveniles pursuant to this exception be required to provide continuous visual supervision of juveniles incarcerated pursuant to this exception.

(5) *Reporting Requirement.* The State shall report annually to the Administrator of OJJDP on the results of monitoring for section 223(a) (12), (13), and (14) of the JJDP Act. The reporting period should provide 12 months of data, but shall not be less than 6 months. Three copies of the report shall be submitted to the Administrator of OJJDP no later than December 31 of each year.

(i) To demonstrate the extent of compliance with section 223(a)(12)(A) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Dates of baseline and current reporting period.

(B) Total number of public and private secure detention and correctional facilities AND the number inspected on-site.

(C) Total number of accused status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(f)(2) for longer than 24 hours (not including weekends and holidays), excluding those held pursuant to the valid court order provision as defined in paragraph (f)(3) of this section.

(D) Total number of adjudicated status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(f)(2), excluding those held pursuant to the valid court order provision as defined in paragraph (f)(3) of this section.

(E) Total number of status offenders held in any secure detention or correctional facility pursuant to a judicial determination that the juvenile violated a valid court order as defined in paragraph (f)(3) of this section.

(ii) To demonstrate the extent to which the provisions of section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and non-offenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the progress toward and extent of compliance with section 223(a)(13) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Designated date for achieving full compliance.

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months AND the number inspected on-site.

(C) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide adequate separation.

(D) The total number of juvenile offenders and non-offenders NOT adequately separated in facilities used for the secure detention and confinement of both juveniles and adults.

(iv) To demonstrate the progress toward and extent of compliance with section 223(a)(14) of the JJDP Act the report must at least include the following information for the baseline and current reporting periods:

(A) Dates of baseline and current reporting period.

(B) Total number of adult jails in the State AND the number inspected on-site.

(C) Total number of adult lockups in the State AND the number inspected on-site.

(D) Total number of adult jails holding juveniles during the past twelve months.

(E) Total number of adult lockups holding juveniles during the past twelve months.

(F) Total number of adult jails and lockups in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which it is located.

(G) Total number of juvenile criminal-type offenders held in adult jails in excess of six hours.

(H) Total number of juvenile criminal-type offenders held in adult lockups in excess of six hours.

(I) Total number of accused and adjudicated status offenders and non-offenders held in any adult jail or lockup.

(J) Total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than 24 hours in adult jails and lock-ups in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section.

(6) *Compliance.* The State must demonstrate the extent to which the requirements of section 223(a) (12)(A), (13), and (14) of the Act are met. Should the State fail to demonstrate compliance with the requirements of this Section within designated time frames, eligibility for formula grant funding shall terminate. The compliance levels are:

(i) *Substantial compliance* with section 223(a)(12)(A) requires within three years of initial plan submission achievement of a 75% reduction in the aggregate number of status offenders and non-offenders held in secure detention or correctional facilities or removal of 100% of such offenders from secure correctional facilities only. In addition, the State must make an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within two additional years. *Full compliance* is achieved when a State

has removed 100% of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with *de minimis* exceptions pursuant to the policy criteria contained in the Federal Register of January 9, 1981 (46 FR 2566–2569).

(m) *Compliance* with section 223(a)(13) has been achieved when a State can demonstrate that

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of section 223(a)(13); or

(B)(*1*) State law, regulation, court rule, or other established executive or judicial policy clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of section 223(a)(13);

(*2*) All instances of noncompliance reported in the last submitted monitoring report were in violation of, or departures from, the State law, rule, or policy referred to in paragraph (f)(6)(iii)(B)(*1*) of this section;

(*3*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances; and

(*4*) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (f)(6)(iii)(B)(*1*) of this section are such that the instances of noncompliance are unlikely to recur in the future.

(n) *Substantial compliance* with section 223(a)(14) requires the achievement of a 75% reduction in the number of juveniles held in adult jails and lockups by December 8, 1985 and that the State has made an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within three additional years. *Full compliance* is achieved when a State demonstrates that the last submitted monitoring report, covering a full and actual 12 months of data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of section 223(a)(14). *Full compliance with de minimis exceptions* is achieved when a State demonstrates that it has met the standard set forth in either of paragraphs (f)(6)(iii) (A) or (B) of this section:

(A)(*1*) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of section 223(a)(14);

(*2*) All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from, the State law, rule, or policy referred to in paragraph (f)(6)(iii)(A)(*1*) of this section;

(*3*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;

(*4*) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (f)(6)(iii)(A)(*1*) of this section are such that the instances of noncompliance are unlikely to recur in the future; and

(*5*) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(A)(*4*) of this section.

(B) [Reserved]

(7) *Monitoring Report Exceptions.* States which have been determined by the OJJDP Administrator to have achieved full compliance with section 223(a)(12)(A) and compliance with section 223(a)(13) of the JJDP and which wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

(i) The State provides for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to enable an annual determination of State compliance with section 223(a) (12)(A), (13), and (14) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of section 223(a) (12)(A) and (13) of the JJDP Act; and

(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

(A) Authority for enforcement of the statute is assigned;

(B) Time frames for monitoring compliance with the statute are specified; and

(C) Adequate sanctions and penalties that will result in enforcement of statute and procedures for remedying violations are set forth.

(g) *Juvenile Crime Analysis.* Pursuant to section 223(a)(8) (A) and (B) the State shall conduct an analysis of juvenile crime problems and juvenile justice and delinquency prevention needs.

(1) *Analysis.* The analysis must be provided in the multiyear application. A suggested format for the analysis is provided in the Formula Grant Application Kit.

(2) *Product.* The product of the analysis is a series of brief written problem statements set forth in the application that define and describe the priority problems.

(3) *Programs.* Applications are to include descriptions of programs to be supported with JJDP Act formula grant funds. A suggested format for these programs is included in the application kit.

(4) *Performance Indicators.* A list of performance indicators must be developed and set forth for each program. These indicators show what data will be collected at the program level to measure whether objectives and performance goals have been achieved and should relate to the measures used in the problem statement and statement of program objectives.

(h) *Annual Performance Report.* Pursuant to section 223(a) and section 223(a)(22) the State plan shall provide for submission of an annual performance report. The State shall report on its progress in the implementation of the approved programs, described in the three-year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals. The annual performance report shall describe progress made in addressing the problem of serious juvenile crime, as documented in the juvenile crime analysis pursuant to section 223(a)(8)(A).

(i) *Technical Assistance.* States shall include, within their plan, a description of technical assistance needs. Specific direction regarding the development and inclusion of all technical assistance needs and priorities will be provided in the "Application Kit for Formula Grants under the JJDPA."

(j) *Other Terms and Conditions.* Pursuant to section 223(a)(23) of the JJDP Act, States shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the formula grant.

§ 31.304 Definitions.

(a) *Private agency.* A private non-profit agency, organization or institution is:

(1) Any corporation, foundation, trust, association, cooperative, or accredited institution of higher education not under public supervision or control; and

(2) Any other agency, organization or institution which operates primarily for scientific, education, service, charitable, or similar public purposes, but which is not under public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax-exempt under the provisions of section 501(c)(3) of the 1954 Internal Revenue Code.

(b) *Secure.* As used to define a detention or correctional facility this

term includes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

(c) *Facility.* A place, an institution, a building or part thereof, set of buildings or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.

(d) *Juvenile who is accused of having committed an offense.* A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

(e) *Juvenile who has been adjudicated as having committed an offense.* A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.

(f) *Juvenile offender.* An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations by defined as State law, i.e., a criminal-type offender or a status offender.

(g) *Criminal-type offender.* A juvenile offender who has been charged with or adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(h) *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(i) *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

(j) *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

(k) *Other individual accused of having committed a criminal offense.* An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction.

(l) *Other individual convicted of a criminal offense.* An individual, adult or juvenile, who has been convicted of a criminal offense in court exercising criminal jurisdiction.

(m) *Adult jail.* A locked facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

(n) *Adult lock-up.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

(o) *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word "valid" permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States.

(p) *Local Private Agency.* For the purposes of the pass-through requirement of section 223(a)(5), a local private agency is defined as a private non-profit agency or organization that provides program services within an identifiable unit or a combination of units of general local government.

Subpart E—General Conditions and Assurances

§ 31.400 Compliance with statute.

The applicant State must assure and certify that the State and its subgrantees and contractors will comply with applicable provisions of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, as amended, and with the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, as amended, and the provisions of the current edition of OJP Financial and Administrative Guide for Grants, M 7100.1.

§ 31.401 Compliance with other Federal laws, orders, circulars.

The applicant State must further assure and certify that the State and its subgrantees and contractors will adhere to other applicable Federal Laws, orders and OMB circulars. These general Federal laws and regulations are described in greater detail in the Financial and Administrative Guide for Grants, M 7100.1, and the Formula Grant Application Kit.

§ 31.402 Application on file.

Any Federal funds awarded pursuant to an application must be distributed and expended pursuant to and in accordance with the programs contained in the approved State current approved [illegible] Any departures therefrom, either [illegible] to the extent permitted by [illegible] and local regulations and procedures, must be submitted for advance approval by the Administrator of OJARS.

§ 31.403 Non-discrimination.

The State assures that it will comply, and it assures that its subgrantees and contractors will comply, with all applicable Federal nondiscrimination requirements, including:

(a) Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and made applicable by Section 262(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

(b) Title VI of the Civil Rights Act of 1964.

(c) Section 504 of the Rehabilitation Act of 1973, as amended.

(d) Title IX of the Education Amendments of 1972.

(e) The Age Discrimination Act of 1975, and

(f) The Department of Justice Nondiscrimination Regulations; 28 CFR Part 42, Subparts C, D, E, and G.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-007]

Arizona State Plan; Approval of Revised Compliance Staffing Benchmarks and Final Approval Determination

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of Revised Compliance Staffing Benchmarks and Final State Plan Approval.

SUMMARY: This document amends Subpart CC of 29 CFR Part 1952 to reflect the Assistant Secretary's decision approving revised compliance staffing requirements and granting final approval to the Arizona State plan. As a

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of final regulation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing the final revision of the existing Formula Grants Regulation (28 CFR part 31), which implements part B of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, (subtitle F of title VII of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4181, November 18, 1988). The 1988 Amendments reauthorize and modify the Federal assistance program of grants to state and local governments and private not-for-profit agencies for juvenile justice and delinquency prevention improvements authorized under part B of Title II of the JJDP Act (42 U.S.C. 5611 *et seq.*). The final revision to the existing Regulation provides guidance to states in the formulation, submission, and implementation of state formula grants plans.

EFFECTIVE DATE: This regulation is effective August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Jeff Allison, Compliance Monitoring Coordinator, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 633 Indiana Avenue, NW., Room 760, Washington, DC 20531; (202) 724-5924.

SUPPLEMENTARY INFORMATION:

Statutory Amendments

The 1988 reauthorization of the JJDP Act resulted in statutory amendments that impact the Formula Grants Program. These statutory changes include: A modified formula grant fund allocation minimum for participating states and territories; a funding pass-through requirement for Indian tribes; a plan requirement related to assessing and addressing the overrepresentation of minority juveniles in all types of secure facilities; extension through 1993 of the non-MSA exception to the jail and lockup removal requirement; an alternative substantial compliance standard for jail and lockup removal; and, a provision for the Administrator to waive termination of funding eligibility for states that have failed to achieve substantial or full compliance with the jail and lockup removal requirement. The final regulation details revised procedures and requirements for states participating in the Formula Grants Program resulting from the 1988 amendments to the JJDP Act.

Description of Major Changes

Formula Grant Allocations

Section 222(a) of the JJDP Act was amended to raise the minimum Formula Grant allocation from $225,000 per state and $56,250 per territory. The minimum allocations are now $325,000 per state and $75,000 per territory if the title II appropriation is less than $75 million (other than part D). If the title II appropriation is more than $75 million (other than part D), the minimum allocations are $400,000 per state and $100,000 per territory. State and territory allocations will be reduced prorata to the extent necessary to ensure that no state receives less than it was allotted in Fiscal Year 1988.

Indian Pass-Through

Section 223(a)(5) of the JJDP Act was amended to require that a portion of each participating state's 66⅔ percent Formula Grant pass-through be made available to fund programs of Indian tribes that perform law enforcement functions, and that agree to attempt to comply with the deinstitutionalization of status offenders, separation, and jail and lockup removal requirements of the JJDP Act. The proportion of pass-through funds made available for these programs must be the same as the proportion of the state's population under 18 years of age which resides in those geographical areas where Indian tribes perform such law enforcement functions. Each year, the Secretary of the Interior will provide OJJDP with an updated list of those tribes within states that perform law enforcement functions. The initial list is available through OJJDP.

A related provision, section 223(a)(6)(A) of the JJDP Act, was amended to require that each state's juvenile crime analysis, which is submitted annually as part of the Formula Grant Application and Plan, include an assessment of juvenile crime problems and prevention needs within the geographical areas in which Indian tribes perform law enforcement functions.

Minority Overrepresentation in Secure Facilities

Section 223(a)(23) of the JJDP Act was amended to require that each participating state's Formula Grant Plan address efforts to reduce the proportion of juveniles who are members of minority groups detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups, if such proportion exceeds the proportion such groups represent in the general population.

Jail Removal

Section 223(a)(14) of the JJDP Act was amended to continue the non-MSA (low population density) exception to the jail and lockup removal requirement through 1993. The statutory criteria outlined in section 223(a)(14) (A), (B) and (C) that must be satisfied for a state to use this exception remain the same (28 CFR 31.303(f)(4)).

Section 223(c) of the JJDP Act was amended to create an alternative substantial compliance standard for those states unable to achieve a 75 percent reduction in jail and lockup removal violations, but which have made sufficient progress to merit continued funding. The new standard establishes four criteria which, if satisfied, may be used in lieu of achieving a 75 percent numerical reduction to demonstrate substantial compliance. The four criteria require that the state has: (1) Removed all status and nonoffender juveniles from adult jails and lockups; (2) made meaningful progress in removing other juveniles from adult jails and lockups; (3) diligently carried out the state's jail and lockup removal plan; and (4) historically expended and continues to expend an appropriate and significant share of Formula Grant resources to comply with section 223(a)(14) of the JJDP Act. As with the 75 percent reduction standard, for a state to be eligible for a finding of substantial compliance under this alternative standard the state must demonstrate an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed three additional years, after the December 8, 1985, statutory deadline for achieving substantial compliance with the jail and lockup removal requirement.

The statutory deadlines for substantial and full compliance with section 223(a)(14) of the JJDP Act were not changed by the 1988 Amendments. Each participating state and territory's 1987 and 1988 Monitoring Reports (due by December 31, 1987, and December 31, 1988, respectively) must demonstrate either substantial or full compliance with the jail and lockup removal requirement in order for the state to be eligible (absent a waiver of termination)

for the FY 1988 and 1990 Formula Grant awards, respectively. Each participating state and territory's 1989 Monitoring Report (due by December 31, 1989), must demonstrate full compliance or full compliance with de minimis exceptions with section 223(a)(14) in order for the state to be eligible (absent a waiver of termination) for the FY 1991 Formula Grant award, and all subsequent awards.

Section 223(c) of the JJDP Act was also amended to provide the Administrator of OJJDP with the discretion to waive termination of funding eligibility for those states and territories that have not achieved substantial or full compliance with the jail and lockup removal requirement, provided that the state or territory agrees to expend all of its Formula Grant resources, except planning and administration, advisory group set aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14). This final revision of the Formula Grants Regulation sets forth standards that a state must demonstrate it meets in order to be considered by the Administrator for a waiver of the termination sanction. A state which satisfies these standards qualifies for a waiver on the basis that: (1) It has made significant progress to date; and (2) additional funding is likely to produce further progress toward compliance.

Discussion of Comments

The proposed revisions to the existing Formula Grants Regulation were published in the Federal Register on April 12, 1989 (54 FR 14768), for public comment. Written comments were received from eight states, two regional coalitions of state juvenile justice advisory groups, the National Coalition of State Juvenile Justice Advisory Groups, the University of Wisconsin School of Social Welfare, and the Subcommittee on Human Resources of the U.S. House of Representatives' Committee on Education and Labor. The National Coalition of State Juvenile Justice Advisory Groups submitted a resolution passed at their May 7-10, 1989 National Conference in Reno. All comments have been considered by OJJDP in the issuance of this final regulation.

The following is a summary of the comments and the responses by OJJDP:

1. *Comment:* The majority of respondents expressed concern that paragraphs (f)(6)(iii)(D)(1)(v) and (f)(6)(iii)(D)(2) (vii) of the proposed regulation only required states to demonstrate a "commitment" to achieving full compliance when seeking a waiver of termination of eligibility for failure to achieve substantial or full compliance with the jail and lockup removal provision, section 223(a)(14) of the JJDP Act. These respondents indicated that states should be required to demonstrate an "unequivocal commitment" to achieving full compliance in order to be eligible for a waiver of termination. The House Subcommittee on Human Resources commented that requiring a lesser commitment for a state in the context of an application for a waiver than is required for that state to achieve substantial compliance weakens the Act's compliance scheme, which was not the intent of the 1988 Amendments. The House Subcommittee further commented that only a requirement of unequivocal commitment will enable the Administrator to make the determination, with certainty, that additional funding is likely to produce further progress toward compliance when waivers are granted. The comments and the resolution of the National Coalition of State Juvenile Justice Advisory Groups supported this position.

Several respondents commented that the positive responses of state legislatures and governors to the requirement of an unequivocal commitment as a basis of eligibility for participation in the OJJDP sponsored Jail Removal Initiative I demonstrates the level of commitment that most states have already made to achieving the goals of jail removal. Within this context, respondents commented that OJJDP should remain consistent in its interpretation of requirements, as weakening the standard undermines gains already achieved by many states.

Finally, several respondents indicated that without requiring the higher, well defined standard of "unequivocal commitment," waivers of termination would practically be automatic, and the jail and lockup removal provision of the JJDP Act would be weakened.

One state supported the "commitment" language in the proposed regulation.

Response: It is the OJJDP position that the legislation itself is clear in that it does not require the Administrator to demand an "unequivocal commitment" but allows the Administrator discretion to waive termination of eligibility when a state is unable to meet the standard for substantial compliance, or the standard for full compliance. The Act imposes only one condition upon the Administrator in utilizing the waiver provision: That those states who are unable to demonstrate substantial or full compliance (as required by the Act) must commit all of their formula grant dollars to the issue of jail removal except as provided by the statute. This is a substantial requirement and is demonstrative of a state's willingness and commitment to comply with the jail removal mandate.

The Regulation incorporates this requirement and in addition requires states to: Have an adequate monitoring system, diligently carry out the state's jail and lockup removal plan, submit an acceptable plan to eliminate noncompliant incidents and to demonstrate a commitment to achieving full compliance. Therefore, the Regulation satisfies not only the clear language of the statute, it also satisfies the intent of Congress that the waiver be applied to those cases where the Administrator determines the states have made significant progress and additional funding is likely to produce further progress toward compliance. It is consistent with Congressional action in creating the waiver provision by assisting states that are committed to maintaining progress toward and achieving full compliance with 223(a)(14).

Based on these conclusions, paragraphs (f)(6)(iii)(D)(1)(v) and (f)(6)(iii)(D)(2)(vii) of the final regulation retain the original language from the proposed regulation requiring states seeking a waiver of termination of eligibility to demonstrate a "commitment" to achieving full compliance.

2. *Comment:* One respondent indicated that there was no justification for allowing the Administrator to waive termination of a state's eligibility for failure to achieve substantial compliance with the jail and lockup removal provision.

Response: Section 223(c)(2)(B) of the JJDP Act clearly applies the waiver of termination sanction to those states unable to achieve substantial compliance with the jail and lockup removal provision, pursuant to section 223(c)(2)(A). This interpretation of the statute is supported by the House Committee on Education and Labor Report (100-605) which states on page 11, "It should be noted that the bill makes this alternative sanction available with regard to enforcing the substantial and full compliance requirements."

It is the OJJDP's intention to apply the waiver provision carefully, as directed by Congress. This will occur in those situations where, although substantial compliance has not been achieved within the applicable time limit, the state has made significant progress in removing juveniles from adult jails and

lockups, and there is substantive evidence that additional funding is likely to produce further progress toward full compliance.

3. *Comment:* One respondent requested that the waiver maximum apply only to (f)(6)(iii)(D)(2), which relates to full compliance and not to (f)(6)(iii)(D)(1), which relates to substantial compliance. Thus the maximum number of waivers would only be counted for failure to achieve full compliance. Waivers applied to states for failure to achieve substantial compliance would not be counted toward the three waiver maximum.

Response: Although the standard for substantial compliance is different from the standard for full compliance no other distinction is made in the application of the three year waiver limitation. No state, regardless of whether the substantial compliance standard is used or the full compliance standard is used, is eligible for more than three waivers.

4. *Comment:* One respondent recommended that paragraph (j)(1), which requires that documentation be provided in the State Plan Juvenile Crime Analysis to indicate whether minority juveniles are disproportionately detained or confined, provide more specific information as to what kind of documentation is required.

Response: OJJDP agrees with this recommendation and will prepare supplemental information, including recommended data collection and analysis strategies. For those states whose Fiscal Year 1989 plan has already been submitted, separate instructions for supplementing the FY 1989 plan update to meet any new or modified requirements imposed by the final regulation will also be issued.

5. *Comment:* One respondent expressed concern about how the implementation of the workplan for addressing overrepresentation of minorities in the juvenile justice system will be monitored to ensure that the plan is being carried out.

Response: OJJDP intends to monitor implementation of workplans through site visits and through reviewing Performance Reports. In addition, OJJDP plans to develop an addendum to the Monitoring Compliance Report which is currently submitted annually to determine compliance with section 223(a)(12)(A), (13), and (14). This addendum will apply to the 1990 Monitoring Report due December 31, 1990, and all subsequent monitoring reports.

6. *Comment:* One respondent expressed concern about the interpretation of the statutory language in section 223(a)(23) of the Act that requires states to address the over-representation of minority youth in secure detention facilities. The basis for this concern is that the language "if such proportion exceeds the proportion such groups represent in the general population," if interpreted literally, might lead to a situation in which the proportion of minority youth in secure detention would be compared to the proportion of minority members in the general population. Such a comparison would be misleading because of the skewed age distributions of minority populations in the United States at the present. Minority populations tend to be composed of greater percentages of younger individuals. Thus, while in a given jurisdiction 25 percent of the overall population may be members of a minority group, 30 percent or more of the population could be under 20 years of age. If this were the case, and assuming equal risks of offense, apprehension and other decision making, it would still be the case that this hypothetical jurisdiction would appear to have an over-representation of minority youth.

The respondent recommends that for purposes of determining over-representation of minority youth in secure facilities, the general population be defined as youth at risk for such confinement.

Response: OJJDP also recognized the potential for misinterpretation of the statutory language. As a consequence, this language was clarified in § 31.303 (j)(1) of the proposed OJJDP Formula Grants Regulation. This clarification has been retained in the final Regulation.

7. *Comment:* The Subcommittee on Human Resources of the House Committee on Education and Labor commented on the definition of Indian tribes that perform law enforcement functions. Concern was expressed that the definition does not fully track the definition of "law enforcement and criminal justice" in section 103(6) of the Act. While the proposed definition specifically includes police efforts, it omits any specific reference to activities of courts, corrections, probation, or parole authorities. Concern was expressed that OJJDP not interpret the term "law enforcement functions" too narrowly and a suggestion made that this definition be expanded to more closely track the section 103(6) language. Two state respondents expressed similar concerns.

Response: In response to this comment, as well as to those from the two state respondents, the language for the definition of law enforcement functions has been expanded to include corrections, probation, and parole activities.

8. *Comment:* One state, which has only one Indian tribe that might be able to qualify for pass-through funds, expects that the population under 18 years is too small to warrant an individual grant. A question was raised about how OJJDP defines the term "larger tribal jurisdiction" as it relates to that situation?

Response: OJJDP recognizes the range of populations of Indian Tribes and Alaskan Native villages, and the Regulation is designed to give the State Agency flexibility in targeting funds where substantial impact can be anticipated through the funding of tribes attempting to achieve compliance with section 223(a) (12)(A), (13) and (14) of the JJDP Act. It also recognizes the variation in resources among Indian tribes to develop and manage projects, and, accordingly, provides for making pass-through funds available to organizations designated by tribes to represent them, or to combinations of eligible tribes. Where a state has only one tribe, that tribe, regardless of size would be the eligible tribe and would necessarily be the recipient or beneficiary of the Indian tribe pass-through, if it met the requirements of performing law enforcement functions and agreeing to attempt to achieve compliance with the statutory mandates.

An excerpt from The U.S. Census 1980 Report on the General Characteristics for American Indian Persons on Reservations, which provides data on juvenile populations under 18 residing on Indian Reservations by state and by Indian tribe is available through OJJDP. Data on Alaskan Native Organizations is also included. In addition, the 1980 Bureau of Census data for juvenile populations under 18 by state (the figure for each state is total juvenile population under 18, and includes Indian juvenile population under 18), is available through OJJDP. Given the fact that the 1980 Census data on Indian tribe population is the most recent data available at this time, states are expected to use the comparable 1980 census data for the general youth population under 18 to compute the proportion of the pass-through for Indian tribes performing law enforcement functions. The Indian population will need to be subtracted from the total juvenile population under 18 for each state. The 1980 data will be used until the 1990 Census Report is issued and provides more current data on Indian tribe youth populations. In the event that there are Indian tribes performing law enforcement functions that do not

appear on the Bureau of Census listing, the cognizant OJJDP State Representative should be contacted for assistance in securing other population data.

9. *Comment:* In the proposed regulations, numerous references are made to Indian tribes that perform law enforcement functions. There are Alaska Natives that are recognized by the Department of the Interior as having law enforcement functions, and it is important that references and definitions include these populations.

Response: In drafting this section OJJDP used the language of the Amendments. There is no intent to exclude any tribal unit, determined by the Secretary of the Department of the Interior as performing law enforcement functions. Moreover, section 103(16) of the 1988 Amendments defines "Indian tribe" as: (A) A Federally recognized Indian tribe or (B) An Alaskan Native organization. The Department of the Interior provided the OJJDP with a listing that will be used to determine Indian tribe eligibility to receive Formula Grant funds from the State agencies. Alaskan Native organizations are included in the list. The listing is entitled, "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs," published by the Bureau of Indian Affairs, U.S. Department of the Interior, December 29, 1988. This is the list of tribes eligible to receive BIA services and presumed to perform law enforcement functions, pursuant to the definition provided in paragraph § 31.301(b)(2) of this regulation. While this list is more encompassing than Indian tribes performing law enforcement functions, this is the only list available from the Department of the Interior at this time. Thus, it will be used by State Planning Agencies until revised or updated by the Department of the Interior, for purposes of determining Indian tribes eligibility for the pass-through;

10. *Comment:* One comment reflected concern about the difficulty in defining tribes that perform law enforcement functions.

Response: Section 103(6) of the Act provides the definition of law enforcement and criminal justice for the purposes of OJJDP programs. This definition includes those activities that impact on section 223(a)(12)(A), (13) and (14). Section 223(a)(5) designates the Secretary of the Department of the Interior as the authority for determining which tribes perform law enforcement functions using this definition.

Executive Order 12291

This notice does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This final regulation, does not have a "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96-354).

Paperwork Reduction Act

No collection of information requirements are contained in or effected by this regulation (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR part 31, states must submit formula grant applications to the State "Single Point of Contact," if one exists. The State may take up to 60 days from the application date to comment on the application.

List of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Grant programs.

For the reasons set out in the preamble, the OJJDP Formula Grants Regulation, 28 CFR part 31, is amended as follows:

PART 31—[AMENDED]

1. The authority citation for part 31 continues to read as follows:

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 et seq.).

2. Paragraphs (a) and (b) of § 31.301, are revised to read as follows:

§ 31.301 Funding.

* * * * *

(a) *Allocation to States.* Each state receives a base allocation of $325,000, and each territory receives a base allocation of $75,000 when the title II appropriation is less than $75 million (other than part D). When the title II appropriation equals or exceeds $75 million (other than part D), each state receives a base allocation of $400,000, and each territory receives a base allocation of $100,000. To the extent necessary, each state and territory's base allocation will be reduced proportionately to ensure that no state receives less than it was allocated in Fiscal Year 1988.

(b) *Funds for Local Use.* At least two-thirds of the formula grant allocation to the state (other than the section 222(d) State Advisory Group set aside) must be used for programs by local government, local private agencies, and eligible Indian Tribes, unless the State applies for and is granted a waiver by the OJJDP. The proportion of pass-through funds to be made available to eligible Indian tribes shall be based upon that proportion of the state youth population under 18 years of age who reside in geographical areas where tribes perform law enforcement functions. Pursuant to section 223(a)(5)(C) of the JJDP Act, each of the standards set forth in paragraphs (b)(1) (i) through (iii) of this section must be met in order to establish the eligibility of Indian tribes to receive pass through funds:

(1)(i) The tribal entity must be recognized by the Secretary of the Interior as an Indian tribe that performs law enforcement functions as defined in paragraph (b)(2) of this section.

(ii) The tribal entity must agree to attempt to comply with the requirements of section 223(a)(12)(A), (13), and (14) of the JJDP Act; and

(iii) The tribal entity must identify the juvenile justice needs to be served by these funds within the geographical area where the tribe performs law enforcement functions.

(2) "Law enforcement functions" are deemed to include those activities pertaining to the custody of children, including, but not limited to, police efforts to prevent, control, or reduce crime and delinquency or to apprehend criminal and delinquent offenders, and/or activities of adult and juvenile corrections, probation, or parole authorities.

(3) To carry out this requirement, OJJDP will annually provide each state with the most recent Bureau of Census statistics on the number of persons under age 18 living within the state, and the number of persons under age 18 who reside in geographical areas where Indian tribes perform law enforcement functions.

(4) Pass-through funds available to tribal entities under section 223(a)(5)(C) shall be made available within states to Indian tribes, combinations of Indian tribes, or to an organization or organizations designated by such tribe(s), that meet the standards set forth in paragraphs (b)(1) (i)–(iii) of this section. Where the relative number of persons under age 18 within a geographic area where an Indian tribe

performs law enforcement functions is too small to warrant an individual subgrant or subgrants, the state may, after consultation with the eligible tribe(s), make pass-through funds available to a combination of eligible tribes within the state, or to an organization or organizations designated by and representing a group of qualifying tribes, or target the funds on the larger tribal jurisdictions within the state.

(5) Consistent with section 223(a)(4) of the JJDP Act, the state must provide for consultation with Indian tribes or a combination of eligible tribes within the state, or an organization or organizations designated by qualifying tribes, in the development of a state plan which adequately takes into account the juvenile justice needs and requests of those Indian tribes within the state.

* * * * *

3. Section 31.303 is amended by adding paragraphs (f)(4)(vi) and (k); and by revising paragraph (f)(6)(iii), introductory text of (g) and paragraph (j) to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(f) * * *

(4) * * *

(vi) Pursuant to section 223(a)(14) of the JJDP Act, the nonMSA (low population density) exception to the jail and lockup removal requirement described in paragraphs (f)(4) (i) through (v) of this section shall remain in effect through 1993.

* * * * *

(6) * * *

(iii)(A) Substantial compliance with section 223(a)(14) requires:

(*1*) The achievement of a 75% reduction in the number of juveniles held in adult jails and lockups after December 8, 1985; or

(*2*) That a state demonstrate it has met each of the standards set forth in paragraphs (f)(6)(iii)(A)(*2*) (*i*)–(*iv*) of this section:

(*i*) Removed all status and nonoffender juveniles from adult jails and lockups. Compliance with this standard requires that the last submitted monitoring report demonstrate that no status offender (including those accused of or adjudicated for violating a valid court order) or nonoffender juveniles were securely detained in adult jails or lockups for any length of time; or, that all status offenders and nonoffenders securely detained in adult jails and lockups for any length of time were held in violation of an enforceable state law and did not constitute a pattern or practice within the state;

(*ii*) Made meaningful progress in removing other juveniles from adult jails and lockups. Compliance with this standard requires the state to document a significant reduction in the number of jurisdictions securely detaining juvenile criminal-type offenders in violation of section 223(a)(14) of the JJDP Act; or, a significant reduction in the number of facilities securely detaining such juveniles; or, a significant reduction in the number of juvenile criminal-type offenders securely detained in violation of section 223(a)(14) of the JJDP Act; or, a significant reduction in the average length of time each juvenile criminal-type offender is securely detained in an adult jail or lockup; or, that state legislation has recently been enacted and taken effect and which the state demonstrates will significantly impact the secure detention of juvenile criminal-type offenders in adult jails and lockups;

(*iii*) Diligently carried out the state's jail and lockup removal plan approved by OJJDP. Compliance with this standard requires that actions have been undertaken to achieve the state's jail and lockup removal goals and objectives within approved timelines, and that the State Advisory Group, required by section 223(a)(3) of the JJDP Act, has maintained an appropriate involvement in developing and/or implementing the state's plan;

(*iv*) Historically expended and continues to expend an appropriate and significant share of its Formula Grant funds to comply with Section 223(a)(14). Compliance with this standard requires that, based on an average from two (2) Formula Grant Awards, a minimum of 40 percent of the program funds was expended to support jail and lockup removal programs; or that the state provides a justification which supports the conclusion that a lesser amount constituted an appropriate and significant share because the state's existent jail and lockup removal barriers did not require a larger expenditure of Formula Grant Program funds; and

(*3*) The state has made an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within a reasonable time but in no event may such time extend beyond December 8, 1988.

(B) Full compliance is achieved when a state demonstrates that the last submitted monitoring report, covering 12 months of actual data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of section 223(a)(14).

(C) Full compliance with de minimis exceptions is achieved when a state demonstrates that it has met the standard set forth in either of paragraphs (f)(6)(iii)(C) (*1*) or (*2*) of this section:

(*1*) *Substantive De Minimis Standard.* To comply with this standard the state must demonstrate that each of the following requirements have been met:

(*i*) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of section 223(a)(14);

(*ii*) All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from, the state law, rule, or policy referred to in paragraph (f)(6)(iii)(C)(*1*)(*i*) of this section;

(*iii*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;

(*iv*) Existing mechanisms for the enforcement of the state law, rule or policy referred to in paragraph (f)(6)(iii)(C)(*1*)(*i*) of this section are such that the instances of noncompliance are unlikely to recur in the future; and

(*v*) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(C)(*1*)(*iv*) of this section.

(*2*) *Numerical De Minimis Standard.* To comply with this standard the state must demonstrate that each of the following requirements under paragraphs (f)(6) (iii)(C)(*2*) (*i*) and (*ii*) of this section have been met:

(*i*) The incidents of noncompliance reported in the state's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the state;

(*ii*) An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of state law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

(*iii*) Exception. When the annual rate for a state exceeds 9 incidents of noncompliance per 100,000 juvenile population, the state will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis standard unless the state has recently enacted changes in state law which have gone into effect and which the state demonstrates can reasonably be expected to have a substantial, significant and positive impact on the state's achieving full (100%) compliance or full compliance with de minimis exceptions by the end

of the monitoring period immediately following the monitoring period under consideration.

(*iv*) Progress. Beginning with the monitoring report due by December 31, 1990, any state whose prior full compliance status is based on having met the numerical de minimis standard set forth in paragraph (f)(6)(iii)(C)(*2*)(*i*) of § 31.303, must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100%) compliance in order to maintain eligibility for a continued finding of full compliance with de minimis exceptions.

(*v*) Request Submission. Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the monitoring report due by December 31 of each calendar year. Any state reporting less than full (100%) compliance in any annual monitoring report may request a finding of full compliance with de minimis exceptions under paragraph (f)(6)(iii)(C) (*1*) or (*2*) of this section. The request may be submitted in conjunction with the monitoring report, as soon thereafter as all information required for a determination is available, or be included in the annual state plan and application for the state's Formula Grant Award.

(D) *Waiver.* (*1*) Failure to achieve substantial compliance as defined in this section shall terminate any state's eligibility for Formula Grant funds unless the Administrator of OJJDP waives termination of the state's eligibility. In order to be eligible for a waiver of termination, a state must submit a waiver request which demonstrates that it meets the standards set forth in paragraph (f)(6)(iii)(D)(*1*) (*i*)–(*v*) of this section:

(*i*) Agrees to expend all of its Formula Grant Award except planning and administration, advisory group set aside, and Indian-tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(*ii*) Diligently carried out the state's jail and lockup removal plan as set forth in paragraph (f)(6)(iii)(A)(*2*)(*iii*) of this section; and

(*iii*) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the state, to eliminate noncompliant incidents; and

(*iv*) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(*v*) Demonstrates a commitment, through appropriate executive or legislative action, to achieving full compliance.

(*2*) Failure to achieve full compliance as defined in this section shall terminate any state's eligibility for Formula Grant funds unless the Administrator of OJJDP waives termination of the state's eligibility. In order to be eligible for this waiver of termination, a state must request a waiver and demonstrate that it meets the standards set forth in paragraphs (f)(6)(iii)(D)(*2*) (*i*)–(*vii*) of this section:

(*i*) Agrees to expend all of its Formula Grant Award except planning and administration, advisory group set aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(*ii*) Removed all status and nonoffender juveniles from adult jails and lockups as set forth in paragraph (f)(6)(iii)(A)(*2*)(*i*) of this section; and

(*iii*) Made meaningful progress in removing other juveniles from adult jails and lockups as set forth in paragraphs (f)(6)(iii)(A)(*2*)(*ii*) of this section; and

(*iv*) Diligently carried out the state's jail and lockup removal plan as set forth in paragraph (f)(6)(iii)(A)(*2*)(*iii*) of this section; and

(*v*) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the state, to eliminate noncompliant incidents; and

(*vi*) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(*vii*) Demonstrates a commitment, through appropriate executive or legislative action, to achieving full compliance.

(E) Waiver Maximum. A state may receive a waiver of termination of eligibility from the Administrator under paragraph (f)(6)(iii)(D) (*1*) and (*2*) of this section for a combined maximum of three Formula Grant Awards. No additional waivers will be granted.

* * * * *

(g) Juvenile Crime Analysis. Pursuant to section 223(a)(8) (A) and (B), the state must conduct an analysis of juvenile crime problems, including juvenile gangs that commit crimes, and juvenile justice and delinquency prevention needs within the state, including those geographical areas in which an Indian tribe performs law enforcement functions.

* * * * *

(j) Minority Detention and Confinement. Pursuant to section 223(a)(23) of the JJDP Act, states must address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population, viz., youth at risk for secure confinement. It is important for states to approach this in a comprehensive manner. Compliance with this provision is achieved when a state has met the requirements set forth in paragraphs (j) (1)–(3) of this section:

(1) Provide documentation in the State Plan Juvenile Crime Analysis to indicate whether minority juveniles are disproportionately detained or confined in secure detention or correctional facilities, jails, or lockups in relation to their proportion of the at risk youth population;

(2) Where documentation is unavailable, or demonstrates that minorities are disproportionately detained or confined in relation to their proportion in the at risk youth population, states must provide a strategy for addressing the disproportionate representation of minority juveniles in the juvenile justice system, including but not limited to:

(i) Assessing the differences in arrest, diversion, and adjudication rates, court dispositions other than incarceration, and the rates and periods of commitment to secure facilities of minority youth and non-minority youth in the juvenile justice system;

(ii) Increasing the availability and improving the quality of diversion programs for minorities who come in contact with the juvenile justice system such as police diversion programs;

(iii) Providing support for prevention programs in communities with a high percentage of minority residents with emphasis upon support for community-based organizations that serve minority youth;

(iv) Providing support for reintegration programs designed to facilitate reintegration and reduce recidivism of minority youths;

(v) Initiate or improve the usefulness of relevant information systems and disseminate information regarding minorities in the juvenile justice system.

(3) Each state is required to submit a supplement to the 1988 Multi-Year Plan for addressing the extent of disproportionate representation of minorities in the juvenile justice system. This supplement, which will be submitted as a component of the 1989 Formula Grant Application and Multi-Year Plan Update, must include the state's assessment of disproportionate minority representation, and a workplan for addressing this issue programmatically. Where data is insufficient to make a complete assessment, the workplan must include provisions for improving the information

collection systems. The workplan, once approved by OJJDP, is to be implemented as a component of the state's 1990 Formula Grant Plan.

(4) For purposes of this plan requirement, minority populations are defined as members of the following groups: Asian Pacific Islanders; Blacks; Hispanics; and, American Indians.

(k) Pursuant to section 223(a)(24) of the JJDP Act, states shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the Formula Grant.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

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DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

OJJDP Formula Grants Regulation

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Proposed rule and request for public comment.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing for public comment proposed amendments to the existing Formula Grants Regulation. The Formula Grants Regulation implements Part B of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1992. The 1992 Amendments reauthorize and modify the Federal assistance program to state and local governments, and private not-for-profit agencies for juvenile justice and delinquency prevention improvements. The proposed amendments to the existing Regulation provides clarification and guidance to States in the formulation, submission and implementation of State Formula Grant plans and determinations of State compliance with plan requirements. It provides additional flexibility and guidance to participating States while strengthening several key provisions related to the mandates of the JJDP Act.

DATES: Interested persons are invited to submit written comments which must be received on or before September 8, 1994.

ADDRESSES: Address all comments to Mr. John J. Wilson, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 633 Indiana Avenue NW., room 742, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Ms. Roberta Dorn, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 633 Indiana Avenue NW., room 543, Washington, DC 20531; (202) 307–5924.

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention is proposing revisions to the existing Regulation, codified at 28 CFR Part 31, and inviting public comment on the proposed changes. The proposed changes in the regulatory text accomplish the following:

(1) continue the authority citation for the regulation;

(2) revise § 31.3 to establish a mandatory deadline for the submission of State Formula Grant applications;

(3) revise § 31.102 to provide that the State agency must, at a minimum, assign one full-time Juvenile Justice Specialist to manage the Formula Grants Program;

(4) revise § 31.301 to provide for statutory changes in the base allocation for States and Territories;

(5) revise § 31.303(e)(3) to modify the requirements for a facility located within the same building or on the same grounds as an adult jail or lockup to qualify as a separate juvenile detention facility;

(6) delete § 31.303(c)(3) and (e)(4) related to substantial compliance with the deinstitutionalization of status offenders (DSO) and jail and lockup removal requirements respectively, and section 31.303(d)(2) related to progress toward compliance with the separation provision;

(7) revise § 31.303(d)(1) to provide for statutorily required enhanced separation requirements;

(8) revise § 31.303(f)(3)(iv) to provide that a status offender alleged or found in a judicial hearing to have violated a valid court order may be held in a secure juvenile detention or correctional facility and not in an adult jail or lockup. This proposed revision, based on the 1992 Amendments, is effective for, and must be reflected in, State monitoring reports due by December 31, 1994, and subsequent monitoring reports;

(9) revise § 31.303(f)(3) to require that status offenders receive the full due process protections guaranteed by the Constitution prior to the issuance of a court order regulating future behavior, and that prior to a secure dispositional placement of a status offender found to have violated a valid court order, the court must review and consider a report on possible dispositional alternatives for the youth, the report to be prepared by a public agency or organization other than a court or law enforcement agency;

(10) revise § 31.303(f)(4) to provide for expansion of the non-MSA exception to jail and lockup removal to address adverse weather and distance/lack of ground transportation;

(11) revise § 31.303 (f)(5) to require that States must, in completing their annual monitoring report, report as violations of the section 223(a)(12)(A) deinstitutionalization requirement the number of status offenders (including those status offenders accused of violating a valid court order) and nonoffenders held in secure custody in an adult jail or lockup for any length of time. This proposed policy-based revision is effective for, and must be reflected in, State monitoring reports due by December 31, 1995, and subsequent monitoring reports;

(12) delete § 31.303(f)(6)(iii)(A) related to substantial compliance with the jail and lockup removal requirement and redesignate subsequent paragraphs;

(13) revise § 31.303(f)(6)(iii)(C), as redesignated, to allow States that have reduced the number of status and nonoffenders securely detained or confined in jails and lockups to less than 9 per 100,000 juvenile population in the State, and can demonstrate meaningful progress in removing juvenile criminal-type offenders, to qualify for a waiver of termination for annual fund allocations through Fiscal Year 1993, when full compliance with the jail and lockup removal requirement has not been achieved. This section is also revised to require that a State seeking a waiver of termination demonstrate an "unequivocal" commitment to achieving full compliance;

(14) revise § 31.303(f)(6)(iii)(D), as redesignated, to increase the maximum number of waivers that may be granted to a State from three to four;

(15) revise § 31.303(f)(6) to provide that failure to comply with the subsection (a)(12)(A), (13), (14) or (23) mandates for any fiscal year beginning with 1994, will result in the State's Formula Grant allocation being reduced by 25% for each such failure;

(16) revise § 31.303(h) to require the submission of annual performance reports by June 30, beginning with calendar year 1995; and

(17) revise § 31.303(j) to enhance State requirements for demonstrating compliance with the section 223(a)(23) mandate on disproportionate minority confinement, and to establish timelines for compliance.

Application Deadline

Section 31.1 currently requires that Formula Grant applications and related plans or plan updates for each fiscal year should be submitted to OJJDP by August 1st (60 days prior to the beginning of the fiscal year) or within 60 days after States are officially notified of each fiscal year's Formula Grants Program allocation.

A number of States have submitted applications sufficiently late in recent fiscal years to impede orderly and timely application processing by OJJDP. This has resulted in an increased number of special conditions and a need for time consuming follow-up by State Relations and Assistance Division staff.

The submission requirement would be changed to require that Fiscal Year 1995 applications and all subsequent applications shall be submitted to OJJDP no later than March 31 of the fiscal year for which the funds were allocated. This submission date would allow OJJDP adequate time to conduct a full review of each State's plan or plan update, give States the opportunity to address any deficiencies in the application, plan or plan update, or budget prior to award, and assure complete application processing and award of funds prior to the end of the fiscal year.

State Agency Structure—Staffing

In addition to the current "adequate staff" requirement of § 31.102 for the State agency administering Formula Grant funds, the Regulation is revised to provide that a participating State agency must, at a minimum, assign one full-time Juvenile Justice Specialist to manage the Formula Grants Program. OJJDP's experience indicates that the complexity of the Formula Grants program justifies the attention of at least one full-time Juvenile Justice Specialist in each State to perform and oversee required planning and administration activities including: developing, announcing, competing, packaging, awarding, evaluating, and overseeing subawards, developing programs to address disproportionate minority confinement issues and provide for effective use of Indian tribe pass-through funds; providing for program and project monitoring; playing a central role in preparing the three year program plan and annual plan update; providing staff support to the State supervisory board and/or the State advisory group; and overseeing the reporting of State progress in achieving and maintaining compliance with the deinstitutionalization, separation, adult jail and lockup removal, and disproportionate minority confinement requirements.

Funding—Allocation to States

Section 222(a) provides for a "floating minimum" for the allocation of formula grants to States and Territories that is tied to the total appropriation level for Title II in a given fiscal year. For Fiscal Year 1993, the total appropriation for Title II of the JJDP Act (other than Parts D and E) was less than $75 million. As a result, the "floating minimum" formula grant allocation for any State was legislatively established at a minimum of $325,000 and a maximum of $400,000 for States, and $75,000 and $100,000 for Territories, with no State or Territory receiving less than its Fiscal Year 1992 allocation. The Congressionally stated purpose of this formula was to increase the funds available to the minimum allocation States and Territories. In order to ensure that this Congressional intent is maximized, the Fiscal Year 1993 formula grant allocations held the non-minimum States and Territories at their Fiscal Year 1992 funding levels, allocating the increased Fiscal Year 1993 formula grant funds to the minimum States and Territories on a prorata basis.

For Fiscal Year 1994, the total appropriation for Title II (other than Part D) exceeds the $75 million threshold. Consequently, the "floating minimum" formula grant allocation for any State in Fiscal Year 1994 is established at a minimum of $400,000 and a maximum of $600,000. OJJDP proposes to implement the amended language in Section 222(a)(2)(B) to provide for a minimum allocation of $600,000, based on fund availability: "* * * not less than $400,000, or such greater amount, up to $600,000, as is available to be allocated * * *" All non-minimum States will also receive an increased formula grant allocation in Fiscal Year 1994.

Proposed State formula grant allocations for Fiscal Years 1993 and 1994 have been provided to all States and Territories. The precise procedure used by the budget staff of the Office of Justice Programs to calculate State formula grant allocations is available upon request.

Collocated Juvenile and Adult Facilities

Section 223(a)(14) of the JJDP Act requires that juveniles be removed from adult jails and lockups. OJJDP policy No. 91–1401, July 16, 1991, sought to clarify the existing OJJDP regulatory requirements for establishing the existence of a separate juvenile detention facility where such facility is located in the same building or on the same grounds as an adult jail or lockup.

OJJDP's initial policy on collocated juvenile and adult facilities was established by an OJJDP "Position Statement on Minimum Requirements of Section 223(a)(14) of the Juvenile Justice and Delinquency Prevention Act, as amended," which was published as a Notice in the **Federal Register** on January 17, 1984. Four criteria were established in that policy publication, each of which had to be met to ensure the requisite separateness of juvenile and adult facilities. The criteria were subsequently incorporated into the Formula Grants regulation the following year (See 50 FR 119, 25550–25561, June 20, 1985). The July 16, 1991 OJJDP policy reiterated each of the four criteria, and sought to clarify a number of specific implementation mechanisms that would be acceptable to OJJDP while remaining within the parameters of each criterion.

The clarifications in OJJDP Policy No. 91–1401 have been the subject of continued concern and controversy in the juvenile justice community. In addition, the 1992 Amendments substantially revise one of the four criteria (separate staff) for determining whether a separate juvenile detention facility exists. For these reasons, the Administrator deems it essential to provide interested parties with an opportunity to comment on each of the four collocated facility criteria.

In formulating the four criteria initially, and in providing additional policy clarification, OJJDP recognized a need to distinguish an optimal system, where a juvenile detention center would never be collocated with an adult jail or lockup, from a system where States can use collocated facilities that meet the regulatory requirements for a separate facility by creating and maintaining an atmosphere that is appropriate and conducive to the care of alleged juvenile criminal-type offenders who require a secure detention environment. Given the limited level of funds available to States under the Formula Grants program, and the need to expend these funds to address a variety of priorities and needs identified in the JJDP Act and State plans, OJJDP has sought to provide States with sufficient flexibility to achieve and maintain compliance with JJDP Act mandates while, at the same time, addressing needed delinquency prevention and other system improvement initiatives.

The proposed regulation clarifies the four criteria by providing that: (1) Total separation in spatial areas of juvenile and adult facilities can be achieved by providing for no common use areas or by time-phasing common use areas, provided that the arrangement precludes even haphazard or accidental contact between juvenile and adult residents and adult facility staff at all times and provided that time-phasing of common use areas cannot extend to sleeping or living areas. Under either approach to total separation, written operational plans, policies and procedures must be in place to insure that the objective of total separation is achieved; (2) total separation in juvenile and adult program activities requires the formulation of an independent and comprehensive operational plan for the juvenile facility which provides a full range of separate program activities for juveniles. While program space, equipment and resources may be shared

by both juvenile and adult facility populations subject to the requirements of total separation in spatial areas, the key feature of this policy is the express requirement that the juvenile population receive a full range of services in circumstances where collocation of facilities is approved; (3) separate juvenile and adult staff—management, security and direct care—is essential to the maintenance of an appropriate atmosphere for the care of juveniles in detention. The regulation distinguishes between staff who routinely have day-to-day direct care responsibility for juveniles and specialized service staff not normally in contact with detainees. For security and direct care staff (including management), the 1992 Amendments require that these functions be vested in totally separate staff. This requirement is designed to ensure that a facility's security and direct care staff are both well qualified to serve, and appropriately focused on, the needs of the juvenile population while providing juvenile facility services; (4) in States that have standards or licensing requirements for secure juvenile detention facilities, a collocated facility must meet the standards (on the same basis as separate facilities) and be licensed as appropriate. The proposed regulation establishes an express requirement that a responsible State authority must certify that State standards and licensing requirements have been met and that the architectural configuration and operational procedures and policies of the facility assure total separation between juvenile detention center and adult facility populations.

OJJDP intends these clarifications to strengthen the four requirements for a separate facility and to establish reliable parameters for States completing final steps to achieve and maintain full compliance with the jail and lockup removal requirement. The regulatory language committing OJJDP to the "rule of reason" represents a further attempt to place the collocated facility criteria in perspective. Finally, States are reminded of their oversight responsibility to insure that the separate character of any collocated juvenile detention facility is fully maintained following its classification as a separate juvenile detention facility. The 1992 Amendments require States to reassess the separate staff criterion in all collocated facilities, including those classified as such by the State and concurred with by OJJDP prior to the effective date of this proposed regulation.

OJJDP's original policy on collocated facilities was designed to accommodate a small number of existing juvenile detention facilities. However, several States have used the policy and regulation to create a network of collocated juvenile detention facilities in rural areas as county or regional detention facilities in lieu of establishing dedicated county or regional juvenile detention facilities. Consequently, and because OJJDP does not believe either that building or establishing collocated facilities in urban areas can be justified or that States should rely upon collocated facilities as a primary or long-term strategy for achieving and maintaining compliance with the jail and lockup removal mandate in rural areas, OJJDP proposes to limit future approval of collocated facilities to those that are outside a Standard Metropolitan Statistical Area (SMSA), are operational or planned such that a determination of compliance with the criteria can be made, and have been determined by the State (with subsequent OJJDP concurrence) to meet each of the four criteria, by December 31, 1994.

Criteria for Compliance With DSO, Adult Jail and Lockup Removal, Separation, and Minority Overrepresentation

The proposed regulation deletes the "substantial compliance criteria" from § 31.303(c)(3) and (e)(4) of the regulation. Pursuant to the 1992 Amendments, all eligible States and territories are required to be in full compliance with the DSO and Jail and Lockup Removal requirements in order to be eligible for FY 1994 Formula Grant funds. Also, States must demonstrate compliance with the enhanced Separation and Disproportionate Minority Confinement mandates in order to be eligible for 1994 funds. Therefore, the regulatory provision recognizing "progress" toward compliance with the Separation mandate is being deleted. Also, enhanced criteria and specific timelines would be established for the Disproportionate Minority Confinement Mandate. OJJDP would use these criteria and timelines to determine if States have demonstrated compliance with the Minority Overrepresentation Mandate.

Deinstitutionalization of Status Offenders

Revisions are proposed to the valid court order exception and monitoring report requirements related to the deinstituionalization of status offenders and nonoffenders requirement (DSO) [section 223(a)(12)(A)]. These changes are designed to bring the DSO requirement in line with the section 223(a)(14) Jail and Lockup Removal requirement. Currently, the regulatory DSO exceptions for valid court order violations [28 CFR 31.303(f)(3)] and the 24-hour monitoring report exception for detention of status and nonoffender juveniles [28 CFR 31.303(f)(5)] do not prohibit the use of adult jails and lockups for status offenders who violate a valid court order or for status or nonoffender juveniles held in secure custody pursuant to the 24-hour monitoring exception. This anomaly, which resulted from the separate years in which these requirements became law (1974 and 1980, respectively), is being addressed to reflect OJJDP's determination that there are no longer any circumstances in which the secure custody of noncriminal juveniles in adult jails and lockups can be justified or sanctioned. To the extent that inadvertent or isolated violations occur, or where violations result from emergency situations, the de minimis criteria for full compliance should continue to provide sufficient latitude to permit States to maintain full compliance with the DSO requirement. Monitoring information to reflect these changes must be included in the State Monitoring Report due by December 31, 1995, and subsequent monitoring reports.

Waiver of Termination—Criteria and Number

The criteria for a waiver of termination when a State has failed to achieve full compliance, or full compliance with de minimis exceptions with the jail and lockup removal requirement, were established by regulation in § 31.303(f)(6) in 1989. Section 223(c)(3) of the JJDP Act provided that a State's failure to achieve compliance with the jail and lockup removal requirement "* * * shall terminate any State's eligibility for funding unless the Administrator waives the termination of the State's eligibility on the condition that the State agrees to expend all of the funds to be received under this part by the State, [with specific exceptions] only to achieve compliance with subsection (a)(14)."

OJJDP established seven regulatory criteria to be satisfied by a State requesting a waiver. OJJDP's premise, based on Congressional guidance, was that

"A State which satisfies these standards qualifies for a waiver on the basis that: (1) It has made significant progress to date; and (2) additional funding is likely to produce further

progress toward compliance (54 FR 14769, April 12, 1989).

The seven criteria, set forth at 28 CFR 31.303(f)(6)(iii)(D)(*2*), provide that a State requesting a waiver must demonstrate that it:

(*i*) Agrees to expend all of its Formula Grant Award except planning and administration, advisory group set aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(*ii*) Removed all status and nonoffender juveniles from adult jails and lockups as set forth in paragraph (f)(6)(iii)(A)(2)(*i*) of this section; and

(*iii*) Made meaningful progress in removing other juveniles from adult jails and lockups as set forth in paragraph (f)(6)(iii)(A)(2)(*ii*) of this section; and

(*iv*) Diligently carried out the State's jail and lockup removal plan as set forth in paragraph (f)(6)(iii)(A)(2)(*iii*) of this section; and (*v*) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the State, to eliminate noncompliant incidents; and

(*vi*) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(*vii*) Demonstrated a commitment, through appropriate executive or legislative action, to achieving full compliance.

The reference in (*ii*) above, is to regulatory provisions implementing the former "substantial compliance" standard, which reads as follows:

(*i*) Removed all status and nonoffender juveniles from adult jails and lockups. Compliance with this standard requires that the last submitted monitoring report demonstrate that no status offender (including those accused of or adjudicated for violating a valid court order) or nonoffender juveniles were securely detained in adult jails or lockups for any length of time; or, that all status offenders and nonoffenders securely detained in adult jails and lockups for any length of time were held in violation of an enforceable state law and did not constitute a pattern or practice within the state.

Currently, several States have not been awarded their FY 1992 and/or FY 1993 funds because they cannot meet criterion (*ii*) for receiving a waiver. While the numbers of status and nonoffenders are typically small, these States either lack an enforceable State law which would prohibit any violations or the State has been unable to demonstrate that the violations do not constitute a pattern or practice within the State. OJJDP does not believe that the practice of detaining status or nonoffender juveniles in adult jails or lockups is acceptable or that States should in any way sanction or permit such a practice. However, OJJDP also has to weigh the detriment that will occur if States which are close to achieving full compliance are deprived of a significant means of obtaining that important goal through the application of criteria that are inflexible.

Consequently, OJJDP proposes to modify criterion (*ii*) to provide that States can meet the standard by demonstrating that the number of status offenders (including valid court order violators) and nonoffenders securely detained in adult jails and lockups is less than the numerical de minimis rate of 9 per 100,000 juvenile population in the State. This provision is balanced by the addition in criterion (*vii*) of a requirement that the State demonstrate an *unequivocal* commitment, *through appropriate executive or legislative action*, to achieving full compliance, and the proposed change in the monitoring exception for DSO to prohibit placing a status or nonoffender juvenile in an adult jail or lockup for any length of time. The proposed revisions should provide these few remaining States with a reasonable opportunity to achieve full compliance without a loss of Formula Grant Program funds while, at the same time, reiterating the Congressional mandate that adult jails and lockups are inappropriate places in which to securely detain children who have committed no criminal law violation.

Finally, OJJDP proposes to increase the maximum number of waivers of termination from three to four. There are several States that may need to receive a fourth waiver in order to be eligible for a Fiscal Year 1992 or 1993 Formula Grant Award.

Executive Order 12866

This notice is not a "significant regulatory action" for purposes of Executive Order 12886 because it does not result in: (1) an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles of Executive Order No. 12866.

Regulatory Flexibility Act

This proposed regulation, if promulgated, will not have a "significant" economic impact on a substantial number of small "entities," as defined by the Regulatory Flexibility Act (Pub.L. 96–354).

Paperwork Reduction Act

No collection of information requirements are contained in or effected by this regulation (See the Paperwork Reduction Act, 44 U.S.C. 3504(H)).

Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR Part 30, States must submit Formula Grant Program applications to the State "Single Point of Contact," if one exists. The State may take up to 60 days from the application date to comment on the application.

Lists of Subjects in 28 CFR Part 31

Grant programs—law, juvenile delinquency, grant programs. For the reasons set forth in the preamble, it is proposed to amend the OJJDP Formula Grants Regulation, 28 CFR Part 31, as follows:

PART 31—[AMENDED]

1. The authority citation for Part 31 would continue to read as follows:

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 et seq.).

2. Section 31.3 is revised to read as follows:

§ 31.3 General.

Formula Grant Applications for each fiscal year should be submitted to OJJDP by August 1 (60 days prior to the beginning of the fiscal year) or within 60 days after the States are officially notified of the fiscal year formula grant allocations. Beginning with Fiscal Year 1995 and each subsequent fiscal year, all Formula Grant Applications must be submitted no later than March 31 of the fiscal year for which the funds are allocated.

3. Section 31.101 is revised to read as follows:

§ 31.101 Designation of State agency.

The Chief Executive of each State which chooses to apply for a formula grant shall establish or designate a State agency as the sole agency for supervising the preparation and

administration of the plan. The plan must demonstrate compliance with administrative and supervisory board membership requirements established by the OJJDP Administrator pursuant to section 299(c) of the JJDP Act. States must have available for review a copy of the State law or executive order establishing the State agency and its authority.

4. Section 31.102(c) is amended by adding the following sentence at the end thereof:

§ 31.102 State agency structure.

(c) * * * At a minimum, one full-time Juvenile Justice Specialist must be assigned to the Formula Grants Program by the State agency. Where the State does not currently provide or maintain a full-time Juvenile Justice Specialist, the plan must clearly establish and document that the program and administrative support staff resources currently assigned to the program will temporarily meet the adequate staff requirement, and provide an assurance that at least one full-time Juvenile Justice Specialist will be assigned to the Formula Grants Program by the end of Fiscal Year 1995 (September 30, 1995).

5. Section 31.203 is revised to read as follows:

§ 31.203 Open meetings and public access to records.

The State must assure that the State agency, its supervisory board established pursuant to section 299(c) and the State advisory group established pursuant to section 223(a)(3) will follow applicable State open meeting and public access laws and regulations in the conduct of meetings and the maintenance of records relating to their functions.

6. Section 31.301 (a), (c), (d), and (e) is revised to read as follows:

§ 31.301 Funding.

(a) *Allocation to states.* Funds shall be allocated annually among the States on the basis of relative population of persons under age 18. If the amount allocated for title II (other than Parts D and E) of the JJDP Act is less than $75 million, the amount allocated to each State will not be less than $325,000, nor more than $400,000, provided that no State receives less than its allocation for Fiscal Year 1992. The Territories will receive not less than $75,000 or more than $100,000. If the amount appropriated for title II (other than Part D) is $75 million or more, the amount allocated for each State will be not less than $400,000, nor more than $600,000, provided that Parts D and E have been funded in the full amounts authorized. For the Territories, the amount remains at $100,000.

* * * * *

(c) *Match.* Formula Grants under the JJDP Act shall be 100% of approved costs, with the exception of planning and administration funds, which require a 100% cash match (dollar for dollar), and construction projects funded under section 299C (a)(2) of the JJDP Act which also require a 100% cash match.

(d) *Funds for administration.* Not more than 10% of the total annual Formula Grant award may be utilized to develop the annual juvenile justice plan and pay for administrative expenses, including project monitoring. These funds are to be matched on a dollar for dollar basis. The State shall make available needed funds for planning and administration to units of local government on an equitable basis. Each annual application must identify uses of such funds.

(e) *Nonparticipating States.* Pursuant to section 223(d), the OJJDP Administrator shall endeavor to make the fund allotment under section 222(a), of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, directly available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of achieving deinstitutionalization of status offenders and nonoffenders, separation of juveniles from incarcerated adults, removal of juveniles from adult jails and lockups, and/or reducing the disproportionate confinement of minority youth in secure facilities. Absent a request for extension which demonstrates compelling circumstances justifying the reallocation of formula grant funds back to the State to which the funds were initially allocated, or the pendency of administrative hearing proceedings under section 223(d), formula grant funds allocated to a State which has failed to submit an application, plan, or monitoring data establishing its eligibility for the funds will, beginning with Fiscal Year 1994, be reallocated to the nonparticipating State program on September 30 of the fiscal year for which the funds were appropriated. Reallocated funds will be awarded to eligible recipients pursuant to program announcements published in the **Federal Register.**

7. Section 31.302 (a) and (b)(2) is amended to read as follows:

§ 31.302 Applicant State agency.

(a) Pursuant to section 223(a)(1), section 223(a)(2) and section 299(c) of the JJDP Act, the State must assure that the State agency approved under section 299(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.

(b) * * *

(2) Should consider in meeting the statutory membership requirements and responsibilities of section 223(a)(3) (A)–(E), appointing at least one member who represents each of the following: a locally elected official representing general purpose local government; a law enforcement officer; a juvenile or family court judge; a probation officer; a juvenile corrections official; a prosecutor; a representative from an organization, such as a parents group, concerned with teenage drug and alcohol abuse; a high school principal; a recreation director; a volunteer who works with delinquent or at risk youth; a person with a special focus on the family; a youth worker experienced with programs that offer alternatives to incarceration; persons with special competence in addressing programs of school violence and vandalism and alternatives to expulsion and suspension; and, persons with special knowledge concerning learning disabilities, child abuse, neglect and youth violence.

8. Section 31.303 (a) and (b) is revised to read as follows:

§ 31.303 Assurances.

(a) Assurances. The State must certify through the provision of assurances that it has complied and will comply (as appropriate) with section 223(a) (1), (2), (3), (4), (5), (6), (7), (8)(c), (9), (10), (11), (16), (17), (18), (19), (20), (21), (22), and (25), and sections 229 and 261(d), in formulating and implementing the State plan. The Formula Grant Application kit provides a form and guidance for the provision of assurances. OJJDP interprets the 223(a)(16) assurance as satisfied by an affirmation that State law and/or policy clearly require equitable treatment on the required bases; or by providing in the State plan that the State agency will require an assurance of equitable treatment by all Formula Grant subgrant and contract recipients, and establish as a program goal, in conjunction with the State Advisory Group, the adoption and implementation of a statewide juvenile justice policy that all youth in the juvenile justice system will be treated equitably without regard to gender, race, family income, and mentally, emotionally, or physically handicapping conditions. OJJDP interprets the 223(a)(25) assurance as satisfied by a provision in the State plan for the State agency and the State Advisory Group to

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promulgate policies and budget priorities that require the funding of programs that are part of a comprehensive and coordinated community system of services as set forth in section 103(19) of the JJDP Act. This requirement is applicable when a State's formula grant for any fiscal year exceeds 105 percent of the State's formula grant for Fiscal Year 1992.

(b) Serious juvenile offender emphasis. Pursuant to sections 101(a)(10) and 223(a)(10) of the JJDP Act, the Office encourages States that have identified serious and violent juvenile offenders as a priority problem to allocate formula grant funds to programs designed for serious and violent juvenile offenders at a level consistent with the extent of the problem as identified through the State planning process. Particular attention should be given to improving prosecution, sentencing procedures, providing resources necessary for informed dispositions, providing for effective rehabilitation, and facilitating the coordination of services between the juvenile justice and criminal justice systems.

* * * * *

9. Section 31.301 is amended by revising paragraph (c)(3) to read as follows:

§ 31.301 Federal Wards.

(c) * * *

(3) Apply this requirement to alien juveniles under Federal jurisdiction who are held in State or local facilities.

* * * * *

10. Section 31.303 is amended by revising paragraph (c)(4) to read as follows:

§ 31.303 DSO Compliance.

(c) * * *

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(12)(A) may, in lieu of addressing paragraphs (c)(1) and (2) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

* * * * *

11. Section 31.303 is amended by revising paragraphs (d)(1) (i) and (ii) to read as follows:

Section § 31.303 Separation

(d) * * *

(1) * * *

(i) Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term "contact" is defined to include any sight and sound contact between juveniles in a secure custody status and incarcerated adults, including inmate trustees. Sound contact is further defined to mean that no conversation is possible. Separation must be accomplished in all secure areas of the facility which include, but are not limited to: sallyports within the secure perimeter of the facility, other entry areas, all passageways (hallways), admissions, sleeping, toilet and shower, dining, recreational, educational, vocational, health care, and other areas as appropriate.

(ii) In those instances where accused juvenile criminal-type offenders are authorized to be temporarily detained in facilities where adults are confined, the State must set forth the procedures for assuring no sight or sound contact between such juveniles and confined adults.

* * * * *

12. Paragraph (d)(2) of § 31.303 is amended by adding a period "." after the word "State" and removing the remainder of paragraph (d)(2).

13. Paragraph (e)(3) in § 31.303 is revised to read as follows:

§ 31.303 Collocated Facilities.

(e) * * *

(3)(i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. In circumstances where juveniles are detained or confined in a separate building within a justice center or building complex which includes both juvenile and adult facilities (same grounds) or in a separate juvenile area (floor, wing, or side) of a building which includes an adult jail or lockup (same building), the separate building or area in which juveniles are detained or confined may qualify as a juvenile detention facility. However, except when a collocated building or area within a building has previously been determined by the State (with OJJDP concurrence) to qualify as a separate juvenile detention facility under the four established requirements prior to the effective date of this proposed regulation, State determinations and OJJDP concurrence on collocated facilities will be limited to those which are located in geographic areas outside a Standard Metropolitan Statistical Area, *and* are operational or planned such that a determination of compliance with the criteria can be made, *and* are determined by the State (with subsequent OJJDP concurrence) to meet the criteria and procedure established in paragraph (e)(3)(i) (A) through (D) and (ii) of this section, no later than December 31, 1994. Each of the following four criteria must be met in order to ensure the requisite separateness of the two facilities. The requirements are:

(A) Total separation between juvenile and adult facility spatial areas such that there could be no contact between juveniles and adult residents in the respective facilities. Total separation in spatial areas of juvenile and adult facilities can be achieved by providing for no common use areas, or by time-phasing common use areas, provided that the arrangement precludes contact between juveniles and adult residents and adult facility staff at all times. Sleeping or other living areas may not be considered common use areas.

(B) Total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility which provides for a full range of separate program activities. No program activities may be shared by juvenile and adult residents. However, program space, equipment, and other resources may be used by both facility populations subject to the criterion in paragraph (e)(3)(i)(A) of this section.

(C) Separate juvenile and adult staff, including management, security staff, and direct care staff such as recreation, education, and counseling. Specialized services staff, such as cooks, bookkeepers and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both. The day to day management, security and direct care functions of the juvenile detention facility and its programs must be vested in totally separate staff. Collocated facilities classified by the State with subsequent OJJDP concurrence prior to the effective date of this proposed regulation must also meet this requirement.

(D) In States that have established State standards or licensing requirements for secure juvenile detention facilities, the juvenile facility meets the standards (on the same basis as free-standing juvenile detention facilities) and is licensed as appropriate. Responsible State authorities must certify that all State standards or licensing requirements for a secure juvenile detention facility have been met, and that the architectural and operational configuration of the juvenile facility assures total separation.

(ii) The State must initially determine that the four requirements are fully met. Upon such determination, the State

must submit to OJJDP a request to concur with the State finding that a separate juvenile facility exists. To enable OJJDP to assess the separateness of the two facilities, sufficient documentation must accompany the request to demonstrate that each requirement is met. In assessing the separateness of the two facilities pursuant to a State's request for OJJDP concurrence, OJJDP will be guided by the "rule of reason." If a facility is, in fact, a separate and distinct living environment for juveniles in secure custody, and not simply a juvenile wing, section, or area of an adult jail or lockup, a reasoned and reasonable application of the criteria will result in OJJDP's concurrence that a separate juvenile detention facility exists. It is incumbent upon each State to make the initial determination through an on-site facility (or full plan) review and, through the exercise of its oversight responsibility, to insure that the separate character of the facility is maintained by continuing to fully meet each of the four criteria in the operation of the juvenile detention facility.

* * * * *

14. Paragraph (e)(4) in § 31.303 is removed and paragraph (e)(5) is redesignated as paragraph (e)(4) and revised to read as follows:

§ 31.303 Jail Removal Compliance.

(e) * * *

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(14) may, in lieu of addressing paragraphs (e) (1) and (2) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

15. In § 31.303, Paragraph (f)(1) introductory text is revised to read as follows:

§ 31.303 Compliance Monitoring.

(f) * * *

(1) Pursuant to section 223(a)(15) of the JJDP Act, the State shall:

* * * * *

16. Paragraph (f)(3)(i) in § 31.303 is amended by adding the following to the end of the paragraph:

§ 31.303 Valid Court Order.

(f) * * *

(3) * * *

(i) * * * Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

* * * * *

17. Paragraph (f)(3)(iv) in § 31.303 is amended by revising the last sentence thereof to read as follows:

§ 31.303 Valid Court Order.

(f) * * *

(3) * * *

(iv) * * * A juvenile alleged or found in a violation hearing to have violated a valid court order may be held only in a secure juvenile detention or correctional facility, and not in an adult jail or lockup.

* * * * *

18. Paragraph (f)(3)(vi) in § 31.303 is amended by adding the following to the end of the paragraph:

§ 31.303 Valid Court Order.

(f) * * *

(3) * * *

(vi) * * * This determination must be informed by a written report, to the judge, that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by a public agency or organization other than a court or law enforcement agency. A multidisciplinary review team that operates independently of courts or law enforcement agencies would satisfy this requirement even if some individual members of the team represented court or law enforcement agencies.

* * * * *

19. Paragraph (f)(4)(vi) in § 31.303 is revised to read as follows:

§ 31.303 Rural Area.

(f) * * *

(4) * * *

(vi) Pursuant to section 223(a)(14) of the JJDP Act, the non-MSA (low population density) exception to the jail and lockup removal requirement as described in paragraphs (f)(4) (i) through (v) of this section shall remain in effect through 1997, and shall allow for secure custody beyond the 24 hour period described in paragraph (f)(4)(i) of this section when the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, so that a brief (not to exceed an additional 48 hours) delay is excusable; or the facility is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel. States may use these additional statutory allowances only where the precedent requirements set forth in paragraphs (f)(4) (i) through (v) of this section have been complied with. This may necessitate statutory or judicial (court rule or opinion) relief within the State from the 24 hour initial court appearance standard required by paragraph (f)(4)(i) of this section. States must document and describe in their annual monitoring report to OJJDP, the specific circumstances surrounding each individual use of the distance/ ground transportation, and weather allowances.

* * * * *

20. Paragraph (f)(5) in § 31.303 is revised to read as follows:

§ 31.303 Monitoring Report.

(f) * * *

(5) *Reporting Requirement.* The State shall report annually to the Administrator of OJJDP on the results of monitoring for section 223(a) (12), (13), and (14) of the JJDP Act. The reporting period should provide 12 months of data, but shall not be less than six months. The report shall be submitted to the Administrator of OJJDP by December 31 of each year.

(i) To demonstrate compliance with section 223(a)(12)(A) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period.

(B) Total number of public and private secure detention and correctional facilities, the total number reporting, and the number inspected on-site.

(C) The total number of accused status offenders and nonoffenders, including out-of-state runaways and Federal wards, held in any secure detention or correctional facility for longer than 24 hours (not including weekends or holidays), excluding those held pursuant to the valid court order provision as set forth in paragraph (f)(3) of this section.

(D) The total number of accused status offenders and nonoffenders, including out-of-state runaways and Federal wards, held in any secure detention or correctional facility for less than 24 hours for purposes other than identification, investigation, release to parent(s), or transfer to a nonsecure facility.

(E) The total number of accused status offenders (including valid court order

violations) and nonoffenders securely detained in any adult jail, lockup, or nonapproved collocated facility for less than 24 hours.

(F) The total number of adjudicated status offenders and nonoffenders, including out-of-state runaways and Federal wards, held for any length of time in a secure detention or correctional facility, excluding those held pursuant to the valid court order provision.

(G) The total number of status offenders held in any secure detention or correctional facility pursuant to the valid court order provision set forth in paragraph (f)(3) of this section.

(ii) To demonstrate the extent to which the provisions of section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and nonoffenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the extent of compliance with section 223(a)(13) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period.

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months AND the number inspected on-site.

(C) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide sight and sound separation.

(D) The total number of juvenile offenders and nonoffenders NOT separated in facilities used for the secure detention and confinement of both juveniles and adults.

(E) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have been concurred with by OJJDP, including a list of such facilities.

(F) The total number of juveniles detained in collocated facilities concurred with by OJJDP, that were not separated from the security or direct care staff of the adult portion of the facility.

(G) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have not been concurred with by OJJDP, including a list of such facilities.

(H) The total number of juveniles detained in collocated facilities not approved by the State and concurred with by OJJDP, that were not sight and sound separated from adult criminal offenders.

(iv) To demonstrate the extent of compliance with section 223(a)(14) of the JJDP Act, the report must include, at a minimum, include the following information for the current reporting period:

(A) Dates covered by the current reporting period.

(B) The total number of adult jails in the State AND the number inspected on-site.

(C) The total number of adult lockups in the State AND the number inspected on-site.

(D) The total number of adult jails holding juveniles during the past twelve months.

(E) The total number of adult lockups holding juveniles during the past twelve months.

(F) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and collocated facilities not concurred with by OJJDP, in excess of six hours.

(G) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and collocated facilities not concurred with by OJJDP, for less than six hours for purposes other than identification, investigation, processing, release to parent(s), or transfer to a juvenile facility.

(H) The total number of adjudicated juvenile criminal-type offenders held securely in adult jails, lockups and collocated facilities not concurred with by OJJDP, for any length of time.

(I) The total number of accused and adjudicated status offenders (including valid court order violators) and nonoffenders held securely in adult jails, lockups and collocated facilities not approved by the State and concurred with by OJJDP, for any length of time.

(J) The total number of adult jails, lockups and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which each is located.

(K) The total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than 24 hours in adult jails, lockups and collocated facilities not approved by the State and concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section.

(L) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours in adult jails, lockups and collocated facilities not approved by the State and concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, due to conditions of distance or lack of ground transportation.

(M) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours in adult jails, lockups and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, due to adverse weather conditions.

* * * * *

21. Paragraph (f)(6) introductory text in § 31.303 is revised to read as follows:

§ 31.303 Funding Eligibility.

(f) * * *

(6) *Compliance.* The State must demonstrate the extent to which the requirements of section 223(a) (12)(A), (13), (14), and (23) of the Act are met. If the State fails to demonstrate full compliance with section 223(a) (12)(A) and (14), and compliance with (13) and (23) by the end of the fiscal year for any fiscal year beginning with 1994, the State's allotment under section 222 will be reduced by 25% for each such failure, provided that the State will lose its eligibility for *any* allotment unless: the State agrees to expend all remaining funds (except planning and administration, State advisory group set-aside funds and Indian tribe pass-through funds) for the purpose of achieving compliance with the mandate(s) for which the State is in noncompliance; or the Administrator makes a discretionary determination that the State has substantially complied with the mandate(s) for which there is noncompliance and that the State has made an unequivocal commitment to achieving full compliance within a reasonable time. Where a State's allocation is reduced, the amount available for planning and administration and the required pass-through allocation, other than State advisory group set-aside, will be reduced because they are based on the reduced allocation.

* * * * *

22. Paragraph (f)(6)(i) in § 31.303 is revised to read as follows:

§ 31.303 DSO Substantial Compliance.

(f) * * *

(6) * * *

(i) Substantial compliance with section 223(a)(12)(A) can be used to demonstrate eligibility for FY 1993 and prior year formula grant allocations if, within three years of initial plan submission, the State has achieved a 75% reduction in the aggregate number of status offenders and nonoffenders held in secure detention or correctional facilities, or removal of 100% of such juveniles from secure correctional facilities only. In addition, the State must make an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance by Fiscal Year 1994. Full compliance is achieved when a State has removed 100% of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with de minimis exceptions pursuant to the policy criteria contained in the Federal Register of January 9, 1981 (46 FR 2566–2569).

* * * * *

23. Paragraph (f)(6)(iii)(A) in § 31.303 is removed and paragraphs (f)(6)(iii) (B), (C), (D), and (E), thereof are redesignated as paragraphs (f)(6)(iii) (A), (B), (C), and (D), respectively.

24. Newly designated paragraph (f)(6)(iii)(C) in § 31.303 is revised to read as follows:

§ 31.303 Jail Removal Waiver.

(f) * * *

(6) * * *

(iii) * * *

(C) *Waiver.* Failure to achieve full compliance as defined in this section shall terminate any State's eligibility for FY 1993 and prior year formula grant funds unless the Administrator of OJJDP waives termination of the State's eligibility. In order to be eligible for this waiver of termination, a State must request a waiver and demonstrate that it meets the standards set forth in paragraph (f)(6)(iii)(C) (*1*) through (*7*) of this section:

(*1*) Agrees to expend all of its Formula Grant award except planning and administration, advisory group set-aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(*2*) Removed all status and nonoffender juveniles from adult jails and lockups. Compliance with this standard requires that the last submitted monitoring report demonstrate that no status offender (including those accused of or adjudicated for violating a valid court order) or nonoffender juveniles were securely detained in adult jails or lockups for any length of time; or, that all status offenders and nonoffenders securely detained in adult jails and lockups for any length of time were held in violation of an enforceable State law and did not constitute a pattern or practice within the State; or, the number of status offenders and nonoffenders securely detained in adult jails and lockups is less than 9 per 100,000 juvenile population in the State; and

(*3*) Made meaningful progress in removing juvenile criminal-type offenders from adult jails and lockups. Compliance with this standard requires the State to document a significant reduction in the number of jurisdictions securely detaining juvenile criminal-type offenders in violation of section 223(a)(14) of the JJDP Act; or, a significant reduction in the number of facilities securely detaining such juveniles; or, a significant reduction in the average length of time each juvenile criminal-type offender is securely detained in an adult jail or lockup; or, that State legislation has recently been enacted and taken effect and which the State demonstrates will significantly impact the secure detention of juvenile criminal-type offenders in adult jails and lockups; and

(*4*) Diligently carried out the State's jail and lockup removal plan approved by OJJDP. Compliance with this standard requires that actions have been undertaken to achieve the State's jail and lockup removal goals and objectives within approved timelines, and that the State advisory group, required by section 223(a)(3) of the JJDP Act, has maintained an appropriate involvement in developing and/or implementing the State's plan; and

(*5*) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the State, to eliminate noncompliant incidents; and

(*6*) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(*7*) Demonstrates an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance.

* * * * *

25. Newly designated paragraph (f)(6)(iii)(D) in § 31.301 is revised to read as follows:

§ 31.303 Jail Removal Waiver.

(f) * * *

(6) * * *

(iii) * * *

(D) *Waiver Maximum.* A State may receive a waiver of termination of eligibility from the Administrator under paragraph (f)(6)(iii)(C) of this section for a combined maximum of four Formula Grant awards through Fiscal Year 1993. No additional waivers will be granted.

* * * * *

26. Paragraph (f)(7) in § 31.303 is revised to read as follows:

§ 31.303 Monitoring Report Exemption.

(f) * * *

(7) *Monitoring Report Exemptions.* States which have been determined by the OJJDP Administrator to have achieved full compliance with sections 223(a)(12)(A) and 223(a)(14), and compliance with section 223(a)(13) of the JJDP Act and wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

(i) The State provides for an adequate system of monitoring jails, law enforcement lockups, detention facilities, correctional facilities, and nonsecure facilities to enable an annual determination of State compliance with sections 223(a) (12)(A), (13), and (14) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of sections 223(a) (12)(A), (13), and (14) of the JJDP Act; and

(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

(A) Authority for enforcement of the statute is assigned;

(B) Time frames for monitoring compliance with the statute are specified; and

(C) Adequate procedures are set forth for enforcement of the statute and the imposition of sanctions for violations.

* * * * *

27. Paragraph (g) introductory text in § 31.303 is revised to read as follows:

§ 31.303 Crime Analysis.

(g) *Juvenile Crime Analysis.* Pursuant to section 223(a)(8), the State must conduct an analysis of juvenile crime problems, including juvenile gangs that commit crimes, and juvenile justice and delinquency prevention needs within the State, including those geographical areas in which an Indian tribe performs law enforcement functions. The analysis and needs assessment must include educational needs, gender specific services, delinquency prevention and treatment services in rural areas, and mental health services available to juveniles in the juvenile justice system. The analysis should discuss barriers to accessing services and provide a plan to provide such services where needed.

* * * * *

28. Paragraph (h) in § 31.303 is amended by adding the following sentence at the end thereof:

§ 31.303 Performance Report.

(h) * * * The annual performance report must be submitted to OJJDP no later than June 30 and address all formula grant activities carried out during the previous complete calendar year, federal fiscal year, or State fiscal year for which information is available, regardless of which year's formula grant funds were used to support the activities being reported on, e.g., during a reporting period, activities may have been funded from two or more formula grant awards.

* * * * *

29. Paragraph (j) in § 31.303 is revised to read as follows:

§ 31.303 Disproportionate Minority Confinement.

(j) *Minority Detention and Confinement.* Pursuant to section 223(a)(23) of the JJDP Act, States must demonstrate specific efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population, viz., in most States, youth between 10–17 are subject to secure custody. It is essential that States approach this statutory mandate in a comprehensive manner. Compliance with this provision is achieved when a State meets the requirements set forth in paragraphs (1) through (3) of this section:

(1) *Identification.* Provide quantifiable documentation (State, county and local level) in the State's FY 1994 Formula Grant Plan (and all subsequent Multi-Year Plans) Juvenile Crime Analysis and Needs Assessment to determine whether minority juveniles are disproportionately detained or confined in secure detention and correctional facilities, jails and lockups in relation to their proportion of the State juvenile population. Guidelines are provided in the OJJDP Disproportionate Minority Confinement Technical Assistance Manual (see Phase I Matrix). Where quantifiable documentation is not available to determine if disproportionate minority confinement exists in secure detention and correctional facilities, jails and lockups, the State must provide a time-limited plan of action, not to exceed six months, for developing and implementing a system for the ongoing collection, analysis and dissemination of information regarding minorities for those facilities where documentation does not exist.

(2) *Assessment.* Each State's FY 1994 Formula Grant Plan must provide a completed assessment of disproportionate minority confinement. Assessments must, at minimum, identify and explain differences in arrest, diversion and adjudication rates, court dispositions other than incarceration, the rates and periods of prehearing detention in and dispositional commitments to secure facilities of minority youth and non-minority youth in the juvenile justice system, and transfers to adult court (see Phase II Matrix). If a completed assessment is not available, the State must submit a time-limited plan (not to exceed 12 months from submission of the Formula Grant Application) for completing the assessment.

(3) *Intervention.* Each State's FY 1995 Formula Grant Plan must, where disproportionate confinement has been demonstrated, provide a time-limited plan of action for reducing the disproportionate confinement of minority juveniles in secure facilities. The intervention plan shall be based on the results of the assessment, and must include, but not be limited to the following:

(i) Diversion. Increasing the availability and improving the quality of diversion programs for minorities who come in contact with the juvenile justice system, such as police diversion programs;

(ii) Prevention. Providing developmental, operational, and assessment assistance (financial and/or technical) for prevention programs in communities with a high percentage of minority residents with emphasis upon support for community-based organizations (including non-traditional organizations) that serve minority youth;

(iii) Reintegration. Providing developmental, operational, and assessment assistance (financial and/or technical) for programs designed to reduce recidivism by facilitating the reintegration of minority youth in the community following release from dispositional commitments to reduce recidivism;

(iv) Policies and Procedures. Providing financial and/or technical assistance that addresses necessary changes in statewide and local, executive, judicial, and legal representation policies and procedures.

(v) Staffing and Training: Providing financial and/or technical assistance that addresses staffing and training needs that will positively impact the disproportionate confinement of minority youth in secure facilities.

(4) The time-limited plans of action set forth in paragraphs (j) (1), (2) and (3) of this section must include a clear indication of current and future barriers; which agencies, organizations, or individual(s) will be responsible for taking what specific actions; when; and what the anticipated outcomes are. The interim and final outcomes from implementation of the time-limited plan of action must be reported in each State's Multi-Year Plans and Annual Plan Updates. Final outcomes for individual project awards are to be included with each State's annual performance report [paragraph (h) of this section].

(5) Technical assistance is available through the OJJDP Technical Assistance Contract to help guide States with the data collection and analysis, and with programmatic elements of this requirement. Information from the OJJDP Special Emphasis Initiative on Disproportionate Minority Confinement pilot sites will be disseminated as it becomes available.

(6) For purposes of this statutory mandate, minority populations are defined as: African Americans, American Indians, Asians, Pacific Islanders, and Hispanics.

* * * * *

30. Section 31.403 is revised to read as follows:

§ 31.403 Other Requirements.

The State assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination requirements, including:

(a) Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and made applicable by section 299A of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended;

(b) Title VI of the Civil Rights Act of 1964, as amended;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975;

(f) The Department of Justice NonDiscrimination regulations, 28 CFR part 42, subparts C, D, E and G;

(g) The Department of Justice regulations on disability discrimination, 28 CFR part 35 and part 39; and

(h) Subtitle A, Title II of the Americans with Disabilities Act (ADA) of 1990.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

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DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

[OJP No. 1045]

RIN 1121–AA28

Formula Grants

AGENCY: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Final regulation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing the final revision of the existing Formula Grants Regulation, which implements part B of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1992.

The 1992 Amendments reauthorize and modify the Federal assistance program to State and local governments, and private not-for-profit agencies for juvenile justice and delinquency prevention improvements. The final revision to the existing Regulation provides clarification and guidance to States in the formulation, submission and implementation of State Formula Grant plans and determinations of State compliance with plan requirements. It provides additional flexibility and guidance to participating States while strengthening several key provisions related to the mandates of the JJDP Act.

EFFECTIVE DATE: This regulation is effective March 10, 1995.

FOR FURTHER INFORMATION CONTACT: Roberta Dorn, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 543, Washington, DC 20531; (202) 307–5924.

SUPPLEMENTARY INFORMATION:

Statutory Amendments

The 1992 reauthorization of the JJDP Act resulted in statutory amendments that impact the Formula Grants Program (28 CFR part 31). These statutory changes include: a formula grant fund allocation minimum base for participating States and territories; elimination of the "substantial compliance criteria" with respect to the Deinstitutionalization of Status Offenders (DSO) and Jail and Lockup Removal requirements because full compliance is required; a requirement that there be separate juvenile and adult staff with respect to management, security and direct care in juvenile detention facilities that are collocated with an adult jail or lockup; and a provision that a status offender alleged or found in a judicial hearing to have violated a valid court order (VCO) may be held in a secure juvenile detention or correctional facility only if enhanced due process and procedural protections have been provided.

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322, September 13, 1994) amended the DSO provision of the JJDP Act to exclude juveniles charged with or adjudicated for possessing a handgun from coverage under the DSO requirement.

The final regulation details revised procedures and requirements for States participating in the Formula Grants Program resulting from the 1992 Amendments to the JJDP Act (Pub. L. 102–586, November 18, 1992).

Description of Major Changes

Formula Grant Allocations

Section 222(a) of the JJDP Act, provides for a "floating minimum" for the allocation of formula grants to States and Territories that is tied to the total appropriation level for Title II in a given fiscal year (FY). For FY's 1994 and 1995, the total appropriation for Title II exceeded $75 million and Congress appropriated sufficient funds to maintain each State at least at its FY 1992 funding level and raise the minimum allocation for each State and Territory to $600,000 and $100,000 respectively.

Application Deadline

The submission requirement for formula grant applications is changed to require that FY 1995 applications and all subsequent applications be submitted to OJJDP no later than March 31 of the fiscal year for which the funds were allocated.

State Agency Structure—Staffing

The regulation is revised to require the assignment of one full-time Juvenile Justice Specialist to manage the Formula Grants Program.

Collocated Juvenile and Adult Facilities

The regulation clarifies the existing four criteria for a juvenile detention facility that is collocated with an adult jail or lockup by providing for: (1) Total separation in spatial areas of juvenile and adult facilities can be achieved by providing for no common use areas, including time-phasing; (2) total separation in juvenile and adult program activities requires the formulation of an independent and comprehensive operational plan for the juvenile facility which provides a full range of separate program activities for juveniles; (3) separate juvenile and adult staff includes all management, security and direct care personnel; and (4) in States that have standards or licensing requirements for secure juvenile detention facilities, a collocated facility must meet the standards on the same basis as separate facilities and be licensed as appropriate.

OJJDP intends these clarifications to enhance and strengthen the four separate facility requirements for States completing final steps to achieve and maintain full compliance with the jail and lockup removal requirement. State certification and oversight responsibilities are strengthened by requiring annual on-site review. The 1992 Amendments require States to review and ensure compliance with the separate staff criterion in all collocated facilities, including those classified as such by the State and concurred with by OJJDP prior to the effective date of this regulation.

OJJDP believes the ideal or most optimal setting for a juvenile detention facility is one in which the facility is not collocated with an adult jail or lockup. Further, OJJDP believes that jurisdictions and States should not rely upon collocated facilities as a primary or long-term strategy for achieving and maintaining compliance with the jail and lockup removal mandate. However, OJJDP believes that where there is a demonstrated need for an existing or planned collocated facility, jurisdictions should have the flexibility to use such a facility, but only where the enhanced requirements, critical to ensuring an appropriate environment for detained youth, are met. Collocated juvenile detention facilities approved by the State and concurred with by OJJDP prior to March 31, 1995 are to be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence, except that all collocated facilities are subject to the separate staff requirement established by the 1992 Amendments.

OJJDP's concurrence on all collocated facilities submitted for OJJDP review after March 31, 1995 is limited to one year and, thereafter, would be reviewed on an annual basis. An on-site review of the facility must be conducted by the compliance monitoring staff for the State agency administering the JJDP Act Formula Grants Program. OJJDP's concurrence may also require on-site

review by OJJDP staff. Additionally, in order to receive OJJDP's initial and subsequent concurrence, a juvenile detention facility approved after March 31, 1995 must, pursuant to a written policy and procedure, only provide secure custody for: juvenile criminal-type offenders; status offenders accused of violating a VCO; and adjudicated delinquents and VCO order violators who are awaiting disposition hearings or transfer to a long-term juvenile correctional facility.

Criteria for Compliance with DSO, Adult Jail and Lockup Removal, Separation, and Minority Over-representation

The regulation deletes the "substantial compliance" criteria from Section 31.303(c)(3) and (e)(4). Pursuant to the 1992 Amendments, participating States are required to be in full compliance with the DSO and Jail and Lockup Removal mandates and demonstrate compliance with the Separation and Enhanced Disproportionate Minority Confinement (DMC) in order to be eligible for FY 1994 and subsequent year Formula Grant funds. Therefore, the regulatory provision recognizing "progress" toward compliance with the Separation mandate is being deleted. Also, enhanced criteria and specific time lines are established for the DMC Mandate.

Deinstitutionalization of Status Offenders

The regulation brings the DSO requirement in line with the Section 223(a)(14) Jail and Lockup Removal requirement by eliminating the monitoring report exclusion for status offenders and nonoffenders securely detained or confined in an adult jail or lockup for less than twenty four hours exclusive of weekends and holidays. This reflects OJJDP's determination that there are no longer any circumstances in which the secure custody of noncriminal juveniles in adult jails and lockups can be justified or sanctioned. To the extent that inadvertent or isolated violations occur, or where violations result from emergency situations, the de minimis criteria for full compliance should continue to provide sufficient latitude to permit States to maintain full compliance with the DSO requirement. Monitoring information to reflect this change must be included in the State Monitoring Report due by December 31, 1995, and subsequent monitoring reports.

Discussion of Comments

The proposed revisions to the existing Formula Grants Regulation were published in the **Federal Register** on July 25, 1994 (59 FR 37866), for public comment. Written comments were received on ten issues addressed by the proposed regulation. All comments have been considered by OJJDP in the issuance of this final regulation.

The following is a summary of the comments and the responses by OJJDP:

1. Comment: One respondent felt that States should be allowed to submit their Annual Performance Reports ninety days after the end of their reporting period, but no later than June 30th.

Response: States are allowed under the final formula grants regulation to submit their Annual Performance Report, ninety days after the end of their reporting period, but no later than June 30th. The regulation merely formalizes the existing policy of States submitting their required Performance Reports by June 30th of each year.

2. Comment: Another respondent was of the opinion that a person who routinely provides legal representation to youth in juvenile court should be added to the State Advisory Group membership requirement.

Response: Section 223(a)(3) already requires representation of "law enforcement and juvenile justice agencies" including "counsel for children and youth" on the State Advisory Group.

3. Comment: With respect to DMC, States need more time to achieve compliance because the issue is too complex. States were given more time to achieve compliance with DSO, Separation, and Jail Removal. Several respondents indicated that more research is needed before effective interventions can be designed and implemented. Respondents expressed concern that the problem of DMC goes beyond the juvenile justice system and other systems need to be addressed. One respondent suggested that States should be required to review and address the effects of legislation on minority over-representation. A recommendation was also made that States' multi-year formula grant plans and annual plan updates should identify and explain any anticipated action steps from a previous formula grant plan that have not been carried out.

Response: States had five years to reach full compliance on DSO, and eight to reach full compliance on Jail and Lockup Removal. Congress initially addressed DMC in 1988. Congressional action on the 1992 Reauthorization of the JJDP Act makes it clear that States are expected to move forward on DMC. The OJJDP regulation reflects the additional priority Congress has attached to DMC.

The experience of OJJDP and most States supports the public comment about the complexity of DMC. OJJDP recognizes that successful approaches to DMC include lessons learned from DSO, Separation, and Jail Removal. For instance, addressing the relationship between attitudes and behavior, and ensuring local ownership of program initiatives, contributed significantly to progress on the earlier mandates. Ultimate success on DMC will, however, require a concerted and comprehensive approach that goes beyond the earlier mandates. Accordingly, the implementation phase activities set forth in the regulation acknowledge the need to look beyond a narrow focus on police, probation, courts, and corrections. Meaningful prevention (including health, mental health, education and vocational) and intervention resources must be available on an equitable basis, and States need to assess the impact of executive, legislative, and judicial policies on DMC.

The final regulation establishes an expectation that States will examine legislative initiatives which may inadvertently contribute to DMC. Also, the final regulation includes a modification that has States explain in their formula grant plans, any previously slated DMC activities that were not carried out.

4. Comment: One respondent stated that there is no difference between a court intake agency preparing the advisory report required prior to a dispositional commitment to a secure facility for violation of a VCO, and an intake unit operated by a human service agency completing the report. Another respondent questioned whether an advisory report would be allowable if it was prepared by a multidisciplinary review team comprised entirely of court and law enforcement agency workers. Other respondents expressed concern that the report could not be completed between apprehension and an initial hearing; that the report would allow a third party to influence the court's decision making process; and, that the new advisory report requirement makes the VCO violation process too restrictive. One commentator was uncertain about the difference between a VCO violation and contempt of court. A question was raised about whether an advisory report would be required for an adjudicated delinquent who absconds from a court-ordered secure treatment facility. One person recommended that the regulation contain an explicit requirement for legal representation of youth during the VCO violation process.

Response: The statute requires that the advisory report be prepared by an appropriate public agency (other than a court or law enforcement agency). A review team composed only of court and law enforcement officials is probably not amenable to the term "multidisciplinary." Nonetheless, if the team were operating under the auspices of, and answerable to, an agency other than a court or law enforcement agency, preparation of the report by this review team would be permissible.

The advisory report does not have to be completed between apprehension and the initial court hearing. The advisory report is only required prior to commitment to a secure facility as a disposition, viz., post adjudication. While the report is not binding on the court, it is intended as an additional, objective source of information upon which the court can base its case planning and decision making. As such, Congress intended the report to "influence" judicial actions with respect to status offenders adjudicated for violating a VCO.

OJJDP disagrees with the comment that the VCO process is so restrictive that it is impossible to securely detain accused or adjudicated VCO violators. Those portions of the existing regulation that specifically address the detention of VCO violators have not been changed. The changes being made implement amendments to the JJDP Act that require due process protections from the very beginning of the VCO process, and an advisory report prior to a dispositional commitment to a secure facility. The 1992 Amendments to the JJDP Act reflect Congressional concern about the possible overuse of the VCO exception in order to incarcerate status offenders and circumvent the deinstitutionalization of status offenders provision of the JJDP Act.

Regarding status offenders charged with contempt of court for behavior that would result in the same charge for an adult, OJJDP agrees that this is not a status offense. If, however, the court is using a contempt process in place of the VCO violation process, OJJDP and the State would look to see that all of the VCO requirements had been met before allowing the VCO exception.

Where allowable under State law, adjudicated delinquents that abscond from secure treatment facilities could be held in a juvenile detention center without new charges, and without violating the JJDP Act. In response to the comment about legal counsel, it is noted that the current formula grants regulation requires legal counsel for youth in VCO cases.

5. Comment: Status offenders in jails and lockups already violate jail and lockup removal, and therefore, this should not be counted as a violation of DSO. The respondent also assumed that this did not effect VCO detentions.

Response: Under current regulations, a status offender or nonoffender securely detained in a jail or lockup for less than twenty four hours would violate the jail and lockup removal provision of the JJDP Act, but not the DSO provision. This conflict in the regulations (issued at different points in time) is not acceptable. It is the position of Congress and OJJDP, that there is no excusable reason for securely detaining juveniles in a jail or lockup, who are not being charged with a criminal offense.

Status offenders accused of, or adjudicated for violating a VCO, remain status offenders under OJJDP regulations, and therefore can not be securely detained in jails and lockups.

6. Comment: A respondent expressed concern over the sound separation standard. Specifically, the "no conversation possible" standard was criticized as being too vague. Respondent suggested that sound separation be expanded to mean "any communication from incarcerated adults." Further, it was recommended that the regulation should explicitly indicate that haphazard and accidental contact are no longer permissible.

Response: The final regulation will indicate that sound contact means any oral communication between incarcerated adults and juveniles. In response to the 1992 Amendments of the JJDP Act, "haphazard and accidental" contact were deleted from the proposed formula grants regulation. OJJDP believes this deletion to be sufficient.

7. Comment: Two respondents questioned the total amount of time allowed for the new distance/lack of ground transportation portion of the rural area (non-MSA) exception to jail and lockup removal. Specifically, one respondent recommended that "distance" be defined as three hours by automobile, and that the total period of incarceration be limited to seventy two hours. This recommendation allows for the original twenty four hours grace period plus the new forty eight hours period provided by Congress, but would not then recognize weekends and holidays as currently allowed for in the statute. The other respondent asserted that the total period of incarceration under the distance/lack of ground transportation provision should not exceed forty eight hours. A recommendation was also made that the regulation require youth specific admissions screening in connection with use of the non-MSA exception, and that continuous visual supervision be provided by a trained person.

Response: OJJDP stands by its interpretation of the statute to mean forty eight hours *in addition* to the first twenty four hours "grace period." Because the statute excludes weekends and holidays, the total time may exceed seventy two hours. States are reminded, however, that each use of the expanded rural area exception must be carefully documented. OJJDP concurs with the comment on youth-specific admissions screening, but this will be added to the final regulation as a recommended practice, not a requirement. The existing regulation addresses continuous visual supervision as a recommended practice.

8. Comment: Respondents questioned the proposal to increase the number of waivers from three to four, for failure to achieve full compliance with jail and lockup removal. Opposition was also expressed toward revising the existing criteria used by OJJDP to assess waiver requests. Specifically, respondents disagreed with the proposal to modify the waiver criterion related to the removal of status and nonoffenders from adult jails and lockups.

Response: There is only one State that is possibly in need of another (fourth) waiver in order to access FY 1993 formula grant funds. Starting with FY 1994 formula grant funds, there is no longer a waiver provision for failure to achieve full compliance with jail and lockup removal.

A preliminary review of the subject State's situation suggests that, if a fourth waiver is needed, the waiver criteria could be complied with. If a fourth waiver is needed and justified for this State, it will be granted in the discretion of the Administrator. The waiver provision of the criteria in the existing regulation are being deleted, as they are no longer applicable.

9. Comment: The 1992 Amendments to the JJDP Act restructure State's eligibility for formula grant funds, such that each of the four major mandates is associated with twenty five percent of the grant. As amended, the Act also requires States receiving reduced allocations for noncompliance to expend all remaining funds to achieve compliance, absent a waiver of this requirement from the Administrator. One respondent questioned the ability of States to adequately address the mandates if all funds must be expended on one noncompliant mandate. Another respondent asked OJJDP to clearly delineate the criteria to be used in assessing States' requests for a waiver from the requirement to expend all

funds to achieve compliance with the noncompliant mandate(s), viz., how will OJJDP determine if a State has achieved substantial compliance.

Response: The concern about States' ability to maintain compliance with all of the major mandates when funds must be focused on one noncompliant mandate, is contemplated by the statutory scheme established by Section 223(c)(3)(B)(ii) of the JJDP Act. A waiver of the dedicated funding provision can be granted if the State has achieved substantial compliance with the mandate(s) for which funding was reduced. In addition, the State must have an unequivocal commitment to achieving full compliance with the noncompliant mandate. The final regulation sets forth specific criteria for determining whether a State has achieved substantial compliance want OJJDP to continue the practice.

10. Comments: The proposed regulation reflected the statutory amendment requiring totally separate staff for juvenile detention facilities collocated with adult jails and lockups. In addition, OJJDP proposed eventually ending the practice of concurring with State classifications and approval of juvenile detention facilities located in the same building as adult jails and lockups. Several national organizations sponded in support of the proposed regulation's position on collocated facilities. The basis for this support is that the existing criteria for collocated facilities, even when fully implemented, do not ensure adequate protection and services for juveniles. In the opinion of these organizations, the existing criteria do not result in jail and lockup removal.

A number of States on the other hand, argued that the existing criteria are adequate, the burgeoning juvenile detention populations necessitate that as many options as possible be available, and that it is essential for States and local units of government to retain their discretion in juvenile detention planning and operations.

Response: The final regulation attempts to balance the interests presented on the collocated facility issue during the public comment period. Specifically, OJJDP will work with the States to implement a three-prong approach to collocated facilities that is consistent with Section 223(a), Paragraphs (13) and (14) of the JJDP Act. The first prong involves a formal assessment of detention needs in a particular jurisdiction or region prior to moving ahead with the approval process a collocated facility.

OJJDP's technical assistance provider will work with jurisdictions interested in a collocated facility to collect and analyze the necessary information for sound juvenile detention services planning. The second prong involves strengthened regulatory criteria for States and OJJDP to use in the approval and concurrence processes, respectively. Specifically, OJJDP will return to its original (1984) standard of not permitting time-phased use of spatial areas in collocated juvenile and adult facilities and will fully implement the 1992 Amendment to the JJDP Act requiring totally separate staff for juvenile detainees. The third prong consists of a requirement that approved collocated facilities receive an annual on-site visit by the State Formula Grant Agency. The purpose of the visit is to reassess the facility's compliance with the collocated criteria, and to revisit the need to collocate facilities in the jurisdiction or region.

Issues Not Addressed by Public Comments

1. Deadline for Monitoring Reports—The current regulation says December 31st of each year. Timely submission of State monitoring reports will be tied to State eligibility for reverted funds, as is the case with formula grant plans and performance reports.

2. The JJDP Act says the State advisory group "shall" consist of * * * and the proposed regulation says "should consider." The final regulation will reflect this correction.

3. Youth Handgun Safety Act—The Violent Crime Control and Law Enforcement Act of 1994 amended the DSO provision of the JJDP Act to exclude juveniles charged with handgun possession. This occurred after publication of the proposed regulation. The final regulation will reflect this change in the definition of status offender.

Executive Order 12866

This final regulation is not a "significant regulatory action" for purposes of Executive Order 12866 because it does not result in: (1) an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles of Executive Order 12866.

Regulatory Flexibility Act

This final regulation, does not have a "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96–354).

Paperwork Reduction Act

No collection of information requirements are contained in or effected by this regulation (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR Part 31, States must submit formula grant applications to the State "Single Point of Contact," if one exists. The State m take up to sixty days from the application date to comment on the application.

List of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the OJJDP Formula Grants Regulation, 28 CFR Part 31, is amended as follows:

PART 31—[AMENDED]

1. The authority citation for Part 31 is revised to read as follows:

Authority: 42 U.S.C. 5601 *et seq.*

2. Section 31.3 is revised to read as follows:

§ 31.3 Formula Grant Plans and Applications.

Formula Grant Applications for each fiscal year should be submitted to OJJDP by August 1 (sixty days prior to the beginning of the fiscal year) or within sixty days after the States are officially notified of the fiscal year formula grant allocations. Beginning with FY 1995 and each subsequent fiscal year, all Formula Grant Applications must be submitted no later than March 31 of the fiscal year for which the funds are allocated.

3. Section 31.101 is revised to read as follows:

§ 31.101 Designation of State agency.

The Chief Executive of each State which chooses to apply for a formula grant shall establish or designate a State agency as the sole agency for supervising the preparation and

administration of the plan. The plan must demonstrate compliance with administrative and supervisory board membership requirements established by the OJJDP Administrator pursuant to Section 299(c) of the JJDP Act. States must have available for review a copy of the State law or executive order establishing the State agency and its authority

4. Section 31.102 is amended by adding two sentences at the end of paragraph (c) to read as follows:

§ 31.102 State agency structure.

* * * * *

(c) * * * At a minimum, one full-time Juvenile Justice Specialist must be assigned to the Formula Grants Program by the State agency. Where the State does not currently provide or maintain a full-time Juvenile Justice Specialist, the plan must clearly establish and document that the program and administrative support staff resources currently assigned to the program will temporarily meet the adequate staff requirement, and provide an assurance that at least one full-time Juvenile Justice Specialist will be assigned to the Formula Grants Program by the end of FY 1995 (September 30, 1995).

5. Section 31.203 is revised to read as follows:

§ 31.203 Open meetings and public access to records.

The State must assure that the State agency, its supervisory board established pursuant to Section 299(c) and the State advisory group established pursuant to Section 223(a)(3) will follow applicable State open meeting and public access laws and regulations in the conduct of meetings and maintenance of records relating to their functions.

6. Section 31.301 is amended by revising paragraphs (a), (c), (d), and (e) to read as follows:

§ 31.301 Funding.

(a) *Allocation to States.* Funds shall be allocated annually among the States on the basis of relative population of persons under age eighteen. If the amount allocated for Title II (other than Parts D and E) of the JJDP Act is less than $75 million, the amount allocated to each State will not be less than $325,000, nor more than $400,000, provided that no State receives less than its allocation for FY 1992. The territories will receive not less than $75,000 or more than $100,000. If the amount appropriated for Title II (other than Parts D and E) is $75 million or more, the amount allocated for each State will be not less than $400,000, nor more than $600,000, provided that Parts D and E have been funded in the full amounts authorized. For the Territories, the amount is fixed at $100,000. For each of FY's 1994 and 1995, the minimum allocation is established at $600,000 for States and $100,000 for Territories.

* * * * *

(c) *Match.* Formula Grants under the JJDP Act shall be 100% of approved costs, with the exception of planning and administration funds, which require a 100 percent cash match (dollar for dollar), and construction projects funded under Section 299C(a)(2) of the JJDP Act which also require a 100 percent cash match.

(d) *Funds for administration.* Not more than ten percent of the total annual Formula Grant award may be utilized to develop the annual juvenile justice plan and pay for administrative expenses, including project monitoring. These funds are to be matched on a dollar for dollar basis. The State shall make available needed funds for planning and administration to units of local government on an equitable basis. Each annual application must identify uses of such funds.

(e) *Nonparticipating States.* Pursuant to Section 223(d), the OJJDP Administrator shall endeavor to make the fund allotment under Section 222(a), of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, directly available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of achieving deinstitutionalization of status offenders and nonoffenders, separation of juveniles from incarcerated adults, removal of juveniles from adult jails and lockups, and/or reducing the disproportionate confinement of minority youth in secure facilities. Absent a request for extension which demonstrates compelling circumstances justifying the reallocation of formula grant funds back to the State to which the funds were initially allocated, or the proceedings under Section 223(d), formula grant funds allocated to a State which has failed to submit an application, plan, or monitoring data establishing its eligibility for the funds will, beginning with FY 1994, be reallocated to the nonparticipating State program on September 30 of the fiscal year for which the funds were appropriated. Reallocated funds will be awarded to eligible recipients pursuant to program announcements published in the **Federal Register**.

7. Section 31.302 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 31.302 Applicant State agency.

(a) Pursuant to Section 223(a)(1), Section 223(a)(2) and Section 299(c) of the JJDP Act, the State must assure that the State agency approved under Section 299(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.

(b) * * *

(2) Shall consider in meeting the statutory membership requirements and responsibilities of Section 223(a)(3) (A)–(E), appointing at least one member who represents each of the following: a locally elected official representing general purpose local government; a law enforcement officer; a juvenile or family court judge; a probation officer; a juvenile corrections official; a prosecutor; a person who routinely provides legal representation to youth in juvenile court; a representative from an organization, such as a parents group, concerned with teenage drug and alcohol abuse; a high school principal; a recreation director; a volunteer who works with delinquent or at risk youth; a person with a special focus on the family; a youth worker experienced with programs that offer alternatives to incarceration; persons with special competence in addressing programs of school violence and vandalism and alternatives to expulsion and suspension; and persons with knowledge concerning learning disabilities, child abuse, neglect and youth violence.

* * * * *

8. Section 31.303 is amended by revising paragraphs (a) and (b) to read as follows:

§ 31.303 Substantive requirements.

(a) *Assurances.* The State must certify through the provision of assurances that it has complied and will comply (as appropriate) with Sections 223(a) (1), (2), (3), (4), (5), (6), (7), (8)(c), (9), (10), (11), (16), (17), (18), (19), (20), (21), (22), and (25), and Sections 229 and 261(d), in formulating and implementing the State plan. The Formula Grant Application kit provides a form and guidance for the provision of assurances. OJJDP interprets the Section 223(a)(16) assurance as satisfied by an affirmation that State law and/or policy clearly require equitable treatment on the required bases; or by providing in the State plan that the State agency will require an assurance of equitable treatment by all Formula Grant subgrant

and contract recipients, and establish as a program goal, in conjunction with the State Advisory Group, the adoption and implementation of a statewide juvenile justice policy that all youth in the juvenile justice system will be treated equitably without regard to gender, race, family income, and mentally, emotionally, or physically handicapping conditions. OJJDP interprets the Section 223(a)(25) assurance as satisfied by a provision in the State plan for the State agency and the State Advisory Group to promulgate policies and budget priorities that require the funding of programs that are part of a comprehensive and coordinated community system of services as set forth in Section 103(19) of the JJDP Act. This requirement is applicable when a State's formula grant for any fiscal year exceeds 105 percent of the State's formula grant for FY 1992.

(b) *Serious juvenile offender emphasis.* Pursuant to Sections 101(a)(10) and 223(a)(10) of the JJDP Act, OJJDP encourages States that have identified serious and violent juvenile offenders as a priority problem to allocate formula grant funds to programs designed for serious and violent juvenile offenders at a level consistent with the extent of the problem as identified through the State planning process. Particular attention should be given to improving prosecution, sentencing procedures, providing resources necessary for effective rehabilitation, and facilitating the coordination of services between the juvenile justice and criminal justice systems.

* * * * *

§ 31.303 [Amended]

9. Section 31.303 is amended by revising paragraph (c)(3) to read as follows:

* * * * *

(c) * * *

(3) *Federal wards.* Apply this requirement to alien juveniles under Federal jurisdiction who are held in State or local facilities.

* * * * *

10. Section 31.303 is amended by revising paragraph (c)(4) to read as follows:

* * * * *

(c) * * *

(4) *DSO compliance.* Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with Section 223(a)(12)(A) may, in lieu of addressing paragraphs (c) (1) and (2) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

* * * * *

11. Section 31.303 is amended by revising paragraphs (d)(1) (i) and (ii) to read as follows:

* * * * *

(d) * * *

(1) * * *

(i) *Separation.* Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term "contact" is defined to include any sight and sound contact between juveniles in a secure custody status and incarcerated adults, including inmate trustees. Sound contact is further defined to mean no oral communication between incarcerated adults and juveniles. Separation must be accomplished in all secure areas of the facility which include, but are not limited to: sallyports within the secure perimeter of the facility, other entry areas, all passageways (hallways), admissions, sleeping, toilet and shower, dining, recreational, educational, vocational, health care, and other areas as appropriate.

(ii) In those instances where accused juvenile criminal-type offenders are authorized to be temporarily detained in facilities where adults are confined, the State must set forth the procedures for assuring no sight or sound contact between such juveniles and confined adults.

* * * * *

12. Paragraph (d)(2) of § 31.303 is revised to read as follows:

* * * * *

(d)* * *

(2) *Implementation.* The requirement of this provision is to be planned and implemented immediately by each State.

* * * * *

13. Paragraph (e)(3) in § 31.303 is revised to read as follows:

* * * * *

(e)* * *

(3) *Collocated facilities.* (i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups. Juvenile facilities collocated with adult facilities are not considered adult jails or lockups when the criteria set forth in paragraph (e)(3)(i)(D) of this section are complied with.

(A) A collocated facility is a juvenile facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered "related" when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer), or those that are allowable under paragraph (e)(3)(i)(C) of this section.

(B) The State, with OJJDP concurrence must determine whether a collocated facility qualifies as a separate juvenile detention facility under the four criteria set forth in Paragraph (e)(3)(i)(D) of this section for the purpose of monitoring compliance with Section 223(a), Paragraphs 12(A), (13) and (14) of the JJDP Act.

(C) A needs based analysis must precede a jurisdiction's request for State approval, and OJJDP concurrence that a collocated facility qualifies as a juvenile detention facility. Specifically, consideration should be given to such factors as excessive travel time to an existing juvenile detention center; crowding in an existing facility (despite the use of objective detention criteria); and in areas where there are no juvenile detention facilities, a measurable increase in the need for juvenile detention beds. This list is not considered exhaustive. OJJDP's technical assistance provider to the States should be involved in the needs based analysis (without cost to the State or local jurisdiction). The needs based analysis must take into consideration and be coordinated with the State's plans and efforts toward a continuum of detention services for juvenile offenders.

(D) Each of the following four criteria must be met in order to ensure the requisite separateness of the two facilities:

(*1*) Total separation between juvenile and adult facility spatial areas such that there could be no sight or sound contact between juveniles and incarcerated adults in the facility. Total separation of spatial areas can be achieved architecturally, and must provide for no common use areas (time-phasing is not permissible).

(*2*) Total separation in all juvenile and adult program areas, including recreation, education, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention center which provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. However, equipment and other resources may be used by both populations subject to security concerns

and the criterion in paragraph (e)(3)(i)(A) of this section.

(3) Separate staff for the juvenile and adult populations, including management, security staff, and direct care staff. Specialized services staff who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations, subject to State standards or licensing requirements. The day to day management, security and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population.

(4) In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no State standards or licensing requirements, then the jurisdiction must cooperate in a preapproval review of its physical plant, staffing patterns, and programs by an organization selected and compensated by OJJDP. This review will be based on prevailing national juvenile detention standards, and will inform the State's approval process and concurrence by OJJDP.

(ii) The State must initially determine that the four criteria are fully met. Upon such determination, the State must submit to OJJDP a request for concurrence with the State finding that a separate juvenile detention facility exists. To enable OJJDP to assess the separateness of the two facilities, sufficient documentation must accompany the request to demonstrate that each criterion has been met. It is incumbent upon the State to make the initial determination through an on-site facility (or full plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile facility is maintained by continuing to fully meet the four criteria set forth in paragraph (e)(3)(i)(D) of this section.

(iii) Collocated juvenile detention facilities approved by the State and concurred with by OJJDP on or before March 31, 1995 are to be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence, except that all collocated facilities are subject to the separate staff requirement established by the 1992 Amendments to the JJDP Act, and set forth in paragraph (e)(3)(i)(C) of this section. Unless otherwise indicated, review of previously approved collocated facilities is expected to occur as part of the State's regularly scheduled monitoring activities.

(iv) OJJDP's concurrence on facilities considered after March 31, 1995 is limited to one year and thereafter, on an annual basis. An on-site review of the facility must be conducted by the compliance monitoring staff person(s) in the State agency administering the JJDP Act Formula Grants Program. OJJDP's concurrence is required annually, and may involve on-site review by OJJDP staff. The purpose of the annual review is to determine if compliance with the criteria set forth in paragraphs (e)(3)(i)(A) through (D) of this section is being maintained, and to assess the continuing need for the collocated facility and the jurisdiction's long term plan to move to a free-standing facility (single jurisdiction or regional) or other detention alternatives unless the juvenile detention center is part of a justice center, in which case the annual review will look solely at the four regulatory criteria. An example of a justice center is a building or a set of buildings in which various agencies are housed, such as law enforcement, courts, State's attorneys, public defenders, and probation, in addition to an adult jail or lockup, and a juvenile detention facility.

(v) In order to receive OJJDP's initial and any subsequent concurrences, a juvenile detention facility approved after March 31, 1995 must, pursuant to a written policy and procedure, only provide secure custody for juvenile criminal-type offenders; status offenders accused of violating a VCO; and adjudicated delinquents and VCO violators who are awaiting disposition hearings or transfer to a long term juvenile correctional facility.

* * * * *

14. Paragraph (e)(4) in § 31.303 is removed and paragraph (e)(5) is redesignated as paragraph (e)(4) and revised to read as follows:

* * * * *

(e) * * *

(4) *Jail removal compliance.* Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with Section 223(a)(14) may, in lieu of addressing paragraphs (e)(1) and (2) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

* * * * *

15. Paragraph (f)(3)(i) in § 31.303 is amended by adding a sentence to the end of the paragraph to read as follows:

* * * * *

(f) * * *

(3) * * *

(i) * * * Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

* * * * *

16. Paragraph (f)(3)(iv) in § 31.303 is amended by revising the last sentence to read as follows:

* * * * *

(f) * * *

(3) * * *

(iv) * * * A juvenile alleged or found in a violation hearing to have violated a Valid Court Order may be held only in a secure juvenile detention or correctional facility, and not in an adult jail or lockup.

* * * * *

17. Paragraph (f)(3)(vi) in § 31.303 is amended by adding three sentences to the end of the paragraph to read as follows:

* * * * *

(f) * * *

(3) * * *

(vi) * * * This determination must be preceded by a written report to the judge that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency). A multidisciplinary review team that operates independently of courts or law enforcement agencies would satisfy this requirement even if some individual members of the team represent court or law enforcement agencies.

* * * * *

18. Paragraph (f)(4)(v) in § 31.303 is amended by revising the last sentence to read as follows:

* * * * *

(f) * * *

(4) * * *

(v) * * * OJJDP strongly recommends that jails and lockups that incarcerate juveniles be required to provide youth specific admissions screening and continuous visual supervision of juveniles incarcerated pursuant to this exception.

* * * * *

19. Paragraph (f)(4)(vi) in § 31.303 is revised to read as follows:

* * * * *

(f) * * *

(4) * * *

(vi) Pursuant to Section 223(a)(14) of the JJDP Act, the non-MSA (low population density) exception to the jail and lockup removal requirements as described in paragraphs (f)(4) (i) through (v) of this section shall remain in effect through 1997, and shall allow for secure custody beyond the twenty four hours period described in paragraph (f)(4)(i) of this section when the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within twenty four hours, so that a brief (not to exceed an additional forty eight hours) delay is excusable; or the facility is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until twenty four hours after the time that such conditions allow for reasonably safe travel. States may use these additional statutory allowances only where the precedent requirements set forth in paragraphs (f)(4) (i) through (v) of this section have been complied with. This may necessitate statutory or judicial (court rule or opinion) relief within the State from the twenty four hours initial court appearance standard required by paragraph (f)(4)(i) of this section. States must document and describe in their annual monitoring report to OJJDP, the specific circumstances surrounding each individual use of the distance/ ground transportation, and weather allowances.

* * * * *

20. Paragraph (f)(5) in § 31.303 is revised to read as follows:

* * * * *

(f) * * *

(5) *Reporting requirement.* The State shall report annually to the Administrator of OJJDP on the results of monitoring for Section 223(a) (12), (13), and (14) of the JJDP Act. The reporting period should provide 12 months of data, but shall not be less than six months. The report shall be submitted to the Administrator of OJJDP by December 31 of each year.

(i) To demonstrate compliance with Section 223(a)(12)(A) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) dates covered by the current reporting period;

(B) total number of public and private secure detention and correctional facilities, the total number reporting, and the number inspected on-site;

(C) the total number of accused status offenders and nonoffenders, including out-of-state runaways and Federal wards, held in any secure detention or correctional facility for longer than twenty four hours (not including weekends or holidays), excluding those held pursuant to the VCO provision as set forth in paragraph (f)(3) of this section or pursuant to Section 922(x) of Title 18 United States Code Section or a similar State law;

(D) the total number of accused status offenders and nonoffenders, including out-of-state runaways and Federal wards, (excluding juveniles held for VCO violations and Title 18 U.S.C. Section 922(x) violators) held in any secure detention or correctional facility for less than twenty four hours for purposes other than identification, investigation, release to parent(s), or transfer to a nonsecure facility;

(E) the total number of accused status offenders (including VCO violators but excluding 922(x) violators) and nonoffenders securely detained in any adult jail, lockup, or nonapproved collocated facility for less than twenty four hours;

(F) the total number of adjudicated status offenders and nonoffenders, including out-of-state runaways and Federal wards, held for any length of time in a secure detention or correctional facility, excluding those held pursuant to the VCO provision or pursuant to Title 18 U.S.C. Section 922(x);

(G) the total number of status offenders held in any secure detention or correctional facility pursuant to the VCO provision set forth in paragraph (f)(3) of this section or Title 18 U.S.C. Section 922(x) violators; and

(H) the total number of juvenile offenders held pursuant to Title 18 U.S.C. Section 922(x).

(ii) To demonstrate the extent to which the provisions of Section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and nonoffenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the extent of compliance with Section 223(a)(13) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past twelve months and the number inspected on-site;

(C) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide sight and sound separation;

(D) The total number of juvenile offenders and nonoffenders NOT separated in facilities used for the secure detention and confinement of both juveniles and adults;

(E) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have been concurred with by OJJDP, including a list of such facilities;

(F) The total number of juveniles detained in collocated facilities concurred with by OJJDP that were not separated from the security or direct care staff of the adult portion of the facility;

(G) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have not been concurred with by OJJDP, including a list of such facilities; and

(H) The total number of juveniles detained in collocated facilities not approved by the State and concurred with by OJJDP, that were not sight and sound separated from adult criminal offenders.

(iv) To demonstrate the extent of compliance with Section 223(a)(14) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of adult jails in the State AND the number inspected on-site;

(C) The total number of adult lockups in the State AND the number inspected on-site;

(D) The total number of adult jails holding juveniles during the past twelve months;

(E) The total number of adult lockups holding juveniles during the past twelve months;

(F) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and collocated facilities not concurred with by OJJDP, in excess of six hours (including those held pursuant to the "removal exception" as set forth in paragraph (f)(4) of this Section);

(G) The total number of accused juvenile criminal-type offenders held securely in adult jails and lockups (including collocated facilities not concurred with by OJJDP) for less than six hours for purposes other than

identification, investigation, processing, release to parent(s), or transfer to a juvenile facility;

(H) The total number of adjudicated juvenile criminal-type offenders held securely in adult jails or lockups (including collocated facilities not concurred with by OJJDP) for any length of time;

(I) The total number of accused and adjudicated status offenders (including VCO violators) and nonoffenders held securely in adult jails, lockups and collocated facilities not approved by the State and concurred with by OJJDP, for any length of time;

(J) The total number of adult jails, lockups, and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which each is located;

(K) The total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than twenty four hours in adult jails or lockups (including collocated facilities not approved by the State and concurred with by OJJDP) pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section;

(L) The total number of juveniles accused of a criminal-type offense who were held in excess of twenty four hours but no more than an additional forty eight hours in adult jails or lockups (including collocated facilities not approved by the State and concurred with by OJJDP) pursuant to the "removal exception" as noted in paragraph (f)(4) of this section, due to conditions of distance or lack of ground transportation; and

(M) The total number of juveniles accused of a criminal-type offense who were held in excess of twenty four hours, but no more than an additional twenty four hours after the time such conditions allow for reasonably safe travel, in adult jails, lockups and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, due to adverse weather conditions.

* * * * *

21. Paragraph (f)(6) introductory text in § 31.303 is revised to read as follows:

* * * * *

(f) * * *

(6) *Compliance.* The State must demonstrate the extent to which the requirements of Sections 223(a)(12)(A), (13), (14), and (23) of the Act are met. If the State fails to demonstrate full compliance with Sections 223(a)(12)(A) and (14), and compliance with Sections 223(a)(13) and (23) by the end of the fiscal year for any fiscal year beginning with 1994, the State's allotment under Section 222 will be reduced by twenty five percent for each such failure, provided that the State will lose its eligibility for any allotment unless: the State agrees to expend all remaining funds (except planning and administration, State advisory group set-aside funds and Indian tribe pass-through funds) for the purpose of achieving compliance with the mandate(s) for which the State is in noncompliance; or the Administrator makes discretionary determination that the State has substantially complied with the mandate(s) for which there is noncompliance and that the State has made through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time. In order for a determination to be made that a State has substantially complied with the mandate(s), the State must demonstrate that it has: Diligently carried out the plan approved by OJJDP; demonstrated significant progress toward full compliance; submitted a plan based on an assessment of current barriers to DMC; and provided an assurance that added resources will be expended, be it formula grants or other funds to achieve compliance. Where a State's allocation is reduced, the amount available for planning and administration and the required pass-through allocation, other than State advisory group set-aside, will be reduced because they are based on the reduced allocation.

* * * * *

22. Paragraph (f)(6)(i) in Section 31.303 is revised to read as follows:

* * * * *

(f) * * *

(6) * * *

(i) Substantial compliance with Section 223(a)(12)(A) can be used to demonstrate eligibility for FY 1993 and prior year formula grant allocations if, within three years of initial plan submission, the State has achieved a seventy five percent reduction in the aggregate number of status offenders and nonoffenders held in secure detention or correctional facilities, or removal of 100 percent of such juveniles from secure correctional facilities only. In addition, the State must make an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance by FY 1994. Full compliance is achieved when a State has removed 100 percent of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with de minimis exceptions pursuant to the policy criteria published in the Federal Register of January 9, 1981. (Available from the Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.)

* * * * *

23. Paragraph (f)(6)(iii)(A) in § 31.303 is removed and paragraphs (f)(6)(iii) (B), (C), (D), and (E) are redesignated as paragraphs (f)(6)(iii) (A), (B), (C), and (D), respectively.

24. Paragraph (f)(7) in Section 31.303 is revised to read as follows:

* * * * *

(f) * * *

(7) *Monitoring report exemptions.* States which have been determined by the OJJDP Administrator to have achieved full compliance with Sections 223 (a)(12)(A), (a)(14), and compliance with Section 223(a)(13) of the JJDP Act and wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

(i) The State provides for an adequate system of monitoring jails, law enforcement lockups, detention facilities, to enable an annual determination of State compliance with Sections 223(a) (12)(A), (13), and (14) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of Sections 223(a) (12)(A), (13), and (14) of the JJDP Act; and

(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

(A) Authority for enforcement of the statute is assigned;

(B) Time frames for monitoring compliance with the statute are specified; and

(C) Adequate procedures are set forth for enforcement of the statute and the imposition of sanctions for violations.

* * * * *

25. Paragraph (g) introductory text in Section 31.303 is revised to read as follows:

* * * * *

(g) *Juvenile crime analysis.* Pursuant to Section 223(a)(8), the State must conduct an analysis of juvenile crime problems, including juvenile gangs that commit crimes, and juvenile justice and delinquency prevention needs within the State, including those geographical areas in which an Indian tribe performs law enforcement functions. The analysis and needs assessment must include educational needs, gender specific services, delinquency prevention and

treatment services in rural areas, and mental health services available to juveniles in the juvenile justice system. The analysis should discuss barriers to accessing services and provide a plan to provide such services where needed.

* * * * *

26. Paragraph (h) in § 31.303 is amended by adding a sentence at the end of the paragraph to read as follows:

* * * * *

(h) * * * The annual performance report must be submitted to OJJDP no later than June 30 and address all formula grant activities carried out during the previous complete calendar year, federal fiscal year, or State fiscal year for which information is available, regardless of which year's formula grant funds were used to support the activities being reported on, e.g., during a reporting period, activities may have been funded from two or more formula grant awards.

* * * * *

27. Paragraph (j) in § 31.303 is revised to read as follows:

* * * * *

(j) *Minority detention and confinement.* Pursuant to Section 223(a)(23) of the JJDP Act, States must demonstrate specific efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population, viz., in most States, youth between ages ten-seventeen are subject to secure custody. It is essential that States approach this statutory mandate in a comprehensive manner. Compliance with this provision is achieved when a State meets the requirements set forth in paragraphs (j)(1) through (3) of this section:

(1) *Identification.* Provide quantifiable documentation (State, county and local level) in the State's FY 1994 Formula Grant Plan (and all subsequent Multi-Year Plans) Juvenile Crime Analysis and Needs assessment to determine whether minority juveniles are disproportionately detained or confined in secure detention and correctional facilities, jails and lockups in relation to their proportion of the State juvenile population. Guidelines are provided in the OJJDP Disproportionate Minority Confinement Technical Assistance Manual (see Phase I Matrix). (Available from the Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.) Where quantifiable documentation is not available to determine if disproportionate minority confinement exists in secure detention and correctional facilities, jails and lockups, the State must provide a time-limited plan of action, not to exceed six months, for developing and implementing a system for the ongoing collection, analysis and dissemination of information regarding minorities for those facilities where documentation does not exist.

(2) *Assessment.* Each State's FY 1994 Formula Grant Plan must provide a completed assessment of disproportionate minority confinement. Assessments must, at minimum, identify and explain differences in arrest, diversion and adjudication rates, court dispositions other than incarceration, the rates and periods of prehearing detention in and dispositional commitments to secure facilities of minority youth in the juvenile justice system, and transfers to adult court (see Phase II Matrix). If a completed assessment is not available, the State must submit a time-limited plan (not to exceed twelve months from submission of the Formula Grant Application) for completing the assessment.

(3) *Intervention.* Each State's FY 1995 Formula Grant Plan must, where disproportionate confinement has been demonstrated, provide a time-limited plan of action for reducing the disproportionate confinement of minority juveniles in secure facilities. The intervention plan shall be based on the results of the assessment, and must include, but not be limited to the following:

(i) *Diversion.* Increasing the availability and improving the quality of diversion programs for minorities who come in contact with the juvenile justice system, such as police diversion programs;

(ii) *Prevention.* Providing developmental, operational, and assessment assistance (financial and/or technical) for prevention programs in communities with a high percentage of minority residents with emphasis upon support for community-based organizations (including non-traditional organizations) that serve minority youth;

(iii) *Reintegration.* Providing developmental, operational, and assessment assistance (financial and/or technical) for programs designed to reduce recidivism by facilitating the reintegration of minority youth in the community following release from dispositional commitments to reduce recidivism;

(iv) *Policies and procedures.* Providing financial and/or technical assistance that addresses necessary changes in statewide and local, executive, judicial, and legal representation policies and procedures; and

(v) *Staffing and training.* Providing financial and/or technical assistance that addresses staffing and training needs that will positively impact the disproportionate confinement of minority youth in secure facilities.

(4) The time-limited plans of action set forth in paragraphs (j)(1), (2) and (3) of this section must include a clear indication of current and future barriers; which agencies, organizations, or individual(s) will be responsible for taking what specific actions; when; and what the anticipated outcomes are. The interim and final outcomes from implementation of the time-limited plan of action must be reported in each State's Multi-Year Plans and Annual Plan Updates. Final outcomes for individual project awards are to be included with each State's annual performance report (see paragraph (h) of this section).

(5) Technical assistance is available through the OJJDP Technical Assistance Contract to help guide States with the data collection and analysis, and with programmatic elements of this requirement. Information from the OJJDP Special Emphasis Initiative on Disproportionate Minority Confinement pilot sites will be disseminated as it becomes available.

(6) For purposes of this statutory mandate, minority populations are defined as: African-Americans, American Indians, Asians, Pacific Islanders, and Hispanics.

* * * * *

28. Section 31.403 is revised to read as follows:

§ 31.403 Civil Rights Requirements.

The State assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination requirements, including:

(a) Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and made applicable by Section 299(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended;

(b) Title VI of the Civil Rights Act of 1964, as amended;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975;

(f) The Department of Justice NonDiscrimination regulations, 28 CFR Part 42, Subparts C, D, E, and G;

(g) The Department of Justice regulations on disability discrimination, 28 CFR Parts 35 and 39; and

(h) Subtitle A, Title II of the Americans with Disabilities Act (ADA) of 1990.

Office of Juvenile Justice and Delinquency Prevention.

Shay Bilchik,

Administrator.

[FR Doc. 95–5919 Filed 3–9–95; 8:45 am]

BILLING CODE 4410–18–P

Dated: April 13, 1995.
William B. Schultz,
Deputy Commissioner for Policy.
[FR Doc. 95-9951 Filed 4-20-95; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

[OJP No. 1045]

RIN 1121-AA28

Formula Grants; Correction

Date: April 13, 1995.

AGENCY: Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Correction to final regulation.

SUMMARY: This document contains corrections to the Final Regulation, revising 28 CFR part 31, which was published in the **Federal Register** on Friday, March 10, 1995, (60 FR 13330). The regulation revisions provided clarification and guidance to States in the formulation, submission and implementation of the State Formula Grants Program under Part B of Title II of the Juvenile Justice and Delinquency Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1992 (Pub. L. 102-586, November 18, 1992).

The 1992 Amendments reauthorize and modify the Federal assistance program to State, local governments, and private not-for-profit agencies for the prevention and control of delinquency and improvement of the juvenile justice system. This final revision to the existing regulation provides clarification and guidance to States in the formulation, submission, and implementation of State Formula Grants Program plans and determinations of State compliance with plan requirements. It provides additional flexibility and guidance to participating States while strengthening several key provisions related to the deinstitutionalization, separation, jail and lockup removal, and disproportionate minority confinement plan requirements of the JJDP Act.

EFFECTIVE DATE: This regulation is effective March 10, 1995.

FOR FURTHER INFORMATION CONTACT: Roberta Dorn, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 633 Indiana Avenue NW., Room 543, Washington, D.C. 20531; (202) 307-5924.

SUPPLEMENTARY INFORMATION: The corrections include the requirement that collocated juvenile detention facilities approved by the State and concurred with by OJJDP on or before June 30, 1995, be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence. Facilities approved after the effective date of this regulation and prior to July 1, 1995, will be reviewed against the regulatory criteria in effect on the day before the effective date of this regulation. For those collocated juvenile detention facilities considered after June 30, 1995, OJJDP's concurrence is limited to one year and, thereafter, will be reviewed on an annual basis. The requirement that in order to receive OJJDP's initial and subsequent concurrences, a collocated juvenile detention facility must only provide secure custody for juvenile criminal-type offenders, status offenders accused of violating a valid court order, and adjudicated delinquents and valid court order violators who are awaiting disposition hearings or transfer to a long term juvenile correctional facility, has been eliminated.

Need for Correction

As published in the **Federal Register** on March 10, 1995, (60 FR 13330), the Final Regulation was an earlier draft version that is materially different from the final draft that was intended to be published. These errors are in need of correction.

Correction of Publication

Accordingly, the Final Regulation, as published in the **Federal Register** on March 10, 1995, which was the subject of FR Doc. 95-5919, is corrected as follows:

§ 31.301 [Corrected]

Paragraph 1. On page 13334 in amendatory instruction 6, paragraph (e) of § 31.301 was revised. Paragraph (e) of § 31.301 in the second column, line 30, the numerals "1994" are corrected to read "1995".

§ 31.302 [Corrected]

Paragraph 2. On page 13334 in amendatory instruction 7, paragraph (b)(2) of § 31.302 was revised. Paragraph (b)(2) of § 31.302 is corrected to read as follows:

* * * * *

(b) * * *

(2) Should consider in meeting the statutory membership requirements and responsibilities of section 223(a)(3) (A)-(E), appointing at least one member who represents each of the following: A locally elected official representing general purpose local government; a law enforcement officer; representatives of juvenile justice agencies, including a juvenile or family court judge, a probation officer, a prosecutor, and a person who routinely provides legal representation to youth in juvenile court; a public agency representative concerned with delinquency prevention and treatment; a representative from a private, non-profit organization, such as a parents group, concerned with teenage drug and alcohol abuse; a high school principal; a recreation director; a volunteer who works with delinquent or at risk youth; a person with a special focus on the family; a youth worker experienced with programs that offer alternatives to incarceration; persons with special competence in addressing problems of school violence and vandalism and alternatives to expulsion and suspension; and persons with knowledge concerning learning disabilities, child abuse and neglect, and youth violence.

* * * * *

§ 31.303 [Corrected]

Paragraph 3. On page 13335, in the second column, in amendatory instruction 11, paragraph (d)(1)(i) of § 31.303 was revised. Paragraph (d)(1)(i) of § 31.303, line ten, the word "no" is corrected to read "any".

Paragraph 4. On page 13335 in amendatory instruction 13, paragraph (e)(3) of § 31.303 was revised. Paragraph (e)(3) of § 31.303 is corrected by removing (e)(3)(v). As corrected, § 31.303(e)(3) reads as follows:

* * * * *

(e) * * *

(3) *Collocated facilities.* (i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups, except as otherwise provided under the Act and implementing OJJDP regulations. Juvenile facilities collocated with these adult facilities are considered adult jails or lockups unless the paragraph (e)(3)(i)(D) (1)-(4) criteria established in this section are complied with and the determinations and concurrences set forth in paragraph (e)(3) (ii), (iii), and (iv) of this section have been made.

(A) A collocated facility is a juvenile facility that is located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings

is considered "related" when it shares physical features such as walls and fences services beyond mechanical services (heating, air conditioning, water and sewer), or the specialized services that are allowable under paragraph (e)(3)(i)(D)(3) of this section.

(B) The State, with OJJDP concurrence, must determine whether a collocated facility qualifies as a separate juvenile detention facility under the four criteria set forth in paragraph (e)(3)(i)(D) (1)–(4) of this section for the purpose of monitoring compliance with section 223(a) (12)(A), (13), and (14) of the JJDP Act.

(C) A needs based analysis must precede a jurisdiction's request for State approval and be included with the request for OJJDP concurrence that a collocated facility qualifies as a juvenile detention facility. The needs based analysis should include, but is not limited to, consideration of such factors as excessive travel time to an existing juvenile detention center, crowding in an existing facility (despite the use of objective detention criteria), obsolescence of an existing facility, and, in areas where there are no juvenile detention facilities, a measurable increase in the need for juvenile detention beds. OJJDP's technical assistance provider to the States should be involved in the needs based analysis (without cost to the State or local jurisdiction). The needs based analysis must take into consideration and be coordinated with the State's plans and programs designed to establish a continuum of detention care and to assist detention facilities to provide a full range of services for juvenile offenders.

(D) Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

(1) Total separation between juvenile and adult facility spatial areas such that there could be no sight or sound contact between juveniles and incarcerated adults in the facility. Total separation of spatial areas can be achieved architecturally, and must provide for no common use areas (time-phasing is not permissible);

(2) Total separation in all juvenile and adult program areas, including recreation, education, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention center which provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. However, equipment and other resources may be used by both populations subject to security concerns and the criterion in paragraph (e)(3)(i)(D)(1) of this section;

(3) Separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (food service, laundry, maintenance and engineering, etc.), who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations (subject to State standards or licensing requirements). The day to day management, security and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population within the collocated facilities; and

(4) In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no State standards or licensing requirements, then the jurisdiction must cooperate in a preapproval review of its physical plant, staffing patterns, and programs by an organization selected and compensated by OJJDP. This review will be based on prevailing national juvenile detention standards, and will inform the State's approval process and concurrence by OJJDP.

(ii) The State must initially determine that the four criteria are fully met. Upon such determination, the State must submit to OJJDP a request for concurrence with the State's finding that a separate juvenile detention facility exists. To enable OJJDP to assess the separateness of the two facilities, sufficient documentation must accompany the request to demonstrate that each criterion has been met. It is incumbent upon the State to make the initial determination through an on-site facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria set forth in paragraphs (e)(3)(i)(D) (1)–(4) of this section.

(iii) Collocated juvenile detention facilities approved by the State and concurred with by OJJDP on or before June 30, 1995, are to be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence, except that facilities approved after the effective date of this regulation, but prior to July 1, 1995, shall be reviewed against the regulatory criteria in effect on the day before the effective date of this regulation, and except that all collocated facilities are subject to the separate staff requirement established by the 1992 Amendments to the JJDP Act, as set forth in paragraph (e)(3)(i)(D)(3) of this section. Unless otherwise indicated, review of previously approved collocated facilities is expected to occur as part of the State's regularly scheduled monitoring activities.

(iv) OJJDP's concurrence for facilities considered after June 30, 1995, is limited to one year and thereafter, will be reviewed on an annual basis. An annual on-site review of the facility must be conducted by the compliance monitoring staff person(s) representing or employed by the State agency administering the JJDP Act Formula Grants Program. OJJDP's concurrence is required annually, and may involve on-site review by OJJDP staff. The purpose of the annual review is to determine if compliance with the criteria set forth in paragraph (e)(3)(i)(D) (1)–(4) of this section is being maintained, and to assess the continuing need for the collocated facility and the jurisdiction's long term plan to move to a free-standing facility (single jurisdiction or regional) or other detention alternative, unless the juvenile detention center is part of a justice center, in which case the annual review will look solely at the four regulatory criteria. An example of a justice center is a building or a set of buildings in which various agencies are housed, such as law enforcement, courts, State's attorneys, public defenders, and probation, in addition to an adult jail or lockup and a juvenile detention facility.

Paragraph 5. On page 13337 in amendatory instruction 20, paragraph (f)(5) of section 31.303 was revised. Paragraph (f)(5) of § 31.303 is corrected by removing (f)(5)(i)(D) and redesignating paragraphs (f)(5)(i) (E), (F), (G) and (H) as paragraphs (f)(5)(i) (D), (E), (F) and (G), respectively. As corrected, § 31.303(f)(5) reads as follows:

*

(f)

(5) Reporting requirement. The State shall report annually to the Administrator on the results of monitoring for section 223(a) (12), (13), and (14) of the JJDP Act. The reporting period should provide 12 months of data, but shall not be less than six

months. The report shall be submitted to the Administrator by December 31 of each year.

(i) To demonstrate the extent of compliance with section 223(a)(12)(A) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) Total number of public and private secure detention and correctional facilities, the total number reporting, and the number inspected on-site;

(C) The total number of accused status offenders and nonoffenders, including out-of-State runaways and Federal wards, held in any secure detention or correctional facility for longer than 24 hours (not including weekends or holidays), excluding those held pursuant to the valid court order provision as set forth in paragraph (f)(3) of this section, or pursuant to section 922(x) of Title 18, United States Code, or a similar State law;

(D) The total number of accused status offenders (including valid court order violators, out of state runaways and Federal wards, but excluding Title 18 U.S.C. 922(x) violators) and nonoffenders securely detained in any adult jail, lockup, or nonapproved collocated facility for any length of time;

(E) The total number of adjudicated status offenders and nonoffenders, including out-of-state runaways and Federal wards, held for any length of time in a secure detention or correctional facility, excluding those held pursuant to the valid court order provision or pursuant to Title 18 U.S.C. 922(x);

(F) The total number of status offenders held in any secure detention or correctional facility pursuant to the valid court order provision set forth in paragraph (f)(3) of this section; and

(G) The total number of juvenile offenders held pursuant to Title 18 U.S.C. 922(x).

(ii) To demonstrate the extent to which the provisions of section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and nonoffenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the extent of compliance with section 223(a)(13) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months and the number inspected on-site;

(C) The total number of facilities used for the secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide sight and sound separation;

(D) The total number of juvenile offenders and nonoffenders not separated from adult criminal offenders in facilities used for the secure detention and confinement of both juveniles and adults;

(E) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have been concurred with by OJJDP, including a list of such facilities;

(F) The total number of juveniles detained in collocated facilities concurred with by OJJDP that were not separated from the management, security, or direct care staff of the adult jail or lockup;

(G) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have not been concurred with by OJJDP, including a list of such facilities; and

(H) The total number of juveniles detained in collocated facilities not approved by the State and concurred with by OJJDP, that were not sight and sound separated from adult criminal offenders.

(iv) To demonstrate the extent of compliance with section 223(a)(14) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of adult jails in the State AND the number inspected on-site;

(C) The total number of adult lockups in the State AND the number inspected on-site;

(D) The total number of adult jails holding juveniles during the past twelve months;

(E) The total number of adult lockups holding juveniles during the past twelve months;

(F) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and collocated facilities not concurred with by OJJDP, in excess of six hours (including those held pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section);

(G) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups and collocated facilities not concurred with by OJJDP for less than six hours for purposes other than identification, investigation, processing, release to parent(s), transfer to court, or transfer to a juvenile facility following initial custody;

(H) The total number of adjudicated juvenile criminal-type offenders held securely in adult jails, lockups and collocated facilities not concurred with by OJJDP for any length of time;

(I) The total number of accused and adjudicated status offenders (including valid court order violators) and nonoffenders held securely in adult jails, lockups and collocated facilities not concurred with by OJJDP for any length of time;

(J) The total number of adult jails, lockups, and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which each is located;

(K) The total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than 24 hours in adult jails, lockups and collocated facilities not concurred with by OJJDP pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section;

(L) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours but not more than an additional 48 hours in adult jails, lockups and collocated facilities not concurred with by OJJDP pursuant to the "removal exception" as noted in paragraph (f)(4) of this section, due to conditions of distance or lack of ground transportation; and

(M) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel, in adult jails, lockups and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section.

Paragraph 6. On page 13338 in amendatory instruction 23, paragraph (f)(6)(iii)(A) in § 31.303 was removed and paragraphs (f)(6)(iii) (B), (C), (D), and (E) of § 31.303 were redesignated as paragraphs (f)(6)(iii) (A), (B), (C), and (D) of § 31.303, respectively. Redesignated

paragraph (f)(6)(iii)(B) of § 31.303 is corrected to read as follows:

* * * * *

(f) * * *

(6) * * *

(iii) * * *

(B) Full compliance with de minimis exceptions is achieved when a State demonstrates that it has met the standard set forth in either of paragraphs (f)(6)(iii)(B) (1) or (2) of this section:

(*1*) *Substantive de minimis standard.* To comply with this standard the State must demonstrate that each of the following requirements have been met:

(*i*) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of section 223(a)(14);

(*ii*) All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from, the State law, rule, or policy referred to in paragraph (f)(6)(iii)(B)(1)(i) of this section;

(*iii*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;

(*iv*) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (f)(6)(iii)(B)(1)(i) of this section are such that the instances of noncompliance are unlikely to recur in the future; and

(*v*) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(B)(1)(iv) of this section.

(*2*) *Numerical de minimis standard.* To comply with this standard the State must demonstrate that each of the following requirements under paragraphs (f)(6)(iii)(B)(2) (i) and (ii) of this section have been met:

(*i*) The incidents of noncompliance reported in the State's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the State; and

(*ii*) An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of State law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

(*iii*) *Exception.* When the annual rate for a State exceeds 9 incidents of noncompliance per 100,000 juvenile population, the State will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis standard unless the State has recently enacted changes in State law which have gone into effect and which the State demonstrates can reasonably be expected to have a substantial, significant and positive impact on the State's achieving full (100%) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

(*iv*) *Progress.* Beginning with the monitoring report due by December 31, 1990, any State whose prior full compliance status is based on having met the numerical de minimis standard set forth in paragraph (f)(6)(iii)(B)(2)(i) of this § 31.303, must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100%) compliance in order to maintain eligibility for a continued finding of full compliance with de minimis exceptions.

(*v*) *Request submission.* Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the monitoring report due by December 31 of each calendar year. Any State reporting less than full (100%) compliance in any annual monitoring report may request a finding of full compliance with de minimis exceptions under paragraph (f)(6)(iii)(B) (1) or (2) of this section. The request may be submitted in conjunction with the monitoring report, as soon thereafter as all information required for a determination is available, or be included in the annual State plan and application for the State's Formula Grant Award.

* * * * *

Paragraph 7. On page 13338 in amendatory instruction 23, paragraph (f)(6)(iii)(D) of § 31.303 was redesignated as paragraph (f)(6)(iii)(C) of § 31.303. Redesignated paragraph (f)(6)(iii)(C) of § 31.303 is corrected to read as follows:

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(f) * * *

(6) * * *

(iii) * * *

(C) *Waiver.* Failure to achieve full compliance as defined in this section shall terminate any State's eligibility for FY 1993 and prior year formula grants funds unless the Administrator of OJJDP waives termination of the State's eligibility. In order to be eligible for a waiver of termination, a State must request a waiver and demonstrate that it meets the standards set forth in paragraph (f)(6)(iii)(C) (1) through (7) of this section:

(1) Agrees to expend all of its formula grant award except planning and administration, advisory group set-aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(2) Removed all status and nonoffender juveniles from adult jails and lockups. Compliance with this standard requires that the last submitted monitoring report demonstrate that no status offender (including those accused of or adjudicated for violating a valid court order) or nonoffender juveniles were securely detained in adult jails or lockups for any length of time; or that all status offenders and nonoffenders securely detained in adult jails and lockups for any length of time were held in violation of an enforceable State law and did not constitute a pattern or practice within the State; and

(3) Made meaningful progress in removing juvenile criminal-type offenders from adult jails and lockups. Compliance with this standard requires the State to document a significant reduction in the number of jurisdictions securely detaining juvenile criminal-type offenders in violation of section 223(a)(14) of the JJDP Act; or a significant reduction in the number of facilities securely detaining such juveniles; or a significant reduction in the average length of time each juvenile criminal-type offender is securely detained in an adult jail or lockup; or State legislation has recently been enacted and taken effect and which the State demonstrates will significantly impact the secure detention of juvenile criminal-type offenders in adult jails and lockups; and

(4) Diligently carried out the State's jail and lockup removal plan approved by OJJDP. Compliance with this standard requires that actions have been undertaken to achieve the State's jail and lockup removal goals and objectives within approved time lines, and that the State Advisory Group, required by section 223(a)(3) of the JJDP Act, has maintained an appropriate involvement in developing and/or implementing the State's plan; and

(5) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the State, to eliminate noncompliant incidents; and

(6) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(7) Demonstrates an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance.

Paragraph 8. On page 13338 in amendatory instruction 23, paragraph (f)(6)(iii)(E) of § 31.303 was redesignated as paragraph (f)(6)(iii)(D) of § 31.303. Redesignated paragraph (f)(6)(iii)(D) is corrected to read as follows:

* * * * *

(f) * * *

(6) * * *

(iii) * * *

(D) *Waiver maximum.* A State may receive a waiver of termination of eligibility from the Administrator under paragraph (f)(6)(iii)(C) of this section for a combined maximum of four Formula Grant Awards through Fiscal Year 1993. No additional waivers will be granted.

* * * * *

John J. Wilson,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–9826 Filed 4–20–95; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF DEFENSE

Department of the Army

33 CFR Part 222

Periodic Inspection and Continuing Evaluation of Completed Civil Works Structures and Inspection and Evaluation of Corps of Engineers Bridges; Rescission

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Rescission of regulations.

SUMMARY: This final rule rescinds regulations concerning periodic inspection and continuing evaluation of completed civil works structures and inspection and evaluation of Corps of Engineers bridges. Both regulations are no longer required to be published in the Code of Federal Regulations because they are for "in-house" guidance only. This rule renumbers the remaining regulations in part 222.

EFFECTIVE DATE: March 20, 1995.

ADDRESSES: U.S. Army Corps of Engineers, Engineering Division, Directorate of Civil Works, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Paul D. Barber or Yung Kuo, (202) 504–4533.

SUPPLEMENTARY INFORMATION:

List of Subjects in 33 CFR Part 222

Bridges, Dams, Reservoirs. Safety, Water resources.

For the reasons set forth in the preamble, 33 CFR part 222 is amended as follows:

PART 222—ENGINEERING AND DESIGN

1. The authority citations for part 222 continues to read as follows:

Authority: 23 U.S.C. 116(d); delegation in 49 CFR 1.45(b); 33 U.S.C. 467 et seq.; 33 U.S.C. 701, 701b, and 701c–1 and specific legislative authorization Acts and Public Laws listed in appendix E of § 222.7.

2. Sections 222.2 and 222.3 are removed and §§ 222.4 through 222.8 are redesignated as §§ 222.2 through 222.6.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–9654 Filed 4–20–95; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AE72

Schedule for Rating Disabilities; Gynecological Conditions and Disorders of the Breast

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: This document amends the section of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities on Gynecological Conditions and Disorders of the Breast. This amendment is based on a General Accounting Office (GAO) study noting that there has been no comprehensive review of the rating schedule since 1945, and recommending that such a review be conducted. The intended effect of this action is to update the gynecological and breast disorders section of the rating schedule to ensure that it uses current medical terminology, unambiguous criteria, and that it reflects medical advances which have occurred since the last review.

EFFECTIVE DATE: This amendment is effective May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: In December 1988, the General Accounting Office (GAO) recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. As part of the process to implement these recommendations, VA published in the Federal Register of March 26, 1992 (57 FR 10450–53) a proposal to amend 38 CFR 4.116 and 4.116a. Interested persons were invited to submit written comments, suggestions, or objections on or before April 27, 1992. We received comments from Disabled American Veterans, Veterans of Foreign Wars, Paralyzed Veterans of America, and from several VA employees.

Two commenters suggested that we revise the proposed criteria for rating endometriosis under diagnostic code (DC) 7629, placing the emphasis on pain and abnormal bleeding rather than on headaches.

Upon further review, VA concurs that symptoms such as headaches and muscle cramps are not the most appropriate criteria for evaluating endometriosis, and we have therefore modified the proposed criteria. At the 50 percent level, the proposed criteria specified endometriomas larger than 2×2 cm., ovary or tubes bound down or obstructed by adhesions, or obliteration of the cul-de-sac. These criteria have been modified to call for lesions involving the bladder or bowel confirmed by laparoscopy, pelvic pain or heavy or irregular bleeding not controlled by treatment, and bowel or bladder symptoms. The proposed 30 percent level called for several lesions or minimal adhesions with side effects such as headaches, muscle cramps, or edema despite treatment; but the schedule has been revised to require pelvic pain or heavy or irregular bleeding not controlled by treatment.

One commenter suggested that we include 10 percent and 100 percent levels for evaluation of endometriosis.

Upon further consideration we have added a 10 percent level for those cases in which pain or bleeding requires continuous treatment. However, endometriosis does not in our judgment reach the level of total disability. Some women have incapacitating symptoms, but on a cyclic basis related to their menstrual periods. Others have milder symptoms on a constant basis. Providing a 50 percent level recognizes the substantial level of disability that women may experience because of endometriosis, but we believe that, in general, the highest level of disability assigned for a condition should not exceed the evaluation for absence of the organ involved. In this case, 50 percent for removal of the uterus and both ovaries is the highest post-surgical evaluation.

One individual suggested that a convalescent period of six months at 100 percent should be provided for endometriosis following surgery or other corrective procedure.

U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

Washington, D.C. 20531

December 30, 1996

Judge Karen Perdue
Commissioner
Department of Health and Social Services
Division of Family and Youth Services
P.O. Box 110630
Juneau, AK 99811-0630

Dear Judge Perdue:

Enclosed is a copy of the final revised OJJDP Formula Grants Program regulation. The regulation has been revised with the goal of providing enhanced flexibility to States and local units of government in responding to increases in serious juvenile crime while, at the same time, assuring that the interests of young people who come to the attention of the juvenile justice system are protected. Please review the revised regulation for a full discussion of the changes that have taken place in the following areas:

- Clarification of sight and sound separation between juveniles and incarcerated adults;
- Permitting the transfer of delinquents to adult institutions at the age of criminal responsibility;
- Expansion of the 6-hour hold exception to the jail and lockup removal requirement to include both a six hour period prior to and following a court appearance;
- Allowance of time-phased use of shared program space in collocated adult and juvenile facilities;
- Clarification that the 24-hour hold exception for status and nonoffenders includes 24 hour periods both preceding and following an initial court appearance;
- Elimination of the reference to the use of multi-disciplinary review teams in relation to valid court order disposition hearings;
- Removal of the requirement that States describe the circumstances surrounding each instance where the distance and/or weather exceptions to the jail and lockup removal requirement are used;
- Modification of the provision that did not allow States that had failed to enact legislation providing for the separation of adults and juveniles in secure custody to qualify under the substantive de minimis standards; and
- Clarification of the regulation concerning compliance with the disproportionate minority confinement requirement.

The revisions to the regulation were made after giving careful consideration to the comments and recommendations submitted by numerous juvenile justice professionals and others interested in the welfare of our nation's youth and the safety of our communities. OJJDP deeply appreciates the contributions made by those who took the time to respond to our request for comment on the proposed regulatory changes.

The Office will undertake a widespread distribution of the revised regulation in order to inform a very broad audience of the changes as quickly as possible. On December 11, 1996, training concerning the revised regulation was provided to State Juvenile Justice Specialists in Baltimore, MD. If you have any questions or require clarification on any of the changes you may wish to talk with your State's Juvenile Justice Specialist or contact your OJJDP State Representative at (202) 307-5924.

Sincerely,

Shay Bilchik
Administrator

Enclosure

December 1996

Office of Juvenile Justice and Delinquency Prevention
Formula Grants Regulation Revision
Summary

Since early 1996, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has taken a comprehensive look at the regulation, 28 CFR Part 31, that guides the States' implementation of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended. The Formula Grants program regulation has been modified periodically, usually following Congressional reauthorizations. The focus for the 1996 regulation review was to consider those changes which would be responsive to the expressed needs of States and localities while ensuring the safety of children in the justice system.

In April, OJJDP held two listening conferences, one in Idaho and another in New Jersey. At these meetings, the Office sought input from a cross section of those affected by the JJDP Act: judges, public defenders, prosecutors, sheriffs, other juvenile justice practitioners, and private citizens. At the same time, the Office sought written suggestions from State Agencies and State Advisory Groups charged with implementation of the Act. Recommendations were also received through meetings with public interest groups and youth advocacy organizations.

Based on the information received, OJJDP proposed a revised regulation for public comment in the Federal Register on July 3, 1996. Following the comment period, views from the field were considered and a Final Revised Regulation was published in the *Federal Register* on December 10, 1996. The final regulation, synopsized below, provides enhanced flexibility to State and local governments and reduces red tape related to program administration.

Deinstitutionalization of Status Offenders

Section 223(a)(12)(A) of the JJDP Act provides that status offenders and nonoffenders not be detained or confined in secure detention or correctional facilities. OJJDP policy has, since 1975, provided an exception to allow a status or nonoffender to be detained for up to 24 hours, exclusive of weekends and legal holidays, in a juvenile detention facility. The revised regulation expressly provides that it is permissible to hold an accused status offender or nonoffender in a secure juvenile detention facility for up to 24 hours, exclusive of weekends and legal holidays, prior to an initial court appearance, and for an additional 24 hours, exclusive of weekends and legal holidays, immediately following an initial court appearance.

The JJDP Act provides that status offenders found to have violated a Valid Court Order may be securely detained in a juvenile detention or correctional facility under an exception to Section 223(a)(12)(A). The definition of a Valid Court Order, under Section 103(16) of the JJDP Act, provides that before a disposition of placement in a secure detention facility or a secure correctional facility is entered, an appropriate public agency (other than a court or law enforcement agency) must review the case and submit a written report to the court. The implementing regulation provided an example of a multi-disciplinary review team as an appropriate public agency.

The revised regulation eliminates the regulatory language suggesting that jurisdictions use multi-disciplinary review teams to prepare and submit a written report to a judge who is considering an order that directs or authorizes the placement of a status offender in a secure facility for the violation of a Valid Court Order. Although a multi-disciplinary team is still an appropriate option, and is encouraged when practical, this suggestion led to some confusion and, therefore, the example is deleted.

Separation

Section 223(a)(13) provides that accused and adjudicated delinquent, status offender, and nonoffender juveniles shall not have contact with incarcerated adults. In order to meet this separation requirement, the prior regulation provided that while juveniles are in secure custody in an adult facility, sight and sound contact with adults is prohibited. When OJJDP began the process of reexamining the regulation, it became clear that some confusion existed with the definition of "sight and sound" contact. Therefore, sight contact is defined as clear visual contact between incarcerated adults who are in close proximity to juveniles alleged to be or found to be delinquent, status offenders, and nonoffenders in a secure institution. Sound contact is defined in the regulation as direct oral communication between incarcerated adults and juveniles in secure institutions. While separation must be provided through architectural or procedural means, the revised regulation provides that sight or sound contact that is both brief and inadvertent or accidental must be reported as a violation only if it occurs in secure areas of the facility that are dedicated to use by juvenile offenders, including any residential area. A residential area is an area used to confine individuals overnight, and may include sleeping, shower and toilet, and day room areas.

State laws are increasingly providing for the mandatory or permissible transfer of adjudicated delinquents to adult facilities once the delinquent has attained the age of full criminal responsibility established by State law. The revised regulation provides that the separation requirement of the Act no longer applies if the transfer or placement of an adjudicated delinquent who has reached the age of full criminal responsibility is required or authorized by State law.

The revised regulation modifies the prior compliance standard penalizing States that have not enacted laws, rules and regulations, or policies prohibiting the incarceration of all juvenile offenders under circumstances that would be in violation of Section 223(a)(13). These States were not eligible for a finding of compliance if any instances of noncompliance were sanctioned by State law, rule, regulation, or policy. The revised regulation establishes a single standard applicable to all States regardless of whether a law, rule, regulation, or policy exists, if compliance can be established under circumstances in which: 1) the instances of noncompliance do not indicate a pattern or practice; and either 2) adequate enforcement mechanisms exist; or 3) an acceptance plan has been developed to eliminate the noncompliant incidents.

Jail and Lockup Removal

Section 223(a)(14) provides that juveniles cannot be detained in any adult jail or lockup. Although not expressly provided in the prior regulation, OJJDP policy provided an exception to the jail and lockup removal requirement: an alleged delinquent could be detained, while separate from adults, for up to six hours for the purposes of identification, processing, and to arrange for release to parents or transfer to a juvenile facility. The regulation codifies this exception and extends it to include a six hour time period both immediately before and after a court appearance, provided that the juvenile has no sight or sound contact with incarcerated adults during the time the juvenile is in a secure custody status in the adult jail or lockup.

Sections 223(a)(14) (B) and (C) provide circumstances that extend the statutory 24-hour non Metropolitan Statistical Area (MSA) exception to the jail removal requirement based on distance/ground transportation and weather. The revised regulation removes previous regulatory language requiring States to document and describe, in their annual monitoring report, each individual use of these exceptions.

Collocated Juvenile and Adult Facilities

The regulation makes three revisions to the criteria to establish the existence of a separate juvenile detention facility that is collocated with an adult jail or lockup:

First, the regulation is modified to permit program space in collocated adult and juvenile facilities to be shared through time-phased use. While OJJDP's objective is to encourage the development and use of separately located juvenile facilities whenever possible, it is recognized that expecting every jurisdiction to create wholly separate juvenile facilities, including the duplication of costly infrastructure elements like gymnasiums, cafeterias, and classrooms, may result in those jurisdictions being unable to provide any secure juvenile detention capacity. The revised regulation makes it possible for more jurisdictions to provide collocated juvenile and adult facilities by removing the requirement that collocated facilities not share program space between juvenile and adult populations. Utilization of time-phasing will allow both juveniles and adults access to educational, vocational, and recreational areas of collocated facilities. It is important to note that time-phased use is explicitly limited to nonresidential areas of collocated facilities and requires the use of written procedures to ensure that no contact occurs between detained juveniles and incarcerated adults.

Second, the requirement that a needs-based analysis precede a jurisdiction's request for State approval of a juvenile facility that is collocated with an adult jail or lockup has been removed. Technical assistance will remain available to States and localities that wish to conduct such an analysis.

Finally, OJJDP's concurrence with a State's decision to approve a collocated facility will no longer be required. Annual on-site reviews by the State, coupled with OJJDP's periodic review of the adequacy of State monitoring systems, will ensure that each collocated juvenile detention facility meets the criteria to establish a collocated juvenile detention facility.

Disproportionate Minority Confinement (DMC)

Section 223(a)(23) of the JJDP Act provides that States are to determine if minority juveniles are disproportionately confined in secure detention and correctional facilities and, if so, to address any features of its system that may account for the disproportionate confinement of minority juveniles. The regulation clearly states the position of OJJDP that the DMC core requirement neither requires nor establishes numerical standards or quotas in order for a State to achieve or maintain compliance.

Questions regarding the Formula Grants Regulation may be directed to OJJDP's State Relations and Assistance Division, (202) 307-5924.

federal register

Tuesday
December 10, 1996

Part IV

Department of Justice

Office of Justice Programs

28 CFR Part 31
Formula Grants; Final Rule

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 31

[OJP (OJJDP) No. 1106]

RIN 1121–AA43

Formula Grants

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

ACTION: Final rule.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the U.S. Department of Justice is publishing the final revision of the existing Formula Grants Regulation, which implements part B of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1992.

This final regulation is a further clarification and modification of the regulations issued in March and April of 1995. It offers greater flexibility to States and local units of government in carrying out the Formula Grants Program requirements of the JJDP Act, while reinforcing the importance of complying with those underlying legal requirements and the policy objectives from which they stem.

The Department of Justice remains firmly committed to the core requirements of the JJDP Act, such as the obligation to maintain sight and sound separation between juveniles and adults. With that in mind, this regulation is expected to assist jurisdictions that are working diligently to comply with statutory and regulatory obligations by expressly providing such flexibility as State authorized transfers of delinquents who have reached the age of full criminal responsibility to the criminal justice system and by recognizing certain real-world factors which can make "perfect" compliance unrealistic. These regulatory changes are in no way intended to evidence any lessening of the Department's commitment to the core requirements.

EFFECTIVE DATE: This regulation is effective December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Roberta Dorn, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 633 Indiana Avenue, NW., Room 543, Washington, DC 20531; (202) 307–5924.

SUPPLEMENTARY INFORMATION:

Description of Major Changes

Contact With Incarcerated Adults

The revised regulation provides definitions of sight and sound contact to assist in understanding the level of separation that is required under section 223(a)(13) of the JJDP Act (section 223(a)(13)). Sight contact is defined as clear visual contact between incarcerated adults who are in close proximity to juveniles alleged to be or found to be delinquent, status offenders, and nonoffenders in a secure institution. Sound contact is defined in the regulation as direct oral communication between incarcerated adults and juveniles in secure institutions. While separation must be provided through architectural or procedural means, the revised regulation provides that sight or sound contact that is both brief and inadvertent or accidental must be reported as a violation only if it occurs in secure areas of the facility that are dedicated to use by juvenile offenders, including any residential area. A residential area is an area used to confine individuals overnight, and may include sleeping, shower and toilet, and day room areas.

Placement of Delinquents in Adult Facilities

State laws are increasingly providing for the mandatory or permissible transfer (or placement) of adjudicated delinquents to adult facilities once the delinquent has attained the age of full criminal responsibility under State law. The revised regulation expressly provides that the section 223(a)(13) separation requirement is not violated as a result of contact between an adjudicated delinquent and adult criminal offenders in a secure institution once the adjudicated delinquent has reached the age of full criminal responsibility established by State law, provided that the transfer (or placement) of the adjudicated delinquent is required or authorized under State law.

Expansion of 6-Hour Hold Exception to Pre and Post Court Appearances

The revised regulation builds upon the existing authority to place an alleged or adjudicated delinquent juvenile in an adult jail or lockup for up to 6 hours by providing a 6 hour time period immediately before and/or after a court appearance, subject to the section 223(a)(13) separation requirement, during the time the delinquent juvenile is in a secure custody status in the adult jail or lockup.

Collocated Facilities

The revised regulation removes the requirement that a needs-based analysis precede a jurisdiction's request for State approval of a juvenile holding facility that is collocated with an adult jail or lockup to qualify as a separate juvenile detention facility. OJJDP concurrence with a State agency's decision to approve a collocated facility will no longer be required. On-site reviews by the State to determine compliance, coupled with OJJDP's statutorily required review of the adequacy of state monitoring systems, will be used to insure that each collocated juvenile detention facility meets and continues to meet the collocated juvenile detention facility criteria.

The revised regulation permits the sharing of common use nonresidential areas of collocated adult and juvenile facilities on a time-phased basis that prevents contact between juveniles and adults. Secure juvenile detention facilities around the country are routinely overcrowded. OJJDP's objective is to encourage the development and use of separately located juvenile facilities whenever possible. Still, it is recognized that expecting every jurisdiction to create wholly separate juvenile facilities, including the duplication of costly infrastructure elements like gymnasiums, cafeterias, and classrooms, may result in those jurisdictions being unable to provide any secure juvenile detention capacity. The revised regulation makes it possible for more jurisdictions to provide juvenile facilities by removing the requirement that collocated facilities not share program space between juvenile and adult populations. Utilization of time-phasing will allow both juveniles and adults access to available educational, vocational, and recreational areas of collocated facilities. Time-phased use is explicitly limited to nonresidential areas of collocated facilities and requires the use of written procedures to ensure that no contact occurs between detained juveniles and incarcerated adults.

Deinstitutionalization of Status Offenders

The revised regulation expressly provides, formalizing existing OJJDP policy, that it is permissible to hold an accused status offender or nonoffender in a secure juvenile detention facility for up to 24 hours, exclusive of weekends and legal holidays, prior to an initial court appearance and up to 24 hours, exclusive of weekends and legal

holidays, immediately following an initial court appearance.

Valid Court Order

The revised regulation eliminates the regulatory language suggesting that jurisdictions use multi-disciplinary review teams to prepare and submit a written report to a judge who is considering an order that directs or authorizes the placement of a status offender in a secure facility for the violation of a valid court order pursuant to the valid court order exception to section 223(a)(12)(A). Although a multi-disciplinary team is still an appropriate option, and is encouraged when practical, this suggestion led to some confusion and, therefore, the example was unnecessary.

Removal Exception

The revised regulation eliminates the requirement for States to document and describe, in their annual monitoring report to OJJDP, the specific circumstances surrounding each individual use of the distance/ground transportation and weather exceptions to the section 223(a)(14) jail and lockup removal requirement.

Compliance With Separation Requirement

The revised regulation modifies the compliance standard that penalized States that have not enacted laws, rules, and regulations, or policies prohibiting the incarceration of all juvenile offenders under circumstances that would be in violation of the section 223(a)(13) separation requirement. These States were not eligible for a finding of compliance if any instances of noncompliance were sanctioned by state law, rule or regulation, or policy. Instead, the revised regulation establishes a single standard applicable to all States regardless of whether a law, rule or regulation, or policy exists that prohibits the detention or confinement of juveniles with incarcerated adults in circumstances that would be in violation of section 223(a)(13), providing that compliance can be established under circumstances in which:

(1) the instances of noncompliance do not indicate a pattern or practice; and either (2) adequate enforcement mechanisms exist; or (3) an acceptable plan has been developed to eliminate the noncompliant incidents.

Minority Detention and Confinement

The revised regulation specifically provides that the purpose of the section 223(a)(23) Disproportionate Minority Confinement core requirement is to encourage States to programmatically address any features of its justice system that may account for the disproportionate detention or confinement of minority juveniles. The regulation is revised to clearly state that the Disproportionate Minority Confinement core requirement neither requires nor establishes numerical standards or quotas in order for a State to achieve or maintain compliance.

Discussion of Comments

The proposed revisions to the existing Formula Grants Regulation were published in the Federal Register on July 3, 1996 (61 FR 34770), for public comment. Written comments were received from thirty-six respondents on ten issues addressed by the proposed regulation. The respondents represent a diverse group including child advocacy organizations, state agencies responsible for carrying out the JJDP Act, and public interest groups. All comments have been considered by OJJDP in the issuance of this final regulation.

The following is a summary of the comments and the responses from OJJDP:

1. *Comment:* Several respondents raised concern over the proposed clarification of the Section 223(a)(13) prohibition against contact between incarcerated adults and juveniles who are in close proximity but not at such distances as "several hundred feet." These respondents contended that this statement in the commentary section of the proposed regulation appears to conflict with the later statement in the commentary section concerning the prohibition against systematic contact. These respondents suggested that the "several hundred feet" standard would create monitoring difficulties and, consequently, it should be clarified that "several hundred feet" was intended only as an example and that the ability for a juvenile and adult to communicate is the key. These respondents felt that it should be made clear that "systematic, procedural, and condoned contact is always prohibited."

Response: The Section 223(a)(13) separation requirement is designed to protect juveniles who are at risk from contact with adult offenders while under the delinquency jurisdiction of the juvenile justice system. OJJDP agrees with the comment that "systematic, procedural, and condoned contact is always prohibited." The "several hundred feet" example was intended to illustrate a common sense approach to determining if visual "contact" or oral "communication" is possible. This is not an issue of systematic, procedural, or condoned contact, but one of the potential for harm to juveniles. OJJDP does not believe that a juvenile who is able to see an adult from a significant distance is in danger of being harmed. Simultaneous use of secure areas of adult facilities continues to be prohibited and, under the revised regulation, time-phased use of common use areas to achieve separation is permitted in both collocated facilities and adult jails, lockups, or other adult institutions. For collocated facilities, this revision is designed to allow both juveniles and adults access to available educational, vocational, and recreational areas common to the two facilities.

2. *Comment:* A number of respondents opined that the "brief and inadvertent" contact language of the proposed regulation essentially changes the Section 223(a)(13) prohibition from "no contact" back to "no regular contact" for nonresidential areas of institutions. Relaxing the no contact standard, it is argued, would permit more violations because violations are already occurring under current regulations. Several respondents believe this proposed regulation would "muddy the waters" and may "expose children to needless risks" by lowering the standards to which states must adhere. They assert that national policy should set the separation standard at the highest possible level.

Response: The revised regulation seeks to clarify with particularity the prohibition of systematic, procedural, or condoned contact between incarcerated adults and juveniles. It is not the intent of OJJDP, through the revised regulation, to in any way encourage or tolerate increased contact between incarcerated juveniles and adults, or to expose juveniles to greater risk. However, common sense and practicality suggested that the regulatory definitions of both sight and sound contact needed to be clarified, so that appropriate and reasonable parameters would guide State and local policy and practice.

In considering the respondent comments concerning this proposed regulatory clarification, it is important to note that the obligation of local jurisdictions housing juveniles to maintain sight and sound separation by architectural means or by established policies and procedures remains firmly in place. This obligation, coupled with the maintenance of policies, practices and facilities designed to maximize separation, is designed to maintain strict adherence to the "no contact" statutory prohibition between juveniles and adults in secure custody.

OJJDP also believes, however, that strict adherence to the "no contact"

prohibition is not inconsistent, in view of the lack of a statutory definition of the word "contact", with a recognition that brief and inadvertent or accidental sight or sound contact may occur, upon occasion, in nonresidential areas of a secure institution, without being considered a reportable violation of the separation requirement. OJJDP believes it would be unfair to penalize jurisdictions working consistently and genuinely to maintain sight and sound separation through policies, practices, and facilities architecture if brief and inadvertent or accidental contact between a juvenile and adult occurs in common use areas. This recognition should in no way be interpreted to indicate acceptance or tolerance of such impermissible contacts, but only as a recognition that in such environments, even the very best intentioned facility administrators may not prevent all short-term, accidental contact between juveniles and adults in a portion of the facility used at different times by both juveniles and adults.

Nonetheless, based on the concern expressed in the comment, OJJDP has expanded the regulatory language to prohibit contact in any secure areas of an institution that are dedicated to use by juvenile offenders, including any residential area. A residential area is an area used to confine individuals overnight, and may include sleeping, shower and toilet, and day room areas. OJJDP recognizes that in many jurisdictions, especially jurisdictions in rural areas, there may be periods of time when no juveniles are detained in an adult jail or lockup facility. During these periods, jurisdictions use all areas of the facility, including those areas dedicated to use by juveniles when juveniles are present, for incarcerated adults because no contact between incarcerated adults and juveniles is possible when juveniles are not present in the facility.

This revision, coupled with the requirement that facilities establish separation by architectural means or by establishing policies and procedures for time-phased use of common use areas within the secure perimeter of an adult jail, lockup, or penal facility, or within a juvenile detention facility that is collocated with any adult jail or lockup, helps to insure the safety of detained and confined juveniles.

OJJDP hopes that this explanation will assist those concerned with the proposed regulation to see that it is in no way intended to evidence a change in view or policy regarding the importance of maintaining the sight and sound separation of juveniles from adults in secure facilities at all times.

3(a). Comment: Several respondents asserted that an adjudicated delinquent should only be subject to transfer to an adult facility, such as a prison, once he (or she) reaches the age of full criminal responsibility, as provided by State law, in circumstances where the delinquent has been afforded the full due process rights available to a criminal offender in a criminal court proceeding (e.g. bail, trial by jury, etc.).

Response: The JJDP Act separation requirement expressly applies to juveniles who are alleged to be or found to be delinquent. An individual who has reached the age of full criminal responsibility is no longer considered a juvenile under the law of a State unless expressly so provided and would not, therefore, fall under the protection of the JJDP Act separation requirement. States have a compelling interest in striking a balance between the goal of achieving an adjudicated delinquent's well-being through treatment and physical security and the goals of punishment and protection of the public by lengthening the period of confinement in appropriate circumstances. The State of Texas, for example, has instituted a determinate sentencing system for certain violent offenders which initially places a juvenile adjudicated delinquent under the jurisdiction of the Texas Youth Commission and requires the committing court to re-evaluate the delinquent's placement status when he/she reaches the age of 18. At that time, the court can transfer the individual, who is now an adult, to an adult penal institution if warranted. Alternatively, the delinquent can be retained under the custody of the Texas Youth Commission to age 21, at which time transfer is mandatory if he/she is not released. Our review indicates that the caselaw is not definitive on the issue of whether a failure to provide a juvenile with all the due process rights of a criminal defendant in a delinquency proceeding would prohibit such a transfer, on due process or other grounds, to an adult jail or prison. The regulation continues to prohibit the pro forma administrative transfer of an adjudicated delinquent who has reached the age of full criminal responsibility to an adult jail or prison. However, we believe it is consistent with the JJDP Act and principles of federalism to allow States to authorize or require the transfer of such delinquents under State law. While the due process issue is appropriately a matter of State law and practice, those jurisdictions contemplating passage of a law to authorize such transfers should consider whether delinquents subject to incarceration in the criminal justice system upon reaching the age of full criminal responsibility should be afforded the same due process rights in the original delinquency adjudication to which an adult in a criminal court proceeding is entitled.

3(b). Comment: One respondent opined that where an adjudicated delinquent is subject to transfer to an adult institution on or after reaching the age of full criminal responsibility pursuant to State law, assurances should be required that age-appropriate needs, such as health, mental health, recreation, and education services will be made available.

Response: Meeting the basic needs of transferred adjudicated delinquents should be a priority for any jurisdiction's correctional system. It is the responsibility of the State to provide for basic needs and services for all prisoners, including juveniles and young adults.

3(c). Comment: Several respondents felt that the transfer of adjudicated delinquents to adult facilities once they reach the age of full criminal responsibility defeats the purpose of a delinquency adjudication.

Response: It is important to note that persons eligible for such a transfer are limited to those who are no longer considered juveniles under State law. With States increasingly focusing on the transfer of serious and violent juvenile offenders to criminal court for prosecution, this type of transfer scheme may result in fewer transfers of juveniles to the criminal justice system through judicial waiver, prosecutorial direct-file, and statutory exclusion of certain offenses from the jurisdiction of the juvenile court. This will help to assure that appropriate treatment services are provided by the juvenile justice system while the individual is a juvenile and may serve to protect juvenile offenders from older delinquents who pose a threat or whose treatment needs cannot be met by the juvenile correctional system.

3(d). Comment: Several respondents stated that the transfer of adjudicated delinquents to adult facilities is not sound policy because the influences of adult facilities are extremely negative and harmful to young adults. These respondents further asserted that the risk of assaults and violence in juvenile facilities increase when wards know that they are going to be transferred to adult correctional facilities. This "split" disposition has a destabilizing influence on juvenile programs, according to one respondent. Several respondents stated that any advances made by juveniles in

the juvenile justice system through available educational, vocational, and therapeutic programs will be destroyed as a result of the transfer to an adult facility.

Response: OJJDP strongly recommends that States enacting a transfer law provide the transferred adjudicated delinquent with age appropriate programs. However, this Office is neither aware of any studies supporting the alleged harm from such transfers nor believes that a juvenile who is able to remain in a juvenile correctional setting at least until the age of full criminal responsibility is worse off than the juvenile who is transferred to the criminal justice system for felony prosecution and, upon conviction, is incarcerated in the criminal justice system.

3(e). Comment: One respondent suggested that OJJDP recommend that States provide separate facilities for delinquent offenders who have reached the age of full criminal responsibility.

Response: OJJDP agrees that this option merits State consideration. Such a system has been adopted in Colorado, where older serious and violent delinquent offenders who have reached the age of full criminal responsibility and juveniles transferred to criminal court pursuant to State transfer laws, are placed in secure treatment facilities designed and operated for youthful offenders.

3(f). Comment: One respondent suggested that the proposed regulatory change is of great assistance to individual States looking for appropriate methods to deal with the rising levels of violent juvenile crime.

Response: The intent of this regulatory change is to provide States with appropriate flexibility in dealing with serious and violent delinquent offenders who require sentences that extend into adulthood.

4(a). Comment: Three questions were asked by one respondent concerning the "6 hour rule" that allows an alleged delinquent to be held in a secure custody status in an adult jail or lockup for up to 6 hours for purposes of processing (while maintaining sight and sound separation from adult offenders). The proposed regulation would apply the six hour hold exception to include a six hour period before and/or after a court appearance (both pre and post adjudication).

(a) Is the 6 hour rule cumulative (i.e. before and after inclusive of the 6 hours) or is it a separate 6 hours for before and after a court appearance?

(b) Is the time limit affected by the status of the jail site, i.e. MSA or nonMSA?

(c) Would the 24 hour rural exception continue to be permitted?

Response: (a) The 6 hour rule is not cumulative. A juvenile may be held up to 6 hours before a court appearance and up to 6 hours after a court appearance in an adult jail or lockup.

(b) The time limit is not affected by the status of the jail site;

(c) The 24-hour rural exception is not changed by the regulation. The 24-hour rural (MSA) exception is a statutory exception that applies to initial law enforcement custody, which may or may not result in an initial court appearance. The new six hour hold exception would apply in either an MSA or nonMSA jurisdiction both before and/or after a court appearance.

4(b). Comment: Several respondents suggested that the 6-hour rule following a court appearance be expanded to 24 hours for rural jurisdictions because of the expense of identifying and traveling to an appropriate facility or of constructing a separate detention facility in a small rural county or group of counties.

Response: The nonMSA, or rural exception, provides a 24-hour period, exclusive of nonjudicial days (Saturdays, Sundays and holidays), to detain an alleged delinquent, pending an initial court appearance, if State law requires such an appearance within the 24-hour period. Long distance and weather may extend this exception. The 6-hour hold exception has historically applied when police are holding a juvenile for investigation or processing a juvenile for purposes of notifying parents, arranging release, or transporting to a juvenile facility. Expansion of the 6-hour hold for pre- and post-court appearances is designed to facilitate court appearances of juveniles that require transportation. The statutory 24-hour nonMSA exception for initial court appearances is premised on the need for time to plan the placement/release of the juvenile. Subsequent court appearances can be planned in advance, negating the need for an extended placement of the juvenile in an adult jail or lockup.

4(c). Comment: One respondent found that the 6-hour exception was too inflexible where no reasonable alternative juvenile placement was available following arrest. The respondent suggested that a workable "good faith" rule be established.

Response: The six-hour exception gives law enforcement officials in nonMSA jurisdictions the opportunity to make decisions about investigating, processing, and/or transporting juveniles. States and local units of government have found the 6-hour exception to be sufficient where mechanisms are put in place to expedite the handling of alleged delinquents who need to be detained for investigation or processing in secure custody in an adult jail or lockup.

4(d). Comment: One respondent organization cited the Institute for Judicial Administration/American Bar Association (IJA/ABA) Standards which state that "The interim detention of accused juveniles in any facility or part thereof also used to detain adults is prohibited." In support of its opposition to the proposed regulation, this respondent noted that under conditions where juveniles are held with adults prior to adjudication, ABA standards recommend a blanket prohibition against the detention of juveniles with adult inmates prior to adjudication under any circumstances.

Response: Congress considered the secure confinement of accused delinquent juveniles for up to 6 hours in an urban jail or lockup to be a reasonable outside time limit for processing purposes. This period of time was considered to reflect a "rule of reason", as stated in the House Committee report on the 1980 JJDP Act reauthorization. OJJDP is not establishing any new policy by this regulation, but rather is codifying in the regulation what has been the Office's monitoring policy for 16 years, and extending it to pre- and post-court appearance holds.

5(a). Comment: One respondent, while supporting the time-phasing of common use areas of collocated facilities, requested clarification on whether "professional treatment staff" can be "shared" between juvenile and adult populations.

Response: In collocated facilities, professional care staff such as medical, counseling, or education services continue to be permitted to serve both adult and juvenile residents, although not at the same time.

5(b) Comment: One respondent asserted that elimination of the requirement for OJJDP's concurrence in State-approved collocated facilities weakens the Office's enforcement capabilities.

Response: States will continue to have the responsibility to approve and monitor these facilities. OJJDP will continue to review the monitoring practices of States, as well as provide training and technical assistance. Further, the criteria for the establishment of such facilities are clearly set forth in § 31.303(e)(3) of the regulation.

5(c). Comment: Another respondent felt that the regulation should more

clearly reflect that collocated facilities are not prohibited and that these facilities are permissible if established in accordance with the regulatory criteria set forth to establish that a collocated facility is a separate and distinct facility from the adult jail or lockup with which it is collocated.

Response: OJJDP's proposal to eliminate the requirement for its concurrence in State approval of a collocated facility, and the elimination of a needs-based analysis, should make it clear that the establishment of collocated facilities is not prohibited. States may approve collocated facilities in accordance with State law and policy as long as each such facility meets the criteria set forth in § 31.303(e)(3) of the regulation.

5(d). Comment: Another respondent opined that the needs-based analysis and prohibition of time-phased use should not be eliminated.

Response: A properly constructed and operated collocated facility that meets the criteria set forth in § 31.303(e)(3) does not create conditions where the health and safety of juveniles would be jeopardized. Time-phased use of nonresidential areas allows for efficient use of these resources which, otherwise, might not be available to the juvenile population. Time-phased use, if properly implemented, would not result in any contact between juveniles and adults. Further, States are encouraged to conduct their own needs-based analysis. OJJDP technical assistance will remain available, upon State request, for this purpose.

6(a). Comment: One commentor, in response to the 24 hour detention exception for status and nonoffenders, stated that nonoffenders should not be placed in detention facilities. Limited exceptions should be permitted in the event of a well documented need. In this way, detention of nonoffenders will not become a pattern or practice.

Response: OJJDP agrees that the detention of nonoffenders, such as dependent, neglected, or abused children, should not become a pattern or practice. This authority should be used to meet emergency needs only. States are encouraged to provide for the return of nonoffenders to their families or to appropriate shelter care as soon as possible.

6(b). Comment: Another respondent considers the placement of nonoffenders in secure detention to be a retrenchment of longstanding national policy in opposition to such a placement.

Response: OJJDP Formula Grants program policy and regulation have authorized the limited and temporary placement of nonoffenders in secure detention facilities since 1975. When either status offenders or nonoffenders are placed in such facilities, Section 223(a)(12)(B) encourages States to place the status offender or nonoffender in facilities which are the least restrictive alternative appropriate to the needs of the child and the community. The provision does not change established policy and is intended to provide adequate time to arrange for appropriate placement prior to or following an initial court appearance. Because the current statutory definition of "secure detention facility" includes dedicated facilities for nonoffenders, removal of the 24 hour hold exception's applicability to nonoffenders would also prohibit the secure holding of nonoffender juveniles in dedicated facilities. This issue needs to be addressed statutorily before OJJDP can propose a change to the 24 hour hold exception's applicability to nonoffenders.

6(c). Comment: One respondent believes that placement of status offenders with children accused of delinquency can stigmatize them as delinquent and that the proposed regulation dilutes OJJDP's strong regulatory support for the deinstitutionalization of status offender and nonoffender juveniles. This respondent supports the placement of status offenders in secure residential facilities for up to six hours and only when law enforcement is unable to contact a parent, custodian, or relative, unreasonable distance exists, the juvenile refuses to be taken home, or law enforcement is otherwise unable to make arrangements for the safe release of the juvenile.

Response: OJJDP has, since 1975, authorized the secure short-term detention of status offenders and nonoffenders in juvenile detention facilities. While blanket use of this authority without regard to the facts and circumstances of each juvenile taken into custody would be a poor policy, State and local governments should determine the specific law and policy that will govern the use of this authority.

7(a). Comment: Two respondents commented regarding revision of § 31.303(f)(3)(vi), authorizing the use of multi-disciplinary teams to make recommendations on the use of secure confinement for a valid court order violator, contending that such teams are an important tool for the valid court order process and that the language should not be deleted. Another commented that language should be added to clarify that multi-disciplinary teams are only a suggested way of meeting the requirement for an independent review team and that court or law enforcement personnel can still serve on such a team.

Response: Multi-disciplinary teams may still be utilized for the purpose of preparing and submitting a written report to a judge considering an order to place a status offender in a secure facility for violation of a valid court order.

The suggestion of multi-disciplinary teams in the existing regulation was meant to be an example of one mechanism that would fulfill the statutory requirement. However, this apparently created the impression that only multi-disciplinary teams could be utilized. In fact, the review could be conducted by an individual, agency, or team representing a noncourt or law enforcement agency.

7(b). Comment: One comment opposed the deletion of language requiring that secure confinement represent the least restrictive alternative "appropriate to the needs of the juvenile and the community." This respondent felt that removal of this language lessens the judge's overall responsibility to ensure the appropriateness of the disposition in light of other available placement.

Response: Section 103(16)(C)(iii) of the JJDP Act and § 31.303(f)(3)(vi) of the regulation require that a disposition of secure confinement must consider all alternative dispositions (including treatment) to placement in a secure detention or secure correctional facility. Removal of the referenced language does not diminish the responsibility of the court to consider alternatives to secure confinement. However, the referenced nonstatutory language is vague and does not provide meaningful guidance.

7(c). Comment: Another comment requested clarification of why the words "of a status offender" were added to the language "In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must, * * *" in Section 31.303(f)(3)(vi).

Response: The change was intended to underscore that the valid court order (VCO) provision applies solely to status offenders. A nonoffender may not be placed in secure confinement for any length of time for violation of a court order.

7(d). Comment: One respondent recommended the deletion of the VCO requirement for an independent review and determination of the reasons for the juvenile's behavior. This respondent

insisted that the first was difficult to monitor and the latter impossible to determine, asking "How can the court ascertain the reasons for the juvenile's behavior?". Another respondent commented that the VCO provision should be a recommendation rather than a requirement.

Response: The use of the independent review standard under the valid court order exception is statutorily established in Section 223(a)(12)(A) and the term "valid court order" is defined in Section 103(16) of the JJDP Act. Therefore, they cannot be deleted or modified by regulation.

8. Comment: Comments were received both in favor of and opposed to the proposal to eliminate the reporting requirement for each use of the ground/distance and weather exceptions to the jail and lockup removal exception. Those opposed to the change are concerned that it will encourage abuses of the rule and lead to more youth in adult jails and lockups, in violation of the statute.

Response: Enforcement of this provision will continue to be a State responsibility that is subject to on-site monitoring and verification by OJJDP during compliance monitoring visits to States utilizing this jail and lockup removal exception. The changes streamline the process and remove an unnecessary administrative burden.

9(a). Comment: Several respondents felt that the "relaxation" of State reporting and monitoring requirements related to the separation requirement is "dangerous" and could cause States to slide into noncompliance. States might view this as an opportunity to relax their oversight responsibility.

Response: It is not OJJDP's intent to encourage States to weaken their commitment to the core requirements of the JJDP Act. However, OJJDP believes that isolated violations of the separation requirement that do not represent a pattern or practice should not jeopardize a State's ability to access federal funds. OJJDP remains fully committed to the enforcement of Section 223(a)(13) of the JJDP Act requiring the separation of juvenile delinquents from adult offenders.

9(b). Comment: One respondent commented that the existence of state laws, regulations, or court rules is the only mechanism that provides any true assurance that future violations of the separation requirement will not occur in a given jurisdiction. Another felt that eliminating this requirement will mean that States will abandon their efforts to obtain conforming laws, regulations, and court rules in order to enforce the separation core requirement. A third respondent felt that all States should have a policy that mirrors the JJDP Act separation requirement.

Response: OJJDP encourages States to retain existing laws, regulations, and court rules mirroring the separation requirement. OJJDP also encourages States to utilize other effective enforcement tools including: training and technical assistance workshops; on-site training for law enforcement and adult jail and lockup personnel; and development of alternatives to incarceration.

9(c). Comment: One commentor suggested that until such time as OJJDP has unlimited resources, there is no way that the existence of a "pattern or practice" of noncompliance can be monitored.

Response: Section 223(a)(15) requires States to "provide for an adequate system of monitoring jails, detention facilities, and nonsecure facilities to ensure that the requirements of paragraph (12)(A), paragraph (13) and paragraph (14) are met, and for annual reporting of the results of such monitoring to the Administrator; * * *". It is OJJDP's position that State monitoring systems successfully identify the vast majority of violations and State monitoring reports can be used to identify whether reported violations establish a pattern or practice of separation violations in the State.

9(d). Comment: A single separation standard applicable to all States for measuring compliance based on *de minimis* violations that do not indicate a pattern or practice is a fair standard, according to one respondent. Moreover, it is less cumbersome than the present compliance requirement. Another respondent felt that it is clearly appropriate to find overall compliance within the separation requirement even if individual violations have occurred, as long as no pattern or practice exists.

Response: It is OJJDP's intent to treat all States in a fair and equitable manner. In addressing violations of Section 223(a)(13) of the JJDP Act in terms of a pattern or practice, OJJDP's across the board approach is equitable to the States, providing a substantive *de minimis* standard for the separation requirement.

10(a). Comment: A commentor noted that the addition of the word "programmatically" in Section 31.303(j) to clarify that "the purpose of the statute and regulation is to encourage States to address programmatically, * * *" the disproportionate minority confinement (DMC) core requirement (Section 223(a)(23)) will limit the focus of the States and move them away from alternative ways to address the over-representation of minorities in secure facilities.

Response: OJJDP notes that the addition of the word "programmatically" does not restrict a State's options for addressing DMC. States are encouraged to examine all aspects of DMC and address any features of its juvenile or criminal justice systems that may contribute to DMC as identified by the State.

10(b). Comment: Another respondent stated that the regulation needs to reflect a broader examination of minority over-representation. Since 1992, States have spent considerable time and dollars reviewing their juvenile justice systems in their entirety. The clarification to the DMC core requirement provides that States should address "programmatically" any feature of its justice system that accounts for the disproportionate detention or confinement of minority juveniles. However, the entire system should be analyzed, not just juvenile detention or confinement.

Response: The regulation provides for a broad examination of the DMC issue, including all decision points in the juvenile justice system, and encourages States to address "any feature of its justice system" that accounts for DMC and not just those that "may account for the disproportionate detention or confinement." The latter language is taken verbatim from the statutory language of Section 223(a)(23) of the JJDP Act.

Executive Order 12866

This final rule is not a "significant regulatory action" for purposes of Executive Order 12866 because it does not result in: (1) an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles of Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management of Budget. This regulation has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation.

Regulatory Flexibility Act

This final rule, if promulgated, will not have a "significant" economic impact on a substantial number of small "entities" as defined by the Regulatory Flexibility Act. This action is intended to relieve existing requirements in the Formula Grants program and to clarify other provisions so as to promote compliance with its provisions by States participating in the program.

Paperwork Reduction Act

No collections of information requirements are contained in or affected by this regulation pursuant to the Paperwork Reduction Act, codified at 44 U.S.C. 3504(H).

Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR Part 30, States must submit Formula Grant Program applications to the State "Single Point of Contact," if one exists. The State may take up to 60 days from the application date to comment on the application.

Lists of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 28 CFR Part 31 is amended as follows:

PART 31—[AMENDED]

1. The authority citation for Part 31 continues to read as follows:

Authority: 42 U.S.C. 5601 *et seq.*

2. Section 31.303 is amended to read as follows:

a. Paragraphs (d)(1)(i) and (d)(1)(v) are revised;

b. Paragraphs (e)(2) and (e)(3) are revised;

c. Paragraphs (f)(2), (f)(3)(vi), (f)(4)(vi), (f)(5)(i)(C), (f)(5)(iii), (f)(8)(iv), (f)(6)(i), and (f)(6)(ii) are revised;

d. Paragraph (f)(4)(iv) is amended by removing "and" at the end of the paragraph and paragraph (f)(4)(v) is amended by removing the period at the end of the paragraph and adding "; and" in its place; and

e. Paragraph (j) introductory text is amended by adding two sentences following the second sentence.

The additions and revisions read as follows:

§ 31.303 Substantive requirements.

* * * * *

(d) * * *

(1) * * *

(i) *Separation.* Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term "contact" includes any physical or sustained sight or sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. A juvenile offender in a secure custody status is one who is physically detained or confined in a locked room or other area set aside or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being placed in such a room or area and/or from being physically secured to a cuffing rail or other stationary object. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders. Separation must be accomplished architecturally or through policies and procedures in all secure areas of the facility which include, but are not limited to, such areas as admissions, sleeping, and shower and toilet areas. Brief and inadvertent or accidental contact between juvenile offenders in a secure custody status and incarcerated adults in secure areas of a facility that are not dedicated to use by juvenile offenders and which are nonresidential, which may include dining, recreational, educational, vocational, health care, sally ports or other entry areas, and passageways (hallways), would not require a facility or the State to document or report such contact as a violation. However, any contact in a dedicated juvenile area, including any residential area of a secure facility, between juveniles in a secure custody status and incarcerated adults would be a reportable violation.

* * * * *

(v) Assure that adjudicated delinquents are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of separating juveniles from adult criminals in jails or correctional facilities. A State is not prohibited from placing or transferring an alleged or adjudicated delinquent who reaches the State's age of full criminal responsibility to an adult facility when required or authorized by State law. However, the administrative transfer, without statutory direction or authorization, of a juvenile offender to an adult correctional authority, or a transfer within a mixed juvenile and adult facility for placement with adult criminals, either before or after a juvenile reaches the age of full criminal responsibility, is prohibited. A State is also precluded from transferring adult offenders to a juvenile correctional authority for placement in a juvenile facility. This neither prohibits nor restricts the waiver or transfer of a juvenile to criminal court for prosecution, in accordance with State law, for a criminal felony violation, nor the detention or confinement of a waived or transferred criminal felony violator in an adult facility.

* * * * *

(e) * * *

(2) Describe the barriers that a State faces in removing all juveniles from adult jails and lockups. This requirement excepts only those alleged or adjudicated juvenile delinquents placed in a jail or a lockup for up to six hours from the time they enter a secure custody status or immediately before or after a court appearance, those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

(3) *Collocated facilities.* (i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups, except as otherwise provided under the Act and implementing OJJDP regulations. Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with criteria established in paragraphs (e)(3)(i)(C)(*1*) through (*4*) of this section.

(A) A collocated facility is a juvenile facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered "related" when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer), or the specialized services that are allowable under paragraph (e)(3)(i)(C)(*3*) of this section.

(B) The State must determine whether a collocated facility qualifies as a separate juvenile detention facility under the four criteria set forth in paragraphs (e)(3)(i)(C) (*1*) through (*4*) of this section for the purpose of monitoring compliance with section 223(a) (12)(A), (13) and (14) of the JJDP Act.

(C) Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

(1) Separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and incarcerated adults in the facility. Separation can be achieved architecturally or through time-phasing of common use nonresidential areas; and

(2) Separate juvenile and adult programs, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility which provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. Time-phasing of common use nonresidential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and

(3) Separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (medical care, food service, laundry, maintenance and engineering, etc.) who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations (subject to State standards or licensing requirements). The day to day management, security and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population within the collocated facilities; and

(4) In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no State standards or licensing requirements, OJJDP encourages States to establish administrative requirements that authorize the State to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards.

(ii) The State must determine that the four criteria are fully met. It is incumbent upon the State to make the determination through an on-site facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria set forth in paragraphs (e)(3)(i)(C) (1) through (4) of this section.

(iii) Collocated juvenile detention facilities approved by the State and concurred with by OJJDP before December 10, 1996 may be reviewed by the State against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence or against the regulatory criteria set forth herein, as the State determines. Facilities approved on or after the effective date of this regulation shall be reviewed against the regulatory criteria set forth herein. All collocated facilities are subject to the separate staff requirement established by the 1992 Amendments to the JJDP Act, and set forth in paragraph (e)(3)(i)(C)(3) of this section.

(iv) An annual on-site review of the facility must be conducted by the compliance monitoring staff person(s) representing or employed by the State agency administering the JJDP Act Formula Grants Program. The purpose of the annual review is to determine if compliance with the criteria set forth in paragraphs (e)(3)(i)(C) (1) through (4) of this section is being maintained.

* * * * *

(f) * * *

* * * * *

(2) For the purpose of monitoring for compliance with section 223(a)(12)(A) of the Act, a secure detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders, or used for the lawful custody of accused or convicted adult criminal offenders. Accused status offenders or nonoffenders in lawful custody can be held in a secure juvenile detention facility for up to twenty-four hours, exclusive of weekends and holidays, prior to an initial court appearance and for an additional twenty-four hours, exclusive of weekends and holidays, following an initial court appearance.

(3) * * *

(vi) In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3) (i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must obtain and review a written report that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency).

* * * * *

(4) * * *

(vi) Pursuant to section 223(a)(14) of the JJDP Act, the nonMSA (low population density) exception to the jail and lockup removal requirement as described in paragraphs (f)(4) (i) through (v) of this section shall remain in effect through 1997, and shall allow for secure custody beyond the twenty-four hour period described in paragraph (f)(4)(i) of this section when the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within twenty-four hours, so that a brief (not to exceed an additional forty-eight hours) delay is excusable; or the facility is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until twenty-four hours after the time that such conditions allow for reasonably safe travel. States may use these additional statutory allowances only where the precedent requirements set forth in paragraphs (f)(4) (i) through (v) of this section have been complied with. This may necessitate statutory or judicial (court rule or opinion) relief within the State from the twenty-four hour initial court appearance standard required by paragraph (f)(4)(i) of this section.

(5) * * *

(i) * * *

(C) The total number of accused status offenders and nonoffenders, including out-of-State runaways and Federal wards, held in any secure detention or correctional facility for longer than twenty-four hours (not including weekends or holidays), excluding those held pursuant to the valid court order provision as set forth in paragraph (f)(3) of this section or pursuant to section 922(x) of Title 18, United States Code (which prohibits the possession of a handgun by a juvenile), or a similar State law. A juvenile who violates this statute, or a similar state law, is

excepted from the deinstitutionalization of status offenders requirement;

* * * * *

(iii) To demonstrate the extent of compliance with section 223(a)(13) of the JJDP Act, the report must include, at a *minimum*, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months and the number inspected on-site;

(C) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide sight and sound separation;

(D) The total number of juvenile offenders and nonoffenders not separated from adult criminal offenders in facilities used for the secure detention and confinement of both juveniles and adults;

(E) The total number of State approved juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup, including a list of such facilities;

(F) The total number of juveniles detained in State approved collocated facilities that were not separated from the management, security or direct care staff of the adult jail or lockup;

(G) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have not been approved by the State, including a list of such facilities; and

(H) The total number of juveniles detained in collocated facilities not approved by the State that were not sight and sound separated from adult criminal offenders.

(iv) To demonstrate the extent of compliance with section 223(a)(14) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of adult jails in the State AND the number inspected on-site;

(C) The total number of adult lockups in the State AND the number inspected on-site;

(D) The total number of adult jails holding juveniles during the past twelve months;

(E) The total number of adult lockups holding juveniles during the past twelve months;

(F) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and unapproved collocated facilities in excess of six hours, including those held pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section;

(G) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups and unapproved collocated facilities for less than six hours for purposes other than identification, investigations, processing, release to parent(s), transfer to court, or transfer to a juvenile facility following initial custody;

(H) The total number of adjudicated juvenile criminal-type offenders held securely in adult jails or lockups and unapproved collocated facilities in excess of six hours prior to or following a court appearance or for any length of time not related to a court appearance;

(I) The total number of accused and adjudicated status offenders (including valid court order violators) and nonoffenders held securely in adult jails, lockups and unapproved collocated facilities for any length of time;

(J) The total number of adult jails, lockups, and unapproved collocated facilities in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which each is located;

(K) The total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than 24 hours in adult jails, lockups and unapproved collocated facilities pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section;

(L) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 48 hours, in adult jails, lockups and unapproved collocated facilities pursuant to the "removal exception" as noted in paragraph (f)(4) of this section, due to conditions of distance or lack of ground transportation; and

(M) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel, in adult jails, lockups and unapproved collocated facilities, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section.

(6) * * *

(i) Full compliance with section 223(a)(12)(A) is achieved when a State has removed 100 percent of status offenders and nonoffenders from secure detention and correctional facilities or can demonstrate full compliance with de minimis exceptions pursuant to the policy criteria contained in the Federal Register of January 9, 1981 (copies are available from the Office of General Counsel, Office of Justice Programs, 633 Indiana Ave., N.W., Washington, D.C. 20531).

(ii) Compliance with section 223(a)(13) has been achieved when a State can demonstrate that:

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of section 223(a)(13); or

(B)(*1*) The instances of noncompliance reported in the last submitted monthly report do not indicate a pattern or practice but rather constitute isolated instances; and

(*2*)(*i*) Where all instances of noncompliance reported were in violation of or departure from State law, rule, or policy that clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of Section 223(a)(13), existing enforcement mechanisms are such that the instances of noncompliance are unlikely to recur in the future; or

(*ii*) An acceptable plan has been developed to eliminate the noncompliant incidents.

* * * * *

(j) * * * The purpose of the statute and the regulation in this part is to encourage States to address, programmatically, any features of its justice system, and related laws and policies, that may account for the disproportionate detention or confinement of minority juveniles in secure detention facilities, secure correctional facilities, jails, and lockups. The disproportionate minority confinement core requirement neither establishes nor requires numerical standards or quotas in order for a State to achieve or maintain compliance.

* * *

* * * * *

Dated: December 5, 1996.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 96-31316 Filed 12-9-96; 8:45 am]

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U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

Washington, D.C. 20531

December 30, 1996

Judge Karen Perdue
Commissioner
Department of Health and Social Services
Division of Family and Youth Services
P.O. Box 110630
Juneau, AK 99811-0630

Dear Judge Perdue:

Enclosed is a copy of the final revised OJJDP Formula Grants Program regulation. The regulation has been revised with the goal of providing enhanced flexibility to States and local units of government in responding to increases in serious juvenile crime while, at the same time, assuring that the interests of young people who come to the attention of the juvenile justice system are protected. Please review the revised regulation for a full discussion of the changes that have taken place in the following areas:

- Clarification of sight and sound separation between juveniles and incarcerated adults;
- Permitting the transfer of delinquents to adult institutions at the age of criminal responsibility;
- Expansion of the 6-hour hold exception to the jail and lockup removal requirement to include both a six hour period prior to and following a court appearance;
- Allowance of time-phased use of shared program space in collocated adult and juvenile facilities;
- Clarification that the 24-hour hold exception for status and nonoffenders includes 24 hour periods both preceding and following an initial court appearance;
- Elimination of the reference to the use of multi-disciplinary review teams in relation to valid court order disposition hearings;
- Removal of the requirement that States describe the circumstances surrounding each instance where the distance and/or weather exceptions to the jail and lockup removal requirement are used;
- Modification of the provision that did not allow States that had failed to enact legislation providing for the separation of adults and juveniles in secure custody to qualify under the substantive de minimis standards; and
- Clarification of the regulation concerning compliance with the disproportionate minority confinement requirement.

U.S. Department of Justice

Office of Justice Programs

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- Modification of the provision that did not allow States that had failed to enact legislation providing for the separation of adults and juveniles in secure custody to qualify under the substantive de minimis standards; and
- Clarification of the regulation concerning compliance with the disproportionate minority confinement requirement.

The revisions to the regulation were made after giving careful consideration to the comments and recommendations submitted by numerous juvenile justice professionals and others interested in the welfare of our nation's youth and the safety of our communities. OJJDP deeply appreciates the contributions made by those who took the time to respond to our request for comment on the proposed regulatory changes.

The Office will undertake a widespread distribution of the revised regulation in order to inform a very broad audience of the changes as quickly as possible. On December 11, 1996, training concerning the revised regulation was provided to State Juvenile Justice Specialists in Baltimore, MD. If you have any questions or require clarification on any of the changes you may wish to talk with your State's Juvenile Justice Specialist or contact your OJJDP State Representative at (202) 307-5924.

Sincerely,

Shay Bilchik
Administrator

Enclosure

federal register

Tuesday
December 10, 1996

Part IV

Department of Justice

Office of Justice Programs

28 CFR Part 31
Formula Grants; Final Rule

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 31

[OJP (OJJDP) No. 1106]

RIN 1121-AA43

Formula Grants

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

ACTION: Final rule.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the U.S. Department of Justice is publishing the final revision of the existing Formula Grants Regulation, which implements part B of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1992.

This final regulation is a further clarification and modification of the regulations issued in March and April of 1995. It offers greater flexibility to States and local units of government in carrying out the Formula Grants Program requirements of the JJDP Act, while reinforcing the importance of complying with those underlying legal requirements and the policy objectives from which they stem.

The Department of Justice remains firmly committed to the core requirements of the JJDP Act, such as the obligation to maintain sight and sound separation between juveniles and adults. With that in mind, this regulation is expected to assist jurisdictions that are working diligently to comply with statutory and regulatory obligations by expressly providing such flexibility as State authorized transfers of delinquents who have reached the age of full criminal responsibility to the criminal justice system and by recognizing certain real-world factors which can make "perfect" compliance unrealistic. These regulatory changes are in no way intended to evidence any lessening of the Department's commitment to the core requirements.

EFFECTIVE DATE: This regulation is effective December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Roberta Dorn, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 633 Indiana Avenue, NW., Room 543, Washington, DC 20531; (202) 307-5924.

SUPPLEMENTARY INFORMATION:

Description of Major Changes

Contact With Incarcerated Adults

The revised regulation provides definitions of sight and sound contact to assist in understanding the level of separation that is required under section 223(a)(13) of the JJDP Act (section 223(a)(13)). Sight contact is defined as clear visual contact between incarcerated adults who are in close proximity to juveniles alleged to be or found to be delinquent, status offenders, and nonoffenders in a secure institution. Sound contact is defined in the regulation as direct oral communication between incarcerated adults and juveniles in secure institutions. While separation must be provided through architectural or procedural means, the revised regulation provides that sight or sound contact that is both brief and inadvertent or accidental must be reported as a violation only if it occurs in secure areas of the facility that are dedicated to use by juvenile offenders, including any residential area. A residential area is an area used to confine individuals overnight, and may include sleeping, shower and toilet, and day room areas.

Placement of Delinquents in Adult Facilities

State laws are increasingly providing for the mandatory or permissible transfer (or placement) of adjudicated delinquents to adult facilities once the delinquent has attained the age of full criminal responsibility under State law. The revised regulation expressly provides that the section 223(a)(13) separation requirement is not violated as a result of contact between an adjudicated delinquent and adult criminal offenders in a secure institution once the adjudicated delinquent has reached the age of full criminal responsibility established by State law, provided that the transfer (or placement) of the adjudicated delinquent is required or authorized under State law.

Expansion of 6-Hour Hold Exception to Pre and Post Court Appearances

The revised regulation builds upon the existing authority to place an alleged or adjudicated delinquent juvenile in an adult jail or lockup for up to 6 hours by providing a 6 hour time period immediately before and/or after a court appearance, subject to the section 223(a)(13) separation requirement, during the time the delinquent juvenile is in a secure custody status in the adult jail or lockup.

Collocated Facilities

The revised regulation removes the requirement that a needs-based analysis precede a jurisdiction's request for State approval of a juvenile holding facility that is collocated with an adult jail or lockup to qualify as a separate juvenile detention facility. OJJDP concurrence with a State agency's decision to approve a collocated facility will no longer be required. On-site reviews by the State to determine compliance, coupled with OJJDP's statutorily required review of the adequacy of state monitoring systems, will be used to insure that each collocated juvenile detention facility meets and continues to meet the collocated juvenile detention facility criteria.

The revised regulation permits the sharing of common use nonresidential areas of collocated adult and juvenile facilities on a time-phased basis that prevents contact between juveniles and adults. Secure juvenile detention facilities around the country are routinely overcrowded. OJJDP's objective is to encourage the development and use of separately located juvenile facilities whenever possible. Still, it is recognized that expecting every jurisdiction to create wholly separate juvenile facilities, including the duplication of costly infrastructure elements like gymnasiums, cafeterias, and classrooms, may result in those jurisdictions being unable to provide any secure juvenile detention capacity. The revised regulation makes it possible for more jurisdictions to provide juvenile facilities by removing the requirement that collocated facilities not share program space between juvenile and adult populations. Utilization of time-phasing will allow both juveniles and adults access to available educational, vocational, and recreational areas of collocated facilities. Time-phased use is explicitly limited to nonresidential areas of collocated facilities and requires the use of written procedures to ensure that no contact occurs between detained juveniles and incarcerated adults.

Deinstitutionalization of Status Offenders

The revised regulation expressly provides, formalizing existing OJJDP policy, that it is permissible to hold an accused status offender or nonoffender in a secure juvenile detention facility for up to 24 hours, exclusive of weekends and legal holidays, prior to an initial court appearance and up to 24 hours, exclusive of weekends and legal

holidays, immediately following an initial court appearance.

Valid Court Order

The revised regulation eliminates the regulatory language suggesting that jurisdictions use multi-disciplinary review teams to prepare and submit a written report to a judge who is considering an order that directs or authorizes the placement of a status offender in a secure facility for the violation of a valid court order pursuant to the valid court order exception to section 223(a)(12)(A). Although a multi-disciplinary team is still an appropriate option, and is encouraged when practical, this suggestion led to some confusion and, therefore, the example was unnecessary.

Removal Exception

The revised regulation eliminates the requirement for States to document and describe, in their annual monitoring report to OJJDP, the specific circumstances surrounding each individual use of the distance/ground transportation and weather exceptions to the section 223(a)(14) jail and lockup removal requirement.

Compliance With Separation Requirement

The revised regulation modifies the compliance standard that penalized States that have not enacted laws, rules, and regulations, or policies prohibiting the incarceration of all juvenile offenders under circumstances that would be in violation of the section 223(a)(13) separation requirement. These States were not eligible for a finding of compliance if any instances of noncompliance were sanctioned by state law, rule or regulation, or policy. Instead, the revised regulation establishes a single standard applicable to all States regardless of whether a law, rule or regulation, or policy exists that prohibits the detention or confinement of juveniles with incarcerated adults in circumstances that would be in violation of section 223(a)(13), providing that compliance can be established under circumstances in which:

(1) the instances of noncompliance do not indicate a pattern or practice; and either (2) adequate enforcement mechanisms exist; or (3) an acceptable plan has been developed to eliminate the noncompliant incidents.

Minority Detention and Confinement

The revised regulation specifically provides that the purpose of the section 223(a)(23) Disproportionate Minority Confinement core requirement is to encourage States to programmatically address any features of its justice system that may account for the disproportionate detention or confinement of minority juveniles. The regulation is revised to clearly state that the Disproportionate Minority Confinement core requirement neither requires nor establishes numerical standards or quotas in order for a State to achieve or maintain compliance.

Discussion of Comments

The proposed revisions to the existing Formula Grants Regulation were published in the **Federal Register** on July 3, 1996 (61 FR 34770), for public comment. Written comments were received from thirty-six respondents on ten issues addressed by the proposed regulation. The respondents represent a diverse group including child advocacy organizations, state agencies responsible for carrying out the JJDP Act, and public interest groups. All comments have been considered by OJJDP in the issuance of this final regulation.

The following is a summary of the comments and the responses from OJJDP:

1. *Comment:* Several respondents raised concern over the proposed clarification of the Section 223(a)(13) prohibition against contact between incarcerated adults and juveniles who are in close proximity but not at such distances as "several hundred feet." These respondents contended that this statement in the commentary section of the proposed regulation appears to conflict with the later statement in the commentary section concerning the prohibition against systematic contact. These respondents suggested that the "several hundred feet" standard would create monitoring difficulties and, consequently, it should be clarified that "several hundred feet" was intended only as an example and that the ability for a juvenile and adult to communicate is the key. These respondents felt that it should be made clear that "systematic, procedural, and condoned contact is always prohibited."

Response: The Section 223(a)(13) separation requirement is designed to protect juveniles who are at risk from contact with adult offenders while under the delinquency jurisdiction of the juvenile justice system. OJJDP agrees with the comment that "systematic, procedural, and condoned contact is always prohibited." The "several hundred feet" example was intended to illustrate a common sense approach to determining if visual "contact" or oral "communication" is possible. This is not an issue of systematic, procedural, or condoned contact, but one of the potential for harm to juveniles. OJJDP does not believe that a juvenile who is able to see an adult from a significant distance is in danger of being harmed. Simultaneous use of secure areas of adult facilities continues to be prohibited and, under the revised regulation, time-phased use of common use areas to achieve separation is permitted in both collocated facilities and adult jails, lockups, or other adult institutions. For collocated facilities, this revision is designed to allow both juveniles and adults access to available educational, vocational, and recreational areas common to the two facilities.

2. *Comment:* A number of respondents opined that the "brief and inadvertent" contact language of the proposed regulation essentially changes the Section 223(a)(13) prohibition from "no contact" back to "no regular contact" for nonresidential areas of institutions. Relaxing the no contact standard, it is argued, would permit more violations because violations are already occurring under current regulations. Several respondents believe this proposed regulation would "muddy the waters" and may "expose children to needless risks" by lowering the standards to which states must adhere. They assert that national policy should set the separation standard at the highest possible level.

Response: The revised regulation seeks to clarify with particularity the prohibition of systematic, procedural, or condoned contact between incarcerated adults and juveniles. It is not the intent of OJJDP, through the revised regulation, to in any way encourage or tolerate increased contact between incarcerated juveniles and adults, or to expose juveniles to greater risk. However, common sense and practicality suggested that the regulatory definitions of both sight and sound contact needed to be clarified, so that appropriate and reasonable parameters would guide State and local policy and practice.

In considering the respondent comments concerning this proposed regulatory clarification, it is important to note that the obligation of local jurisdictions housing juveniles to maintain sight and sound separation by architectural means or by established policies and procedures remains firmly in place. This obligation, coupled with the maintenance of policies, practices and facilities designed to maximize separation, is designed to maintain strict adherence to the "no contact" statutory prohibition between juveniles and adults in secure custody.

OJJDP also believes, however, that strict adherence to the "no contact"

prohibition is not inconsistent, in view of the lack of a statutory definition of the word "contact", with a recognition that brief and inadvertent or accidental sight or sound contact may occur, upon occasion, in nonresidential areas of a secure institution, without being considered a reportable violation of the separation requirement. OJJDP believes it would be unfair to penalize jurisdictions working consistently and genuinely to maintain sight and sound separation through policies, practices, and facilities architecture if brief and inadvertent or accidental contact between a juvenile and adult occurs in common use areas. This recognition should in no way be interpreted to indicate acceptance or tolerance of such impermissible contacts, but only as a recognition that in such environments, even the very best intentioned facility administrators may not prevent all short-term, accidental contact between juveniles and adults in a portion of the facility used at different times by both juveniles and adults.

Nonetheless, based on the concern expressed in the comment, OJJDP has expanded the regulatory language to prohibit contact in any secure areas of an institution that are dedicated to use by juvenile offenders, including any residential area. A residential area is an area used to confine individuals overnight, and may include sleeping, shower and toilet, and day room areas. OJJDP recognizes that in many jurisdictions, especially jurisdictions in rural areas, there may be periods of time when no juveniles are detained in an adult jail or lockup facility. During these periods, jurisdictions use all areas of the facility, including those areas dedicated to use by juveniles when juveniles are present, for incarcerated adults because no contact between incarcerated adults and juveniles is possible when juveniles are not present in the facility.

This revision, coupled with the requirement that facilities establish separation by architectural means or by establishing policies and procedures for time-phased use of common use areas within the secure perimeter of an adult jail, lockup, or penal facility, or within a juvenile detention facility that is collocated with any adult jail or lockup, helps to insure the safety of detained and confined juveniles.

OJJDP hopes that this explanation will assist those concerned with the proposed regulation to see that it is in no way intended to evidence a change in view or policy regarding the importance of maintaining the sight and sound separation of juveniles from adults in secure facilities at all times.

3(a). Comment: Several respondents asserted that an adjudicated delinquent should only be subject to transfer to an adult facility, such as a prison, once he (or she) reaches the age of full criminal responsibility, as provided by State law, in circumstances where the delinquent has been afforded the full due process rights available to a criminal offender in a criminal court proceeding (e.g. bail, trial by jury, etc.).

Response: The JJDP Act separation requirement expressly applies to juveniles who are alleged to be or found to be delinquent. An individual who has reached the age of full criminal responsibility is no longer considered a juvenile under the law of a State unless expressly so provided and would not, therefore, fall under the protection of the JJDP Act separation requirement. States have a compelling interest in striking a balance between the goal of achieving an adjudicated delinquent's well-being through treatment and physical security and the goals of punishment and protection of the public by lengthening the period of confinement in appropriate circumstances. The State of Texas, for example, has instituted a determinate sentencing system for certain violent offenders which initially places a juvenile adjudicated delinquent under the jurisdiction of the Texas Youth Commission and requires the committing court to re-evaluate the delinquent's placement status when he/she reaches the age of 18. At that time, the court can transfer the individual, who is now an adult, to an adult penal institution if warranted. Alternatively, the delinquent can be retained under the custody of the Texas Youth Commission to age 21, at which time transfer is mandatory if he/she is not released. Our review indicates that the caselaw is not definitive on the issue of whether a failure to provide a juvenile with all the due process rights of a criminal defendant in a delinquency proceeding would prohibit such a transfer, on due process or other grounds, to an adult jail or prison. The regulation continues to prohibit the pro forma administrative transfer of an adjudicated delinquent who has reached the age of full criminal responsibility to an adult jail or prison. However, we believe it is consistent with the JJDP Act and principles of federalism to allow States to authorize or require the transfer of such delinquents under State law. While the due process issue is appropriately a matter of State law and practice, those jurisdictions contemplating passage of a law to authorize such transfers should consider whether delinquents subject to incarceration in the criminal justice system upon reaching the age of full criminal responsibility should be afforded the same due process rights in the original delinquency adjudication to which an adult in a criminal court proceeding is entitled.

3(b). Comment: One respondent opined that where an adjudicated delinquent is subject to transfer to an adult institution on or after reaching the age of full criminal responsibility pursuant to State law, assurances should be required that age-appropriate needs, such as health, mental health, recreation, and education services will be made available.

Response: Meeting the basic needs of transferred adjudicated delinquents should be a priority for any jurisdiction's correctional system. It is the responsibility of the State to provide for basic needs and services for all prisoners, including juveniles and young adults.

3(c). Comment: Several respondents felt that the transfer of adjudicated delinquents to adult facilities once they reach the age of full criminal responsibility defeats the purpose of a delinquency adjudication.

Response: It is important to note that persons eligible for such a transfer are limited to those who are no longer considered juveniles under State law. With States increasingly focusing on the transfer of serious and violent juvenile offenders to criminal court for prosecution, this type of transfer scheme may result in fewer transfers of juveniles to the criminal justice system through judicial waiver, prosecutorial direct-file, and statutory exclusion of certain offenses from the jurisdiction of the juvenile court. This will help to assure that appropriate treatment services are provided by the juvenile justice system while the individual is a juvenile and may serve to protect juvenile offenders from older delinquents who pose a threat or whose treatment needs cannot be met by the juvenile correctional system.

3(d). Comment: Several respondents stated that the transfer of adjudicated delinquents to adult facilities is not sound policy because the influences of adult facilities are extremely negative and harmful to young adults. These respondents further asserted that the risk of assaults and violence in juvenile facilities increase when wards know that they are going to be transferred to adult correctional facilities. This "split" disposition has a destabilizing influence on juvenile programs, according to one respondent. Several respondents stated that any advances made by juveniles in

the juvenile justice system through available educational, vocational, and therapeutic programs will be destroyed as a result of the transfer to an adult facility.

Response: OJJDP strongly recommends that States enacting a transfer law provide the transferred adjudicated delinquent with age appropriate programs. However, this Office is neither aware of any studies supporting the alleged harm from such transfers nor believes that a juvenile who is able to remain in a juvenile correctional setting at least until the age of full criminal responsibility is worse off than the juvenile who is transferred to the criminal justice system for felony prosecution and, upon conviction, is incarcerated in the criminal justice system.

3(e). Comment: One respondent suggested that OJJDP recommend that States provide separate facilities for delinquent offenders who have reached the age of full criminal responsibility.

Response: OJJDP agrees that this option merits State consideration. Such a system has been adopted in Colorado, where older serious and violent delinquent offenders who have reached the age of full criminal responsibility and juveniles transferred to criminal court pursuant to State transfer laws, are placed in secure treatment facilities designed and operated for youthful offenders.

3(f). Comment: One respondent suggested that the proposed regulatory change is of great assistance to individual States looking for appropriate methods to deal with the rising levels of violent juvenile crime.

Response: The intent of this regulatory change is to provide States with appropriate flexibility in dealing with serious and violent delinquent offenders who require sentences that extend into adulthood.

4(a). Comment: Three questions were asked by one respondent concerning the "6 hour rule" that allows an alleged delinquent to be held in a secure custody status in an adult jail or lockup for up to 6 hours for purposes of processing (while maintaining sight and sound separation from adult offenders). The proposed regulation would apply the six hour hold exception to include a six hour period before and/or after a court appearance (both pre and post adjudication).

(a) Is the 6 hour rule cumulative (i.e. before and after inclusive of the 6 hours) or is it a separate 6 hours for before and after a court appearance?

(b) Is the time limit affected by the status of the jail site, i.e. MSA or nonMSA?

(c) Would the 24 hour rural exception continue to be permitted?

Response: (a) The 6 hour rule is not cumulative. A juvenile may be held up to 6 hours before a court appearance and up to 6 hours after a court appearance in an adult jail or lockup.

(b) The time limit is not affected by the status of the jail site;

(c) The 24-hour rural exception is not changed by the regulation. The 24-hour rural (MSA) exception is a statutory exception that applies to initial law enforcement custody, which may or may not result in an initial court appearance. The new six-hour hold exception would apply in either an MSA or nonMSA jurisdiction both before and/or after a court appearance.

4(b). Comment: Several respondents suggested that the 6-hour rule following a court appearance be expanded to 24 hours for rural jurisdictions because of the expense of identifying and traveling to an appropriate facility or of constructing a separate detention facility in a small rural county or group of counties.

Response: The nonMSA, or rural exception, provides a 24-hour period, exclusive of nonjudicial days (Saturdays, Sundays and holidays), to detain an alleged delinquent, pending an initial court appearance, if State law requires such an appearance within the 24-hour period. Long distance and weather may extend this exception. The 6-hour hold exception has historically applied when police are holding a juvenile for investigation or processing a juvenile for purposes of notifying parents, arranging release, or transporting to a juvenile facility. Expansion of the 6-hour hold for pre- and post-court appearances is designed to facilitate court appearances of juveniles that require transportation. The statutory 24-hour nonMSA exception for initial court appearances is premised on the need for time to plan the placement/release of the juvenile. Subsequent court appearances can be planned in advance, negating the need for an extended placement of the juvenile in an adult jail or lockup.

4(c). Comment: One respondent found that the 6-hour exception was too inflexible where no reasonable alternative juvenile placement was available following arrest. The respondent suggested that a workable "good faith" rule be established.

Response: The six-hour exception gives law enforcement officials in nonMSA jurisdictions the opportunity to make decisions about investigating, processing, and/or transporting juveniles. States and local units of government have found the 6-hour exception to be sufficient where mechanisms are put in place to expedite the handling of alleged delinquents who need to be detained for investigation or processing in secure custody in an adult jail or lockup.

4(d). Comment: One respondent organization cited the Institute for Judicial Administration/American Bar Association (IJA/ABA) Standards which state that "The interim detention of accused juveniles in any facility or part thereof also used to detain adults is prohibited." In support of its opposition to the proposed regulation, this respondent noted that under conditions where juveniles are held with adults prior to adjudication, ABA standards recommend a blanket prohibition against the detention of juveniles with adult inmates prior to adjudication under any circumstances.

Response: Congress considered the secure confinement of accused delinquent juveniles for up to 6 hours in an urban jail or lockup to be a reasonable outside time limit for processing purposes. This period of time was considered to reflect a "rule of reason", as stated in the House Committee report on the 1980 JJDP Act reauthorization. OJJDP is not establishing any new policy by this regulation, but rather is codifying in the regulation what has been the Office's monitoring policy for 16 years, and extending it to pre- and post-court appearance holds.

5(a). Comment: One respondent, while supporting the time-phasing of common use areas of collocated facilities, requested clarification on whether "professional treatment staff" can be "shared" between juvenile and adult populations.

Response: In collocated facilities, professional care staff such as medical, counseling, or education services continue to be permitted to serve both adult and juvenile residents, although not at the same time.

5(b) Comment: One respondent asserted that elimination of the requirement for OJJDP's concurrence in State-approved collocated facilities weakens the Office's enforcement capabilities.

Response: States will continue to have the responsibility to approve and monitor these facilities. OJJDP will continue to review the monitoring practices of States, as well as provide training and technical assistance. Further, the criteria for the establishment of such facilities are clearly set forth in § 31.303(e)(3) of the regulation.

5(c). Comment: Another respondent felt that the regulation should more

clearly reflect that collocated facilities are not prohibited and that these facilities are permissible if established in accordance with the regulatory criteria set forth to establish that a collocated facility is a separate and distinct facility from the adult jail or lockup with which it is collocated.

Response: OJJDP's proposal to eliminate the requirement for its concurrence in State approval of a collocated facility, and the elimination of a needs-based analysis, should make it clear that the establishment of collocated facilities is not prohibited. States may approve collocated facilities in accordance with State law and policy as long as each such facility meets the criteria set forth in § 31.303(e)(3) of the regulation.

5(d). Comment: Another respondent opined that the needs-based analysis and prohibition of time-phased use should not be eliminated.

Response: A properly constructed and operated collocated facility that meets the criteria set forth in § 31.303(e)(3) does not create conditions where the health and safety of juveniles would be jeopardized. Time-phased use of nonresidential areas allows for efficient use of these resources which, otherwise, might not be available to the juvenile population. Time-phased use, if properly implemented, would not result in any contact between juveniles and adults. Further, States are encouraged to conduct their own needs-based analysis. OJJDP technical assistance will remain available, upon State request, for this purpose.

6(a). Comment: One commentor, in response to the 24 hour detention exception for status and nonoffenders, stated that nonoffenders should not be placed in detention facilities. Limited exceptions should be permitted in the event of a well documented need. In this way, detention of nonoffenders will not become a pattern or practice.

Response: OJJDP agrees that the detention of nonoffenders, such as dependent, neglected, or abused children, should not become a pattern or practice. This authority should be used to meet emergency needs only. States are encouraged to provide for the return of nonoffenders to their families or to appropriate shelter care as soon as possible.

6(b). Comment: Another respondent considers the placement of nonoffenders in secure detention to be a retrenchment of longstanding national policy in opposition to such a placement.

Response: OJJDP Formula Grants program policy and regulation have authorized the limited and temporary placement of nonoffenders in secure detention facilities since 1975. When either status offenders or nonoffenders are placed in such facilities, Section 223(a)(12)(B) encourages States to place the status offender or nonoffender in facilities which are the least restrictive alternative appropriate to the needs of the child and the community. The provision does not change established policy and is intended to provide adequate time to arrange for appropriate placement prior to or following an initial court appearance. Because the current statutory definition of "secure detention facility" includes dedicated facilities for nonoffenders, removal of the 24 hour hold exception's applicability to nonoffenders would also prohibit the secure holding of nonoffender juveniles in dedicated facilities. This issue needs to be addressed statutorily before OJJDP can propose a change to the 24 hour hold exception's applicability to nonoffenders.

6(c). Comment: One respondent believes that placement of status offenders with children accused of delinquency can stigmatize them as delinquent and that the proposed regulation dilutes OJJDP's strong regulatory support for the deinstitutionalization of status offender and nonoffender juveniles. This respondent supports the placement of status offenders in secure residential facilities for up to six hours and only when law enforcement is unable to contact a parent, custodian, or relative, unreasonable distance exists, the juvenile refuses to be taken home, or law enforcement is otherwise unable to make arrangements for the safe release of the juvenile.

Response: OJJDP has, since 1975, authorized the secure short-term detention of status offenders and nonoffenders in juvenile detention facilities. While blanket use of this authority without regard to the facts and circumstances of each juvenile taken into custody would be a poor policy, State and local governments should determine the specific law and policy that will govern the use of this authority.

7(a). Comment: Two respondents commented regarding revision of § 31.303(f)(3)(vi), authorizing the use of multi-disciplinary teams to make recommendations on the use of secure confinement for a valid court order violator, contending that such teams are an important tool for the valid court order process and that the language should not be deleted. Another commented that language should be added to clarify that multi-disciplinary teams are only a suggested way of meeting the requirement for an independent review team and that court or law enforcement personnel can still serve on such a team.

Response: Multi-disciplinary teams may still be utilized for the purpose of preparing and submitting a written report to a judge considering an order to place a status offender in a secure facility for violation of a valid court order.

The suggestion of multi-disciplinary teams in the existing regulation was meant to be an example of one mechanism that would fulfill the statutory requirement. However, this apparently created the impression that only multi-disciplinary teams could be utilized. In fact, the review could be conducted by an individual, agency, or team representing a noncourt or law enforcement agency.

7(b). Comment: One comment opposed the deletion of language requiring that secure confinement represent the least restrictive alternative "appropriate to the needs of the juvenile and the community." This respondent felt that removal of this language lessens the judge's overall responsibility to ensure the appropriateness of the disposition in light of other available placement.

Response: Section 103(16)(C)(iii) of the JJDP Act and § 31.303(f)(3)(vi) of the regulation require that a disposition of secure confinement must consider all alternative dispositions (including treatment) to placement in a secure detention or secure correctional facility. Removal of the referenced language does not diminish the responsibility of the court to consider alternatives to secure confinement. However, the referenced nonstatutory language is vague and does not provide meaningful guidance.

7(c). Comment: Another comment requested clarification of why the words "of a status offender" were added to the language "In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must, * * *" in Section 31.303(f)(3)(vi).

Response: The change was intended to underscore that the valid court order (VCO) provision applies solely to status offenders. A nonoffender may not be placed in secure confinement for any length of time for violation of a court order.

7(d). Comment: One respondent recommended the deletion of the VCO requirement for an independent review and determination of the reasons for the juvenile's behavior. This respondent

insisted that the first was difficult to monitor and the latter impossible to determine, asking "How can the court ascertain the reasons for the juvenile's behavior?". Another respondent commented that the VCO provision should be a recommendation rather than a requirement.

Response: The use of the independent review standard under the valid court order exception is statutorily established in Section 223(a)(12)(A) and the term "valid court order" is defined in Section 103(16) of the JJDP Act. Therefore, they cannot be deleted or modified by regulation.

8. Comment: Comments were received both in favor of and opposed to the proposal to eliminate the reporting requirement for each use of the ground/distance and weather exceptions to the jail and lockup removal exception. Those opposed to the change are concerned that it will encourage abuses of the rule and lead to more youth in adult jails and lockups, in violation of the statute.

Response: Enforcement of this provision will continue to be a State responsibility that is subject to on'site monitoring and verification by OJJDP during compliance monitoring visits to States utilizing this jail and lockup removal exception. The changes streamline the process and remove an unnecessary administrative burden.

9(a). Comment: Several respondents felt that the "relaxation" of State reporting and monitoring requirements related to the separation requirement is "dangerous" and could cause States to slide into noncompliance. States might view this as an opportunity to relax their oversight responsibility.

Response: It is not OJJDP's intent to encourage States to weaken their commitment to the core requirements of the JJDP Act. However, OJJDP believes that isolated violations of the separation requirement that do not represent a pattern or practice should not jeopardize a State's ability to access federal funds. OJJDP remains fully committed to the enforcement of Section 223(a)(13) of the JJDP Act requiring the separation of juvenile delinquents from adult offenders.

9(b). Comment: One respondent commented that the existence of state laws, regulations, or court rules is the only mechanism that provides any true assurance that future violations of the separation requirement will not occur in a given jurisdiction. Another felt that eliminating this requirement will mean that States will abandon their efforts to obtain conforming laws, regulations, and court rules in order to enforce the separation core requirement. A third respondent felt that all States should have a policy that mirrors the JJDP Act separation requirement.

Response: OJJDP encourages States to retain existing laws, regulations, and court rules mirroring the separation requirement. OJJDP also encourages States to utilize other effective enforcement tools including: training and technical assistance workshops; on-site training for law enforcement and adult jail and lockup personnel; and development of alternatives to incarceration.

9(c). Comment: One commentor suggested that until such time as OJJDP has unlimited resources, there is no way that the existence of a "pattern or practice" of noncompliance can be monitored.

Response: Section 223(a)(15) requires States to "provide for an adequate system of monitoring jails, detention facilities, and nonsecure facilities to ensure that the requirements of paragraph (12)(A), paragraph (13) and paragraph (14) are met, and for annual reporting of the results of such monitoring to the Administrator; * * *". It is OJJDP's position that State monitoring systems successfully identify the vast majority of violations and State monitoring reports can be used to identify whether reported violations establish a pattern or practice of separation violations in the State.

9(d). Comment: A single separation standard applicable to all States for measuring compliance based on *de minimis* violations that do not indicate a pattern or practice is a fair standard, according to one respondent. Moreover, it is less cumbersome than the present compliance requirement. Another respondent felt that it is clearly appropriate to find overall compliance within the separation requirement even if individual violations have occurred, as long as no pattern or practice exists.

Response: It is OJJDP's intent to treat all States in a fair and equitable manner. In addressing violations of Section 223(a)(13) of the JJDP Act in terms of a pattern or practice, OJJDP's across the board approach is equitable to the States, providing a substantive *de minimis* standard for the separation requirement.

10(a). Comment: A commentor noted that the addition of the word "programmatically" in Section 31.303(j) to clarify that "the purpose of the statute and regulation is to encourage States to address programmatically, * * *" the disproportionate minority confinement (DMC) core requirement (Section 223(a)(23)) will limit the focus of the States and move them away from alternative ways to address the over-representation of minorities in secure facilities.

Response: OJJDP notes that the addition of the word "programmatically" does not restrict a State's options for addressing DMC. States are encouraged to examine all aspects of DMC and address any features of its juvenile or criminal justice systems that may contribute to DMC as identified by the State.

10(b). Comment: Another respondent stated that the regulation needs to reflect a broader examination of minority over-representation. Since 1992, States have spent considerable time and dollars reviewing their juvenile justice systems in their entirety. The clarification to the DMC core requirement provides that States should address "programmatically" any feature of its justice system that accounts for the disproportionate detention or confinement of minority juveniles. However, the entire system should be analyzed, not just juvenile detention or confinement.

Response: The regulation provides for a broad examination of the DMC issue, including all decision points in the juvenile justice system, and encourages States to address "any feature of its justice system" that accounts for DMC and not just those that "may account for the disproportionate detention or confinement." The latter language is taken verbatim from the statutory language of Section 223(a)(23) of the JJDP Act.

Executive Order 12866

This final rule is not a "significant regulatory action" for purposes of Executive Order 12866 because it does not result in: (1) an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles of Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management of Budget. This regulation has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation.

Regulatory Flexibility Act

This final rule, if promulgated, will not have a "significant" economic impact on a substantial number of small "entities" as defined by the Regulatory Flexibility Act. This action is intended to relieve existing requirements in the Formula Grants program and to clarify other provisions so as to promote compliance with its provisions by States participating in the program.

Paperwork Reduction Act

No collections of information requirements are contained in or affected by this regulation pursuant to the Paperwork Reduction Act, codified at 44 U.S.C. 3504(H).

Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR Part 30, States must submit Formula Grant Program applications to the State "Single Point of Contact," if one exists. The State may take up to 60 days from the application date to comment on the application.

Lists of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 28 CFR Part 31 is amended as follows:

PART 31—[AMENDED]

1. The authority citation for Part 31 continues to read as follows:

Authority: 42 U.S.C. 5601 *et seq.*

2. Section 31.303 is amended to read as follows:

a. Paragraphs (d)(1)(i) and (d)(1)(v) are revised;

b. Paragraphs (e)(2) and (e)(3) are revised;

c. Paragraphs (f)(2), (f)(3)(vi), (f)(4)(vi), (f)(5)(i)(C), (f)(5)(iii), (f)(5)(iv), (f)(6)(i), and (f)(6)(ii) are revised;

d. Paragraph (f)(4)(iv) is amended by removing "and" at the end of the paragraph and paragraph (f)(4)(v) is amended by removing the period at the end of the paragraph and adding "; and" in its place; and

e. Paragraph (j) introductory text is amended by adding two sentences following the second sentence.

The additions and revisions read as follows:

§ 31.303 Substantive requirements.

* * * * *

(d) * * *

(1) * * *

(i) *Separation.* Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term "contact" includes any physical or sustained sight or sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. A juvenile offender in a secure custody status is one who is physically detained or confined in a locked room or other area set aside or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being placed in such a room or area and/or from being physically secured to a cuffing rail or other stationary object. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders. Separation must be accomplished architecturally or through policies and procedures in all secure areas of the facility which include, but are not limited to, such areas as admissions, sleeping, and shower and toilet areas. Brief and inadvertent or accidental contact between juvenile offenders in a secure custody status and incarcerated adults in secure areas of a facility that are not dedicated to use by juvenile offenders and which are nonresidential, which may include dining, recreational, educational, vocational, health care, sally ports or other entry areas, and passageways (hallways), would not require a facility or the State to document or report such contact as a violation. However, any contact in a dedicated juvenile area, including any residential area of a secure facility, between juveniles in a secure custody status and incarcerated adults would be a reportable violation.

* * * * *

(v) Assure that adjudicated delinquents are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of separating juveniles from adult criminals in jails or correctional facilities. A State is not prohibited from placing or transferring an alleged or adjudicated delinquent who reaches the State's age of full criminal responsibility to an adult facility when required or authorized by State law. However, the administrative transfer, without statutory direction or authorization, of a juvenile offender to an adult correctional authority, or a transfer within a mixed juvenile and adult facility for placement with adult criminals, either before or after a juvenile reaches the age of full criminal responsibility, is prohibited. A State is also precluded from transferring adult offenders to a juvenile correctional authority for placement in a juvenile facility. This neither prohibits nor restricts the waiver or transfer of a juvenile to criminal court for prosecution, in accordance with State law, for a criminal felony violation, nor the detention or confinement of a waived or transferred criminal felony violator in an adult facility.

* * * * *

(e) * * *

(2) Describe the barriers that a State faces in removing all juveniles from adult jails and lockups. This requirement excepts only those alleged or adjudicated juvenile delinquents placed in a jail or a lockup for up to six hours from the time they enter a secure custody status or immediately before or after a court appearance, those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

(3) *Collocated facilities.* (i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups, except as otherwise provided under the Act and implementing OJJDP regulations. Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with criteria established in paragraphs (e)(3)(i)(C)(*1*) through (*4*) of this section.

(A) A collocated facility is a juvenile facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered "related" when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer), or the specialized services that are allowable under paragraph (e)(3)(i)(C)(*3*) of this section.

(B) The State must determine whether a collocated facility qualifies as a separate juvenile detention facility under the four criteria set forth in paragraphs (e)(3)(i)(C) (*1*) through (*4*) of this section for the purpose of monitoring compliance with section 223(a) (12)(A), (13) and (14) of the JJDP Act.

(C) Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

(1) Separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and incarcerated adults in the facility. Separation can be achieved architecturally or through time-phasing of common use nonresidential areas; and

(2) Separate juvenile and adult programs, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility which provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. Time-phasing of common use nonresidential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and

(3) Separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (medical care, food service, laundry, maintenance and engineering, etc.) who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations (subject to State standards or licensing requirements). The day to day management, security and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population within the collocated facilities; and

(4) In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no State standards or licensing requirements, OJJDP encourages States to establish administrative requirements that authorize the State to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards.

(ii) The State must determine that the four criteria are fully met. It is incumbent upon the State to make the determination through an on-site facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria set forth in paragraphs (e)(3)(i)(C) (1) through (4) of this section.

(iii) Collocated juvenile detention facilities approved by the State and concurred with by OJJDP before December 10, 1996 may be reviewed by the State against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence or against the regulatory criteria set forth herein, as the State determines. Facilities approved on or after the effective date of this regulation shall be reviewed against the regulatory criteria set forth herein. All collocated facilities are subject to the separate staff requirement established by the 1992 Amendments to the JJDP Act, and set forth in paragraph (e)(3)(i)(C)(3) of this section.

(iv) An annual on-site review of the facility must be conducted by the compliance monitoring staff person(s) representing or employed by the State agency administering the JJDP Act Formula Grants Program. The purpose of the annual review is to determine if compliance with the criteria set forth in paragraphs (e)(3)(i)(C) (1) through (4) of this section is being maintained.

* * * * *

(f) * * *

* * * * *

(2) For the purpose of monitoring for compliance with section 223(a)(12)(A) of the Act, a secure detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders, or used for the lawful custody of accused or convicted adult criminal offenders. Accused status offenders or nonoffenders in lawful custody can be held in a secure juvenile detention facility for up to twenty-four hours, exclusive of weekends and holidays, prior to an initial court appearance and for an additional twenty-four hours, exclusive of weekends and holidays, following an initial court appearance.

(3) * * *

(vi) In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3) (i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must obtain and review a written report that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency).

* * * * *

(4) * * *

(vi) Pursuant to section 223(a)(14) of the JJDP Act, the nonMSA (low population density) exception to the jail and lockup removal requirement as described in paragraphs (f)(4) (i) through (v) of this section shall remain in effect through 1997, and shall allow for secure custody beyond the twenty-four hour period described in paragraph (f)(4)(i) of this section when the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within twenty-four hours, so that a brief (not to exceed an additional forty-eight hours) delay is excusable; or the facility is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until twenty-four hours after the time that such conditions allow for reasonably safe travel. States may use these additional statutory allowances only where the precedent requirements set forth in paragraphs (f)(4) (i) through (v) of this section have been complied with. This may necessitate statutory or judicial (court rule or opinion) relief within the State from the twenty-four hour initial court appearance standard required by paragraph (f)(4)(i) of this section.

(5) * * *

(i) * * *

(C) The total number of accused status offenders and nonoffenders, including out-of-State runaways and Federal wards, held in any secure detention or correctional facility for longer than twenty-four hours (not including weekends or holidays), excluding those held pursuant to the valid court order provision as set forth in paragraph (f)(3) of this section or pursuant to section 922(x) of Title 18, United States Code (which prohibits the possession of a handgun by a juvenile), or a similar State law. A juvenile who violates this statute, or a similar state law, is

excepted from the deinstitutionalization of status offenders requirement;

* * * * *

(iii) To demonstrate the extent of compliance with section 223(a)(13) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months and the number inspected on-site;

(C) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide sight and sound separation;

(D) The total number of juvenile offenders and nonoffenders not separated from adult criminal offenders in facilities used for the secure detention and confinement of both juveniles and adults;

(E) The total number of State approved juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup, including a list of such facilities;

(F) The total number of juveniles detained in State approved collocated facilities that were not separated from the management, security or direct care staff of the adult jail or lockup;

(G) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have not been approved by the State, including a list of such facilities; and

(H) The total number of juveniles detained in collocated facilities not approved by the State that were not sight and sound separated from adult criminal offenders.

(iv) To demonstrate the extent of compliance with section 223(a)(14) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of adult jails in the State AND the number inspected on-site;

(C) The total number of adult lockups in the State AND the number inspected on-site;

(D) The total number of adult jails holding juveniles during the past twelve months;

(E) The total number of adult lockups holding juveniles during the past twelve months;

(F) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and unapproved collocated facilities in excess of six hours, including those held pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section;

(G) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups and unapproved collocated facilities for less than six hours for purposes other than identification, investigations, processing, release to parent(s), transfer to court, or transfer to a juvenile facility following initial custody;

(H) The total number of adjudicated juvenile criminal-type offenders held securely in adult jails or lockups and unapproved collocated facilities in excess of six hours prior to or following a court appearance or for any length of time not related to a court appearance;

(I) The total number of accused and adjudicated status offenders (including valid court order violators) and nonoffenders held securely in adult jails, lockups and unapproved collocated facilities for any length of time;

(J) The total number of adult jails, lockups, and unapproved collocated facilities in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which each is located;

(K) The total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than 24 hours in adult jails, lockups and unapproved collocated facilities pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section;

(L) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 48 hours, in adult jails, lockups and unapproved collocated facilities pursuant to the "removal exception" as noted in paragraph (f)(4) of this section, due to conditions of distance or lack of ground transportation; and

(M) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel, in adult jails, lockups and unapproved collocated facilities, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section.

(6) * * *

(i) Full compliance with section 223(a)(12)(A) is achieved when a State has removed 100 percent of status offenders and nonoffenders from secure detention and correctional facilities or can demonstrate full compliance with de minimis exceptions pursuant to the policy criteria contained in the **Federal Register** of January 9, 1981 (copies are available from the Office of General Counsel, Office of Justice Programs, 633 Indiana Ave., N.W., Washington, D.C. 20531).

(ii) Compliance with section 223(a)(13) has been achieved when a State can demonstrate that:

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of section 223(a)(13); or

(B)(*1*) The instances of noncompliance reported in the last submitted monthly report do not indicate a pattern or practice but rather constitute isolated instances; and

(*2*)(*i*) Where all instances of noncompliance reported were in violation of or departure from State law, rule, or policy that clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of Section 223(a)(13), existing enforcement mechanisms are such that the instances of noncompliance are unlikely to recur in the future; or

(*ii*) An acceptable plan has been developed to eliminate the noncompliant incidents.

* * * * *

(j) * * * The purpose of the statute and the regulation in this part is to encourage States to address, programmatically, any features of its justice system, and related laws and policies, that may account for the disproportionate detention or confinement of minority juveniles in secure detention facilities, secure correctional facilities, jails, and lockups. The disproportionate minority confinement core requirement neither establishes nor requires numerical standards or quotas in order for a State to achieve or maintain compliance.

* * *

* * * * *

Dated: December 5, 1996.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 96-31316 Filed 12-9-96; 8:45 am]

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December 1996

Office of Juvenile Justice and Delinquency Prevention
Formula Grants Regulation Revision
Summary

Since early 1996, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has taken a comprehensive look at the regulation, 28 CFR Part 31, that guides the States' implementation of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended. The Formula Grants program regulation has been modified periodically, usually following Congressional reauthorizations. The focus for the 1996 regulation review was to consider those changes which would be responsive to the expressed needs of States and localities while ensuring the safety of children in the justice system.

In April, OJJDP held two listening conferences, one in Idaho and another in New Jersey. At these meetings, the Office sought input from a cross section of those affected by the JJDP Act: judges, public defenders, prosecutors, sheriffs, other juvenile justice practitioners, and private citizens. At the same time, the Office sought written suggestions from State Agencies and State Advisory Groups charged with implementation of the Act. Recommendations were also received through meetings with public interest groups and youth advocacy organizations.

Based on the information received, OJJDP proposed a revised regulation for public comment in the Federal Register on July 3, 1996. Following the comment period, views from the field were considered and a Final Revised Regulation was published in the *Federal Register* on December 10, 1996. The final regulation, synopsized below, provides enhanced flexibility to State and local governments and reduces red tape related to program administration.

Deinstitutionalization of Status Offenders

Section 223(a)(12)(A) of the JJDP Act provides that status offenders and nonoffenders not be detained or confined in secure detention or correctional facilities. OJJDP policy has, since 1975, provided an exception to allow a status or nonoffender to be detained for up to 24 hours, exclusive of weekends and legal holidays, in a juvenile detention facility. The revised regulation expressly provides that it is permissible to hold an accused status offender or nonoffender in a secure juvenile detention facility for up to 24 hours, exclusive of weekends and legal holidays, prior to an initial court appearance, and for an additional 24 hours, exclusive of weekends and legal holidays, immediately following an initial court appearance.

The JJDP Act provides that status offenders found to have violated a Valid Court Order may be securely detained in a juvenile detention or correctional facility under an exception to Section 223(a)(12)(A). The definition of a Valid Court Order, under Section 103(16) of the JJDP Act, provides that before a disposition of placement in a secure detention facility or a secure correctional facility is entered, an appropriate public agency (other than a court or law enforcement agency) must review the case and submit a written report to the court. The implementing regulation provided an example of a multi-disciplinary review team as an appropriate public agency.

The revised regulation eliminates the regulatory language suggesting that jurisdictions use multi–disciplinary review teams to prepare and submit a written report to a judge who is considering an order that directs or authorizes the placement of a status offender in a secure facility for the violation of a Valid Court Order. Although a multi–disciplinary team is still an appropriate option, and is encouraged when practical, this suggestion led to some confusion and, therefore, the example is deleted.

Separation

Section 223(a)(13) provides that accused and adjudicated delinquent, status offender, and nonoffender juveniles shall not have contact with incarcerated adults. In order to meet this separation requirement, the prior regulation provided that while juveniles are in secure custody in an adult facility, sight and sound contact with adults is prohibited. When OJJDP began the process of reexamining the regulation, it became clear that some confusion existed with the definition of "sight and sound" contact. Therefore, sight contact is defined as clear visual contact between incarcerated adults who are in close proximity to juveniles alleged to be or found to be delinquent, status offenders, and nonoffenders in a secure institution. Sound contact is defined in the regulation as direct oral communication between incarcerated adults and juveniles in secure institutions. While separation must be provided through architectural or procedural means, the revised regulation provides that sight or sound contact that is both brief and inadvertent or accidental must be reported as a violation only if it occurs in secure areas of the facility that are dedicated to use by juvenile offenders, including any residential area. A residential area is an area used to confine individuals overnight, and may include sleeping, shower and toilet, and day room areas.

State laws are increasingly providing for the mandatory or permissible transfer of adjudicated delinquents to adult facilities once the delinquent has attained the age of full criminal responsibility established by State law. The revised regulation provides that the separation requirement of the Act no longer applies if the transfer or placement of an adjudicated delinquent who has reached the age of full criminal responsibility is required or authorized by State law.

The revised regulation modifies the prior compliance standard penalizing States that have not enacted laws, rules and regulations, or policies prohibiting the incarceration of all juvenile offenders under circumstances that would be in violation of Section 223(a)(13). These States were not eligible for a finding of compliance if any instances of noncompliance were sanctioned by State law, rule, regulation, or policy. The revised regulation establishes a single standard applicable to all States regardless of whether a law, rule, regulation, or policy exists, if compliance can be established under circumstances in which: 1) the instances of noncompliance do not indicate a pattern or practice; and either 2) adequate enforcement mechanisms exist; or 3) an acceptance plan has been developed to eliminate the noncompliant incidents.

Jail and Lockup Removal

Section 223(a)(14) provides that juveniles cannot be detained in any adult jail or lockup. Although not expressly provided in the prior regulation, OJJDP policy provided an exception to the jail and lockup removal requirement: an alleged delinquent could be detained, while separate from adults, for up to six hours for the purposes of identification, processing, and to arrange for release to parents or transfer to a juvenile facility. The regulation codifies this exception and extends it to include a six hour time period both immediately before and after a court appearance, provided that the juvenile has no sight or sound contact with incarcerated adults during the time the juvenile is in a secure custody status in the adult jail or lockup.

Sections 223(a)(14) (B) and (C) provide circumstances that extend the statutory 24-hour non Metropolitan Statistical Area (MSA) exception to the jail removal requirement based on distance/ground transportation and weather. The revised regulation removes previous regulatory language requiring States to document and describe, in their annual monitoring report, each individual use of these exceptions.

Collocated Juvenile and Adult Facilities

The regulation makes three revisions to the criteria to establish the existence of a separate juvenile detention facility that is collocated with an adult jail or lockup:

First, the regulation is modified to permit program space in collocated adult and juvenile facilities to be shared through time-phased use. While OJJDP's objective is to encourage the development and use of separately located juvenile facilities whenever possible, it is recognized that expecting every jurisdiction to create wholly separate juvenile facilities, including the duplication of costly infrastructure elements like gymnasiums, cafeterias, and classrooms, may result in those jurisdictions being unable to provide any secure juvenile detention capacity. The revised regulation makes it possible for more jurisdictions to provide collocated juvenile and adult facilities by removing the requirement that collocated facilities not share program space between juvenile and adult populations. Utilization of time-phasing will allow both juveniles and adults access to educational, vocational, and recreational areas of collocated facilities. It is important to note that time-phased use is explicitly limited to nonresidential areas of collocated facilities and requires the use of written procedures to ensure that no contact occurs between detained juveniles and incarcerated adults.

Second, the requirement that a needs-based analysis precede a jurisdiction's request for State approval of a juvenile facility that is collocated with an adult jail or lockup has been removed. Technical assistance will remain available to States and localities that wish to conduct such an analysis.

Finally, OJJDP's concurrence with a State's decision to approve a collocated facility will no longer be required. Annual on-site reviews by the State, coupled with OJJDP's periodic review of the adequacy of State monitoring systems, will ensure that each collocated juvenile detention facility meets the criteria to establish a collocated juvenile detention facility.

Disproportionate Minority Confinement (DMC)

Section 223(a)(23) of the JJDP Act provides that States are to determine if minority juveniles are disproportionately confined in secure detention and correctional facilities and, if so, to address any features of its system that may account for the disproportionate confinement of minority juveniles. The regulation clearly states the position of OJJDP that the DMC core requirement neither requires nor establishes numerical standards or quotas in order for a State to achieve or maintain compliance.

Questions regarding the Formula Grants Regulation may be directed to OJJDP's State Relations and Assistance Division, (202) 307-5924.

PART 4:

ALASKA'S SYSTEM FOR MONITORING COMPLIANCE WITH THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT (REVISED)

ALASKA'S SYSTEM FOR MONITORING COMPLIANCE WITH THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

N.E. Schafer, Ph.D.
Justice Center
University of Alaska Anchorage

Revised August 1994

[Part 4]

ALASKA'S SYSTEM FOR MONITORING COMPLIANCE WITH THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

STATE OF ALASKA

Department of Health and Social Services

Deborah R. Wing, Director
Division of Family and Youth Services

N.E. Schafer, Ph.D.

Justice Center
University of Alaska Anchorage

Revised August 1994

JC 9420

[Part 4]

CONTENTS

ALASKA'S SYSTEM FOR MONITORING COMPLIANCE WITH THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

Pursuant to Section 223(a)(15) of the Juvenile Justice and Delinquency Prevention Act of 1974 and as mandated by 28 CFR Part 31.303(f), the state is required to "[d]escribe its plan, procedure and timetable for annually monitoring jails, lockups, detention facilities, correctional facilities and non-secure facilities. The plan must at a minimum describe in detail each [monitoring task] including the identification of the specific agency(s) responsible for each task" [28 CFR Part 31.303(f)(1)(i)]. The state must also "[p]rovide a description of the barriers which [it] faces in implementing and maintaining a monitoring system to report the level of compliance with section 223(a)(12), (13) and (14) and how it plans to overcome such barriers" [28 CFR Part 31.303(f)(1)(ii)]. Finally, the state is also required to "[d]escribe procedures established for receiving, investigating, and reporting complaints of violation of section 223(a)(12), (13) and (14). This should include both legislative and administrative procedures and sanctions" [28 CFR Part 31.303(f)(1)(iii)].

In Alaska the agency responsible for juvenile matters, and therefore for monitoring compliance with the Act, is the Division of Family and Youth Services (DFYS), a division of the Alaska Department of Health and Social Services. In 1988 DFYS, using JJDP Formula Grant Funds, contracted with the Justice Center of the University of Alaska Anchorage to develop a monitoring plan, complete compliance monitoring for the 1987 and 1988 calendar years, and produce a policies and procedures manual to aid in future compliance monitoring activities. DFYS has annually renewed the contract with the Justice Center to complete monitoring activities and to cooperate in developing compliance monitoring reports. Experience with the process as well as changes in state statutes, public policies, and departmental reorganizations have led to improved procedures for monitoring compliance and a need for a revised compliance monitoring plan and a revised manual.

The revised plan for monitoring compliance with the Act has been developed by the Justice Center in cooperation with DFYS. The plan is outlined in Section I below; Section II discusses barriers to compliance monitoring, particularly those unique to Alaska; and Section III addresses procedures for receiving, investigating, and reporting complaints of violations. A timetable for completion of monitoring activities is attached as an appendix to the revised plan.

I. THE MONITORING PLAN

A. Annual Review and Update of the Monitoring Universe

The universe must be reviewed annually for changes. New facilities open, old facilities close, and both statutory and public policy shifts have prohibited some facilities from holding juveniles. When the 1988 plan was written, 103 facilities were identified as places where juveniles could be detained: 17 state-contracted rural jails; 78 municipal and village lockups; three Department of Corrections pre-trial facilities; and five juvenile detention/correction facilities operated by DFYS. The 1993 universe consisted of 120 facilities: 16 rural jails; 96 lockups; one Department of Corrections facility; and seven juvenile detention/correction facilities.

Systematic review of the universe is conducted annually as follows:

1) A list of state-contracted rural jails for the monitored year is compiled from prisoner billing sheets received from the Department of Public Safety Contract Jail Administrator.

2) The Director of Rural Law Enforcement of the Alaska State Troopers supplies a list of oversight troopers along with the villages and Village Public Safety Officers (VPSOs) for which each has responsibility. Each oversight trooper is telephoned to determine which villages have secure holding cells.

3) VPSO coordinators from the regional associations are contacted to determine if villages with Village Police Officers (VPOs) rather than VPSOs have secure holding facilities.

4) The North Slope Borough Department of Public Safety is contacted regarding changes in village lockups in the borough.

5) The Director of Institutions of the Alaska Department of Corrections is asked to provide information on which DOC pre-trial facilities are permitted to detain juveniles.

6) Area court administrators are asked to review court holding facilities in each judicial district for changes in the previous year's census of court facilities.

7) DFYS provides a list of all juvenile holding facilities, detention centers, and juvenile correctional facilities in which juveniles are detained.

8) DFYS regional administrators are telephoned for updates of the previous year's list of public or private halfway houses, group homes, residential treatment programs, etc. Each identified facility is telephoned to see if there are changes in status, type of population, etc.

B. Classification of the Monitoring Universe

Facilities in the previous year's universe are checked to determine if there are changes in classification. When village lockups are upgraded to state-contracted jail status, such changes are noted. Facilities added to the universe are classified according to definitions supplied by the supervising agency, or, if these are not comparable to state and federal definitions, are classified by the Justice Center in accordance with such definitions.

Each facility is inspected at least once every three years to determine if its classification remains adequate.

C. Inspection of Facilities

One-third of all facilities in the universe are inspected annually. Under the terms of 28 CFR Part 31.303(f)(1)(C), on-site inspections include:

a) examination of the entire physical plant to determine whether the facility is secure as defined in the regulations and to determine its proper classification (i.e., as an adult jail, adult lockup, etc., as these terms are defined in the JJDP Act);

b) inspection of all areas of the facility to determine whether there is adequate separation in each area of juvenile and adult offenders;

c) review of the record keeping system at the facility to determine whether facility records are sufficient for valid determination of compliance with section 223(a)(12), (13) and (14) of the JJDP Act;

d) interviews with staff and discussions of agency policies and procedures *vis a vis* juvenile detention and how these policies and procedures are best implemented.

Determining facilities for on-site inspection essentially follows a routine. A universe list is maintained which provides year-by-year information about data availability and facility inspections. Facilities inspected in 1989 were inspected in 1992; facilities inspected in 1990 were inspected in 1993, etc. As facilities are added to the universe they are scheduled for on-site inspection as soon as possible within the three-year "routine." The 1988 monitoring plan involved selection of facilities for on-site inspections by geographic region for ease of travel. Facilities added to the universe are inspected in accordance with such geographic constraints in order to more efficiently carry out on-site inspections.

D. Data Collection, Verification, and Analysis

Data for monitoring compliance with the Juvenile Justice and Delinquency Prevention Act are sought yearly from all facilities in the monitoring universe. The information sought includes: name or initials of person detained, date of birth, charge, date and time detained, date and time released, and sex and race. This information is available for some types of facilities through centralized record-keeping, and where this is the case photocopies or computer printouts of the required information are requested from the appropriate agency.

1. Collection of data

a. State-Contracted Rural Jails. Each spring the Alaska Department of Public Safety is asked to supply the Justice Center with copies of all prisoner billing sheets for the previous calendar year. Because the Department of Public Safety reimburses contract jails for each prisoner held, the billing sheets are complete and accurate and contain all the information necessary for monitoring compliance.

b. Department of Corrections. Each spring the Director of Institutions of the Alaska Department of Corrections is asked to provide a printout of juveniles held by the DOC during the monitored year.

c. North Slope Borough. Each spring a letter is sent to the Director of the North Slope Borough Department of Public Safety requesting him to supply photocopies of booking logs for each village lockup in the North Slope Borough.

d. Juvenile facilities. Letters are sent to each DFYS regional administrator requesting computer printouts of detention logs for all corrections/detention facilities, juvenile holding facilities, and alternative facilities. Juveniles detained are extracted for review, as are probation violations, in order to monitor the deinstitutionalization of status offenders.

e. Rural facilities. Letters are sent to oversight troopers and VPSOs responsible for trooper posts and/or village lockups requesting photocopies of booking logs for the

previous calendar year from each lockup. Enclosed with the letters are forms certifying the authenticity of the records, and forms which certify that no prisoners were held in the facility during the monitored year.

f. Two weeks after the letters are sent, follow-up telephone calls are made to the agencies/facilities which have not responded. Further explanation may be required and alternative sources of data explored.

2. Data Verification

Verification of data is carried out on three levels: a) the records of each facility in the universe are examined on-site for accuracy and completeness at least once every three years; b) collected data are compared with Juvenile Confinement forms provided by DFYS; and c) each instance of what may be a violation is examined for offender status, charge, valid court order, etc.

a. Verification of data is carried out once every three years in conjunction with on-site inspection of one-third of the facilities in the universe each year. A sample from the collected data is examined for accuracy and completeness using case files, notebooks, guard hire forms, etc. The type of verification depends on the type of facility.

- Juvenile Corrections/Detention Facilities. A ten percent sample of all status offenders and detained juveniles are selected from the computer printout supplied by the agency in order to monitor the deinstitutionalization of status offenders. Their files are examined to determine accuracy of birth date, charge, and dates and times of detention.

- Contract Jails. Data from contract jail billing sheets are taken to each jail due for on-site inspection. Case files for detainees whose birth dates indicate they were seventeen or under during the calendar year monitored are examined for accuracy. Files of an additional ten percent of all persons detained are also examined. A list of persons taken into protective custody is examined for the presence of juveniles.

- Department of Corrections Facilities. A computer printout from the Department of Corrections is compared to booking logs at the only DOC facility which may hold juveniles.

- Lockups. Data received are verified on-site using VPSO logs, notebooks, case files, etc. In some villages data may be collected on-site and then verified. If no prisoners were held in the facility during the year monitored, verification of the "no prisoners held" certificate is sought from city officials (mayors, city managers) and/or oversight troopers.

b. In addition to verifying records for accuracy every three years, all data collected are compared with DFYS Juvenile Confinement forms and with a list of juveniles currently on probation for status offenses provided by DFYS. The Division examines statewide records to determine which juveniles in the monitored year were on any form of probation solely as a result of status offense adjudication.

c. Each purported violation is examined in-depth. If the violation relates to a status offender the arresting agency is contacted to determine whether the probation violation listed was the only reason for detention or whether other charges were filed concurrently. Each juvenile confinement violation is reconstructed with the arresting officer using case files and notebooks to determine whether the child was securely confined for the full period listed in the admission/release records.

3. Data Analysis

Given the data collection challenges inherent in Alaska, adequate data will not be received from all rural lockups in the monitoring universe. Data projection is required to ensure the accuracy and completeness of the annual report. Data projection techniques are applied in three situations: when complete data from a specific site are submitted for only a portion of the year, when complete data are received from only a portion of the facilities in the classification category, and when time data are deemed inadequate or inaccurate for a specific entry while the rest of the facility's data are judged to be accurate.

a. When only a portion of the year is reported by a specific facility, the data projection is accomplished by computing the proportion of the year reported (x days / 365 days), and weighting each instance of juvenile detention recorded at the facility by a factor equal to the reciprocal of that proportion. This weighting procedure necessarily assumes that instances of noncompliance will occur at the same rate during the unreported portion of the year as during the reported portion.

b. Data projection for rural lockups which fail to provide annual data is accomplished by computing the proportion of the rural lockups which did provide annual data (n reporting / n in universe) and weighting each instance of detention recorded at rural lockups by a factor equal to the reciprocal of that proportion. Again, this weighting procedure necessarily assumes that instances of noncompliance will occur at the same rate in non-reporting lockups as it does in reporting lockups. Given the nature of the state's rural lockups, the number of violations occurring in the non-reporting lockups is certain to be less than it is in the reporting lockups, with the result that this method of projection should never provide an underestimate regarding violations in rural lockups.

c. Data with missing times could also be projected, although to date this has not been necessary. When all attempts to infer the length of stay using anecdotal facts and deductive reasoning have failed, proportions of the three types of violations are established for that type of facility and applied as weighting to those cases for which the length of stay cannot be determined. This same logic would also apply when offense information is missing.

II. BARRIERS TO IMPLEMENTATION OF COMPLIANCE MONITORING

The major barriers to implementation of a monitoring system in Alaska are intimately bound up with the nature of the state's people and geography. Over 200 Alaska Native villages and about 25 larger and more heterogeneous cities and towns are scattered across nearly 600,000 square miles of rugged and otherwise desolate territory. Many of the people do not read, write or speak English fluently. Western cultures, lifestyles and legal systems are unfamiliar to a large portion of the population. Travel to most rural communities must be by air or water, as highways are limited to the population centers of central and southcentral Alaska, and air service, especially to the smaller and more isolated communities, can be infrequent, expensive, undependable and, especially in winter, extremely dangerous.

A task as seemingly simple as identifying and classifying facilities is confounded by 1) the absence of any system for licensing or oversight of municipal holding facilities; 2) the fact that in most rural villages a single police officer or Village Public Safety Officer (VPSO) must serve as jailer, fireman, dog catcher, search and rescue team, and in a host of other roles in addition to handling normal policing duties -- and may be out of town altogether, for training or some other function, for weeks at a time; and 3) the lack of any formally recognized or sanctioned facilities in many locations for holding either adult or juvenile arrestees.

Moreover, while identification of the monitoring universe is problematic, the barriers to collection of data are enormous. Communication with village officials is itself difficult. Travel to villages can be very hazardous in inclement winter weather, and flight delays of a week or more are commonplace. Photocopying equipment which might facilitate data collection is not available in some communities, and in others access to such equipment may be limited.

Another major barrier to data collection for monitoring purposes in Alaska is the high rate of turnover among rural law enforcement officers. A village may be without a Village Public Safety Officer (VPSO) or Village Police Officer (VPO) for more than a year and certainly for substantial portions of a year. A VPO or VPSO who is replaced may dispose of any records upon leaving, and a replacement officer may not have been trained to maintain records.

In most cases the village lockup is not used for detention when there is no officer in the village. The monitoring plan accommodates this eventuality by providing a Certificate of No Prisoners Held to be signed by oversight troopers and/or city officials.

In some villages mayors, tribal councils, etc. may have the authority to use the facility for detention, even when no law enforcement officer resides in the village, and in such circumstances the maintenance of records is not likely.

Another consideration is the status of Indian Reorganization Act (IRA) villages. Some IRA village leaders view their lockup records as exempt from state oversight. Neither the Bureau of Indian Affairs nor the Office of Juvenile Justice and Delinquency Prevention has been able to verify such exemptions and the confusion is problematic.

A most important barrier to implementation of a compliance monitoring system in Alaska is a pervasive pattern of poor or nonexistent record keeping among public agencies serving rural Alaska. Many facilities classified as adult lockups simply do not maintain any record of detentions. Where records are kept, they may be incomplete or hopelessly disorganized (e.g., the only records maintained at some facilities are the personal notebooks detailing all routine activities of the village public safety officer and/or the arrest reports which are filled out for all persons charged with offenses, whether or not they are detained, and which may refer to detention only obliquely in the narrative portion of the report).

The failure of rural officials to maintain detention records presents problems for the monitoring agency. The absence of data in some villages clearly does not mean that their detention practices are comparable to villages which can and do provide data.

The monitoring plan incorporates procedures for educating and training local officials in record-keeping methods and the importance of record maintenance and for providing appropriate forms and information for implementing a record-keeping system. However, the high turnover rate mentioned above also undermines these efforts.

III. VIOLATION PROCEDURES

Each violation identified in the analysis of the data is examined by the Justice Center to determine if a violation actually did occur or if it is merely an error in data submission or data entry. If there is a violation it is analyzed by DFYS in order to determine what kind of training or information juvenile probation officers or law enforcement agencies might need in order to avoid similar violations in the future.

Each facility found to be in violation of the jail removal, separation and/or deinstitutionalization requirements of the JJDP Act will be notified by DFYS in writing of the number of violations and the nature of each violation which occurred during the monitoring period. An explanation of each type of violation is provided, along with suggested methods for avoiding future violations. Facilities will be informed of alternatives to detention which are available to them, and they will be notified that DFYS is prepared to work with them to prevent violations and to help them avoid situations where they may be subjecting themselves to possible liability by detaining juveniles inappropriately.

Appendix A

Monitoring Plan—Timeline

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
Identification of monitoring universe											
Update monitoring universe											
Request trooper listing from AST		•									
Survey troopers/VPSO coordinators			•	•							
Request facilities list from DOC, ACS, DFYS		•									
Revision completed				•							
Classify monitoring universe											
Classify facilities				•	•	•					
Inspect facilities; verify records											
Contact facilities by letter				•							
Telephone for scheduling				•	•						
On-site inspections					•	•	•				
Data collection											
Mail letters requesting data				•							
On-site data collection					•	•	•				
Begin data clarification (telephone contacts regarding unclear entries, etc.)						•	•				
Follow-up telephone requests for data to non-responding facilities/agencies					•	•	•				
Data entry							•	•			
Data analysis								•	•		
Compare MCA list								•	•		
Draft report									•		
Verify violations									•	•	
Final report											•

PART 5:

FIELD AUDIT OF COMPLIANCE MONITORING SYSTEM—ALASKA

September 1987

FIELD AUDIT OF COMPLIANCE MONITORING SYSTEM

ALASKA

SEPTEMBER, 1987

OJJDP Auditor: Paul Steiner

State Relations and Assistance Division

Alaska Field Audit

1. Purpose

Pursuant to Sections 223(a)(15) and 204(b)(7) of the Juvenile Justice and Delinquency Prevention (JJDP) Act, a field audit of Alaska's compliance monitoring system was conducted from September 28 - October 3, 1987.

The purpose of the field audit was to determine the extent to which Alaska's system for monitoring compliance with the deinstitutionalization, separation, and jail removal provisions of the JJDP Act, satisfies the requirements for monitoring contained in the Final Regulation (28 CFR Part 31).

The field audit was preceded by a desk audit which involved a review of Alaska's written description of its compliance monitoring system. In keeping with generally accepted auditing principles, the field audit was carried out as an on-site verification of the written description.

2. Field Audit Schedule

Monday, September 28

Major Activities: Interviews and discussions regarding the state's compliance monitoring system; document reviews.

Persons Contacted:
Yvonne Chase, Director
Division of Family and Youth Services
Department of Health and Social Services

Russell Webb, JJDP Coordinator
Division of Family and Youth Services

Tuesday, September 29

Major Activity: Data Verification at the Ketchikan Regional Jail

Persons Contacted:
Alan Bailey, Assistant Superintendent
Ketchikan Regional Jail
Alaska Department of Corrections

Marlyn Olson, Regional Administrator
Division of Family and Youth Services

Richard Roberts, Probation Officer
Division of Family and Youth Services

Russell Webb

Wednesday, September 30

Major Activity: Data verification at the Sitka Jail

Persons Contacted: John Newell, Chief of Police
Sitka Police Department

Wolf Courdan, Jailer
Sitka Police Department

Marlyn Olson

Russell Webb

Thursday, October 1

Major Activity: Data verification at the Johnson Youth Center, Juneau

Persons Contacted: Gregory Roth, Superintendent
Johnson Youth Center

Kim Scott, Unit Leader
Johnson Youth Center

Marlyn Olson

Russell Webb

Saturday, October 3

Major Activity: Exit conference and review of audit findings

Persons Contacted: Yvonne Chase

Russell Webb

In addition, I briefed the Juvenile Justice and Family Advisory Committee (SAG) on the audit findings vis-a-vis Alaska's compliance status, on Friday and Saturday, October 2-3. The members present are as follows:

Roberta Carnahan, Chairperson (Fairbanks)
Thomas Begich (Anchorage)
Linda Big Joe (Fairbanks)
Lucy Sparck (Bethel)
Jay McCarthy (Anchorage)
Susan Wibker (Juneau)

Also, I met with Richard Illias, Chief of the DFYS Youth Services Section, and Russ Webb to discuss the preliminary audit findings and strategies to address issues raised by the audit.

3. Monitoring System

A. General Description

The Division of Family and Youth Services, (DFYS) Department of Health and Social Services, (DHSS) is the designated agency for administering the JJDP Formula Grant. The JJDP Coordinator in DFYS coordinates the annual collection of monitoring data by the DFYS Probation Officers and detention center staff from state and local facilities. The data is analyzed by the JJ Coordinator and submitted annually by the Director of DFYS to OJJDP in the standard monitoring report format.

Eighteen adult jails and four regional juvenile facilities are monitored. There are no lock-ups in Alaska. The Probation Officers annually inspect jails for sight and sound separation.

B. Authority to Monitor

Alaska Statutes (AS) 47.10.150, 47.10.160, and 47.10.180 grants DHSS broad authority to require and collect statistics on juvenile offenses and offenders, inspect all facilities that hold juveniles, and adopt standards and regulations for facility design and operation.

DHSS, however, does not exercise this regulatory authority vis-a-vis the JJDP Act. There are no written regulations, policies, or procedures for the regular monitoring and inspection of facilities.

In practice, DHSS has obtained the cooperation of all the facilities that are monitored by means other than regulation. It appears that state and local facilities readily share admission and population data with DHSS.

C. Compatibility of Definitions

1. Status Offender: AS 47.10.290 defines a "child in need of aid" (CHINA) as "a minor found to be within the jurisdiction of the court under AS 47.10.010(a)(2)." This latter cite refers to children who: are habitually absent from home; refuse to accept available care; are abandoned or parent's rights have been terminated; are in need of medical (including mental health) treatment; are neglected or physically and/or sexually abused or in danger of being abused; or are delinquent as a result of parental pressure.

   For DFYS purposes, the working definition of status offenders is illustrated, in a May 16, 1983 memorandum from David E. Arnold to Jerry Jackowski, to wit:

   > Status Offenders are defined as all youth law violators who are arrested for violations which would not be a law violation if they were an adult. Examples of these are runaways, truancy, and curfew violations.
   >
   > Liquor violations are not included because 18 year olds are considered adults by law, however can still be arrested for liquor violations.

   AS 04.16.180 specifies that minor liquor law violations are class A misdemeanors.

   For monitoring purposes, DFYS has not been counting liquor law violations as status offenders. (See Findings and Recommendations).

2. Non-Offenders: Non-offenders are included in the CHINA definition noted above.

3. Delinquent: As 47.10.290 defines "delinquent minor" as a "minor found to be within the jurisdiction of the court under AS 47.10.010(a)(1)." This cite refers to state and municipal criminal violations. AS 47.10.010(b)

excludes non-felony traffic, and fish and game violations from this provision and directs that they be treated as adults.

4. Sight and Sound Separation: AS 47.10.130 prohibits the incarceration of juveniles in jails unless the juvenile is "assigned to separate quarters so that the minor cannot communicate with or view adult prisoners."

   This is the definition of sight and sound separation used for monitoring purposes, as noted on the "Instructions for State Monitoring Report Data Collection Sheet", attached to the July 27, 1987 memorandum from Dave Arnold to the Regional Administrators regarding the JJDP Monitoring Report.

5. Secure: There is no explicit definition of secure for monitoring purposes. AS 47.10.290 defines "juvenile detention facility" as separate quarters within a city jail, and "detention home" as a separate establishment exclusively devoted to the short-term detention of minors.

6. Valid Court Order: There is no explicit definition of valid court order. As 47.10.140 describes juveniles' due process rights for detention and requires a detention hearing within 48 hours.

7. Deinstitutionalization of Status Offenders: The Alaska Supreme Court ruled in 1971 that CHINA's cannot be institutionalized. DFYS policy, as described in the Fairbanks Youth Facility "Detention Admission Policy and Procedure" prohibits detaining CHINA's. However, as previously described, liquor law violators are not considered CHINA's.

8. Separation: See Section C.4 above.

9. Jail Removal: As noted in Section C.5 above, "juvenile detention facilities" are defined as a separate part of a jail. AS 47.10.140 authorizes detention of delinquents in "juvenile detention facilities." AS 47.10.080 authorizes DHSS to place committed minors in "juvenile detention facilities."

AS 47.10.010(b) classifies juvenile traffic and fish and game violators as adults and thus allows their detention and sentencing to jails.

As described in Section C.7 above, CHINA's cannot be held in jails; this does not apply to liquor violations.

Since Alaska does not have a 24-hour detention hearing requirement, DFYS has never sought non-MSA exceptions.

D. Identification of the Monitoring Universe

DFYS monitors all facilities that are operated or under contract by the State; thus, the universe consists of the four DFYS operated detention centers and eighteen jails under contract to the Department of Public Safety or operated by the Department of Corrections.

DFYS does not include in the monitoring universe the many jails (there are no lock-ups in Alaska) that are not under DPS contract.

Likewise, community-based facilities and health and mental health facilities are not included in the universe (see Findings and Recommendations).

E. Classification of Facilities

In practice DFYS classifies all jails and detention centers as secure. DFYS does not review community-based programs for secure components, even though DHSS regulations (7AAC 50.053) allows the use of locked isolation rooms in community-based programs. Likewise, hospitals and mental health facilities are not considered for classification as secure (see Findings and Recommendations).

F. Monitoring Period

Alaska's data is reported on a Calendar Year basis.

G. Inspection of Facilities

DFYS Probation Officers inspect DPS contracted jails annually for sight and sound separation; there are no inspections specifically to determine the adequacy of each facility's record keeping. No other facilities are inspected for JJDP monitoring purposes. Furthermore, there are no detailed policies and

procedures for the inspection of facilities (see Findings and Recommendations).

H. Data Collection and Verification

The DFYS Regional Administrators assign Probation Officers to collect monitoring data from the DPS contract jails in their respective districts. Data from the DFYS detention centers is gathered by DFYS staff at the detention centers. The data is collected at each facility according to written instructions provided by the JJDP Coordinator, and recorded on a form accompanying the instructions. The information sought for each facility includes: sight and sound separation; date of birth; offense; date of admission; duration of detention; offense; accused or adjudicated.

The data collection sheets are forwarded to the JJDP Coordinator for analysis and compilation for the JJDP monitoring report.

The data collected from the individual facilities has never been checked for accuracy. Likewise, the review of the jails for sight and sound separation has never been verified. (See Findings and Recommendations).

I. Method of Reporting

DFYS uses the standard OJJDP format for reporting the monitoring data.

J. Violation Procedures

Since DFYS operates the detention centers and controls admission to the centers, DFYS has set policies and procedures to assure that status offenders are not admitted. As noted earlier in this report, however, these policies do not apply to juvenile liquor law violations. Nonetheless, it appears that DFYS has the authority to prohibit the detention of liquor law violations. (See Findings and Recommendations).

Unfortunately, DFYS has less control over juveniles in jails, and thus greater difficulty in addressing violations of the JJDP Act in jails. However, AS 47.10.130 provides a clear statutory prohibition against jailing children unless they are provided adequate separation. This provision, plus DHSS'regulatory authority, could provide DHSS a vehicle for promoting, if not enforcing separation and removal. (See Findings and Recommendations).

4. Other Issues

A. Given Alaska's unique geography, demography, and climate, DFYS faces very difficult barriers in administering the JJDP program, including monitoring. Alaska has never devoted any JJDP funds towards planning, administration, and monitoring. Discussions with DFYS staff indicate that the FY 1988 and a revised FY 1987 plan will, for the first time, devote resources for these purposes.

B. Alaska has invested over $12 million since 1980 for construction of four regional detention centers. These centers should be operational this year and will be an important component of a statewide jail removal strategy.

C. One of the most pervasive problems facing Alaska's juvenile justice system is alcohol abuse. The lack of programs to deal with the alcohol abusing juvenile results in jails and detention centers being used as detoxification centers. In fact, recent court rulings have required law enforcement officials to take into custody any person who is so intoxicated as to be a danger to him or herself; the only residential placement available for the vast majority of these individuals is jail.

DFYS is working with the State Office of Alcohol and Drug Abuse to establish regional treatment centers that can be used as an alternative to jail.

5. Compliance Data Verification

A. Ketchikan Regional Jail

The Ketchikan Regional Jail serves Ketchikan and Prince of Wales with a total population of approximately 13,000. The major sources of revenue for this area are fishing, timber, and tourism.

There is a dearth of residential alternatives available for the placement of juveniles; juveniles are generally either returned home or held in the jail. There are no detoxification services available.

The 63-bed jail is operated by the Alaska Department of Corrections. The facility has been in operation for approximately four years. All the cells have double bunks except the four intake cells which have triple bunks. One or two of the intake cells are used for juveniles; these cells have neither audio nor video

monitoring. In addition, juveniles that need to be held for only a very short period of time may be confined in the interview room, which is a sound proof room under continual sight supervision by the control center and booking desk.

Juveniles that are admitted to the jail are subject to the same procedures as those employed for adult admissions. Juveniles are brought into the booking area for admission processing, taken to the clothing storage area for a search, and admitted to the intake cells or the interview room. Juveniles receive at least hourly visual checks in the intake cells, and more frequently if the juvenile is intoxicated or poses a suicide risk.

The facility design and the Jail's policies and procedures raise the following concerns regarding compliance with the JJDP separation requirements:

- There are no policies and procedures to assure the time phased use of the booking area;
- The intake cells provide sight but not sound separation;
- The interview room provides sound but not sight separation;
- The showers provide sight but not sound separation.

The data review consisted of reviewing the 479 jail admissions for February, May, August, and November, 1986. The Jail recorded all admissions on the Alaska Department of Corrections "Daily Count Sheet" which contains date of birth, times and dates of admission and release, race, and sex. Since the Daily Count Sheets do not indicate offenses, I also reviewed the Probation Officer's Intake Log and contact file. Rick Roberts, the PO, was very knowledgeable about every case and provided any additional information that I requested. I also obtained the Juvenile Incarceration Report, generated by a DHSS automated program, which gives offense, date of admission and release, and total time held.

In spite of all these sources, it was still difficult to verify the data due to conflicting information regarding offenses. Nonetheless, my review revealed that 17 juveniles were admitted during the four months audited. All 17 of these admissions would be violations of the separation requirements due to the facility design and lack of policies and procedures

described above. Of these 17 admissions, there were 12 held in excess of six hours which would constitute violation of the jail removal requirement. Some of the five juveniles held less than six hours may have been status offenders and would have also been a violation of the removal requirement, but their offenses could not be verified.

The data collected by DHSS for monitoring purposes contained the following shortcomings:

- The jail was reported as providing adequate separation;
- Only 14 of 17 admissions were reported;
- All but one reported admission were listed as accused delinquents, yet it appeared that there were five additional juveniles sentenced to jail for DWI.
- The offenses for four of the juveniles recorded on the monitoring data collection sheets do not correspond to the offenses recorded on the DHSS Juvenile Incarceration Report.

The following findings pertain to the Ketchikan Regional Jail:

1. The jail does not provide adequate separation so all juvenile admission should be considered as separation violations.

2. DFYS should develop alternatives to the jail. Given the fact that virtually all of the admissions to the jail, with the exception of DWI sentences, are for less than one day, it appears that the use of short-term, non-residential as well as residential alternatives would be appropriate. The number of juveniles jailed could be significantly reduced by using a holding area outside the secure area of the jail which has continual sight supervision for juveniles who are awaiting parents. In addition, the number of alcohol related offenses indicates the need for alternatives and services in this area.

3. The data review indicated that DFYS needs to improve the data collection process. Particular attention should be paid to the definition of separation and the recording of offenses, especially recording the most serious offense.

In general, the Ketchikan Regional Jail appears to be a

well operated and professionally managed facility, but is not designed to detain juveniles. DFYS should work with the Department of Corrections, the Department of Public Safety, and the local community to develop alternatives to the use of the jail for sentenced, as well as accused juveniles.

B. Sitka Police Department Holding Facility

The major sources of revenue for Sitka's 8500 residents are fishing, tourism and timber. The Sitka Holding Facility is under contract to the Alaska Department of Public Safety.

The Police Department, court, and probation office pursue a policy of minimizing the jailing of juveniles. Most juveniles are returned home as quickly as possible, and a few are placed in emergency foster care. Although state law requires a detention hearing within 48 hours, most hearings in Sitka are held within 12 hours.

The facility has 15 beds (14 double bunked) and a holding tank. One of the two double bunked female cells is used for holding juveniles; these two cells are in a separate section from the rest of the jail.

Juveniles are brought to the same booking area as adults for intake processing. The practice is to never have juveniles and adults in the booking area at the same time, although there is no written policy and procedure stating this. Most juveniles are held in a non-secure room in the police department; few juveniles are actually admitted to a cell. The juvenile cell provides sight but not sound separation from the adult female cell. Likewise, the shower shared by these two cells provides sight but not sound separation. DFYS classified the facility as providing adequate separation.

I reviewed the Booking Log for February, May, August and November, 1986. Of the 185 bookings for those months, 17 were juveniles. DFYS recorded all of these juveniles for monitoring purposes; however, we learned that not all of those juveniles are actually held in the jail. Although there was no written record, John Newell, the Chief of Police, and Wolf Courdan, the Jailer, explained that eight of these juveniles were held in the non-secure portion of the police station for very brief periods while waiting for their parents to arrive. So it appears that DFYS was overreporting the number of jail admissions. However, since only

only two of these eight juveniles would have been jail removal violations if held securely (one delinquent over six hours and one status offender), the overreporting error would be slight.

As described earlier, the juvenile cells do not provide adequate sight and sound separation (assuming female adults are occupying the adjoining cell), so all juveniles held in the juvenile cell would be considered separation violations. In addition, according to the booking log, there were seven violations of the jail removal requirement: five delinquents held more than six hours and two status offenders held. There were no violations of the status offender provision. Although DFYS recorded all these admissions correctly, two of the jail removal violations were for status offenses (minors consuming alcohol) held for less than six hours, and DFYS would not have reported these as violations to OJJDP since DFYS considered these as delinquents.

The findings regarding the Sitka Police Department Holding Facility are as follows:

1. The accuracy of the data collection process is adequate; all juveniles entered on the Booking Log for the four months reviewed, are accurately recorded on the DFYS data collection form. However, the Booking Log may be overreporting actual admissions to the jail. DFYS should work with the Sitka Police Department to make certain the Booking Log indicates when juveniles are not admitted to a cell.

2. The Sitka Police Department has very good policies and procedures for the custody and release of juveniles. The policies and procedures are concise, understandable, and promote the limited use of secure confinement. DFYS should work with the Sitka Police Department to enhance their written policies and procedures to: (a) document the current practice of assuring separation of juveniles and adults by time-phasing the use of the booking area, and (b) provide guidance on which juveniles should actually be admitted to the cells and which juveniles should be held outside of the secure area of the jail and where and how they should be supervised.

3. The juvenile cell does not provide sound separation, so juveniles admitted to the cell are violations of the separation requirement. Since

the jail was classified as providing adequate separation, DFYS should assess the criteria and process used to determine separation.

4. The number of bookings for Minors Consuming Alcohol indicates the need for services and alternatives in this area.

The practices at the Sitka Police Department reflect the system's and the community's concern for troubled and troublesome juveniles. This should provide a solid basis for DFYS'efforts towards compliance with the JJDP Act in Sitka.

C. Johnson Youth Center, Juneau

As the state capital, Juneau's economy relies heavily on government. Income for the burrough's 20,000 residents also comes from the timber and fishing industries.

The Johnson Youth Center is operated by DFYS and was built in 1981 as a combined facility for juveniles and female adults. Since 1985, the Center has held only juveniles and is now applying for ACA accreditation.

The facility has four double bunk rooms; there are two rooms in each of two sections having a common area for recreation and meals. The Center has at least two staff per shift on duty.

The data verification was conducted by reviewing the monthly movement statistics sheets and the monthly reports for the Youth Center, and comparing them to the monitoring data collection sheets. The movement statistics and monthly report contain dates and times in and out and usually the offense. In many instances, however, "detention order" was listed instead of offense, making verification difficult. The verification was further complicated by the fact that the movement statistics were arranged alphabetically while the monitoring data was collected chronologically. As a result, I checked only every other case listed as an admission on the monthly movement sheets for February, May, September, and November, 1986. The data for August was unavailable.

There were 111 admissions for the four months I reviewed, and I tested 53 admissions for accuracy in reporting for JJDP monitoring. Of these 53 cases, I found that DFYS accurately recorded data for 22. Among these 22 verified cases, I found six status offender

violations, all minors consuming alcohol.

The inability to verify more admissions was the result of incorrectly recorded times on the monitoring data form, unknown offenses, and unreported admissions. It was impossible to determine the number of valid court order violations.

The findings pertaining to the Johnson Youth Center are as follows:

1. DFYS should review the data collection process in order to develop more accurate and verifiable data. DFYS should include the dates of court hearings in the data collected so that compliance with the valid court order exception can be determined.

2. As noted earlier in this report, minors charged with alcohol offenses are status offenders for JJDP monitoring purposes and if held for more than 24 hours, excluding non-judicial days, would be considered as violations of Section 223(a)(12)(A) of the JJDP Act.

3. Since the Johnson Youth Center is applying for accreditation, DFYS is encouraged to seek technical assistance from OJJDP and ACA to facilitate compliance with ACA standards.

4. It appears that many juveniles are detained for relatively minor offenses. DFYS is encouraged to assess the system of residential and non-residential alternatives in light of detention criteria to determine if the present system is the most economical and effective system for protecting the community and the court process while providing adequate services to juveniles.

6. Findings and Recommendations

The exit conference was convened with Yvonne Chase and Russ Webb. The following findings and recommendations summarizes our discussion of the audit. Critical findings are so noted:

(1) DFYS must establish the monitoring universe by identifying all facilities, including private facilities, that might hold juveniles pursuant to

public authority, and describe how the universe is periodically updated. This requirement is explained in Chapter 1, Paragraph 6 of the Audit Handbook. (Critical)

(2) DFYS must classify all the facilities in the universe that are secure and may hold juveniles, and describe the criteria used for classifying and how the list of classified facilities is updated. (Critical)

(3) DFYS needs to assess the use of locked isolation rooms in public and private residential programs, including hospitals and mental health facilities, and determine if these facilities should be classified as secure for possible inclusion in the monitoring data collection process.

(4) DFYS must inspect all jails for separation and adequacy of recordkeeping. This can be accomplished through a variety of methods, e.g., inspecting one-third of the facilities annually. (Critical)

(5) As part of the formal monitoring process, DFYS must develop a system for reviewing facility monitoring data for accuracy and completeness. This verification review should take place on-site annually at a representative sample of at least ten percent of the facilities in each category, i.e., juvenile detention centers, jails, and juvenile corrections facilities. (Critical)

(6) DFYS needs to verify sight and sound separation in facilities that have been designated as providing adequate separation.(Critical)

(7) DFYS is strongly encouraged to continue the practice of collecting data from all the facilities that have been monitored to date. When DFYS identifies all the facilities in the monitoring universe, however, it should be noted that the Audit Handbook (Chapter 2, Paragraph 18) requires a representative sampling of at least 50% of the facilities in each category.

(8) DFYS must include minors charged or adjudicated for alcohol violations in the definition of status offenders for JJDP monitoring purpose. Alcohol violations which apply to <u>all</u> adults, e.g., public consumption or possession where prohibited by local ordinance, are considered delinquent offenses. (Critical)

(9) In order for Alaska to use the valid court order exception, DFYS needs to verify on a case-by-case basis that the juvenile received a detention hearing within 24 hours, as required by JJDP regulations. (Critical)

(10) For the purpose of monitoring for Section 223(a)(14), juveniles accused of traffic and fish and game violations are subject to the six-hour rule. Adjudicated juveniles, including sentenced DWI offenders, cannot be held for any length of time. (Critical)

(11) DFYS must develop a timetable for carrying out all monitoring compliance tasks. (Critical)

(12) DFYS is encouraged to develop a policies and procedures manual for monitoring compliance with the JJDP Act. This manual should include, but not be limited to:

(a) A list of all residential programs in the state that might hold juveniles pursuant to juvenile court authority.

(b) An indication for each of these facilities as to whether they are secure or nonsecure.

(c) A description of criteria used for classifying facilities as secure or nonsecure, public or private.

(d) The date each secure facility was last inspected for compliance with the JJDP Act.

(e) A description of the authority state agencies have for licensing and inspecting both secure and nonsecure facilities.

(f) A description of the procedure to be followed for:

(1) collecting monitoring data (include a copy of any self report forms);

(2) verifying data (what facility source documents are to be consulted and what data sets are to be reviewed);

(3) inspection of physical plant of adult facilities for separation while onsite for data collection and verification.

(g) Description of enforcement mechanisms that exist for implementation of State law, administrative rules, or standards.

(h) A copy of state statutes, judicial rules, administrative rules, and standards that parallel or support implementation of the JJDP Act.

(i) A copy of the JJDP Act, 1985 Formula Grant Regulation, and other pertinent rules and regulations.

(j) A list of contact persons in related state agencies or organizations that have monitoring responsibilities.

(13) DFYS is encouraged to develop in-service training for personnel involved in the monitoring process. The Monitoring Manual could serve as the basic text for this training. The use of JJDP funds for this purpose is allowable.

(14) Given Alaska's expansive and remote geography, DFYS should consider contracting for some of the monitoring tasks.

(15) DHSS is encouraged to formally exercise the broad regulatory authority over the confinement and custody of children granted by Alaska statutes, especially with regard to JJDP Act compliance.

(16) DHSS is encouraged to work with the Department of Public Safety to promote separation and jail removal by adopting policies and procedures coherent with JJDP requirements, and incorporating those policies in the contracts with rural jails and Native Corporations.

(17) It appears that alcohol abuse is a very significant factor in juvenile arrests and confinement. The Juvenile Justice and Family Advisory Committee (JJFAC) is strongly encouraged to make juvenile alcohol abuse a priority issue and pursue JJDP Act compliance as a means for providing more effective services for alcohol abusing juveniles.

(18) The JJFAC is strongly encouraged to make public officials aware of the existing state law on separation of juveniles and adults in jails and to use this law as a vehicle for promoting the prohibition of jailing juveniles and the development of alternatives to jails.

(19) DHSS/DFYS should examine local practices in implementing AS 47.010.130, prohibiting the detention of juveniles in jails that do not provide adequate separation from adults, and develop means for assuring this statute's implementation.

(20) The JJFAC in strongly encouraged to consider promoting changes in statutes and regulations to support JJDP Act compliance.

7. Conclusion

Alaska's annual JJDP Plan always refers to Alaska's "unique barriers" to JJDP compliance. My limited visit to Alaska to conduct this audit revealed those barriers as no written description can: they are as immense and rugged as the Alaska landscape. I left Alaska with a greater sensitivity to the problems DFYS faces in achieving compliance.

As difficult as Alaska's barriers to compliance may be, DHSS and DFYS have some advantages enjoyed by few other states. The highly centralized structure of government, the broad regulatory authority granted DHSS, and the progressive statutes regarding the care and custody of children, can provide a basis for pursuing JJDP compliance and mitigate the immensity of some of the barriers to compliance.

We look forward to working with DFYS and JJFAC to achieve compliance.

PART 6:

1993 JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT COMPLIANCE MONITORING REPORT

1993 JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

COMPLIANCE MONITORING REPORT

Justice Center
University of Alaska Anchorage

September 1994

[Part 6]

1993 JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

COMPLIANCE MONITORING REPORT

STATE OF ALASKA
Department of Health and Social Services
Division of Family and Youth Services

Report Prepared by:

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Justice Center
University of Alaska Anchorage

JC 9420

September 1994

[Part 6]

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1993 JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT
COMPLIANCE MONITORING REPORT

A. GENERAL INFORMATION

1. Name and address of state monitoring agency:

Alaska Division of Family and Youth Services
P.O. Box 110630
Juneau, Alaska 99811-0630

2. Contact person regarding state report:

Name: Donna Schultz Phone #: (907) 465-2112

3. Does the state's legislative definition of criminal-type offender, status offender, or nonoffender differ with the OJJDP definition contained in the current OJJDP formula grant regulation?

Alaska's definition of "delinquent minor" is congruent with the OJJDP definition of "criminal-type offender" contained in 28 CFR Part 31.304(g). Alaska's definition of "child in need of aid" encompasses both "status offenders" and "nonoffenders" as defined in 28 CFR Part 31.304(h) and (i). The relevant Alaska definitions are contained in AS 47.10.010 and AS 47.10.290.

Although Alaska's legislative definitions are consistent with those contained in the OJJDP Formula Grant Regulation, the OJJDP Office of General Counsel issued a Legal Opinion Letter dated August 30, 1979 interpreting Section 223(a)(12)(A) of the JJDP Act to require "that an alcohol offense that would be a crime only for a limited class of young adult persons must be classified as a status offense if committed by a juvenile." Because Alaska law defines possession or consumption of alcohol by persons under 21 years of age as a criminal offense (AS 04.16.050), on this point the state's definitions of "criminal-type offender" and "status offender" are inconsistent with the OJJDP interpretation.

Pursuant to OJJDP's interpretation of Section 223(a)(12)(A), juveniles accused of, or adjudicated delinquent for, possession or consumption of alcohol ("minor consuming alcohol" or "minor in possession of alcohol") have been defined as status offenders.

4. During the state monitoring effort was the federal definition or state definition for criminal-type offender, status offender and nonoffender used?

The federal definitions for criminal-type offender, status offender and nonoffender were used.

SECTION 223(a)(12)(A)

B. REMOVAL OF STATUS OFFENDERS AND NONOFFENDERS FROM SECURE DETENTION AND CORRECTIONAL FACILITIES

1. Baseline reporting period: Calendar year 1976
Current reporting period: Calendar year 1993

2. Number of public and private secure detention and correctional facilities:

	Total	*Public*	*Private*
Baseline data	**14**	**13**	**0**
Current data	**122**	**122**	**0**
Juvenile detention centers	5	5	0
Juvenile holdover facilities[1]	2	2	0
Juvenile training schools[2]	0	0	0
Adult jails	16	16	0
Adult correctional facilities	1	1	0
Adult lockups[3]	98	98	0

[1] "Juvenile Holdover Facility" is a designation used to identify secure facilities used solely for the temporary detention of juveniles.
[2] Three facilities serve as both juvenile detention centers and juvenile training schools. Because all juveniles admitted to these facilities must be processed through the respective detention centers, separate monitoring of the training schools is unnecessary.
[3] Modifications to the 1992 universe of adult jails and adult lockups for the 1993 report include the deletion of three adult lockups, the transition of three adult jails into adult lockups, and the addition of four adult lockups.

3. Number of facilities in each category reporting admission and release data for juveniles to the state monitoring agency:

	Total	*Public*	*Private*
Baseline data	**14**	**13**	**1**
Current data	**74**	**74**	**0**
Juvenile detention centers	5	5	0
Juvenile holdover facilities	2	2	0
Adult jails	16	16	0
Adult correctional facilities	1	1	0
Adult lockups	50	50	0

4. Number of facilities in each category receiving an on-site inspection during the current reporting period for the purpose of verifying Section 223(a)(12)(A) data:

	Total	*Public*	*Private*
Current data	**35**	**35**	**0**
Juvenile detention centers	1	1	0
Juvenile holdover facilities	0	0	0
Adult jails	5	5	0
Adult correctional facilities	0	0	0
Adult lockups	29	29	0

5. Total number of accused status offenders and nonoffenders held for longer than 24 hours in public and private secure detention and correctional facilities during the report period, excluding those held pursuant to a judicial determination that the juvenile violated a valid court order:

	Total	*Public*	*Private*
Baseline data[1]	485	485	0
Current data	0	0	0

[1] The monitoring report format for the baseline year did not distinguish between accused and adjudicated status offenders and nonoffenders. Baseline data for both accused and adjudicated status offenders and nonoffenders are included here.

6. Total number of adjudicated status offenders and nonoffenders held in public and private secure detention and correctional facilities for any length of time during the report period, excluding those held pursuant to a judicial determination that the juvenile violated a valid court order:

	Total	*Public*	*Private*
Baseline data[1]	n/a	n/a	n/a
Current data	0	0	0

[1] The monitoring report format for the baseline year did not distinguish between accused and adjudicated status offenders and nonoffenders.

7. Total number of status offenders held in any secure detention or correctional facility pursuant to a judicial determination that the juvenile violated a valid court order:

	Total	*Public*	*Private*
Baseline data[1]	**n/a**	**n/a**	**n/a**
Current data	**3**	**3**	**0**
Juvenile detention centers	3	3	0
Adult jails	0	0	0
Adult correctional facilities	0	0	0
Adult lockups	0	0	0

[1] Data for status offenders determined to have violated valid court orders were not included in the monitoring report format for the baseline year.

Has the State monitoring agency verified that the criteria for using this exclusion have been satisfied pursuant to the current OJJDP regulation?

Yes.

If yes, how was this verified (State law and/or judicial rules match the OJJDP regulatory criteria, or each case was individually verified through a check of court records)?

In the three instances of detention in which the valid court order exception was applied, photocopies of the Order(s) for Temporary Detention or Placement were obtained from the youth facility where the juvenile was detained.

C. DE MINIMIS REQUEST

1. Criterion A—the extent that noncompliance is insignificant or of slight consequence:

Number of accused status offenders and nonoffenders held in excess of 24 hours and the number of adjudicated status offenders and nonoffenders held for any length of time in secure detention or secure correctional facilities:

Accused		Adjudicated		Total
0	+	0	=	0

Total juvenile population of the State under age 18 according to the most recent available U.S. Bureau of Census data or census projection:

178,349 juveniles.

(Source: *Alaska Population Estimates by Age, Race and Sex*, Alaska Department of Labor, Research and Analysis, Demographics Unit, July 1991.)

If the data was projected to cover a 12 month period, provide the specific data used in making the projection and the statistical method used to project the data:

Please refer to the "Data Projection" section of Appendix I, "Method of Analysis."

Calculation of status offender and nonoffender detention and correctional institutionalization rate per 100,000 population under age 18:

0/1.78349 = 0 per 100,000

2. Criterion B—The extent to which the instances of noncompliance were in apparent violation of state law or established executive or judicial policy:

0

3. Criterion C—The extent to which an acceptable plan has been developed:

N/A

4. Out of state runaways: 2

5. Federal wards: 0

6. Recently enacted change in state law:

A law (AS 47.10.141) specifying the conditions under which runaway juveniles may be detained became effective in October 1988, and provided a statutory basis for compliance with the deinstitutionalization requirement of the JJDP Act. The law specified that

> [a] minor may be taken into emergency protective custody by a peace officer and placed into temporary detention in a juvenile detention home in the local community if there has been an order issued by a court under a finding of probable cause that (1) the minor is a runaway in willful violation of a valid court order . . . , (2) the minor's current situation poses a severe and imminent risk to the minor's life or safety, and (3) no reasonable placement alternative exists within the community.

The statute prohibits detention of runaway juveniles "in a jail or secure facility other than a juvenile detention home" and limits the duration of such detention to 24 hours if no criminal-type offense is charged.

A more recently enacted amendment to AS 47.10.160 requires that jails and other secure detention facilities operated by state and local agencies record and report to the Department of Health and Social Services all instances of juvenile detention. Effective in September 1990, the statute requires facilities to use a standardized format in reporting juvenile admissions, and to report name, date of birth, the offense for which the minor was admitted, date and time admitted, date and time released, gender, and ethnic origin. The statute requires that the records be prepared at the time of admission into secure confinement. Because this statute standardizes the report format and requires full reporting of juvenile detention, it is anticipated that its enactment will have a significant and positive impact on Alaska's compliance efforts.

Implementation of the juvenile detention report program was initiated in February 1991, when a set of forms and instructions was mailed to secure detention facilities throughout the state. The first month of the reporting program was July 1991. A second mailing was made on July 1, 1991, as a reminder to the facilities that the reporting program had commenced. To date, while many of the larger facilities have participated in the program, there are still many rural lockup facilities that do not report, or if they do it is sporadic. This may be due in part to the frequent turnover of Village Public Safety Officers (VPSOs). It is not uncommon for a village to be without a VPSO for several months.

SECTION 223(a)(12)(B)

D. PROGRESS MADE IN ACHIEVING REMOVAL OF STATUS OFFENDERS AND NONOFFENDERS FROM SECURE DETENTION AND CORRECTIONAL FACILITIES

1. Provide a brief summary of the progress made in achieving the requirements of Section 223(a)(12)(A):

Alaska's progress in achieving the removal of status offenders and nonoffenders from secure detention has been excellent. Over the course of several years, Alaska has achieved full compliance with the deinstitutionalization goal of the JJDP Act. In comparison with the 1976 baseline, when 485 status offenders were securely detained, there were no instances of noncompliance recorded in 1993. All status offenders and nonoffenders held in secure confinement in Alaska's institutions were released within the 24-hour allowable grace period.

2. Number of accused and adjudicated status offenders and nonoffenders who are placed in facilities which (a) are not near their home community; (b) are not the least restrictive appropriate alternative; and, (c) do not provide the services described in the definition of community-based:

There were no apparent violations of these conditions recorded in Alaska during 1993.

SECTION 223(a)(13)

E. SEPARATION OF JUVENILES AND ADULTS

1. **Baseline reporting period:** Calendar year 1976
   Current reporting period: Calendar year 1993

2. **What date had been designated by the state for achieving compliance with the separation requirements of Section 223(a)(13)?**

   December 31, 1991

3. **Total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past twelve (12) months:**

	Total	*Public*	*Private*
Baseline data	**12**	**12**	**0**
Current data	**43**	**43**	**0**
Adult jails	9	9	0
Adult correctional facilities	1	1	0
Adult lockups[1]	33	33	0

[1] Includes projection for facilities not submitting data. There were 17 reporting sites and a weighting factor of 1.96 for non-reporting sites. (See Appendix I for data projection method.)

4. **Number of facilities in each category receiving an on-site inspection during the current reporting period to check the physical plant to ensure adequate separation:**

	Total	*Public*	*Private*
Baseline data	**n/a**	**n/a**	**n/a**
Current data	**34**	**34**	**0**
Adult jails	5	5	0
Adult correctional facilities	0	0	0
Adult lockups	29	29	0

5. Total number of facilities used for the secure detention and confinement of both juvenile and adult offenders which did not provide adequate separation of juveniles and adults:

	Total	*Public*	*Private*
Baseline data	**5**	**5**	**0**
Current data	**5**	**5**	**0**
Adult jails	0	0	0
Adult correctional facilities	1	1	0
Adult lockups[1]	4	4	0

[1] Includes projection for lockups not submitting data. There were 2 adult lockups reporting violations and a weighting factor of 1.96 for non-reporting sites. (See Appendix I for data projection method.)

6. Total number of juveniles not adequately separated in facilities used for the secure detention and confinement of both juvenile offenders and adult criminal offenders during the report period:

	Total	*Public*	*Private*
Baseline data	**824**	**824**	**0**
Current data	**16**	**16**	**0**
Adult jails	0	0	0
Adult correctional facilities	12	12	0
Adult lockups[1]	4	4	0

[1] Includes projection for lockups not submitting data. There were 2 adult lockups reporting violations and a weighting factor of 1.96 for non-reporting sites. (See Appendix I for data projection method.)

7. Provide a brief summary of the progress made in achieving the requirements of Section 223(a)(13):

Alaska's efforts at reducing the number of juveniles detained in violation of the JJDP separation mandate have produced dramatic results. Sixteen separation violations were recorded in Alaska during 1993. Since the 1976 baseline, when 824 cases of noncompliance were recorded, Alaska has achieved a 98.1 percent reduction in separation violations.

Alaska law prohibits detention of any juvenile in a facility which also houses adult prisoners, "unless assigned to separate quarters so that the minor cannot communicate with or view adult prisoners convicted of, under arrest for, or charged with a crime" (AS 47.10.130). Detention officers throughout the state have not only indicated awareness of this statute, but have embraced the concerns of the legislation and have taken a variety of innovative

measures in order to comply with the separation mandate. The central—and persistent—barrier to achieving compliance with the separation mandate has been the vast geographical distances between Alaska's five youth detention centers.

Four of the 1993 separation violations occurred in adult lockups, which represent 79 percent of all secure facilities in the state. With few exceptions, lockups in Alaska's monitoring universe are located in geographically remote areas which lack the alternatives necessary for achieving success with separation requirements. In remote areas, transfer of juveniles to appropriate facilities has frequently been impossible due to unavailability of air transportation and inclement weather.

In 1993, there were no separation violations reported in adult jails. Adult jails accounted for 27 percent of the separation violations in Alaska during 1992, down from 51 percent the year before.

The Department of Corrections Mat-Su Pretrial Facility had twelve separation violations in 1993. These were the only juveniles held in a Department of Corrections facility in 1993. In August 1990, Department of Health and Social Services (DHSS) and Department of Corrections (DOC) terminated a 1986 Memorandum of Agreement which had allowed for the detention of juveniles at the Ketchikan Correctional Center. DOC ceased the practice of detaining juveniles at the Ketchikan facility on August 15, 1990. This left Mat-Su Pretrial Facility as the single Department of Corrections facility permitted by policy to detain juveniles. At this facility, through a combination of site visits by DHSS staff to the Mat-Su Pretrial Facility and meetings with the Alaska State Troopers, transportation mechanisms have been improved and implemented which have reduced the number of separation violations in that facility. In June 1993, staff of the Division of Family and Youth Services (DFYS) again met with Mat-Su Pretrial Facility staff and Alaska State Troopers about the sight and sound separation. DFYS is currently exploring additional strategies that would result in the Mat-Su Pretrial Facility ceasing to accept juveniles.

Over the course of 1993, significant gains continued in complying with the separation mandate in all facilities. The number of separation violations increased from 11 in 1992 to 16 in 1993. That figure is still the second lowest level achieved since monitoring began in the state.

8. Describe the mechanism for enforcing the state's separation law:

Alaska has employed a number of mechanisms for enforcing its separation laws, AS 47.10.130 and AS 47.10.190, and has substantially reduced instances of noncompliance with Section 223(a)(13) of the JJDP Act. DFYS has instituted a program of public education designed to alert the law enforcement community and the public to the dangers in jailing juveniles and to the laws restricting such detention. The Division has sponsored public service announcements in print and broadcast media and currently has established nonsecure attendant care shelters in twelve communities throughout the state.

The Alaska Department of Public Safety (DPS) has amended its contracts with adult jails and has removed any language which could be construed as authorizing admission of juveniles or providing for the purchase of such services by DPS.

Proposed Senate Bill 45 was introduced during the 1993 legislative session and continues to be lobbied by the Alaska Juvenile Justice Advisory Committee. This legislation seeks to end separation violations by specifying that

> the minor shall be assigned to quarters in the correctional facility that are separate from quarters used to house adult prisoners so that the minor cannot communicate with or view adults who are in official detention. . . .

SECTION 223(A)(14)

F. REMOVAL OF JUVENILES FROM ADULT JAILS AND LOCKUPS

1. Baseline reporting period: Calendar year 1980
Current reporting period: Calendar year 1993

2. Number of adult jails:

	Total	*Public*	*Private*
Baseline data	15	15	0
Current data[1]	17	17	0

[1] This total includes one facility classified as an adult correctional center.

3. Number of adult lockups:

	Total	*Public*	*Private*
Baseline data[1]	n/a	n/a	n/a
Current data[2]	98	98	0

[1] Adult lockups were not included in the monitoring universe for the baseline year.
[2] Three adult lockups were removed from the universe in 1993, and seven were added.

4. Number of facilities in each category receiving an on-site inspection during the current reporting period for the purpose of verifying Section 223(a)(14) compliance data:

	Total	*Public*	*Private*
Current data	**34**	**34**	**0**
Adult jails	5	5	0
Adult correctional facilities	0	0	0
Adult lockups	29	29	0

5. Total number of adult jails holding juveniles during the last twelve months:

	Total	*Public*	*Private*
Baseline data[1]	14	14	0
Current data[2]	10	10	0

[1] Includes data for two facilities classified as adult correctional facilities.
[2] Includes data for one facility classified as an adult correctional facility. Fewer than 10 facilities held juveniles in violation of Section 223(A)(14).

6. Total number of adult lockups holding juveniles during the past twelve months:

	Total	*Public*	*Private*
Baseline data[1]	n/a	n/a	n/a
Current data[2]	35	35	0

[1] Adult lockups were not included in the monitoring universe for the baseline year.
[2] Includes projection for facilities not submitting data. There were 18 known facilities holding juveniles, and a weighting factor of 1.96 for non-reporting facilities. (See Appendix I for data projection method.) Does not represent the total number of lockups detaining juveniles in violation of Section 223(A)(14).

7. Total number of accused juvenile criminal-type offenders held in adult jails in excess of six (6) hours:

	Total	*Public*	*Private*
Baseline data[1]	766	766	0
Current data[2]	20	20	0

[1] The monitoring report format for the baseline year did not distinguish between accused and adjudicated criminal-type offenders or between adult jails and adult correctional facilities. Both accused and adjudicated criminal-type offenders held in adult jails and adult correctional facilities (including juveniles accused of or adjudicated delinquent for minor consuming alcohol) are included in the baseline data reported here.
[2] Includes data for one facility classified as an adult correctional facility. There were 16 known violations which were weighted to reflect missing times (+3.55). (See Appendix I for data projection method.)

8. Total number of accused juvenile criminal-type offenders held in adult lockups in excess of six (6) hours:

	Total	*Public*	*Private*
Baseline data[1]	n/a	n/a	n/a
Current data[2]	13	13	0

[1] Adult lockups were not included in the monitoring universe for the baseline year.
[2] There were 6 known violations which were weighted to reflect missing times (+.316), missing offenses (+.42), and non-reporting sites (x 1.96). (See Appendix I for data projection method.)

9. Total number of adjudicated criminal-type offenders held in adult jails for any length of time:

	Total	*Public*	*Private*
Baseline data[1]	n/a	n/a	n/a
Current data[2]	3	3	0

[1] The monitoring report format for the baseline year did not distinguish between accused and adjudicated criminal-type offenders or between adult jails and adult correctional facilities.
[2] Includes data for one facility classified as an adult correctional facility.

10. Total number of adjudicated criminal-type offenders held in adult lockups for any length of time:

	Total	*Public*	*Private*
Baseline data[1]	n/a	n/a	n/a
Current data[2]	7	7	0

[1] Adult lockups were not included in the monitoring universe for the baseline year.
[2] There were 4 known violations which were weighted to reflect missing offenses (+.09) and non-reporting sites (x 1.96). (See Appendix I for data projection method.)

11. Total number of accused and adjudicated status offenders and nonoffenders held in adult jails for any length of time, including those status offenders accused of or adjudicated for violation of a valid court order:

	Total	*Public*	*Private*
Baseline data[1]	98	98	0
Current data[2]	7	7	0

[1] Because juveniles charged with minor consuming alcohol were classified as criminal-type offenders in the baseline year, baseline data for juveniles accused of or adjudicated delinquent for this offense are included in item F7.

[2] Includes data for one facility classified as an adult correctional facility. Current data for juveniles accused of or adjudicated delinquent for minor consuming alcohol are included here (see Appendix II for detailed list of violations).

12. Total number of accused and adjudicated status offenders held in adult lockups for any length of time, including those status offenders accused of or adjudicated for violation of a valid court order:

	Total	*Public*	*Private*
Baseline data[1]	n/a	n/a	n/a
Current data[2]	9	9	0

[1] Adult lockups were not included in the monitoring universe for the baseline year.

[2] There were 4 known violations which were weighted to reflect missing offenses (+.385) and non-reporting sites (x 1.96). (See Appendix I for data projection method.)

13. Total number of adult jails and lockups in areas meeting the "removal exception:"

Baseline data:	0
Current data:	0

Alaska is ineligible for the removal exception because state law requires an initial court appearance within 48 hours, rather than 24 hours, after a juvenile has been taken into custody (see AS 47.10.140). All adult jails, lockups and correctional facilities in the 1992 monitoring universe are outside the state's only Standard Metropolitan Statistical Area, but only a handful provide adequate separation, as required in order for the removal exception to apply.

14. Total number of juveniles accused of a criminal-type offense who were held in excess of six (6) hours but less than twenty-four (24) hours in adult jails and lockups in areas meeting the "removal exceptions:"

Baseline data:	0 (n/a)
Current data:	0 (n/a)

15. Provide a brief summary of the progress made in achieving the requirements of Section 223(a)(14):

From a base of 117 adult jails, correctional centers and lockups, 59 jail removal violations were projected for in Alaska during 1993. This count represents a 94 percent reduction in the overall number of juveniles held in violation of the jail removal mandate since the baseline year 1980. From the levels of last year, the 1993 count of 59 noncompliant instances represents a 25 percent increase in the number of juveniles held in adult facilities in violation of Section 223(a)(14).

This increase from the 1992 count represents a trend in both types of facilities, the total removal violations in adult jails and the correctional facility increased by 11 percent, and the violations in adult lockups increased by 47 percent. By offense category however, there were some mixed trends. In handling accused criminals, adult jails had 25 percent more violations than in 1992, while the adult lockups were unchanged at 11 violations. For adjudicated criminals, adult jails had a 57 percent decrease in violations from the 1992 levels, while the adult lockups level went from 2 in 1992 to 7 in 1993. Violations involving status offenders and nonoffenders increased 75 percent from the 1992 levels in both adult jails and adult lockups.

Differences in the number of violations can be attributed to a number of factors, including: modification of practices and policies toward the handling of juveniles on the part of rural jails and lockups, the further refinement in the accuracy of the detention logs of state-contracted jails and adult lockups, and improved data gathering techniques. It is also likely that the current "get tough on crime" sentiment is being reflected in the way Alaskan communities are handling some juvenile offenders. Since most of the violations in the status offender category resulted from cases where the offense was specified as MCA or MC (minor consuming alcohol), it appears that frequently the actual reason for the detention involved protective custody which, if properly recorded, would not have resulted in a removal violation.

The courts have determined that AS 47.37.170 imposes a duty upon peace officers to take inebriates into custody for their own protection. The statute directs that they may be held in a detention facility if no other facility is available.

In recent years gains have been made in reducing the number of violations in the state-contracted jails, as ten adult jails located in Barrow, Cordova, Dillingham, Kotzebue, Naknek, Petersburg, Seldovia, Sitka, Valdez and Wrangell, reported no jail removal violations during 1993 (down from 11 last year, but the state lost 3 jails in 1993). The state correctional facility in Ketchikan also no longer detains juveniles.

Further explanation of the overall gains Alaska has made in reducing violations of Section 223(A)(14) is found in the increased accuracy of the data itself. Prior efforts at monitoring Alaska's compliance with JJDP had been characterized by an apparent over-counting of incidents of noncompliant juvenile detention in adult contract jails. Whereas previous jail logs (the primary source of information used in monitoring) did not distinguish individuals who were booked and released from those who were placed in secure detention, the revised jail log format allows for this critical distinction.

By mid-1989 each contract jail had begun use of revised billing sheets ("logs") which allowed for clear distinction between those juveniles held in secure confinement and those who were not. As the contract jail personnel have become more familiar with this new billing form, the 1993 detention data have proven more accurate than that of 1992. Even so, some questions remained in analysis of the 1993 jail data either because individual jails did not properly use the revised log format or because even when a juvenile was noted as securely detained, the combination of offense and time held indicated that he/she was *probably* booked and released contrary to the official record. In those instances where questions remained, the contract jails were contacted by phone in an attempt to clarify the circumstances regarding those detention episodes. If no further information was obtained, those cases for which the duration of detention was recorded as 45 minutes or less, and for which the records gave no indication that the juvenile was ever securely detained, have been classified as having been booked and released.

Examination of the records of those facilities which were inspected, indicates that the jail logs used in monitoring are largely reliable as records of juvenile traffic through community jails and police departments, but there may remain some issues of accuracy.

Apart from efforts at refining juvenile detention data, barriers to full compliance with the jail removal requirement remain in Alaska. However, the state has made great progress in reducing incidence of noncompliance and in offering alternatives to secure detention in adult facilities. Geographic distance between smaller communities and the five secure youth detention centers has been bridged by the creation and operation of nonsecure attendant care shelters, which serve twelve rural communities.

In 1991 DFYS distributed copies of the OJJDP-produced educational video *Law Enforcement Custody of Juveniles* to each adult lockup and jail in the 1989 monitoring universe. This tape explains the constraints of the Juvenile Justice and Delinquency Prevention Act on the handling of juvenile offenders and nonoffenders, and specifies exact prohibitions. Local and municipal law enforcement personnel, including police, dispatchers,

guards, village police officers and village public safety officers, were asked to review the video tape and to mail lists of who had reviewed the tape to DFYS. DFYS plans to further utilize this educational video by working with the law enforcement training academies in Alaska. These education processes appear to be having an impact, as many of the personnel contacted during the data collection process were well-informed about legal constraints regarding the detention of juveniles. During 1993 training on the mandates of the Juvenile Justice & Delinquency Prevention Act was provided to Village Public Safety Officers at the Public Safety Academy in Sitka.

In 1990 the Alaska Legislature passed AS 4710.160(b), requiring the Department of Health and Social Services to develop a standardized form for use by all agencies operating a jail or lockup. Its purpose was to report the admission and secure confinement of all minors. In accordance with this statute, in May 1991 DFYS initiated a new system by which all incidents of secure confinement of juveniles would be recorded. Each adult lockup and jail in the 1990 monitoring universe was sent information on Alaska's new statutory requirement, instructions on how the new reporting system would operate, and supplies of the Juvenile Confinement Admission and Release Form and the Juvenile Confinement Admission and Release Log. It was instructed that the form was to be completed on every juvenile admitted to secure confinement in each facility. The log was to be maintained on a monthly basis and sent to DFYS/Facility Compliance office, even in the event no juveniles were confined in the facility. This system was in place by the beginning of the State Fiscal Year, July 1991.

In the spring of 1991, the Alaska Juvenile Justice Advisory Committee (AJJAC) introduced legislation concerning the confinement of juveniles that would bring State law closer to conformity with federal standards and the JJDP Act. This legislation specifies the criteria for detaining juveniles in adult facilities and limits detention to a maximum of six hours. While not passed by the Seventeenth Legislature, this legislation was reintroduced during the first session of the Eighteenth Legislature and continues to be lobbied for by the Alaska Juvenile Justice Advisory Committee.

During the fall of 1992, Governor Walter J. Hickel issued an Executive Proclamation supporting the elimination of the practice of placing juveniles in adult lockup facilities and jails.

Finally, during the fall of 1992, DFYS staff, Non-Secure Attendant Care Shelter staff and representatives from the Office of Juvenile Justice and Delinquency Prevention met with the Chief of Police of Homer to discuss appropriate procedures for handling juveniles in the Homer jail which would meet the requirements of the jail removal mandate.

G. DE MINIMIS REQUEST: NUMERICAL

1. The extent that noncompliance is insignificant or of slight consequence:

Number of accused juvenile criminal-type offenders in adult jails and lockups in excess of six (6) hours, adjudicated criminal-type offenders held in adult jails and lockups for any length of time, and status offenders held in adult jails and lockups for any length of time.

Total = 59

Total juvenile population of the State under 18 according to the most recent available U.S. Bureau of Census data or census projection:

178,349 juveniles

(Source: *Alaska Population Estimates by Age, Race and Sex*, Alaska Department of Labor, Research and Analysis, Demographics Unit, July 1991)

If the data was projected to cover a 12-month period, provide the specific data used in making the projection and the statistical method used to project the data:

Data projection was not required for missing months; however adjustment was necessary for adult lockups which failed to report data. (See Appendix I)

Calculation of jail removal violations rate per 100,000 population under 18:

Total instances of noncompliance	=	59
Population under 18	=	178,349
59/1.783491	=	33.1 per 100,000

2. Acceptable plan:

The Division of Family and Youth Services (DFYS) of the Department of Health and Social Services has broad authority under AS 47.10.150 and AS 47.10.180 for oversight of facilities used for detention of juveniles. In its attempts to reduce the numbers of noncompliant instances of juvenile detention in Alaska, DFYS has developed a network of nonsecure attendant care shelters—currently in ten locations, serving twelve communities which have historically experienced high levels of noncompliant juvenile detention.

DFYS has been successful in curtailing the practice of securely detaining status offenders and intoxicated juveniles at its own detention centers as well as in many adult facilities. The 1993 data show that juveniles who were charged with minor consuming alcohol continue to pose problems to the state's compliance with Section 223(A)(14). While the DFYS

policy extends only to the five juvenile detention centers, it has had a significant educative effect on the policies of local law enforcement agencies, and the Division continues to educate law enforcement personnel, both through the distribution of the OJJDP videotape, *Law Enforcement Custody of Juveniles*, appearances at state training academies, annual data collection contacts, and tri-annual monitoring visits.

It is anticipated that the implementation of the new record keeping system involving all adult facilities in the state, because it requires periodic attention by law enforcement departments to the issue of juvenile admissions, will also work to increase awareness of and compliance with the mandates of the JJDP Act.

With the submission of monthly logs from the adult facilities, DFYS is able to identify problems much sooner. In cases where a violation appears to have occurred the Juvenile Justice Specialist contacts the facility to discuss the potential violation.

3. Recently enacted change in state law:

In May 1988, the Alaska Legislature passed a bill specifying the conditions under which runaway juveniles may be detained. This legislation, which became effective in October 1988, was explicitly designed to comply with the deinstitutionalization requirement of the JJDP Act, but it is also expected to aid efforts to bring the state into compliance with the jail removal mandate. The law specified that

> [a] minor may be taken into emergency protective custody by a peace officer and placed into temporary detention in a juvenile detention home in the local community if there has been an order issued by a court under a finding of probable cause that (1) the minor is a runaway in willful violation of a valid court order..., (2) the minor's current situation poses a severe and imminent risk to the minor's life or safety, and (3) no reasonable placement alternative exists within the community. (AS 47.10.141)

The statute clearly forbids detention of a runaway juvenile "in a jail or secure facility other than a juvenile detention home" and limits the duration of such detention to 24 hours if no criminal-type offense is charged.

A more recently enacted amendment to AS 47.10.160 requires that jails and other secure detention facilities operated by state and local agencies record and report to the Department of Health and Social Services all instances of juvenile detention. Enacted in June, 1990, and effective September, 1990, this statute requires facilities to use a standardized format in reporting juvenile admissions, and to report name, date of birth, the offense for which the minor was admitted, date and time admitted, date and time released, gender, and ethnic origin. In an effort to further reduce errors in record keeping, the statute also requires that—with the exception of release date and time—the records be prepared at the time of admission into secure confinement.

Because this statute standardizes the report format and requires full reporting of juvenile detention, it is anticipated that its enactment will have a significant and positive impact on Alaska's compliance efforts. The new system has been implemented and it is anticipated that its positive effects on Alaska's compliance will be evident in coming monitoring cycles.

H. DE MINIMIS REQUEST: SUBSTANTIVE

1. The extent that noncompliance is insignificant or of slight consequence:

a. Were all instances of noncompliance in violation of or departures from State law, court rule, or other statewide executive or judicial policy?

AS 47.10.130 provides that "(n)o minor under 18 years of age who is detained pending hearing may be incarcerated in a jail unless assigned to separate quarters so that the minor cannot communicate with or view adult prisoners convicted of, under arrest for, or charged with a crime." Of the 40 reported jail removal violations reported for 1993, 23, or 58 percent, occurred in facilities that allow for sight and sound separation. As a result, 42 percent of the jail removal violations from 1993 could have also constituted violations of Section 223(a)(13).

There was no statutory authorization for detaining status offenders and nonoffenders in any adult facility other than those accused of minor consuming alcohol. During 1993, there was no instance of secure detention of a status offender not charged with an alcohol offense.

b. Do the instances of noncompliance indicate a pattern or practice, or do they constitute isolated instances?

Violations of Section 223(A)(14) occurred in 8 adult jails, 1 correctional center, and at 9 (5 x 1.84 weight) adult lockups. At the majority of these facilities, however, instances of noncompliant detention appear to be the exception rather than the rule of juvenile handling. It is the practice of most law enforcement officials at the village level and at the municipal level to not securely detain juvenile offenders.

The projected 1993 data on jail removal violations indicate that 27 violations occurred in 20 (20%) of the 98 adult rural lockups statewide. Given that the larger, busier lockups tend to be more likely to provide data, this projection that 20 percent of the rural lockups violated Section 223(A)(14) is probably high.

The largest number of noncompliant detentions from a single institution in 1993 was 10 (1 adult jail); the second largest was 7 (1 adult jail); and the third largest was 3 (1 adult jail). There were 5 facilities with 2 violations each (2 adult jails and 3 adult lockups). This number is down from 4 facilities, each with a high of 15 incidents of noncompliance during 1989, and 1 facility showing 15 violations in 1990.

c. Are existing mechanisms for enforcement of the State law, court rule, or other statewide executive or judicial policy such that the instances of noncompliance are unlikely to recur in the future?

Yes. The state has employed several mechanisms for enforcing AS 47.10.130, AS 47.10.141 and AS 47.10.190, which restrict the detention of juveniles in adult facilities, and AS 47.10.160(b), which requires state and municipal agencies to report incidents of secure detention of juveniles. Collectively, these mechanisms have proven effective in substantially reducing instances of noncompliance with Section 223(a)(14) of the JJDP Act. Enforcement of these statutes, along with continued operation of the dozen alternative nonsecure shelters, will effectively curtail jail removal violations in Alaska.

DFYS has sought to maximize enforcement of these laws by instituting a program of public education, including public service announcements in print and broadcast media, to alert both the law enforcement community and the public to the dangers and illegality of jailing juveniles.

Additionally, admission records of adult jails are examined each year by DFYS, and facilities are notified of the instances of noncompliant detention of juveniles.

In combination, the above enforcement mechanisms have been effective in reducing the number of instances of noncompliance by 94 percent in the four years since implementation of the state's revised Jail Removal Plan in December, 1987.

d. Describe the State's plan to eliminate the noncompliant incidents and to monitor the existing enforcement mechanisms:

Alaska's plan to eliminate noncompliant incidents is outlined in the revised 1987 Jail Removal Plan. Salient features of this plan include the following:

(1) placing a full-time JJDP Project Coordinator in the Division's Central Administration Office;

(2) development of alternatives to detention, including development of nonsecure holdover attendant care models in several rural communities and secure holdover attendant care models in others;

(3) cooperative efforts with the Department of Public Safety on such issues as maintenance of appropriate booking data on juveniles, sight and sound separation requirements, the JJDP-mandated 6-hour rule and a prohibition of detention of status offenders;

(4) launching an education and training campaign to inform the public of the problems inherent in inappropriate detention and jailing of youth and of the availability of effective alternatives.

Each of these goals is currently in operation and, as anticipated, their effect has been to consistently and dramatically lower the number of incidents of noncompliance.

Appendix I

METHOD OF ANALYSIS

All aspects of data analysis for the 1993 monitoring report were performed on the DEC/VAX 8800 mainframe computer at the University of Alaska Anchorage, using the SPSS Data Analysis System, Release 4.0.

I. Data collection and data entry

Data were entered into a composite data file from the following sources:

A. Certified photocopies of original *client billing sheets* (booking logs) for the sixteen adult jails were obtained from the Contract Jail Administrator of the Alaska Department of Public Safety (DPS). DPS contracts for services with each Alaska facility that meets the definition of adult jail as defined in the Formula Grant Regulation. The certified photocopies of the jails' booking logs covered all twelve months of 1993.

B. Photocopies of *original booking logs* were obtained from the youth center in Fairbanks, and from nine adult lockups in Alakanuk, Delta Junction, Fort Yukon, Glennallen, King Cove, Kobuk, Kotlik, Russian Mission, and Tok.

C. Certified or signed *detention data reports* were received from the youth centers and holdovers in Anchorage, Bethel, Juneau, and Nome, and from forty-two adult lockups in Akutan, Ambler, Anaktuvuk Pass, Atqasuk, Brevig Mission, Cantwell, Chignik, Cold Bay, Deadhorse, Deering, Eek, Ekwok, Elim, Goodnews Bay, Grayling, Holy Cross, Hoonah, Kaktovik, Kaltag, Kiana, Kivalina, Koyuk, Kwigillingok, Manokotak, Marshall, McGrath, Mekoryuk, Mountain Village, Noorvik, Nuiqsut, Pelican, Pilot Point, Point Hope, Point Lay, Port Heiden, Ruby, Saint Mary's, Sand Point, Skagway, Stevens, Togiak, and Wainwright.

D. Judged to be inadequate for monitoring purposes was adult lockup data received from the village of Selawik.

E. Juvenile booking data were received from the Department of Corrections adult correctional center at Mat-Su Pretrial. The Department of Corrections also provided a computer listing of juvenile bookings in all of the department's facilities.

F. Complete detention data from the two juvenile holdover facilities in Kenai and Kodiak were received from the supervising Youth Probation Officer at that office.

For each case, the following data were entered: Facility type, facility identifier, initials or first initial and last name of juvenile, date of birth, gender, race, date of admission, time of admission,

reason for detention (alphabetic variable; if more than one, reasons were strung together), date of release, time of release, and lockup indicator.

II. Classification of offenders

The likelihood of misclassifying offenses was reduced by adopting a conservative approach. In other words, errors in coding would lead to the reporting of a higher number of violations than actually occurred. The following procedures were used in classifying juveniles as accused criminal-type offenders, adjudicated criminal-type offenders, accused status offenders and adjudicated status offenders:

A. Juveniles who were arrested for the following were classified as *accused criminal-type offenders*: offenses proscribed in Alaska criminal law, traffic violations, fish and game violations, failure to appear, and contempt of court.

B. Juveniles charged with probation violations or violations of conditions of release were classified as *adjudicated criminal-type offenders* unless conditions of probation had been imposed pursuant to an adjudication for possession or consumption of alcohol. In the latter case, the juvenile was classified as an adjudicated status offender.

   Juveniles taken into custody pursuant to warrants and detention orders were also classified as adjudicated criminal-type offenders, unless additional information indicated a more appropriate classification. Where reclassification was not indicated, all instances of detention pursuant to a warrant or court order at Bethel Youth Center, Johnson Youth Center, McLaughlin Youth Center, Fairbanks Youth Center, and the Nome Youth Center were verified through a check of facility records. In this way, accuracy in the classification of these cases was checked.

   Juveniles transferred from one juvenile detention facility to another were also classified, absent additional information, as adjudicated criminal-type offenders, as were a small number of juveniles for whom the offense listed in official records was one of the following: juvenile hold, juvenile probation hold, detention hold, and delinquent minor.

C. Juveniles detained for the following were classified as *accused status offenders*: possession or consumption of alcohol, minor on licensed premises, curfew violations, runaway, and protective custody in excess of the lawful duration as prescribed in AS 47.30.705 and AS 47.37.170.

D. DFYS officials constructed a list with the names and dates of birth of juveniles adjudicated for possession or consumption of alcohol on or after January 1, 1985. The list only included juveniles adjudicated *solely* for the possession or consumption of alcohol and who were not subsequently adjudicated on a criminal-type offense. Juveniles appearing in the 1993 data arrested pursuant to a warrant or detention order and juveniles detained for probation

violations were classified as *adjudicated status offenders* if their names appeared on this list. Otherwise, these juveniles were classified as adjudicated criminal-type offenders.

E. Juveniles detained in adult facilities for protective custody under AS 47.30.705 or AS 47.37.170 (dealing with mental illness and alcohol intoxication, respectively) were counted as violations of the separation requirement. However, because juveniles and adults are accorded the same treatment under these statutes, these cases were determined to be outside the scope of the OJJDP definitions of criminal-type offender, status offender and nonoffender. Therefore, the presence of these juveniles in these facilities is not reflected in sections of this report pertaining to deinstitutionalization and jail removal requirements.

III. Data projection

Four methods of statistical projection for missing and unknown detention data were employed in the analysis of 1993 juvenile detention data. These were: 1) projection of data for the purpose of covering twelve months of time in two instances when only six months of data were received; 2) projection of juvenile detention data from non-reporting adult lockups; 3) projection of data for the purpose of estimating duration of detention in eleven cases with insufficient time information; and 4) projection of data for the purposes of including cases which had insufficient offense data.

A. Projection for complete calendar year

Complete data for calendar year 1993 were available for all but one of the secure facilities in Alaska reporting detention information. Projection of data to cover the full calendar year 1993 for the adult lockup in Mekoryuk was accomplished by computing the proportion of the year for which data from this facility were received (90 days/365 days = .25), and weighting each instance of juvenile detention recorded at the lockup by a factor equal to the reciprocal of that proportion. Thus, any instances of juvenile detention at this facility would be weighted by a factor of 4.00. This weighting procedure assumes that instances of noncompliance at the jail during the first nine months of 1993 occurred at the same rate demonstrated in the data for the last three months.

B. Projection for non-reporting adult lockups

Data for the 48 adult lockups whose records were inadequate for monitoring purposes were projected by assigning a weight of **1.96** (the reciprocal of the proportion of all adult lockups represented by those included in the analysis) to each case of juvenile detention in the 50 adult lockups from which adequate data were obtained. To the extent that lockups from which adequate data were obtained are representative of all lockups in the monitoring universe, this method of projection is statistically valid.

Since *all* adult lockups which submitted adequate data were included in the analysis, random sampling of this group was not performed. It is believed that lockups which do not maintain

adequate records are unlikely to detain more juveniles than those which do. Facilities which do not maintain adequate records probably fail to do so because they detain very few individuals, either adults or juveniles. Any error in this method of projecting data for non-reporting lockups should therefore result in a higher number of noncompliant cases than actually occurred in these facilities.

C. Projection for unknown duration of detention

Projection for an unknown duration of detention was necessary for nine cases involving accused criminal offenders. Two cases involving status offenders were automatically counted as jail removal violations. The cases requiring weighting consisted of eight accused criminal offenders held in adult jails, and one held in an adult lockup. The weighting procedure established the likelihood of a case being a jail removal violation by dividing the number of violations involving accused criminals by the number of accused criminals, with a separate calculation made for the two types of facilities (jails = .444 and lockups = .316). Once that likelihood was established, it was multiplied by the number of cases involved (jails: 8 x .444 and lockups: 1 x .316), and the product was added to the number of reported violations in that category.

D. Projection for unknown offense

Projection for an unknown offense was necessary for five cases which occurred in adult lockups. The calculation required to establish the weighting for these cases required first establishing the likelihood that these cases involved an accused criminal and then establishing the likelihood that it would be a violation, and second, following the same procedure for adjudicated criminal cases, and finally for accused and adjudicated status offender and nonoffender cases. This weights were then added to the number of reported violations in the appropriate categories.

For example, the calculation used for establishing the weighting factor to be added to the accused criminal case violations in adult lockups consisted of taking the likelihood of the case being an accused criminal case (number of accused criminal cases in lockups divided by the number of cases in lockups — 19/42 = .452), and multiplying that probability by the likelihood of an accused criminal case being a jail removal violation (number of accused criminal violation cases in lockups divided by the number of accused criminal cases in lockups — 6/19 = .315). The product (.452 x .315 = .14) was the weighting factor added to the three cases missing offense data and which were detained longer than 6 hours. The sum of these weights (3 x .14) was then added to the reported number of accused criminal case jail removal violations in adult lockups.

Appendix II

1993 VIOLATIONS BY OFFENSE TYPE AND LOCATION

For offense codes, see Appendix III.

Deinstitutionalization Violations / Section 223 (a)(12)(A)

Location	Offense	Time	Offender Type

None in 1993

Separation Violations / Section 223 (a)(13)

Location	Offense	Time	Offender Type
Adult correctional facilities:			
Mat-Su Pretrial	TRAFFIC	18.45	Accused Criminal
	TRAFFIC	.92	Accused Criminal
	FTA	8.58	Accused Criminal
	DWI	1.55	Accused Criminal
	TRAFFIC	3.07	Accused Criminal
	DWI	5.12	Accused Criminal
	TRAFFIC	19.90	Accused Criminal
	FTA	12.60	Accused Criminal
	TRAFFIC	10.50	Accused Criminal
	TRAFFIC	13.42	Accused Criminal
	TRAFFIC	11.38	Accused Criminal
	DWLR	2.83	Accused Criminal
Adult lockups (Weight = 1.96):			
Tok	MCA/MIP	7.42	Accused Status
Noorvik	T47: Alcohol	.92	Non-offender

Jail Removal Violations / Section 223 (a)(14)

Location	Offense	Time	Offender Type
Adult jails:			
Craig	ASSAULT	34.88	Accused Criminal
Emmonak	CT	16.53	Accused Criminal
	ASSAULT	17.92	Accused Criminal
	THEFT	7.33	Accused Criminal

Jail Removal Violations / Section 223 (a)(14)

(continued)

Location	Offense	Time	Offender Type
Adult jails (*continued*):			
Haines	ASSAULT	19.65	Accused Criminal
	BW:	17.70	Adjudicated Criminal
Homer	ASSAULT	6.16	Accused Criminal
	THEFT	24.55	Accused Criminal
	CRIM MISCHIEF	6.97	Accused Criminal
	PV	4.25	Adjudicated Criminal
	DET ORDER	13.50	Adjudicated Criminal
	MCA/MIP	.82	Accused Status
	MCA/MIP	Missing	Accused Status
	MCA/MIP	8.40	Accused Status
	MCA/MIP	1.37	Accused Status
	MCA/MIP	1.37	Accused Status
Seward	MCA/MIP	6.58	Accused Status
	T47: Alcohol	12.38	Accused Status
Unalaska	CRIM MISCHIEF	42.50	Accused Criminal
Adult correctional facilities:			
Mat-Su Pretrial	TRAFFIC	18.45	Accused Criminal
	BW:FTA	8.58	Accused Criminal
	TRAFFIC	19.90	Accused Criminal
	BW:FTA	12.60	Accused Criminal
	TRAFFIC	10.50	Accused Criminal
	TRAFFIC	13.42	Accused Criminal
	TRAFFIC	11.38	Accused Criminal
Adult lockups (Weight = 1.96):			
Alakanuk	T47: Alcohol	12.33	Accused Status
Delta Junction	MV Theft	6.42	Accused Criminal
	MV Theft	6.83	Accused Criminal
Fort Yukon	DC	8.00	Accused Criminal
Hoonah	MCA/MIP	.78	Accused Status
	BW:	1.00	Adjudicated Criminal
Mt. Village	ASSAULT	24.00	Accused Criminal
	T47: Alcohol	Missing	Accused Status
Nuiqsut	WEAPONS	8.83	Accused Criminal
Point Hope	BW:	2.30	Adjudicated Criminal
Ruby	CONCEAL	10.80	Accused Criminal
Skagway	PV	2.67	Adjudicated Criminal
	PV	2.67	Adjudicated Criminal
Tok	MCA/MIP	7.42	Accused Status

Appendix III

COMMON OFFENSE ACRONYMS

ASLT	Assault
BURG	Burglary
BW:	Bench warrant: (original offense)
CM	Criminal mischief
CONCEAL	Concealment of merchandise
COURT HOLD	Court-ordered hold
CRIM MISCHIEF	Criminal mischief
CT	Criminal trespass
CTORDER:VCR	Court order:
DC	Disorderly conduct
DET ORDER	Detention order
DWI	Driving while intoxicated
DWLR	Driving with license revoked
DWLS	Driving with license suspended
DWOL	Driving without license
F&G VIOL	Fish & Game violation
FTA	Failure to appear
MCA/MC	Minor consuming alcohol
MICS	Misconduct involving a controlled substance
MIP	Minor in possession
MIPBC/MIPC	Minor in possession by consumption
MV THEFT	Motor vehicle theft
NON-CRIM	Non-criminal (unspecified)
PC	Protective custody
PV	Probation violation
RA	Resisting arrest
RESIST ARREST	Resisting arrest
RD	Reckless driving
RECKLSS DRIVNG	Reckless driving
ROBBERY	Robbery
RUNAWAY/RAWAY	Runaway
SA	Sexual assault
SRV TIME:DWI	Served time for DWI
T47	Title 47 protective custody
T47: Alcohol	Title 47 protective custody—alcohol
THEFT	Theft
TRAFFIC	Traffic violation
VCR	Violation of conditions of release
VCOR (OC:)	Violation of valid court order (original charge:)
WA:FTA-RD	Warrant: Failure to appear—reckless driving
WEAPONS	Weapons misconduct