Guidance Manual

for

Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974, as Amended

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Preface

The purpose of this manual is to assist States in monitoring for compliance with three of the four core protections of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended. The three core protections addressed in this manual are deinstitutionalization of status offenders, removal of juveniles from adult jails and lockups, and separating adult offenders from juveniles in institutions. The fourth core protection, disproportionate minority confinement, has a separate manual, *Disproportionate Minority Confinement Technical Assistance Manual,* which was published in April 2000.

This manual is a compilation of relevant sections of the JJDP Act, regulations promulgated in the *Federal Register,* and policies developed by the Office of Juvenile Justice and Delinquency Prevention. The manual was compiled by Timothy S. Wight, Compliance Monitoring Coordinator. It was reviewed by State Representatives from the State and Tribal Assistance Division: Cecilia Duquela-Fuentes, Vivian C. Hickman, and Elissa Rumsey.

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Section 1

Background of the Juvenile Justice and Delinquency Prevention Act

Since its passage in 1974, the Juvenile Justice and Delinquency Prevention (JJDP) Act has changed the way States and communities deal with troubled youth. The original goals of the Act and of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) were simple: to assist State and local governments prevent and control juvenile delinquency and to improve the juvenile justice system. These goals remain statutory priorities today. A second important element in the 1974 Act was to protect juveniles in the juvenile justice system from inappropriate placements and from the harm – both physical and psychological – that can occur as a result of exposure to adult criminal offenders. Yet another important element of the JJDP Act emphasized the need for community-based treatment for juvenile offenders. In passing the JJDP Act, Congress recognized that keeping children in the community is critical to their successful treatment.

The JJDP Act, as amended through 1992, establishes four core protections with which participating States and territories must comply to receive grants[1] under the JJDP Act. The four core protections are deinstitutionalization of status offenders (DSO), removal of juveniles from adult jails and lockups (jail removal), separation of juveniles and adults in institutions (separation), and reduction of disproportionate minority confinement (DMC), where it exists. Meeting the core protections is essential to creating a fair and consistent juvenile justice system that advances an important goal of the JJDP Act: to increase the effectiveness of juvenile delinquency prevention and control.

Each participating State must develop and implement a strategy for achieving and maintaining compliance with the four core protections as part of its annual Formula Grants State Plan. A State's level of compliance with each of the four core protections determines eligibility for its continued participation in the grant programs. For example, failure to achieve or maintain compliance, despite good faith efforts, reduces the Formula Grant to the State by 25 percent for each core requirement not met. In addition, the noncompliant State must agree to expend all remaining Formula Grant funds it receives to achieve compliance with the core requirement(s) with which it is not in compliance. Therefore, if a State fails to meet the core requirement regarding DSO, the State loses 25 percent of its Formula Grant allocation and must expend the remaining 75 percent on efforts to develop and adopt policies and programs designed to remove status offenders from placement in secure detention facilities or secure correctional facilities.

As part of the strategy for maintaining compliance, States must provide for an adequate system of monitoring to ensure that the core protections are met. States must visit and collect information

[1] Formula Grants, State Challenge Grants, and Title V Community Prevention Grants are the grants that are affected by compliance with the core protections.

from secure facilities to demonstrate compliance with the JJDP Act. On an annual basis, each State submits this information in the form of a Compliance Monitoring Report to OJJDP. The report provides compliance data and a detailed description of how the State is meeting the core protections. The following four sections contain information on each of the core protections.

1.1 Deinstitutionalization of Status Offenders (DSO)

The DSO provision was included in the original JJDP Act. As enacted in 1974, the Act required States to "provide within two years...that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult (i.e., status offenders), shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities."

A 1977 amendment to the JJDP Act expanded the DSO provision to expressly include nonoffenders such as dependent and neglected youth. It also removed the requirement that these juveniles be placed in shelter facilities, allowing State and local governments additional latitude in the placement of status offenders and nonoffenders.

In 1980, Congress specified that status offenders and nonoffenders must be removed from "secure" juvenile detention and correctional facilities. Congress also added a new jail and lockup removal requirement, which prohibits juveniles, including alleged and adjudicated delinquents, status offenders and nonoffenders, from being detained in adult jails and adult lockups. Congress further amended the JJDP Act that year to allow States to detain or confine status offenders in secure juvenile facilities for the violation of a valid court order (VCO).

As amended by the JJDP Act, the DSO requirement currently reads as follows: "...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 U.S.C. 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..."

1.2 Separation of Juveniles From Adult Offenders (Separation)

Since the inception of the juvenile justice system, the practice of incarcerating juveniles with adult offenders has been criticized. The placement of juveniles in institutions where they are mixed with adult inmates is emotionally and physically traumatic, resulting in further victimization. Moreover, commingling juvenile offenders with adults provides an education in crime and undercuts the intent of a separate juvenile justice system designed to rehabilitate and treat juvenile offenders.

In one of the original provisions of the JJDP Act, Congress sought to provide separation between adult inmates and juveniles in institutional settings such as jails, lockups, prisons, and other secure facilities. The JJDP Act, as amended, provides that juveniles alleged to be or found to be delinquent, as well as status offenders and nonoffenders, "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 awaiting trial on criminal charges."

1.3 Removal of Juveniles From Adult Jails and Lockups (Jail Removal)

Although many of the juveniles taken into police custody and referred to the juvenile court can be released to parental custody to await court action, juveniles who have committed serious crimes and are a safety risk to the community may be removed from their homes and placed in secure facilities pending court hearings. Prior to the passage of the jail and lockup removal provision in the JJDP Act, this routinely resulted in placing juveniles in adult jails or lockups in danger of physical or emotional harm from adult prisoners. Research shows that young people held in adult facilities are sexually assaulted five times more often than youth in juvenile facilities, assaulted by staff twice as often, and assaulted with a weapon 50 percent more often.[2]

In an effort to protect juveniles in custody and to meet the 1974 separation requirement of the JJDP Act, jail officials sometimes placed juveniles in solitary confinement. This practice aggravated the psychological effects of jailing and, in some cases, lead to suicide. In fact, juveniles in jails are found to commit suicide eight times more often than those in juvenile detention facilities.[3] Moreover, young people in adult facilities were being deprived of educational and other services provided in juvenile facilities.

For these reasons, Congress amended the JJDP Act in 1980 to include the jail and lockup removal requirement, which states that "no juvenile shall be detained or confined in any jail or lockup for adults...." An exception was provided in the Formula Grants regulations that allowed an alleged delinquent juvenile offender to be held in an adult jail or lockup for up to 6 hours for processing purposes, provided that separation from adult offenders was maintained. Congress later added an allowance for a 24-hour exception in rural areas. It is important to note that the jail removal requirement does not apply if criminal felony charges have been filed against a juvenile in a court exercising criminal jurisdiction.

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[2] Dale Parent et al., *Conditions of Confinement: Juvenile Detention and Corrections Facilities - Research Summary*, Office of Juvenile Justice and Delinquency Prevention (1994) and Martin Forst, Jeffrey Fagan, and T. Scott Vivona, "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," *Juvenile & Family Court Journal*: 40(1)(l989).

[3] Michael G. Flaherty, *An Assessment of the National Incidence of Juvenile Suicide in Adult Jails, Lockups, and Juvenile Detention Centers*, The University of Illinois, Urbana-Champaign (1980).

1.4 Reduction of Disproportionate Minority Confinement (DMC)

While 32 percent of the Nation's population age 12 to 17 is minority, 68 percent of the confined juvenile population is composed of minority youth. In 1988, Congress took note of this problem by focusing State attention on the phenomenon of disproportionate minority confinement in the juvenile justice system. In 1992, Congress required States to address disproportionate minority confinement as a condition for receiving 25 percent of the State's Formula Grants program allocation, making it the fourth and final core protection of the JJDP Act. It requires States to determine if minority juveniles are disproportionately confined in secure detention and correctional facilities and, if so, to address any features of their juvenile justice systems that may account for the disproportionate confinement of minority juveniles. This core requirement neither requires nor establishes numerical standards or quotas in order for a State to achieve or maintain compliance. Rather, it requires States to identify whether minority juveniles are disproportionately detained or confined in secure facilities, provide a complete assessment of why disproportionate minority confinement exists, and provide an intervention plan that seeks to reduce the disproportionate confinement of minority juveniles in secure facilities.

Section 2

Monitoring for Compliance: Adult Jails and Lockups

2.1 Definitions of Adult Jails, Lockups, and Collocated Facilities

Adult Jail. An adult jail is a locked facility administered by State, county, or local law enforcement and correctional agencies. The purpose of a jail is to detain adults charged with violating criminal law, pending trial. Adult jails also hold convicted adult criminal offenders sentenced for less than 1 year or hold convicted adult criminal offenders until they are transferred to a State prison.

Adult Lockup. An adult lockup is similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature that does not hold persons after they have been formally charged.

Collocated Facility. 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 or services beyond mechanical services (heating, air conditioning, water, and sewer). Adult facilities collocated with juvenile facilities are considered adult jails or lockups absent compliance with collocated facility criteria (See section 4).

2.2 Definitions of Secure and Nonsecure Custody of Juveniles Held in Adult Jails and Lockups

Secure Custody. As used to define a detention or correctional facility, this term includes residential facilities having construction features designed to physically restrict the movements and activities of persons in custody (e.g., 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 (i.e., staff secure).

Further guidance in distinguishing nonsecure custody from secure custody comes from the November 2, 1988, *Federal Register* announcement, *Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of Final Policy*. The policy states that a secure detention or confinement status has occurred within a jail or lockup facility when a juvenile is physically detained or confined in a locked room, set of rooms, or a cell that is designated, 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 enclosure and/or from being physically secured to a cuffing rail or other stationary object.

Also considered secure are those facilities that contain doors with delayed egress devices that have not received written approval by the authority having jurisdiction over fire codes and/or fire inspections in the area in which the facility is located. The egress delay must never exceed the time delay allowed by the fire code applicable to the area in which the facility is located, and the maximum time delay allowed must be specified on the written approval. Facilities that contain devices that exceed a 30-second delay are always considered secure, even though local code may allow for a longer time delay.[1]

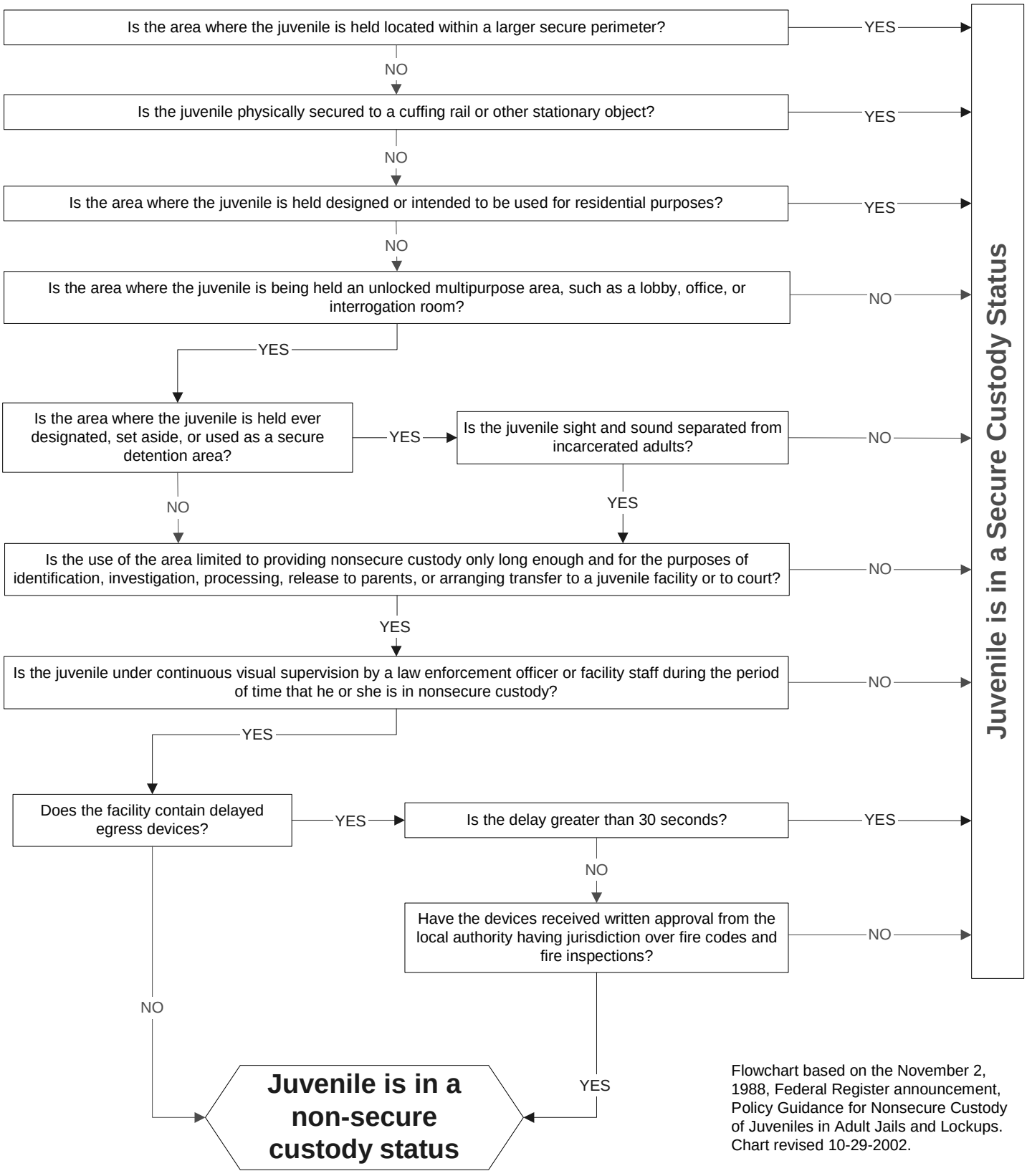
As examples, a juvenile placed in the following situations would be considered in a secure custody status:

- A juvenile placed in a cell within an adult jail or lockup, whether or not the cell door is locked.
- A juvenile placed in an unlocked room within the secure perimeter of an adult jail or lockup or a juvenile detention center.
- A juvenile placed in an adult jail or lockup in a nonsecure conference room that contains a cuffing rail, ring, or other construction feature designated, set aside, or used to securely detain individuals.
- A juvenile left in a secure booking area after being photographed and fingerprinted.
- A juvenile being processed in a secure booking area where an unsecure booking area is available within a facility.
- A juvenile handcuffed to a rail in an unlocked lobby area of an adult jail or lockup.
- A juvenile placed in a room that contains doors with unapproved delayed egress devices or approved delayed egress devices with a delay of more than 30 seconds.

Nonsecure Custody. A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility but not be in a secure detention or confinement status. OJJDP's

[1] This is the maximum delay allowed by the National Fire Protection Association, as published in the *Life Safety Code Handbook*. It should be noted that for these devices to be used, the *Life Safety Code Handbook* dictates that other requirements must be met, such as the existence of an "approved supervised automatic fire detection system or approved supervised automatic sprinkler system."

Flowchart To Determine if a Juvenile Is in a Secure Custody Status in an Adult Jail or Lockup



Flowchart based on the November 2, 1988, Federal Register announcement, Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups. Chart revised 10-29-2002.

Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups[2] states that all of the following policy criteria, if satisfied, will constitute nonsecure custody of a juvenile in an adult jail or lockup facility:

1. The area where the juvenile is held is an unlocked multipurpose area, such as a lobby, office, or interrogation room that is not designated, set aside or used as a secure detention area or is not part of such an area,[3] or, if a secure area, is used only for processing purposes;

2. The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;

3. The use of the area is limited to providing nonsecure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court;

4. In no event can the area be designed or intended to be used for residential purposes; and

5. The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in nonsecure custody.

In addition, a juvenile placed in the following situations would be considered in a nonsecure status:

- A juvenile handcuffed to a nonstationary object: If the five criteria listed above are adhered to, handcuffing techniques that do not involve cuffing rails or other stationary objects are considered nonsecure.

- A juvenile being processed through a secure booking area: Where a secure booking area is all that is available and continuous visual supervision is provided throughout the booking process and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with State law and/or judicial rules), the juvenile is not considered to be in a secure detention status. Continued nonsecure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.

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[2] *Federal Register* 53, no. 212 (November 2, 1988): 44367 (see appendix E).

[3] An unlocked multipurpose area need not be considered part of a secure detention area when, at no time when the juvenile is in such an area, is there sight or sound contact with incarcerated adults.

- A juvenile placed in a secure police car for transportation: The JJDP Act applies to secure detention facilities and secure correctional facilities; therefore, a juvenile placed in a police car for transportation would be in a nonsecure status.

- A juvenile placed in a nonsecure runaway shelter but prevented from leaving because of staff restricting access to exits: A facility may be nonsecure (i.e., staff secure) if physical restriction of movement or activity is provided solely through facility staff.

- A juvenile placed in a room that contains doors with delayed egress devices which have received written approval (including a specification of the maximum time delay allowed) by the authority having jurisdiction over fire codes and fire inspections in the area in which the facility is located and which comply with the egress delay established by the authority having jurisdiction over fire codes and fire inspections. In no case shall this delay exceed 30 seconds (see footnote on page six).

2.3 Compliance With Deinstitutionalization of Status Offenders

Prohibition on Secure Holding. Adult jails and lockups cannot hold status offenders, nonoffenders, or civil-type offenders in a secure manner at any time. An accused status offender may be detained in a nonsecure area of an adult jail or lockup for processing while awaiting transportation to a nonsecure shelter care facility or a juvenile detention center or while waiting release to a parent or guardian.

Status Offender. A status offender is a juvenile who has been charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. The following are examples of status offenses:

- Truancy.

- Violations of curfew.

- Runaway.

- Possession and/or consumption of tobacco products.

- Possession and/or consumption of alcohol: This offense is considered a status offense, even though State or local law may consider it a delinquent offense.[4]

[4] With regard to underage alcohol offenses, in many States it is a criminal offense for any person 18 to 20 years old to consume or possess alcoholic beverages. Because this time period is limited (i.e., 3 years) and the age at which this is not a criminal offense is very broad (i.e., after the age of 21), these alcohol offenses must be classified as status offenses if committed by a juvenile. However, criminal alcohol offenses that apply to all adults (e.g., public intoxication) may be classified as delinquent offenses.

Nonoffender. A nonoffender is 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. These cases are referred to by many names including Children in Need of Services (CHINS), Children in Protective Services (CHIPS), and Families in Need of Services (FINS).

Civil-Type Offender. A civil-type offender is a juvenile offender who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic violations and noncriminal fish and game violations.

Youth Handgun Safety Act Exception. The Youth Handgun Safety Act (18 U.S.C. 922(x)) prohibits possession of a handgun by a minor under the age of 18. There are exceptions to this act such as using a handgun in a gun safety course or hunting under the supervision of an adult. Because the Youth Handgun Safety Act applies only to juvenile offenders and handgun possession, in most cases, would not be a crime if committed by an adult, it fits the definition of a status offense. However, the Violent Crime Control and Law Enforcement Act of 1994, Subtitle B, Youth Handgun Safety, amended the JJDP Act to provide that juveniles who violate United States Code, Title 18, Section 922(x) or a similar State law can be placed in secure detention or secure correctional facilities without violating the DSO requirement. Because of this exception to the JJDP Act, violations of the Youth Handgun Safety Act or a similar State law can be considered either status offenses punishable by detention or confinement or delinquent offenses. The number of these offenders held securely must be reported to OJJDP in the State's annual monitoring report.

Monitoring for Deinstitutionalization of Status Offenders. Adult jails and lockups should keep records of every juvenile who enters the facility. For status offenders, nonoffenders, and civil-type offenders, the records should indicate if the juvenile was held securely or nonsecurely. If such a juvenile is held in a secure manner at any time, this hold would count as a violation of both DSO and jail removal. If held in a secure manner and not sight and sound separated from adult detainees while being held securely, the result would be a violation of DSO, separation, and jail removal.

2.4 Compliance With Jail Removal

Prohibition and Exceptions to the Secure Holding of Juveniles. The JJDP Act states that "no juvenile shall be detained or confined in any jail or lockup for adults...." There are three exceptions to this requirement:

- A 6-hour hold exception for alleged delinquent offenders.
- An exception for alleged delinquent offenders in rural areas if certain criteria are met.
- An exception for juveniles waived or transferred to a criminal court.

Six-Hour Hold Exception. OJJDP regulations allow for a 6-hour "grace period" that permits the secure detention in an adult jail or lockup of those juveniles accused of committing criminal-type offenses (i.e., offenses that would be a criminal offense if committed by an adult). Under this exception, the juvenile cannot have sight or sound contact with incarcerated adults during the time the juvenile is in a secure custody status in the adult jail or lockup. The 6 hours can be used in the following circumstances:

- An alleged delinquent could be detained for up to 6 hours for the purposes of identification, processing, and to arrange for release to parents or transfer to juvenile court officials or juvenile shelter or detention facilities. Any holding of juveniles should be limited to the absolute minimum time necessary to complete these purposes, not to exceed 6 hours. An alleged or adjudicated delinquent could be detained for up to 6 hours before a court appearance and up to an additional 6 hours after a court appearance, but any hold of an adjudicated delinquent that is not related to a court appearance is a violation of jail removal.

The following is noted about this exception:

- The 6-hour time periods cannot be combined to extend the time frame. For example, a juvenile cannot be detained for 4 hours before and 7 hours after the court appearance.

- Once the juvenile has been placed in a secure custody status and the 6-hour period has begun, the facility cannot temporarily take the juvenile out of a secure custody status and begin the 6-hour time period again. For example, if a juvenile was placed in a secure custody status for 4 hours, then was taken to a nonsecure interview room for 1 hour, then was returned to a secure custody status for 2 hours, the total time to report for the jail removal provision is 7 hours and would be a violation of the 6-hour limit.

- A status offender, nonoffender, or civil-type offender cannot be securely detained for any length of time in an adult jail or lockup.

- Adjudicated delinquents cannot be held for any length of time in adult jails or lockups as a disposition.

- A juvenile may not be transferred to a jail or lockup from a juvenile detention center for disciplinary reasons.

- Sight and sound separation from adult offenders must be maintained at all times pursuant to the separation requirement.

Removal (Rural) Exception.[5] OJJDP regulations implement a statutory "rural" exception, allowing the temporary detention beyond the 6-hour limit of juveniles accused of delinquent offenses who are awaiting an initial court appearance. It is important to note that the rural exception does not apply to status offenders. Status offenders may not be held for any length of time in an adult jail or lockup.

All of the following conditions must be met in order for an accused juvenile criminal-type offender, awaiting an initial court appearance, to be detained in an adult jail or lockup under the rural exception:

1. 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);

2. The geographic area having jurisdiction over the juvenile must be outside a metropolitan statistical area (i.e., qualify as a "rural" area) pursuant to the Bureau of Census' current designation;

3. 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;

4. 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

5. The State must provide documentation that conditions 1–4 listed above have been met. In addition, the State must have received prior approval from OJJDP to use the rural exception. OJJDP strongly recommends that jails and lockups that incarcerate juveniles provide youth-specific admissions screening and continuous visual supervision of juveniles incarcerated pursuant to this exception.

If all of the above conditions are met, a juvenile awaiting an initial court appearance may be detained for the following time periods:

- Up to 24 hours (excluding weekends and holidays), or

- If the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation does not allow for court appearances within 24 hours, an additional 48-hour delay is excusable. Therefore, under this condition, the maximum time a juvenile may be detained is 72 hours.

[5] Although cited in regulations as the "removal exception," this provision is more commonly referred to as the "rural exception" and for the purposes of this manual will continue to be referred to as the rural exception.

- If the facility is located where conditions adverse to safety exist (e.g., severe, life-threatening weather conditions that do not allow for reasonably safe travel), the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

These extended time periods cannot be used after the initial court appearance. After the initial court appearance, the 6-hour exception applies and the juvenile could be held only for up to 6 hours prior to and 6 hours after a court appearance.

Transfer or Waiver Exception. If criminal felony charges have been filed against a juvenile in a court exercising criminal jurisdiction, the juvenile can be detained in an adult jail or lockup. The jail and lockup removal requirement does not apply to those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed or to 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. Note that waiver or transfer and the filing of criminal felony charges does not transform a juvenile into an adult. Therefore, such a juvenile can be detained (or confined after conviction) in a juvenile facility and commingled with juvenile offenders.

2.5 Compliance With Separation

Juveniles Shall Not Have Contact With Incarcerated Adults. Neither juveniles alleged to be or found to be delinquent nor status offenders and nonoffenders can have contact with incarcerated adults, including inmate trustees. Contact is defined to include any physical or sustained sight and sound contact. 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 achieved in all secure areas of the facility. It may be accomplished architecturally or through policies and procedures such as time phasing the use of an area to prohibit simultaneous use by juveniles and adults. Brief and inadvertent or accidental contacts between juvenile offenders in a secure custody status and incarcerated adults in secure nonresidential areas of the facility do not count as violations.

Where a secure booking area is all that is available, continuous visual supervision is provided throughout the booking process, and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with State law and/or judicial rules), the juvenile is not considered to be in a secure detention status and separation would not apply during this time. Once the booking process has been completed, the juvenile must be separated immediately from incarcerated adults.

Administrative Transfers. Adjudicated juvenile offenders cannot be 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, an 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.

Transferred or Waived Juveniles. A juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court does not have to be separated from adult criminal offenders. This is due to the fact that such a juvenile is not alleged to be or found to be delinquent (i.e., the juvenile is under a criminal proceeding, not a delinquency proceeding). Likewise, an adult held in an adult jail or lockup for a delinquency proceeding (generally related to a crime committed before reaching the age of full criminal responsibility) can be held securely in an adult jail or lockup because the adult is not a juvenile alleged to be or found to be delinquent. Both types of individuals can be placed wherever the legislature or courts, where authorized, deem appropriate.

2.6 Facility Reporting Requirements

States must compile and report compliance monitoring data annually to the Administrator of OJJDP. Section 223(a)(15) of the JJDP Act requires that States have an adequate system of monitoring for compliance with the core protections. As part of this system, facilities must collect data on juveniles held and report the data to the State. In addition, the State must conduct regular onsite visits to monitor all adult jails and lockups and verify reported data.

To demonstrate compliance with the JJDP Act, all adult jails and lockups must report the following:

1. Dates covered by the reporting period, as defined by the State monitoring agency.

2. Whether the facility held any juveniles in a secure custody status[6] during the reporting period. If no juveniles were held, the remaining reporting items do not apply for this reporting period.

[6] For the purposes of reporting on the adult jail and lockup removal and separation requirements, only holding those juveniles who are under the age of the State age of majority and who are held in violation of the JJDP Act are considered violations. In most States, this age is 18. However, 13 States have a lower age of majority. For example, for reporting on number 5, if a State's age of majority was 16, only those juveniles under the age of 16 that were held in an adult jail or lockup in excess of 6 hours would be reported as violations. Because a 17-year-old in such a State can still be a nonoffender or commit status offenses, this exception does not apply to the DSO requirement, and the number of status offenders and nonoffenders held securely in an adult jail or lockup for any length of time requested in number 3 still applies even though the person may be above the State's age of majority.

3. The total number of accused or adjudicated status offenders (including Valid Court Order violators, out-of-State runaways, and Federal wards) and nonoffenders securely detained for any length of time.

4. The total number of accused juvenile criminal-type offenders held securely for any length of time for purposes other than identification, investigation, processing, release to parent(s), transfer to court, or transfer to a juvenile facility following initial custody.

5. The total number of accused juvenile criminal-type offenders held securely in excess of 6 hours (including those held in excess of 6 hours pursuant to the rural exception).

6. The total number of alleged or adjudicated juvenile criminal-type offenders held securely in excess of 6 hours prior to or following a court appearance or for any length of time not related to a court appearance.

7. If the State has received approval to use the rural exception, the following must be reported for those adult jails or lockups located in areas where the rural exception applies:

    a. The total number of juveniles accused of a criminal-type offense who were held in excess of 6 hours but for less than 24 hours;

    b. The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours but not for more than an additional 48 hours because of conditions of distance or lack of ground transportation; and

    c. The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours but not for more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel.

8. The total number of juveniles not separated from adult criminal offenders, including inmate trustees.

Note: To gather data for the disproportionate minority confinement requirement, the State may request the race and/or ethnicity of each juvenile offender brought to the facility.

Summary of JJDP Act: Adult Jails and Lockups

	Urban Adult Jail or Lockup	Rural Adult Jail or Lockup
Alleged juvenile status offender, nonoffender, or civil-type offender	Secure holding prohibited	Secure holding prohibited
Alleged juvenile status offender accused of violating a Valid Court Order	Secure holding prohibited	Secure holding prohibited
Adjudicated juvenile status offender	Secure holding prohibited	Secure holding prohibited
Juvenile status offender adjudicated for violating a Valid Court Order	Secure holding prohibited	Secure holding prohibited
Alleged juvenile delinquent	Secure hold limited to (1) up to 6 hours for identification, processing, release to parents, or transfer to a juvenile facility or (2) 6 hours prior to and 6 hours after a court appearance. Juvenile must be sight and sound separated from adults.	Secure hold limited to 24 hours prior to a court appearance (excluding weekends and holidays) if certain statutory conditions are met. Time may be extended for weather and distance. Juvenile may be held for up to 6 hours prior to and 6 hours after a court appearance. Juvenile must be sight and sound separated from adults.
Adjudicated juvenile delinquent	Secure hold limited to 6 hours prior to and 6 hours after a court appearance. Juvenile must be sight and sound separated from adults.	Secure hold limited to 6 hours prior to and 6 hours after a court appearance. Juvenile must be sight and sound separated from adults.
Juvenile transferred to criminal court and charged with a misdemeanor	Secure hold limited to 6 hours prior to and 6 hours after a court appearance. Separation is not required.	Secure hold limited to 24 hours prior to a court appearance (excluding weekends and holidays) if certain statutory conditions are met. Time may be extended for weather and distance. Following an initial hold, juvenile may be held for up to 6 hours prior to and 6 hours after a court appearance. Separation is not required.
Juvenile transferred to criminal court and convicted of a misdemeanor	Secure holding prohibited	Secure holding prohibited
Juvenile transferred to criminal court and charged with or convicted of a felony	No restrictions on holding	No restrictions on holding
Adult accused of or convicted of a crime	No restrictions on holding	No restrictions on holding

Section 3

Monitoring for Compliance: Juvenile Facilities

3.1 Definitions Related to Juvenile Facilities

Juvenile Facility. A secure juvenile detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders. The term "State training school" is also used for juvenile correctional facilities.

Secure Custody. As used to define a detention or correctional facility, this term includes residential facilities with construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings (including rooms and buildings that contain alarm devices that prevent departure), fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff (i.e., staff secure).

Also considered secure are those facilities that contain doors with delayed egress devices that have not received written approval by the authority having jurisdiction over fire codes and/or fire inspections in the area in which the facility is located. The egress delay must never exceed the time delay allowed by the fire code applicable to the area in which the facility is located, and the maximum time delay allowed must be specified on the written approval. Facilities that contain devices that exceed a 30-second delay are always considered secure, even though local code may allow for a longer time delay.[1]

3.2 Compliance With Deinstitutionalization of Status Offenders

Prohibitions on the Secure Holding of Status Offenders. The JJDP Act provides that status offenders, nonoffenders, and civil-type offenders not be detained or confined in secure detention or correctional facilities. There may be rare situations, however, where short-term secure custody of accused juveniles may be necessary. For example, detention in a juvenile facility for a brief period of time prior to formal juvenile court action for investigative purposes, for identification purposes, or for the purpose of allowing return to the juvenile's parents or guardian may be necessary. Detention for a brief period of time under juvenile court authority may also be necessary in order to arrange for appropriate shelter care placement. Therefore, OJJDP regulations allow a facility 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,

[1] This is the maximum delay allowed by the National Fire Protection Association, as published in the *Life Safety Code Handbook*. It should be noted that for these devices to be used, the *Life Safety Code Handbook* dictates that other requirements must be met, such as the existence of an approved supervised automatic sprinkler system.

immediately following an initial court appearance. Status offenders who fail to appear for court hearings remain status offenders; they cannot be upgraded to delinquent status for their failure to appear.

There is no grace period for securely holding adjudicated status offenders, nonoffenders, and civil-type offenders. These juveniles cannot be held in secure juvenile detention or correction facilities unless all the conditions of the valid court order provision or the handgun possession exception have been met. Adjudicated juveniles who are nonoffenders or civil-type offenders may not be held in secure juvenile detention facilities under any circumstances.

Status Offender. A status offender is a juvenile who has been charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. The following are examples of status offenses:

- Truancy.
- Violations of curfew.
- Runaway.
- Possession and/or consumption of tobacco products.
- Possession and/or consumption of alcohol: This offense is considered a status offense, even though State law or local ordinance may classify it as a delinquent offense.[2]

Nonoffender. A nonoffender is 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. These cases are referred to by many names including Children in Need of Services (CHINS), Children in Protective Services (CHIPS), and Families in Need of Services (FINS).

Civil-Type Offender. A juvenile offender who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic violations and noncriminal fish and game violations.

[2] With regard to underage alcohol offenses, in many States it is a criminal offense for any person 18 to 20 years old to consume or possess alcoholic beverages. Because this time period is limited (i.e., 3 years) and the age at which this is not a criminal offense is very broad (i.e., after the age of 21), these alcohol offenses must be classified as status offenses if committed by a juvenile. However, criminal alcohol offenses that apply to all adults (e.g., public intoxication) may be classified as delinquent offenses.

Youth Handgun Safety Act Exception. The Youth Handgun Safety Act (18 U.S.C. 922(x)) prohibits possession of a handgun by a minor under the age of 18. There are exceptions to this act such as using a handgun in a gun safety course or hunting under the supervision of an adult. Because the Youth Handgun Safety Act applies only to juvenile offenders and handgun possession, in most cases, would not be a crime if committed by an adult, it fits the definition of a status offense. However, the Violent Crime Control and Law Enforcement Act of 1994, Subtitle B, Youth Handgun Safety, amended the JJDP Act to provide that juveniles who violate United States Code, Title 18, Section 922(x), or a similar State law can be placed in secure detention or secure correctional facilities without violating the DSO requirement. Because of this exception to the JJDP Act, violations of the Youth Handgun Safety Act or a similar State law can be considered either status offenses punishable by detention or confinement or delinquent offenses. The number of these offenders held securely must be reported to OJJDP in the State's annual monitoring report.

Out-of-State Runaways. Out-of-State runaways securely held beyond 24 hours solely for the purpose of being returned to proper custody in another State in response to a want, warrant, or request from a jurisdiction in the other State or pursuant to a court order must be reported as violations of the deinstitutionalization of status offenders requirement.[3]

Federal Wards. The JJDP Act states that "...alien juveniles in custody...shall not be placed in secure detention facilities or secure correctional facilities." Federal wards held beyond 24 hours in State and local 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, or for return to their lawful residence or country of citizenship must be reported as violations of the deinstitutionalization of status offenders requirement.[4]

Valid Court Order (VCO) Exception. In the 1980 amendments to the JJDP Act, Congress enacted a provision intended to address concerns that the DSO mandate deprived juvenile court judges of a significant option in handling certain chronic status offenders. This modification of the JJDP Act was meant to be applied sparingly to the small number of status offenders that "continually flout the will of the court."

The exception provides that status offenders found to have violated a Valid Court Order (VCO) may be securely detained in a juvenile detention or correctional facility. Because the JJDP Act does not provide substantive legal authority to a State, where State legislation currently prohibits

[3] OJJDP will exclude these violations if their presence creates a noncompliance rate in excess of 29.4 per 100,000 juvenile population.

[4] Because State and local governments do not have jurisdiction over these juveniles, OJJDP will exclude these violations if their presence creates a noncompliance rate in excess of 29.4 per 100,000 juvenile population.

the secure confinement of status offenders who violate a VCO, legislative amendment would be required if a State wanted to have the ability to confine status offenders who violate VCOs.

Although some States' common laws or statutes allow the courts to use traditional contempt power to upgrade a status offender to a delinquent offender, a juvenile held for violating a VCO remains a status offender, and the VCO process must be followed. As status offenders, juveniles who violate a VCO cannot be held in an adult jail or lockup for any length of time.

For the purpose of determining whether a VCO 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 that regulates future conduct of the juvenile. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

ii. The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing that observed 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 VCO 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 ensure 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-four hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juvenile 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 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.

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/her in 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 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 (found in numbers i, ii, and iii listed above) existed and that the applicable due process rights (found in number v) were afforded the juvenile. 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.

vii. A nonoffender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a VCO.

If the conditions of the VCO process are not met, each juvenile held over the 24-hour limit must be counted as a violation of the DSO requirement. OJJDP has developed a checklist that may be used by juvenile courts to demonstrate compliance with the VCO provision. This VCO checklist can be found in appendix H.

To demonstrate compliance with the VCO process, the State must report in its annual compliance monitoring report the total number of status offenders held in any secure detention or correctional facility pursuant to the VCO provision. The State must have a system in place to verify whether court orders used to hold status offenders in juvenile detention centers comply with the conditions listed above. At a minimum, the State must randomly verify 10 percent of all juvenile cases held securely because of violating a VCO. If a system is not in place to monitor compliance with the conditions of the VCO process, all uses of the VCO provision must be reported as violations of DSO.

Summary of the Valid Court Order (VCO) Process

Juvenile commits a status offense such as truancy, runaway, curfew, or minor in possession of alcohol. (The VCO provision cannot be used for nonoffenders such as dependent or neglected children.)

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If held, the juvenile can be placed in the following facilities:
- A juvenile detention center for up to 24 hours, exclusive of weekends and holidays, or,
- A nonsecure facility.

The juvenile cannot be held in an adult jail or lockup for any length of time.

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The juvenile is brought before a court of competent jurisdiction for the issuance of a Valid Court Order. The order must include:
- An order regulating the future conduct of the juvenile,
- Warning of the consequences of violating the VCO,
- Warning provided in writing to the juvenile, parents, and attorney,
- Warning reflected in court record and proceedings, and,
- Juvenile must be advised of all due process rights.

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After its issuance, the juvenile violates the conditions of the Valid Court Order.

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The juvenile cannot be held in an adult jail or lockup for any length of time.

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If held, the juvenile can be placed in a juvenile detention center if the juvenile has a probable cause hearing within 24 hours (exclusive of weekends and holidays) of being placed in detention.

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If probable cause was established, the juvenile can continue to be held in a juvenile detention center if the juvenile has a violation hearing within 72 hours (exclusive of weekends and holidays) of being placed in detention. The violation hearing must include the following:
- The juvenile must be advised again of all due process rights,
- There must be a judicial determination that the juvenile violated the valid court order, and,
- There must be a judicial determination that there is no less restrictive alternative available. This determination must be based on a written report prepared by a public agency other than a court or law enforcement agency. The written report must include the following three items:
  1. A review of the behavior of the juvenile,
  2. A determination of the reasons for that behavior, and,
  3. A determination that all other dispositions other than secure detention are inappropriate.

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If all of the items listed above were satisfied and during the violation hearing the juvenile was found to have violated the conditions of the VCO, the juvenile can be held in a juvenile detention center for as long as the juvenile court deems appropriate. The juvenile cannot be held in an adult jail or lockup for any length of time.

3.3 Compliance With Jail Removal

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, or services beyond mechanical services (heating, air conditioning, water, and sewer). Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with the collocated facility criteria (see section 4).

3.4 Compliance With Separation

Juveniles alleged to be or found to be delinquent, status offenders, and nonoffenders cannot have contact with incarcerated adults, including inmate trustees. Contact is defined to include any physical or sustained sight and sound contact. 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.

It is important to note that the separation requirement prohibits a State from transferring adult offenders to a juvenile correctional authority for placement in a juvenile facility. For example, an adult could not be transferred to a juvenile detention center to alleviate overcrowding in an adult jail.

Inmate trustees who perform maintenance or other duties at a juvenile detention center or juvenile training school must be sight and sound separated from the juvenile detainees at all times. Separation may be accomplished architecturally or through policies and procedures such as time phasing the use of an area to prohibit simultaneous use by juveniles and adults. The State must monitor all juvenile detention facilities and juvenile training schools for separation.

Transferred, Waived, or Certified Youth. A juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court may be detained or confined in a juvenile correctional facility or juvenile detention center with other juveniles who are under the jurisdiction of the juvenile court. This is not a violation of the separation requirement because the youth is not a juvenile "alleged to be or found to be delinquent" (he or she has been charged with a criminal, not a delinquent act) and the youth is not an "adult person" incarcerated because he/she has been convicted of a crime or is awaiting trial on criminal charges. Once the transferred, waived, or certified youth becomes an adult, however, he or she must be placed in an adult facility.[5]

[5] OJJDP policy excepts individuals placed in a juvenile facility while they are legally a juvenile and who become an adult while under criminal court jurisdiction as long as the placement is "uninterrupted." This policy precludes a transfer to another juvenile facility or the return of the individual to the juvenile facility following release on probation or parole.

Adults Under the Jurisdiction of the Juvenile Court. An adult held for a delinquency proceeding can be held in a juvenile detention center or a juvenile training school. For example, if a 17-year-old juvenile committed a burglary and was charged with this delinquent offense at age 18, he or she could be held in a juvenile detention center. This does not violate the separation requirement because the 18-year-old adult has not been "convicted of a crime or is awaiting trial on criminal charges."

3.5 Facility Reporting Requirements

States must compile and report compliance monitoring data annually to the Administrator of OJJDP. Section 223(a)(15) of the JJDP Act requires that States have an adequate system of monitoring for compliance with the core protections. As part of this system, facilities must collect data on juveniles held and report the data to the State. The State must conduct regular onsite visits to monitor the facilities and verify reported data. To demonstrate compliance with the JJDP Act, secure juvenile detention or correctional facilities must report the following:

1. Dates covered by the reporting period, as designated by the State monitoring agency.

2. The total number of accused status offenders and nonoffenders, including out-of-State runaways and Federal wards, held securely for longer than 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. Exclude those juveniles held pursuant to the Valid Court Order provision or pursuant to the Youth Handgun Safety Act or a similar State law. Of this total number, report how many of the violations were:

    a. Out-of-State runaways.

    b. Federal wards.

3. The total number of adjudicated status offenders and nonoffenders, including out-of-State runaways and Federal wards, held securely for any length of time, excluding those held pursuant to the Valid Court Order provision or pursuant to the Youth Handgun Safety Act.

4. The total number of juveniles not separated from adult criminal offenders.

5. 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.

6. The State monitoring agency is also required to collect the following:

    a. The total number of status offenders held in any secure detention or correctional facility pursuant to the VCO provision. Each use of the VCO provision that does not comply with the VCO process must be reported as a DSO violation above if the juvenile was held for more than 24 hours.

    b. The total number of juvenile offenders held pursuant to the Youth Handgun Safety Act.

    c. The total number of juvenile offenders placed in facilities that are:

        i. Not near their home community.

        ii. Not the least restrictive appropriate alternative.

        iii. Not community-based.

Note: To gather data for the disproportionate minority confinement requirement, the State may request the race of each juvenile offender brought to the facility.

Summary of the JJDP Act: Juvenile Detention or Correctional Facilities

	Secure Juvenile Detention or Juvenile Correctional Facility
Alleged juvenile status offender or nonoffender	Secure hold limited to 24 hours prior to and 24 hours after an initial court appearance (excluding weekends and holidays).
Alleged juvenile status offender accused of violating a Valid Court Order	Juvenile must have a probable cause hearing within 24 hours of being placed in detention. Juvenile must have a violation hearing within 72 hours of being placed in detention. Time limits are excluding weekends and holidays. There is no time limit after the violation hearing.
Adjudicated juvenile status offender	Secure holding prohibited
Juvenile status offender adjudicated for violating a Valid Court Order	No restrictions on holding
Alleged juvenile delinquent	No restrictions on holding
Adjudicated juvenile delinquent	No restrictions on holding
Juvenile transferred to criminal court and charged with a misdemeanor	No restrictions on holding
Juvenile transferred to criminal court and convicted of a misdemeanor	No restrictions on holding
Juvenile transferred to criminal court and charged with or convicted of a felony	No restrictions on holding
Adult accused of or convicted of a criminal offense	Secure holding prohibited

Section 4

Monitoring for Compliance: Other Facilities

4.1 Collocated Facilities

Classifying Facilities. States must determine whether or not a facility in which juveniles are detained or confined is an adult jail, adult lockup, or a secure juvenile detention center or correctional facility. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups.[1] Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with the four criteria listed in this section. A facility adhering to the four criteria would qualify as a separate secure juvenile detention center or correctional facility for the purpose of monitoring for compliance with DSO, jail removal, and separation.

Collocated Facility. 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 or services beyond mechanical services (heating, air conditioning, water, and sewer) or beyond specialized services such as medical care, food service, laundry, maintenance, and engineering.

Criteria for Collocated Facilities. 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. The facility must ensure 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. The facility must have separate juvenile and adult program areas, 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 that 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

[1] See section 2 for exceptions.

3. The facility must have separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (e.g., medical care, food service, laundry, maintenance, and engineering) 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.

The State must determine that the four criteria are fully met. It is incumbent upon the State to make the determination through an onsite 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 above.

Collocated juvenile detention facilities approved by the State and concurred with by OJJDP before December 10, 1996, may be reviewed 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 in this section. It is up to the State monitoring agency to determine which criteria will be used. Facilities approved on or after December 10, 1996, must be reviewed against the criteria set forth in this section. A monitoring checklist has been developed by OJJDP for each of the criteria. The use of either checklist is optional and may be found in appendix I.

Separate Staff Requirement. All collocated facilities are subject to the separate staff requirement established by the 1992 Amendments to the JJDP Act, which provide that juveniles shall not be detained or confined "with the part-time or full-time security staff (including management) or direct-care staff of a jail or lockup for adults."

Annual Onsite Review Requirement. An annual onsite 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 listed above is being maintained.

Collocated Facility Reporting Requirements. States must report annually to the Administrator of OJJDP on the results of monitoring for DSO, jail removal, and separation. In addition, the State must conduct annual onsite visits to monitor collocated facilities for the JJDP Act and to verify reported data.

Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with the four criteria listed in this section and would follow the same reporting requirements as listed for adult jails and lockups in section 2. A collocated juvenile facility adhering to the four criteria would qualify as a separate secure juvenile detention center or correctional facility and would follow the reporting requirements listed for juvenile facilities in section 3.

4.2 Court Holding Facilities

A court holding facility is a secure facility, other than an adult jail or lockup, that is used to temporarily detain persons immediately before or after detention hearings or other court proceedings. Court holding facilities, where they do not detain individuals overnight (i.e., are not residential) and are not used for punitive purposes or other purposes unrelated to a court appearance, are not considered adult jails or lockups.

A status offender or delinquent offender placed in a court holding facility is exempt from the deinstitutionalization requirement if the facility meets the criteria listed in the definition above. Facilities, however, remain subject to the separation requirements of the JJDP Act. The separation requirements pertain to status offenders and nonoffenders, and alleged or adjudicated delinquent offenders.

It is important to note that court holding facilities impose an inherent or practical time limitation in that juveniles must be brought to and removed from the facility during the same judicial day.

The State must monitor court holding facilities to ensure they continue to meet the definition and purpose listed above. A court holding facility that does not meet the definition and purpose listed above must be monitored as an adult jail or lockup.

4.3 Adult Prisons

Status Offenders. The JJDP Act prohibits the placement of status offenders and nonoffenders in secure detention facilities or secure correctional facilities. Holding status offenders or nonoffenders in an adult prison[2] would be an immediate violation of the JJDP Act.

[2] The term "adult prison" includes any institution used for the post-conviction confinement of adult criminal offenders, including work camps and secure facilities located in the community.

Delinquent Offenders. The JJDP Act states that "no juvenile shall be detained or confined in any jail or lockup for adults...." Therefore, the JJDP Act limits the facilities from which juveniles must be removed to adult jails or lockups. The requirement does not apply to adult prisons. Therefore, holding a delinquent offender in an adult prison is not a violation of the jail removal requirement.

It is important to note that the JJDP Act states that "juveniles alleged to be or found to be delinquent 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 awaiting trial on criminal charges." Therefore, complete separation must be provided between juvenile delinquent offenders and adult inmates.

Transferred, Waived, or Certified Juveniles. The JJDP Act states that "no juvenile shall be detained or confined in any jail or lockup for adults...." Therefore, it is not a violation of jail removal to hold a juvenile in an adult prison if that juvenile has been formally waived or transferred to criminal court and criminal felony or misdemeanor charges have been filed.

Furthermore, a juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court does not have to be separated from adult criminal offenders pursuant to the separation requirements of the JJDP Act. This is due to the fact that such a juvenile is not alleged to be or found to be delinquent (i.e., the juvenile is under a criminal proceeding, not a delinquency proceeding).

4.4 Nonsecure Community-Based Programs and Facilities

Nonsecure, community-based programs or facilities are exempt for the purposes of monitoring for compliance with DSO, jail removal, and separation. The core protections only apply to secure facilities. For example, a nonsecure residential substance abuse treatment program could include both juvenile delinquent or status offenders and adult offenders who are under a sentence for the conviction of a crime.

The State should monitor nonsecure facilities that hold juveniles to verify their nonsecure status. If the facility's status were to change and become secure, the facility must be monitored as an adult jail or lockup or other secure institution if it holds both juveniles and adult offenders. If it holds only juveniles, it must be monitored as a secure juvenile detention center or correctional facility.

4.5 Secure Mental Health Treatment Units

A juvenile committed to a mental health facility under a separate State law governing civil commitment of individuals for mental health treatment or evaluation would be considered outside the class of juvenile status offenders and nonoffenders. For monitoring purposes, this distinction does not permit placement of status offenders or nonoffenders in a secure mental health facility where the court is exercising its juvenile status offender or nonoffender

jurisdiction. The State must ensure that juveniles alleged to be or found to be juvenile status offenders or nonoffenders are not committed under State mental health laws to circumvent the intent of DSO.

There are no restrictions to placing delinquent offenders in a mental health treatment unit. The separation requirement does not apply if the juvenile and adults are held in a mental health facility solely because of a mental health civil commitment.

Summary of the JJDP Act: Other Facilities

	Shelter, Group Home, or Other Nonsecure or Staff Secure Facility	Adult Prison	Court Holding Facility (must meet definition)	Secure Mental Health Facility	Collocated Juvenile Facility
Alleged juvenile status offender or nonoffender	No restrictions on holding	Secure holding prohibited	No restrictions if separated from adults	Status offenders or nonoffenders may not be placed in a secure mental health facility where the court is exercising its juvenile status offender or nonoffender jurisdiction. There are no restrictions on holding any juvenile in a secure mental health facility if the juvenile is held there for the purpose of a mental health civil commitment. The separation requirement does not apply if the juvenile and adults are held in a mental health facility due solely to a mental health civil commitment.	A collocated juvenile facility adhering to the collocated facility criteria qualifies as a separate secure juvenile detention center or correctional facility and has the same holding restrictions as secure juvenile facilities. Absent compliance with the collocated facility criteria, juvenile facilities collocated with adult facilities are considered adult jails or lockups and have the same holding restrictions as adult jails and lockups.
Alleged juvenile status offender accused of violating a Valid Court Order (VCO)	No restrictions on holding	Secure holding prohibited	No restrictions if separated from adults		
Adjudicated juvenile status offender	No restrictions on holding	Secure holding prohibited	No restrictions if separated from adults		
Juvenile status offender adjudicated for violating a VCO	No restrictions on holding	Secure holding prohibited	No restrictions if separated from adults		
Alleged juvenile delinquent	No restrictions on holding	No restrictions if separated from adults	No restrictions if separated from adults		
Adjudicated juvenile delinquent	No restrictions on holding	No restrictions if separated from adults	No restrictions if separated from adults		
Juvenile transferred to criminal court and charged with a misdemeanor	No restrictions on holding	No restrictions on holding	No restrictions on holding		
Juvenile transferred to criminal court and convicted of a misdemeanor	No restrictions on holding	No restrictions on holding	No restrictions on holding		
Juvenile transferred to criminal court and charged with or convicted of a felony	No restrictions on holding	No restrictions on holding	No restrictions on holding		
Adult accused of or convicted of a crime	No restrictions on holding	No restrictions on holding	No restrictions on holding		

Section 5

State Monitoring of Facilities

5.1 Adequate System of Monitoring for Compliance

States participating in the JJDP Act must provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and nonsecure facilities to ensure that the core protections are met. The State must also provide annual reporting of the results of such monitoring to the Administrator of OJJDP. Although OJJDP holds the State agency implementing the Formula Grants program responsible for the monitoring effort and the validity of the monitoring report, the State agency may contract with a public or private agency to perform the monitoring function. If selecting another agency, the State must identify in its monitoring plan who the agency has authorized and/or contracted with to assist in the monitoring functions.

As part of an adequate system of monitoring facilities, the State must describe its plan, procedure, and timetable for monitoring. The plan must describe in detail each of the following tasks, including the identification of the specific agency responsible for each task:

1. Identification of the monitoring universe: This refers to the identification of all facilities in the State which might hold juveniles pursuant to public authority. Every facility which has this potential, regardless of the purpose for housing juveniles, comes under the purview of the monitoring requirements. This also includes those facilities owned or operated by public and private agencies.

2. Classification of the monitoring universe: This is the classification of all facilities in the State 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.

3. Inspection of facilities: Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and record keeping. All facilities classified as secure detention or correctional facilities, jails, lockups, and other facilities must have periodic, on-site inspections to determine compliance with the core protections. The inspection must include:

    a. 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

b. A review of the record keeping system to determine whether sufficient data are maintained to determine compliance with DSO, jail removal, and separation.

4. Data collection and data verification: Data collection and reporting are required to determine whether facilities in the State are in compliance with the applicable requirements of DSO, jail removal, and separation. The length of the reporting period should be 12 months, but in no case less than 6 months. If reporting 6 months of data, the data must be projected for a full year in a statistically valid manner. If the data is self-reported by the facility or is collected and reported by an agency other than the State agency receiving Federal Grant funds, the plan must describe a statistically valid procedure used to verify the reported data.

As part of its monitoring system, the State must provide a description of the barriers it faces in implementing and maintaining a monitoring system to report the level of compliance with DSO, jail removal, and separation requirements and its plans to overcome such barriers.

5.2 Native American Tribes

Monitoring Facilities on Native American Reservations. The sovereign authority of Native American tribes with regard to civil and criminal jurisdiction over acts committed on a reservation varies from State to State and, in some States, from tribe to tribe within a State. Where a Native American tribe exercises jurisdiction over juvenile offenders through an established tribal court and operates correctional institutions for juvenile and adult offenders and these activities are not subject to State law (i.e., the functions are performed under the sovereign authority of the tribal entity), the State cannot mandate tribal compliance with the core protections. Therefore, where the State has no authority to regulate or control the law enforcement activities of a sovereign Native American tribal reservation, facilities that are located on such reservations are not required to be included in the monitoring universe.

Grants to Native American Tribes. During the 1988 reauthorization, the JJDP Act was amended to require that a portion of each State's Formula Grant award be made available to fund programs of tribes that perform law enforcement functions. While the Act specifies a minimum level of funding, States may provide any amount in excess of the minimum amount required to accomplish the objectives of the JJDP Act within the tribe. Native American tribes that receive Formula Grant funds as part of the Native American Pass-Through requirement of the JJDP Act must comply with the core protections, and facilities on the reservation must be monitored by the State. In addition, if the tribe wishes to establish eligibility for Community Prevention Grant funds, the tribe must be in compliance with the core protections and facilities on the reservation must be monitored.

5.3 Out-of-State Juveniles

Where there is interstate placement of juveniles and a juvenile is held in a secure facility in violation of the JJDP Act, the receiving State must include the violation in its annual monitoring report. Although only the receiving State must report the violation, it should be noted that neither State is meeting the intent of the core protections. In addition, a unit of local government cannot establish eligibility for Title V Community Prevention Grant funds if the jurisdiction is in compliance because of sending juveniles to another jurisdiction in violation of the JJDP Act.

5.4 Enforcement Mechanism

A State's monitoring system must describe procedures established for receiving, investigating, and reporting complaints of violations of DSO, jail removal, and separation requirements. This should include both legislative and administrative procedures and sanctions.

Section 6

Reporting Requirements

6.1 Annual Compliance Monitoring Report Requirement

In order to receive its full fiscal year allocation of Formula Grants program funds, a State must first demonstrate compliance with DSO, jail removal, separation, and disproportionate minority confinement core protections. Compliance with the first three core protections is demonstrated through data provided in the State's annual Compliance Monitoring Report. Compliance with disproportionate minority confinement is determined by information provided in the State's Comprehensive Three-Year Plan and subsequent Three-Year Plan Updates.

Eligibility for Formula Grant awards is generally based on data contained in the Compliance Monitoring Report that is due by December 31 of the calendar year prior to the beginning of the fiscal year for which funds are being requested. For example, in most cases, eligibility for FY 2000 Formula Grants was based on States' 1998 Compliance Monitoring Reports. This timeframe provides a State that has identified a compliance problem with sufficient time to request technical assistance, develop a corrective action plan, and take the necessary steps to provide OJJDP with more current data demonstrating compliance, thereby maximizing the State's opportunity to receive its full fiscal year allocation.

6.2 Deadline To Submit Annual Report

OJJDP's Formula Grant Regulation requires States to submit compliance information annually. The reporting period should provide 12 months of data but shall not provide less than 6 months of data. The regulation further requires that the report be submitted to the Administrator of OJJDP by December 31 of each year. Recognizing that States use various data collection procedures, OJJDP has historically recognized a variety of data collection periods including calendar years, the Federal fiscal year (10/1– 9/30), or the State fiscal year. To accommodate States that use a calendar year data collection period, OJJDP allows an additional 3 months for the verification of data and submission of the report by March 31 of each year. States that fail to adhere to the requirement for the timely submission of this data face a restriction on the drawdown of funds for active Formula Grants program awards.

6.3 Reporting Requirements

Deinstitutionalization of Status Offenders. To demonstrate the extent of compliance with the DSO requirement, the annual 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 onsite;

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 VCO provision or pursuant to the Youth Handgun Safety Act 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;

D. The total number of accused status offenders (including valid court order violators, out-of-State runaways, and Federal wards, but excluding Youth Handgun Safety Act 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 the Youth Handgun Safety Act;

F. The total number of status offenders held in any secure detention or correctional facility pursuant to the VCO provision; and

G. The total number of juvenile offenders held pursuant to the Youth Handgun Safety Act.

Section 223(a)(12)(B). Although not a core protection of the JJDP Act, Section 223(a)(12)(B) requires States to review progress made in placing juveniles near their home community, in the least restrictive appropriate alternative, and in community-based facilities. 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.

Jail Removal. To demonstrate the extent of compliance with jail removal, 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 onsite;

C. The total number of adult lockups in the State and the number inspected onsite;

D. The total number of adult jails holding juveniles during the past 12 months;

E. The total number of adult lockups holding juveniles during the past 12 months;

F. The total number of accused juvenile[1] criminal-type offenders held securely in adult jails, lockups, and unapproved collocated facilities in excess of 6 hours (including those held pursuant to the rural exception);

G. The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and unapproved collocated facilities for less than 6 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 alleged or adjudicated juvenile criminal-type offenders held securely in adult jails or lockups and unapproved collocated facilities in excess of 6 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 rural exception, including a list of such facilities and the county or jurisdiction in which each is located;

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[1] For the purposes of reporting on the adult jail and lockup removal and separation requirements, only holding those juveniles who are under the age of the State age of majority and who are held in violation of the JJDP Act are considered violations. In most States, this age is 18. However,13 States have a lower age of majority. For example, for reporting on this item, if a State's age of majority is 16, only those juveniles under the age of 16 that were held in an adult jail or lockup in excess of 6 hours would be reported as violations. Because a 17-year-old in such a State can still be a nonoffender or commit status offenses, this exception does not apply to the DSO requirement, and the number of status offenders and nonoffenders held securely in an adult jail or lockup for any length of time requested in letter "I" below still applies even though the person may be above the State's age of majority.

K. The total number of juveniles accused of a criminal-type offense who were held in excess of 6 hours but for less than 24 hours in adult jails, lockups, and unapproved collocated facilities pursuant to the rural exception;

L. The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours but not for more than an additional 48 hours in adult jails, lockups, and unapproved collocated facilities pursuant to the rural exception 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 rural exception.

Separation. 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 onsite;

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 who were not sight and sound separated from adult criminal offenders.

6.4 Technical Assistance Reporting Tools

OJJDP has developed two technical assistance tools to help States submit annual compliance monitoring reports: a paper form and a computer spreadsheet.

Paper Format. This form requests all of the information to be submitted to fulfill the reporting requirements listed above. If using the paper form, the State should not delete or modify any of the text. The latest version of this form, revised August 1995, must be used. This form can be found in appendix J.

Spreadsheet Format. OJJDP has developed a template to use on the Microsoft Excel spreadsheet program. This template requests all of the information to be submitted to fulfill the reporting requirements listed above. The form may be downloaded at the OJJDP compliance monitoring Web site at http://www.ojjdp.ncjrs.org/compliance.

States that are considering using this form should note the following:

- The electronic form is a template only – to use it the State must first have the Microsoft Excel program, version 97 or greater.

- OJJDP cannot provide technical assistance or training on using Microsoft Excel. Those not familiar with Microsoft Excel should use the paper format.

- The template cannot and should not be modified. If modifications are necessary because of differences in the manner in which a State monitors for compliance, the State should use the paper format to fully explain those differences.

- Although it is provided as an electronic template, the form should not be submitted electronically. It must be printed and then sent to OJJDP with all of the requested attachments.

- The State should check for template updates and enhancements before completing its annual monitoring report. New versions of the template can be found at the OJJDP Web site on compliance monitoring at http://www.ojjdp.ncjrs.org/compliance.

6.5 Monitoring Report Exemption

States that have been determined by the OJJDP Administrator to have achieved full compliance with DSO, jail removal, and separation requirements and that wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator that demonstrates the following:

i. The State provides for an adequate system of monitoring jails, law enforcement lockups, and detention 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), (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. Timeframes 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.

6.6 Annual Report to the Governor and Legislature

The JJDP Act requires the State Advisory Group in each State participating in the Formula Grants program to submit annual recommendations to the State's Governor and legislature regarding the State's compliance with the core protections and with progress relating to the State Challenge Grants program. This report is an excellent opportunity for the State agency and the State Advisory Group to make recommendations and report how the State is addressing the core protections.

Section 7

Standards for Demonstrating Compliance

7.1 Grant Funds Affected by Compliance

If a State demonstrates compliance with the core protections, it is eligible for Formula and Challenge Grant funds. Moreover, units of local government and federally recognized tribes that are in compliance with the core protections are eligible for Title V Community Prevention Grant funds.

Formula Grant Funds. The State must demonstrate the extent to which each of the four core protections are met. If the State fails to demonstrate the required level of compliance by the end of the fiscal year for which funds are allocated, the State's Formula Grants allotment will be reduced by 25 percent for each such failure. Further, the State must agree 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 requirement(s) for which the State is in noncompliance. However, if the OJJDP Administrator makes a discretionary determination that the State has substantially complied with the requirement(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, then the restriction on expenditures will not apply. In order for such a determination to be made, 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, from Formula Grants or other fund sources, 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 the State Advisory Group set-aside, will be reduced because they are based on the reduced allocation.

State Challenge Grant Funds. The State is eligible to apply for State Challenge Grant funds if the State is eligible for its Formula Grant award. Therefore, a State not eligible for its Formula Grant award because of noncompliance is not eligible for a State Challenge Grant.

Community Prevention Grant Funds – State Eligibility. A State out of compliance with the JJDP Act may still be awarded Community Prevention Grants if there are units of general local government eligible to receive grant awards based upon their compliance with the core protections.

Community Prevention Grant Funds – Unit of Local Government Eligibility. For a unit of general local government or federally recognized tribe to be eligible to apply to the State for Title V Community Prevention Grant funds, the unit must be certified by the State Advisory Group as

in compliance with the four core protections. The specific unit of general local government that is seeking certification must demonstrate compliance with the four core protections. Therefore, a State Advisory Group is not allowed to certify a city's compliance based on the overall compliance status of the county. The unit of general local government must obtain this certification prior to applying for an award of funds. In determining eligibility, the State Advisory Group must certify only those units of general local government that are within the de minimis parameters provided in sections 7.3, 7.4, and 7.5 and base this determination on the locality's most current census data.

The compliance certification applies to all facilities operated by or contracted by the unit of general local government. This certification is not limited to a specific catchment area within the boundaries of the unit of general local government. Therefore, the certification must also include any facility that the unit of general local government operates, contracts for, or uses inside or outside its boundaries. However, the certification does not apply to facilities operated or controlled by other governmental units within the local governmental boundaries that are not used by the local government.

In order for a unit of general local government to be in compliance with the disproportionate minority confinement (DMC) core requirement, the State Advisory Group must certify that the unit of general local government is cooperating in data gathering and analysis to determine if DMC exists. If DMC is found to exist within the boundaries or jurisdiction of the unit of general local government, the unit must be making an adequate effort toward addressing, or assisting the State to address, this issue. The level of cooperation and commitment must be satisfactory to support efforts to achieve the goals of the DMC requirement.

After awards have been made to units of local government, the State must ensure that these communities continue to comply with the four core protections. Title V awards to units of local government must be in 12-month increments for periods of up to 3 years. Continuation funding for each of the 12-month increments is based on the unit of local government's satisfactory performance and continued compliance with the four core protections. As part of its Community Prevention Grants program, the State must have a plan which will identify and discontinue all Community Prevention Grants funding to units of local government that fall out of compliance.

7.2 Deadline for Establishing Eligibility for Formula Grant Funds

The deadline date for a State to demonstrate eligibility for its annual allocation of Formula Grant funds is March 31 or 60 days after OJJDP officially notifies States of their Formula Grant allocation, whichever is later. Demonstrating eligibility includes submitting a complete grant application by this deadline and submitting a monitoring report and other documentation that establishes compliance with the core protections of the JJDP Act. If a State cannot meet the deadline for good cause, it may apply for an extension to OJJDP in writing by the application due date. The extension will not be continued past the end of the fiscal year for which the State has applied for funds. The funds for which the State could not demonstrate eligibility will not be held past the end of the fiscal year for which the State applied for funds, nor will the entire award be

held past the end of the fiscal year for which the State applied for funds in order to provide additional time to establish eligibility.

7.3 Demonstrating Compliance: Deinstitutionalization of Status Offenders

Full compliance with DSO is achieved when a State has removed 100 percent of status offenders and nonoffenders from secure detention and correctional facilities. The legal concept of *de minimis*, meaning "the law cares not for small things," is generally applied where small, insignificant or infinitesimal matters are at issue. OJJDP has developed de minimis standards for States that have not removed 100 percent of status offenders and nonoffenders from secure detention and correctional facilities. If States that have not achieved 100 percent can demonstrate full compliance with de minimis exceptions pursuant to the OJJDP policy criteria,[1] the State will be determined to be in compliance with DSO. The OJJDP policy establishes three criteria to be applied in making a determination of whether a State has demonstrated full compliance with the deinstitutionalization of status offenders requirement. The three criteria, A, B, and C, are listed below.

Criterion A: The extent of noncompliance is insignificant or of slight consequence in terms of the total juvenile population in the State. In applying Criterion A, the following four standards[2] will be used:

1. States which have an institutionalization rate less than 5.8 per 100,000 population will be considered to be in full compliance with the de minimis exceptions and <u>will not</u> be required to address Criteria B and C.

2. States whose rate falls between 5.8 and 17.6 per 100,000 population will be eligible for a finding of full compliance with de minimis exceptions if they <u>adequately meet</u> Criteria B and C.

[1] *Federal Register* 46, no. 6 (January 9, 1981): 2567-2568 (see appendix C).

[2] To establish these numerical standards, in 1980 OJJDP calculated the average rate of DSO violations in eight States (i.e., two States from each of the four Bureau of Census regions). The eight States selected by OJJDP in 1980 were those having the smallest institutionalization rate per 100,000 population *and* which also had an adequate system of monitoring for compliance. By applying this procedure and utilizing the information provided in the eight States' most recently submitted monitoring reports, OJJDP determined that the eight States' average annual rate was 17.6 incidences of status offenders and nonoffenders held per 100,000 population under 18. In computing the standard deviation from the mean of 17.6, it was determined that a rate of 5.8 per 100,000 was one standard deviation below the mean and 29.4 was one standard deviation above the mean.

3. States whose rate is above 17.6 but does not exceed 29.4 per 100,000 will be eligible for a finding of full compliance with de minimis exceptions only if they fully satisfy Criteria B and C.

4. States which have a placement rate in excess of 29.4 per 100,000 population are presumptively ineligible for a finding of full compliance with de minimis exceptions because any rate above that level is considered to represent an excessive and significant level of status offenders and nonoffenders held in juvenile detention or correctional facilities.

OJJDP will consider requests from such States where the State demonstrates exceptional circumstances which account for the excessive rate. Exceptional circumstances are limited to situations where, but for the exceptional circumstance, the State's institutionalization rate would be within the 29.4 rate established above.

The following will be recognized for consideration as exceptional circumstances:

1. Out-of-State runaways held beyond 24 hours in response to a want, warrant, or request from a jurisdiction in another State or pursuant to a court order, for the sole purpose of being returned to proper custody in the other State;

2. Federal wards held under Federal statutory authority in a secure State or local detention facility for the sole purpose of effecting a jurisdictional transfer, appearance as a material witness, or for return to their lawful residence or country of citizenship; and

3. A State has recently enacted changes in State law which have gone into effect and which the State demonstrates can be expected to have a substantial, significant, and positive impact on the State's achieving full compliance with the deinstitutionalization requirement within a reasonable time.

In order to make a determination that a State has demonstrated exceptional circumstances under (1) and (2) above, the State must have developed a separate and specific plan under Criterion C which addresses the problem in a manner that will eliminate the noncompliant instances within a reasonable time.

It is of critical importance that all States seeking a finding of full compliance with de minimis exceptions demonstrate progress toward full compliance annually in order to be eligible for a finding of full compliance with de minimis exceptions.

States may provide additional information that they deem relevant in determining the extent to which the number of noncompliant incidences is insignificant or of slight consequence. However, factors such as local practice, available resources, or organizational structure of local government will not be considered relevant by OJJDP in making this determination.

Criterion B: The extent to which the instances of noncompliance were in apparent violation of State law or established executive or judicial policy. The following information must be provided in response to Criterion B and must be sufficient to make a determination as to whether the instances of noncompliance with DSO as reported in the State's monitoring report were in apparent violation of, or departures from, State law or established executive or judicial policy. OJJDP will consider this criterion to be satisfied by those States that demonstrate that all or substantially all of the instances of noncompliance were in apparent violation of, or departures from, State law or established executive or judicial policy. This is because such instances of noncompliance can more readily be eliminated by legal or other enforcement processes. The existence of such law or policy is also an indicator of the commitment of the State to the deinstitutionalization requirement and to achieving and maintaining future 100% compliance. Therefore, information should also be included on any newly established law or policy which can reasonably be expected to reduce the State's rate of institutionalization in the future.

1. A brief description of the noncompliant incidents must be provided which includes a statement of the circumstances surrounding the instances of noncompliance. (For example: Of 15 status offenders/nonoffenders held in juvenile detention or correctional facilities during the 12-month period for State X, 3 were accused status offenders held in jail in excess of 24 hours, 6 were accused status offenders held in detention facilities in excess of 24 hours, 2 were adjudicated status offenders held in a juvenile correctional facility, 3 were accused status offenders held in excess of 24 hours in a diagnostic evaluation facility, and 1 was an adjudicated status offender placed in a mental health facility pursuant to the court's status offenders jurisdiction.) Do not use actual names of juveniles.

2. Describe whether the instances of noncompliance were in apparent violation of State law or established executive or judicial policy. A statement should be made for each circumstance discussed in item 1 above. A copy of the pertinent/applicable law or established policy should be attached. (For example: The three accused status offenders were held in apparent violation of a State law which does not permit the placement of status offenders in jail under any circumstances. Attachment "X" is a copy of this law. The six status offenders held in juvenile detention were placed there pursuant to a disruptive behavior clause in our statute which allows status offenders to be placed in juvenile detention facilities for a period of up to 72 hours if their behavior in a shelter care facility warrants secure placement. Attachment "X" is a copy of this statute. A similar statement must be provided for each circumstance.)

Criterion C: The extent to which an acceptable plan has been developed which is designed to eliminate the noncompliant incidents within a reasonable time, where the instances of noncompliance either (1) indicate a pattern or practice, or (2) appear to be consistent with State law or established executive or judicial policy, or both. If the State determines that the instances of noncompliance (1) do not indicate a pattern or practice, and (2) are inconsistent with and in apparent violation of State law or established executive or judicial policy, then the State must explain the basis for this determination. In such case no plan would be required as part of the request for a finding of full compliance.

The following must be addressed as elements of an acceptable plan for the elimination of noncompliant incidents that will result in the modification or enforcement of state law or executive or judicial policy to ensure consistency between the State's practices and the JJDP Act deinstitutionalization requirements.

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 requirement.

2. If the instances of noncompliance are in apparent violation of State law or established executive or judicial policy, but 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. The plan must be targeted specifically to the agencies, courts, or facilities responsible for the placement of status offenders and nonoffenders in compliance with DSO. It must include a specific strategy to eliminate instances of noncompliance through statutory reform, changes in facility policy and procedure, modification of court policy and practice, or other appropriate means.

If OJJDP makes a finding that a State is in full compliance with de minimis exceptions based, in part, upon the submission of an acceptable plan under Criteria C above, the State will be required to include the plan as part of its current or next submitted formula grant plan as appropriate. OJJDP will measure the State's success in implementing the plan by comparison of the data in the next monitoring report indicating the extent to which noncompliant incidences have been eliminated.

Determinations of full compliance status will be made annually by OJJDP following the submission of the annual monitoring report. Any State reporting less than 100% compliance in any annual monitoring report would, therefore, be required to follow the above procedures in requesting a finding of full compliance with de minimis exceptions.

7.4 Demonstrating Compliance: Jail Removal

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 jail removal. As with the deinstitutionalization of status offenders requirement, OJJDP has developed de minimis standards for States that have not achieved 100% removal of juveniles from adult jails and lockups. Full compliance with de minimis exceptions is achieved when a State demonstrates that it has met the numerical or substantive de minimis standards below:

Numerical de Minimis Standard. To comply with this standard the State must demonstrate that each of the following two requirements has 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;[3] 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.

Any State whose prior full compliance status is based on having met the numerical de minimis standard 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.

Substantive de Minimis Standard. To comply with this standard the State must demonstrate that each of the following requirements has 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 jail removal;

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[3] Under an exception to the numerical de minimis standard, 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.

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 (i) above;

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 (i) 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 (iv) above.

Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the annual monitoring report. Any State reporting less than full (100%) compliance in its annual monitoring report may request a finding of full compliance with the substantive or numerical de minimis exceptions. The request may be submitted in conjunction with the monitoring report, or as soon thereafter as all information required for a determination is available, or it may be included in the annual State plan and application for the State's Formula Grant award.

7.5 Demonstrating Compliance: Separation

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

i. 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

ii. The instances of noncompliance reported in the last submitted monitoring report do not indicate a pattern or practice but rather constitute isolated instances; and

   A. 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

   B. An acceptable plan has been developed to eliminate the noncompliant incidents.

Summary of Standards for Demonstrating Compliance

Deinstitutionalization of Status Offenders	
Rate per 100,000 Juveniles	**Criteria for Compliance**
0.0	The State has demonstrated full compliance.
0.1 to 5.7	The State has demonstrated full compliance with de minimis exceptions.
5.8 to 17.6	The State is eligible for a finding of compliance with de minimis exceptions if it adequately meets two criteria: a. Noncompliant incidents violated State law, and b. An acceptable plan has been developed that is designed to eliminate the noncompliant incidents.
17.7 to 29.4	The State is eligible for a finding of compliance with de minimis exceptions if the State fully satisfies two criteria: a. Noncompliant incidents violated State law, and b. An acceptable plan has been developed that is designed to eliminate the noncompliant incidents.
29.5 and greater	The State is presumptively ineligible for a finding of full compliance with de minimis exceptions because any rate above this level is considered to represent an excessive and significant level of status offenders and nonoffenders held in juvenile detention or correctional facilities.

Jail Removal	
Rate per 100,000 Juveniles	**Criteria for Compliance**
0.0	The State has demonstrated full compliance.
0.1 to 9.0	The State is eligible for the numerical de minimis exception if the State has developed an acceptable 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.
9.1 and greater	The State is eligible for the substantive de minimis exception if the State meets five criteria: A. There are recently enacted changes in State law that are expected to have a significant impact on the State's achieving full compliance. B. All instances of noncompliance were in violation of State law. C. The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances. D. There are existing mechanisms to effectively enforce State law. E. An acceptable plan has been developed to eliminate the noncompliant incidents.

Separation	
Number of Violations	**Criteria for Compliance**
0	The State has demonstrated full compliance.
1 and greater	The State is eligible for a finding of compliance if the instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances and one of the following criteria is satisfied: A. Instances of noncompliance were in violation of State law and existing enforcement mechanisms are such that the instances of noncompliance are unlikely to recur in the future, or B. An acceptable plan has been developed to eliminate the noncompliant incidents.

Section 8

Definitions

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 1 year (28 CFR 31.304(m)).

Adult lockup. Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature that does not hold persons after they have been formally charged (28 CFR 31.304(n)).

Civil-type offender. A juvenile offender who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic violations and noncriminal fish and game violations.

Collocated facility. 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 or services beyond mechanical services (heating, air conditioning, water, and sewer) (28 CFR 31.303(e)(3)(i)(A)).

Contact. Any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. 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 (28 CFR 31.303(d)).

Court holding facility. A court holding facility is a secure facility, other than an adult jail or lockup, that is used to temporarily detain persons immediately before or after detention hearings or other court proceedings.

Criminal-type offender. A juvenile offender who has been charged with or adjudicated for conduct that would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult (28 CFR 31.304(g)).

Delayed egress device. A device that precludes the use of exits for a predetermined period of time.

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 (28 CFR 31.304(c)).

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 (28 CFR 31.304(f)).

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 (28 CFR 31.304(d)).

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 (28 CFR 31.304(e)).

Lawful custody. The exercise of care, supervision, and control over a juvenile offender or nonoffender pursuant to the provisions of the law or of a judicial order or decree (28 CFR 31.304(j)).

Nonoffender. 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 31.304(i)). These cases are referred to by many names including Children in Need of Services (CHINS), Children in Protective Services (CHIPS), and Families in Need of Services (FINS).

Nonsecure custody. A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility, but not be in a secure detention or confinement status. The November 2, 1988, *Federal Register* announcement, *Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of Final Policy*, states that the following policy criteria, if satisfied, will constitute nonsecure custody of a juvenile in an adult jail or lockup facility:

1. The area(s) where the juvenile is held is an unlocked multipurpose area, such as a lobby, office, or interrogation room which is not designated, set aside, or used as a secure detention area or is not part of such an area, or, if a secure area, is used only for processing purposes;

2. The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;

3. The use of the area(s) is limited to providing nonsecure custody only long enough for and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court;

4. In no event can the area be designed or intended to be used for residential purposes; and

5. The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in nonsecure custody.

In addition, a juvenile placed in the following situations would be considered in a nonsecure status:

- If certain criteria are met, a juvenile handcuffed to a nonstationary object: Handcuffing techniques that do not involve cuffing rails or other stationary objects are considered nonsecure if the five criteria listed above are adhered to.

- If certain criteria are met, a juvenile being processed through a secure booking area: Where a secure booking area is all that is available, and continuous visual supervision is provided throughout the booking process, and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with State law and/or judicial rules), the juvenile is not considered to be in a secure detention status. Continued nonsecure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.

- A juvenile placed in a secure police car for transportation: The JJDP Act applies to secure detention facilities and secure correctional facilities, so a juvenile placed in a secure police car for transportation would be in a nonsecure status.

- A juvenile placed in a nonsecure runaway shelter, but prevented from leaving due to staff restricting access to exits: A facility may be nonsecure if physical restriction of movement or activity is provided solely through facility staff.

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 (28 U.S.C. 31.304(k)).

Other individual convicted of a criminal offense. An individual, adult or juvenile, who has been convicted of a criminal offense by a court exercising criminal jurisdiction (28 U.S.C. 31.304(l)).

Secure Custody. As used to define a detention or correctional facility, this term includes residential facilities that include construction features 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 (28 CFR 31.304(b)).

Secure juvenile detention center or correctional facility. A secure juvenile detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders (28 CFR 31.303(n)(f)(2)). Many States use the term “training school” for juvenile correctional facilities.

Staff secure facility. A staff secure facility may be defined as a residential facility (1) which does not include construction features designed to physically restrict the movements and activities of juveniles who are in custody therein; (2) which may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

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 (28 CFR 31.304(h)). The following are examples of status offenses:

- Truancy.
- Violations of curfew
- Unruly.
- Runaway.
- Underage possession and/or consumption of tobacco products.
- Underage possession and/or consumption of alcohol. This offense is always considered a status offense, even though State or local law may consider it a delinquent offense.

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

OFFICE OF THE GENERAL COUNSEL
ARRANGED BY UNITED STATES CODE NUMBER
REVISED NOVEMBER 1994

Juvenile Justice and Delinquency Prevention Act

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Programs and Offices
Title II—Subchapter II
Part A—Juvenile Justice and Delinquency Prevention Office

Subchapter II—Programs and Offices
Part B—Federal Assistance for States and Local Programs

Subchapter II—Programs and Offices
Part C—National Programs
Subpart I—National Institute for Juvenile Justice and Delinquency Prevention

Subchapter II—Programs and Offices
Part C—National Programs
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Subpart I—Gang-Free Schools and Communities

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Part D—Gang-Free Schools and Communities; Community-Based Gang Intervention
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Subchapter II—Programs and Offices
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Subchapter III—Runaway and Homeless Youth
Part A—Runaway and Homeless Youth Grant Program

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Subchapter III—Runaway and Homeless Youth
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Subchapter IV—Missing Children

Subchapter V—Incentive Grants for Local Delinquency Prevention Programs

JUVENILE JUSTICE AND DELINQUENCY PREVENTION

SUBCHAPTER I--GENERALLY

42 U.S.C. 5601 **Sec. 101. 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.

(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.

42 U.S.C. 5602

Sec. 102. 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;

(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 the dissemination of 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 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 services between State, local, and community-based agencies and to promote interagency cooperation in providing such services.

42 U.S.C. 5603 **Sec. 103. 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 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;

(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(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;

(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 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.

PROGRAMS AND OFFICES
TITLE II - SUBCHAPTER II
PART A—JUVENILE JUSTICE AND DELINQUENCY PREVENTION OFFICE

42 U.S.C. 5611

Sec. 201. Establishment of office

(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.

42 U.S.C. 5612. **Sec. 202. 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.

(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.

42 U.S.C. 5613 **Sec. 203. 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.

42 U.S.C. 5614 **Sec. 204. 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;

(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 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.

(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.

42 U.S.C. 5615

Sec. 205. 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 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.

42 U.S.C. 5616

Sec. 206. 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.

(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

(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 and 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 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.

42 U.S.C. 5617

Sec. 207. 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.

SUBCHAPTER II--PROGRAMS AND OFFICES
PART B--FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

42 U.S.C. 5631

Sec. 221. 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.

(b)(1) While not to exceed 2 percent of the funds available in a fiscal year to carry out this part, the Administrator shall make grants to and enter into contracts with public and private agencies, organizations, and individuals to provide technical assistance to States, units of general local governments (and combinations thereof), and local private agencies to facilitate compliance with section 5633 of this title and implementation of the State plan approved under section 5633(c) of this title.

(2) Grants and contracts may be made under paragraph (1) only to public and private agencies, organizations, and individuals that have experience in providing such technical assistance. In providing such technical assistance, the recipient of a grant or contract under this subsection shall coordinate its activities with the State agency described in section 5671(c)(1) of this title.

42 U.S.C. 5632

Sec. 222. Allocation of funds

(a) Time; basis; amounts

(1) Subject to paragraph (2) and 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.

(2)(A) Subject to paragraph (3), if the aggregate amount appropriated for a fiscal year to carry out this subchapter (other than parts D and E) is less than $75,000,000, then the amount allocated to each State for such fiscal year shall be not less than $325,000, or such greater amount, up to $400,000, as is available to be allocated without reducing the amount of any State or territory's allocation below the amount allocated for fiscal year 1992 except that the amount allocated 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 $75,000 or such greater amount, up to $100,000, as is available to be allocated without reducing the amount of any State's or territory's allocation below the amount allocated for fiscal year 1992, each.

(B) Subject to paragraph (3), if the aggregate amount appropriated for a fiscal year to carry out this subchapter (other than part D) equals or exceeds $75,000,000, then the amount allocated to each State for such fiscal year shall be not less than $400,000, or such greater amount, up to $600,000, as is available to be allocated if appropriations have been enacted and made available to carry out parts D and E in the full amounts authorized by section 5671(a)(1) and (3) of this title except that the amount allocated 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 $100,000, or such greater amount, up to $100,000, as is available to be allocated without reducing the amount of any State's or territory's allocation below the amount allocated for fiscal year 1992, each.

(3) If, as a result of paragraph (2), the amount allocated to a State for a fiscal year would be less than the amount allocated to such State for fiscal year 1992, then the amounts allocated to satisfy the requirements of such paragraph shall be reduced pro rata to the extent necessary to allot to such State for the fiscal year the amount allocated to such State for fiscal year 1992.

(b) Reallocation of unobligated funds. If any amount so allocated remains unobligated at the end of the fiscal year, such funds shall be reallocated in a manner equitable and consistent with the purpose of this part. Any amount so reallocated shall be in addition to the amounts already allocated and available to the State, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands for the same period.

(c) Use of allocated 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, evaluation, and one full-time staff position. Not more than 10 percent 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.

42 U.S.C. 5633

Sec. 223. 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.

(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 66 2/3 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,

(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)(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;

(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 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.

(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 (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

(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 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;

(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) 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;

(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 section.

SUBCHAPTER II--PROGRAMS AND OFFICES
PART C--NATIONAL PROGRAMS
SUBPART I--NATIONAL INSTITUTE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION

42 U.S.C. 5651

Sec. 241. 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.

(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--

(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--

(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 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 ofsubsistence, 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.

42 U.S.C. 5652

Sec. 242. 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.

42 U.S.C. 5653

Sec. 243. 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;

(2) encourage the development of demonstration projects in new, innovative techniques and methods to prevent and treat juvenile delinquency;

(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) 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;

****** Two (2) number (5) were enacted**

(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 [FN1] involvement in illegal activities or promoting involvement in lawful activities (including the productive use of discretionary time through organized recreational [FN2] 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.

[FN1] So in original.

[FN2] So in original. Probably should be “recreational activities)”.

42 U.S.C. 5654

Sec. 244. 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 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.

42 U.S.C. 5659

Sec. 245. 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.

42 U.S.C. 5660

Sec. 246. 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.

42 U.S.C. 5661

Sec. 247. Participation in training program and State advisory group conferences

(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 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.

42 U.S.C. 5662

Sec. 248. 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

(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 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 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.

SUBCHAPTER II--PROGRAMS AND OFFICES
PART C--NATIONAL PROGRAMS
SUBPART II--SPECIAL EMPHASIS PREVENTION AND TREATMENT PROGRAMS

42 U.S.C. 5665

Sec. 261. 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.

(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.

42 U.S.C. 5665a

Sec. 262. 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.

(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.

SUBCHAPTER II--PROGRAMS AND OFFICES
PART D--GANG-FREE SCHOOLS AND COMMUNITIES; COMMUNITY-BASED GANG INTERVENTION
SUBPART I--GANG-FREE SCHOOLS AND COMMUNITIES

42 U.S.C. 5667

Sec. 281. 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 services, 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 ang-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;

(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.

42 U.S.C. 5667-1

Sec. 281A. 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 nonprofit 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.

SUBCHAPTER II--PROGRAMS AND OFFICES
PART D--GANG-FREE SCHOOLS AND COMMUNITIES; COMMUNITY-BASED GANG INTERVENTION
SUBPART II--COMMUNITY-BASED GANG INTERVENTION

42 U.S.C. 5667a **Sec. 282. 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 services 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 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.

42 U.S.C. 5667a-1 **Sec. 282A. 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 nonprofit 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.

SUBCHAPTER II--PROGRAMS AND OFFICES
PART D--GANG-FREE SCHOOLS AND COMMUNITIES; COMMUNITY-BASED GANG INTERVENTION
SUBPART III--GENERAL PROVISIONS

42 U.S.C. 5667b **Sec. 283. Definition**

For purposes of this part, the term "juvenile" means an individual who is less than 22 years of age.

SUBCHAPTER II--PROGRAMS AND OFFICES
PART E--STATE CHALLENGE ACTIVITIES

42 U.S.C. 5667c **Sec. 285. 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 services 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.

SUBCHAPTER II--PROGRAMS AND OFFICES
PART F--TREATMENT FOR JUVENILE OFFENDERS WHO ARE VICTIMS OF CHILD ABUSE OR NEGLECT

42 U.S.C. 5667d **Sec. 287. Definition**

For the purposes of this part, the term "juvenile" means a person who is less than 18 years of age.

42 U.S.C. 5667d-1 **Sec. 287A. 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.

42 U.S.C. 5667d-2 **Sec. 287B. Administrative requirements**

The Administrator shall administer this part subject to the requirements of sections 5665a, 5673, and 5676 of this title.

42 U.S.C. 5667d-3 **Sec. 287C. 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.

SUBCHAPTER II--PROGRAMS AND OFFICES
PART G--MENTORING

42 U.S.C. 5667e **Sec. 288. 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.

42 U.S.C. 5667e-1 **Sec. 288A. 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.

42 U.S.C. 5667e-2 **Sec. 288B. 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.

42 U.S.C. 5667e-3

Sec. 288C. 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.

42 U.S.C. 5667e-4

Sec. 288D. 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.

42 U.S.C. 5667e-5 **Sec. 288E. 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 chapter 1 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. §§ 2701-2901]; 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.

42 U.S.C. 5667e-6 **Sec. 288F. 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.

42 U.S.C. 5667e-7 **Sec 288G. Grant cycles**

Grants under this part shall be made for 3-year periods.

42 U.S.C. 5667e-8 **Sec. 288H. 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.

SUBCHAPTER II--PROGRAMS AND OFFICES
PART H--BOOT CAMPS

42 U.S.C. 5667f **Sec. 289. 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.

42 U.S.C. 5667f-1 **Sec. 289A. 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.

42 U.S.C. 5667f-2 **Sec. 289B. 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.

42 U.S.C. 5667f-3 **Sec. 289C. 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.

SUBCHAPTER II--PROGRAMS AND OFFICES
PART I--WHITE HOUSE CONFERENCE ON JUVENILE JUSTICE

42 U.S.C. 5667g **Sec. 291. 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.

(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.

42 U.S.C. 5667g-1

Sec. 291A. 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.

42 U.S.C. 5667g-2

Sec. 291B. 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.

42 U.S.C. 5667g-3 **Sec. 291C. 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.

42 U.S.C. 5667g-4 **Sec. 291D. 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.

42 U.S.C. 5667g-5 **Sec. 291E. 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.

SUBCHAPTER II--PROGRAMS AND OFFICES
PART I--GENERAL AND ADMINISTRATIVE PROVISIONS

42 U.S.C. 5671 **Sec. 299. 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 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 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 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) 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 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.

42 U.S.C. 5672

Sec. 299A. 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.

42 U.S.C. 5673

Sec. 299B. 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.

42 U.S.C. 5674

Sec. 299C. 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.

42 U.S.C. 5675

Sec. 299D. 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.

42 U.S.C. 5676

Sec. 299E. 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.

SUBCHAPTER III--RUNAWAY AND HOMELESS YOUTH

42 U.S.C. 5701

Sec. 302. 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;

(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;

(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.

42 U.S.C. 5702

Sec. 303. 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.

SUBCHAPTER III--RUNAWAY AND HOMELESS YOUTH
PART A--RUNAWAY AND HOMELESS YOUTH GRANT PROGRAM

42 U.S.C. 5711

Sec. 311. 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.

42 U.S.C. 5712

Sec. 312. 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);

(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 onstreet 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--

(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.

42 U.S.C. 5712d

Sec. 316. 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.

42 U.S.C. 5713 **Sec. 313. 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.

42 U.S.C. 5714 **Sec. 314. 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.

SUBCHAPTER III--RUNAWAY AND HOMELESS YOUTH
PART B--TRANSITIONAL LIVING GRANT PROGRAM

42 U.S.C. 5714-1 **Sec. 321. 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.

42 U.S.C. 5714-2 **Sec. 322. 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, onsite 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 services, law enforcement, educational, vocational, training, welfare, legal service, and health care programs and to help integrate and coordinate such services for youth;

(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.

SUBCHAPTER III--RUNAWAY AND HOMELESS YOUTH
PART C--NATIONAL COMMUNICATIONS SYSTEM

42 U.S.C. 5714-11 **Sec. 331. 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.

SUBCHAPTER III--RUNAWAY AND HOMELESS YOUTH
PART D--COORDINATING, TRAINING, RESEARCH, AND OTHER ACTIVITIES

42 U.S.C. 5714-21 **Sec. 341. 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.

42 U.S.C. 5714-22 **Sec. 342. 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.

42 U.S.C. 5714-23 **Sec. 343. 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) agencywide 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.

42 U.S.C. 5714-24

Sec. 344. 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.

SUBCHAPTER III--RUNAWAY AND HOMELESS YOUTH
PART E--GENERAL PROVISIONS

42 U.S.C. 5714a

Sec. 371. 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.

42 U.S.C. 5714b

Sec. 372. 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.

SUBCHAPTER III--RUNAWAY AND HOMELESS YOUTH
PART F--ADMINISTRATIVE PROVISIONS

42 U.S.C. 5715

Sec. 381. 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--

(A) the number and characteristic of homeless youth served by such projects;

(B) describing the types of activities carried out under such projects;

(C) the effectiveness of such projects in alleviating the immediate problems of homeless youth;

(D) the effectiveness of such projects in preparing homeless youth for self- sufficiency;

(E) the effectiveness of such projects in helping youth decide upon future education, employment, and independent living;

(F) the ability of such projects to strengthen family relationships, and encourage the resolution of intrafamily problems through counseling and the development of self-sufficient living skills; and

(G) plans for the following fiscal year.

(b)(1) The Secretary shall include in the report required by subsection (a) of this section an evaluation of the results of Federal evaluation of the programs, projects, and activities carried out under this subchapter and a description of the training provided to the persons who carry out the evaluation.

(2) As part of the evaluation described in paragraph (1), the Secretary shall require the persons who carry out the evaluation to visit each grantee onsite not less frequently than every 3 years.

42 U.S.C. 5716

Sec. 382. Federal and non-Federal share; methods of payment

(a) The Federal share for the 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.

42 U.S.C. 5731

Sec. 383. 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.

42 U.S.C. 5732

Sec. 384. Annual program priorities

(a) The Secretary shall develop for each fiscal year, and publish annually in the *Federal Register* for public comment a proposed plan specifying the subject priorities the Secretary will follow in making grants under this subchapter for such fiscal year.

(b) Taking into consideration comments received in the 45-day period beginning on the date the proposed plan is published, the Secretary shall develop and publish, before December 31 of such fiscal year, a final plan specifying the priorities referred to in subsection (a) of this section.

42 U.S.C. 5751

Sec. 385. 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) $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. § 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.

SUBCHAPTER IV--MISSING CHILDREN

42 U.S.C. 5771

Sec. 402. 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.

42 U.S.C. 5772

Sec. 403. 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.

42 U.S.C. 5773

Sec. 404. 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;

(F) 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.

(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 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.

42 U.S.C. 5775

Sec. 405. 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 statewide clearinghouses 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.

42 U.S.C. 5776

Sec. 406. 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.

42 U.S.C. 5776a **Sec. 407. 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.

42 U.S.C. 5777

Sec. 408. 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.

42 U.S.C. 5778

Sec. 409. 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.

42 U.S.C. 5779

Sec. 3701. 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.

42 U.S.C. 5780

Sec. 3702. 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.

SUBCHAPTER V--INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS

42 U.S.C. 5781

Sec. 502. 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.

42 U.S.C. 5782

Sec. 503. 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.

42 U.S.C. 5783

Sec. 504. 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.

42 U.S.C. 5784

Sec. 505. 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.

42 U.S.C. 5785

Sec. 506. 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.

U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

OJJDP Formula Grants

Consolidated Regulation (28 CFR Part 31)

This document updates the Formula Grants Regulation as published in the *Federal Register,* May 31, 1995, by including revisions as published in the *Federal Register,* December 10, 1996.

OJJDP
Formula Grants
Consolidated Regulation
(28 CFR Part 31)

Questions regarding the Formula Grants Regulation may be directed to OJJDP's State Relations and Assistance Division, (202) 307–5924

This document was prepared under U.S. Department of Justice Contract No. OJP-95-C-004, by Community Research Associates, Champaign, Illinois, in conjunction with the U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

OJJDP FORMULA GRANTS REGULATION REVISION SUMMARY

The document that follows this summary provides a consolidated regulation, incorporating into the OJJDP Formula Grants Regulation changes published in the Federal Register *on December 10, 1996. This summary highlights the changes made to the regulation.*

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 1996, 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 multidisciplinary review team as an appropriate public agency.

The revised regulation eliminates the regulatory language suggesting that jurisdictions use multidisciplinary 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 multidisciplinary 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 onsite 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 31--FORMULA GRANTS

Subpart A--General Provisions

Subpart B--Eligible Applicants

Subpart C--General Requirements

Subpart D--Juvenile Justice Act Requirements

Subpart E--General Conditions and Assurances

Authority: 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 Formula grant plan and applications.

Formula Grant Applications 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 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 are due no later than March 31 of the fiscal year for which the funds are allocated.

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 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.

§ 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:

§ 31.102 continued.

(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. 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).

§ 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 Office of Justice Programs Financial Guide (formerly Guide Manual 7100.1). Chapter 19 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 42.301 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 of 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, 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.

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.* 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 FYs 1994 and 1995, the minimum allocation is established at $600,000 for States and $100,000 for Territories.

(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 [Administrator]. 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 the 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.

§ 31.301(b) continued.

(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) through (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 percent cash match (dollar for dollar), and construction projects funded under Section 299C(a)(2) 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 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 1995, be reallocated to the nonparticipating State program on September 30 of 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 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) *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) through (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, nonprofit 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.

(c) The State shall assure that it complies with the State 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)(1), (2), (3), (4), (5), (6), (7), (8), (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(s) 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 Section 101(a)(10) and Section 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.

(c) *Deinstitutionalization of Status Offenders and Nonoffenders.* 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) *Federal wards*. Apply this requirement to alien juveniles under Federal jurisdiction who are held in State or local facilities.

(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.

(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) *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 physical or sustained sight and 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.

(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.

(iii) Describe the barriers which may hinder the separation of alleged or adjudicated criminal-type offenders, status offenders and nonoffenders 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 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.

(2) *Implementation.* The requirement of this provision is to be planned and implemented immediately by each State.

(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.

§ 31.303(e) continued.

(2) Describe the barriers which the 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 paragraph (e)(3)(i)(C)(1)–(4).

(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 paragraph (e)(3)(i)(C)(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) 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 program areas, 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

§ 31.303(e)(3)(i)(C) continued.

(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 onsite 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 above in paragraphs (e)(3)(i)(C)(1)–(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 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 onsite 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)–(4) of this section is being maintained.

(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.

§ 31.303 continued.

(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 nonsecure 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.

(C) *Inspection of facilities:* Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and recordkeeping. 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 recordkeeping 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 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) *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. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

(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 juvenile 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 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.

(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;

§ 31.303(f)(3)(v) continued.

(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 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).

(vii) A nonoffender 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's 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. 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.

(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

§ 31.303(f)(4)(vi) continued.

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.

(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 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 onsite;

(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 (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;

(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).

§ 31.303(f)(5) continued.

(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 onsite;
  (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 onsite;
  (C) The total number of adult lockups in the State AND the number inspected onsite;
  (D) The total number of adult jails holding juveniles during the past 12 months;
  (E) The total number of adult lockups holding juveniles during the past 12 months;

§ 31.303(f)(5)(iv) continued.

(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 6 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) *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 Section 223(a)(13) and (23) by the end of the fiscal year for any fiscal year beginning with fiscal year 1994, the State's allotment under Section 222 will be reduced by 25 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.

(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., NW, Washington, DC 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 monitoring 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.

(iii) (A) 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).

(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:

§ 31.303(f)(6)(iii)(B) continued.

(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 percent) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

§ 31.303(f)(6)(iii)(B) continued.

(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 section, must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100 percent) 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 percent) 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.

(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. ln 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)(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 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.

(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 FY 1993. No additional waivers will be granted.

(7) *Monitoring report exemption.* States which have been determined by the OJJDP Administrator to have achieved full compliance with Section 223(a)(12)(A) and (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, and detention 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), (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) Timeframes 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.

§ 31.303 continued.

(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.

(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). 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.

(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 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 ages 10-17 are subject to secure custody. It is essential that States approach this statutory mandate in a comprehensive manner. The purpose of the statute and regulation 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. 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). 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 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 nontraditional organizations) that serve minority youth;

§ 31.303(j)(3) continued.

(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.

(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.

§ 31.304 Definitions.

(a) *Private agency.* A private nonprofit 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.

§ 31.304 continued.

(b) *Secure.* As used to define a detention or correctional facility this term includes residential facilities which include construction features 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 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) *Nonoffender.* 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 nonoffender 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.

§ 31.304 continued.

(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 nonprofit 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, of 1974, Pub. L. 93-415, as amended, and the provisions of the current edition of OJP's Financial Guide.

§ 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 OJP's Financial Guide 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 Civil rights requirements.

The State assures that it will comply, and that 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 as 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;

§ 31.403 continued.

(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.

Federal Register

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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.

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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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Friday
January 9, 1981

Part VII

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Policy and Criteria for de Minimis Exceptions to Full Compliance With Deinstitutionalization Requirement of Juvenile Justice and Delinquency Prevention Act

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Policy and Criteria for de Minimis Exceptions to Full Compliance With Deinstitutionalization Requirement of the Juvenile Justice and Delinquency Prevention Act, 1974, as Amended

AGENCY: Office of Juvenile Justice and Delinquency Prevention (OJJDP).

ACTION: Issuance of final policy.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601, et seq., (JJDP Act), is issuing a policy and criteria for determining full compliance with de minimis exceptions to the deinstitutionalization requirement of Section 223(a)(12)(A) of the JJDP Act, as amended.

SUPPLEMENTARY INFORMATION: Section 223(a)(12)(A) of the JJDP Act requires that states participating in the Formula Grant Program (Part B, Subpart I), of the JJDP Act "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 non-offenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities." Section 223(c) of the Act further provides that failure to achieve compliance with the Section 223(a)(12)(A) requirement within the three-year limitation shall terminate a State's eligibility for formula grant funding unless a determination is made that the State is in substantial compliance, 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 an unequivocal commitment to achieving full compliance within two additional years. The Agency's Office of General Counsel, in Legal Opinion 76-7, October 7, 1975, indicated that a State's failure to meet the full compliance requirement within the statutorily designated time-frame would result in future ineligibility for Formula Grants unless such failure was de minimis. The opinion further stated that such determinations would be made on a case-by-case basis.

OJJDP published in the August 14, 1980, **Federal Register** a proposed policy and criteria for de minimis exceptions to full compliance. That publication provided interested persons the opportunity to submit comments and recommendations on the proposed criteria. A total of 15 comments were received and analyzed. The responses included comments from 15 of the 50 states participating in the JJDP Act Formula Grant program. Appendix A provides additional information regarding the review and analysis of these comments. OMB Circular No. A-95, regarding State and Local Clearinghouse review of Federal and Federally-assisted programs and projects, is not applicable to the issuance of this policy. This policy is specifically applicable to Program No. 16.540, Juvenile Justice and Delinquency Prevention Allocation to States, within the Catalog of Federal Domestic Assistance.

Policy and Criteria for de Minimis Exceptions to Full Compliance With Section 223(a)(12)(A) of the JJDP Act

The following provides the Office of Juvenile Justice and Delinquency Prevention policy for the determination of State compliance with Section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 *et seq.*). The criteria presented below will be applied in determining whether a State has achieved full compliance, with de minimis exceptions, with the above cited deinstitutionalization requirement of the Juvenile Justice Act. Also specified is the information which each state must provide in response to each criterion when seeking from OJJDP a finding of full compliance with de minimis exceptions.

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. For those States that have participated in the formula grant program continuously since 1975 such a request, if needed, would be due December 31, 1980, because that is the first monitoring report due after five years of participation. States that had extremely low rates of institutionalization when they began participation in the program are eligible to request a finding of full compliance with de minimis exceptions after three years of participation in lieu of demonstrating a 75% reduction from the number of status and non-offenders institutionalized in their base year.

Background

Office of General Counsel Legal Opinion 76-7, October 7, 1975, establishes that a State's "good faith" effort to meet the (then) two year requirement for deinstitutionalization of status offenders would preclude the imposition of sanctions with regard to funds already granted to the State under the formula grant program. However, a State's "good faith" effort cannot be considered in determining whether the statutory minimum compliance level has been met. In terms of eligibility for funding the opinion concluded:

> A State's failure to met the Section 223(a)(12) requirement within a maximum of two years from the date of submission of the initial plan would result in future fund cut-off unless such failure was de minimis. These determinations would be made on a case-by-case basis.

Subsequent amendments to the Juvenile Justice Act in 1977 modified Section 223(a)(12) to require full compliance within three years. However, Section 223(c) was also amended to provide that if a State was in substantial compliance with the modified Section 223(a)(12)(A) provision at the end of three years, substantial compliance being defined as a 75 percent reduction in the number of status offenders held in juvenile detention or correctional facilities, then the State could be given up to two additional years to achieve full compliance.

Thus, this opinion provides the legal basis for the OJJDP to utilize the de minimis principle, i.e., by disregarding instances of non-compliance that are of slight consequence or insignificant, in making a dtermination regarding a state's full compliance with Section 223(a)(12)(A) of the Act.

Parameters

The legal concept of de minimus, meaning "the law cares not for small things," is generally applied where small, insignificant or infinitesimal matters are at issue. Whether a matter, such as the number of status offenders and non-offenders held in non-compliance with Section 223(a)(12)(A), can be characterized as de minimis cannot be determined by an inflexible formula. Therefore, OJJDP will consider each case on its merits based on criteria which take into consideration relative numbers, circumstances of non-compliance, and State law and policy. The establishment of these criteria is intended to achieve an equitable determination process. States reporting significant numbers of institutionalized status and non-offenders should not

expect a finding of full compliance with de minimus exceptions. In determining whether a State has achieved substantial compliance within three years, OJJDP must compare the number of status and non-offenders held in non-compliance with Section 223(a)(12)(A) at the conclusion of the three year period with the number of status and non-offenders held at the start of the three year period (the State's baseline figure). However, in determining whether a State is in full compliance with de minimis exceptions, OJJDP does not consider a comparison of the current situation to baseline to be relevant. Only data and information which accurately and completely portrays the current situation is relevant when demonstrating full compliance with de minimus exceptions.

Individual states must continue to show progress toward achieving 100 percent compliance in order to maintain eligibility for a finding of full compliance with de minimis exceptions.

Criteria and Required Information

The OJJDP has determined that the following criteria will be applied in making a determination of whether a State has demonstrated full compliance with Section 223(a)(12)(A) with de minimis exceptions. While States are not necessarily required to meet each criterion at a fully satisfactory level, OJJDP will consider the extent to which each criterion has been met in making its determination of whether the State is in full compliance with the minimis exceptions. The information following each criterion must be provided to enable OJJDP to make this determination.

Criterion A

The extent of non-compliance is insignificant or of slight consequence in terms of the total juvenile population in the State.

In applying this criterion OJJDP will compare the State's status offender and non-offender detention and correctional institutionalization rate per 100,000 population under age 18 to the average rate that has been calculated for eight states (e.g., two states from each of the four Bureau of Census regions). The eight states selected by OJJDP were those having the smallest institutionalization rate per 100,000 population *and* which also had an adequate system of monitoring for compliance. By applying this procedure and utilizing the information provided by the eight states' most recently submitted monitoring reports, OJJDP determined that eight states' average annual rate was 17.6 incidences of status offenders and non-offenders held per 100,000 population under age 18. In computing the standard deviation from the mean of 17.6, it was determined that a rate of 5.8 per 100,000 was one standard deviation below the mean and 29.4 per 100,000 was one standard deviation above the mean. Therefore, in applying Criterion A, states which have an institutionalization rate less than 5.8 per 100,000 population will be considered to be in full compliance with de minimis exceptions and will not be required to address Criteria B and C. Those states whose rate falls between 17.6 and 5.8 per 100,000 population will be eligible for a finding of full compliance with de minimis exceptions if they adequately meet Criteria B and C. Those states whose rate is above the average of 17.6 but does not exceed 29.4 per 100,000 will be eligible for a finding of full compliance with de minimis exceptions only if they full satisfy Criteria B and C. Finally, those states which have a placement rate in excess of 29.4 per 100,000 population are presumptively ineligible for a finding of full compliance with de minimis exceptions because any rate above that level is considered to represent an excessive and significant level of status offenders and non-offenders held in juvenile detention or correctional facilities.

However, OJJDP will consider requests from such States where the State demonstrates exceptional circumstances which account for the excessive rate. Exceptional circumstances are limited to situations where, but for the exceptional circumstance, the State's institutionalization rate would be within the 29.4 rate established above.

The following will be recognized for consideration as exceptional circumstances:

(1) Out of State runaways 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 other State;

(2) Federal wards held under Federal statutory authority in a secure State or local detention facility for the sole purpose of affecting a jurisdictional transfer, appearance as a material witness, or for return to their lawful residence or country of citizenship; and

(3) A State has recently enacted changes in State law which have gone into effect and which the State demonstrates can be expected to have a substantial, significant, and positive impact on the State's achieving full compliance with the deinstitutionalization requirement within a reasonable time.

In order to make a determination that a State has demonstrated exceptional circumstances under (1) and (2) above, OJJDP will require that the State has developed a separate and specific plan under Criterion C which addresses the problem in a manner that will eliminate the non-compliant instances within a reasonable time.

OJJDP deems it to be of critical importance that all states seeking a finding of full compliance with de minimis exceptions demonstrate progress toward 100 percent compliance and continue to demonstrate progress annually in order to be eligible for a finding of full compliance with de minimis exceptions.

The following information must be provided in response to criterion A and must cover the most recent and available 12 months of data (calendar, fiscal, or other period) or available data for less than 12 months, projected to 12 months in a statistically valid manner. If data projection is used the state must provide the statistical method used, the actual reporting period by dates and the specific data used. States are encouraged to use and expand upon currently available monitoring data gathered for purposes of the annual monitoring report required by Section 223(a)(15).

1. Total number of *accused* status offenders and non-offenders held in secure detention facilities or secure correctional facilities in excess of 24 hours (per OJJDP monitoring policy).

2. Total number of *adjudicated* status offenders and non-offenders held in secure detention facilities or secure correctional facilities.

3. Total number of status offenders and non-offenders held in secure detention facilities or secure correctional facilities (i.e., sum of items 1 and 2).

4. Total juvenile population (under 18) of the State according to the most recent available U.S. Bureau of the Census data or census projections.

States may provide additional pertinent statistics that they deem relevant in determining the extent to which the number of non-compliant incidences is insignificant or of slight consequence. However, factors such as local practice, available resources, or organizational structure of local government will not be considered relevant by OJJDP in making this determination.

Criterion B

The extent to which the instances of non-compliance were in apparent

violation of State law or established executive or judicial policy.

The following information must be provided in response to criterion B and must be sufficient to make a determination as to whether the instances of non-compliance with Section 223(a)(12)(A) as reported in the State's monitoring report were in apparent violation of, or departures from, state law or established executive or judicial policy. OJJDP will consider this criterion to be satisfied by those States that demonstrate that all or substantially all of the instances of non-compliance were in apparent violation of, or departures from, state law or established executive or judicial policy. This is because such instances of non-compliance can more readily be eliminated by legal or other enforcement processes. The existence of such law or policy is also an indicator of the commitment of the State to the deinstitutionalization requirement and to future 100% compliance. Therefore, information should also be included on any newly established law or policy which can reasonably be expected to reduce the State's rate of institutionalization in the future.

1. A brief description of the non-compliant incidents must be provided with includes a statement of the circumstances surrounding the instances of non-compliance. (For example: Of 15 status offenders/non-offenders held in juvenile detention or correctional facilities during the 12 month period for State X, 3 were accused status offenders held in jail in excess of 24 hours, 6 were accused status offenders held in detention facilities in excess of 24 hours, 2 were adjudicated status offenders held in a juvenile correctional facility, 3 were accused status offenders held in excess of 24 hours in a diagnostic and evaluation facility, and 1 was an adjudicated status offender placed in a mental health facility pursuant to the court's status offenders jurisdiction.) Do not use actual names of juveniles.

2. Describe whether the instances of non-compliance were in apparent violation of State law or established executive or judicial policy.

A statement should be made for each circumstance discussed in item 1 above. A copy of the pertinent/applicable law or established policy should be attached. (for example: The 3 accused status offenders held in jail in excess of 24 hours were held in apparent violation of a State law which does not permit the placement of status offenders in jail under any circumstances. Attachment "X" is a copy of this law. The 6 status offenders held in juvenile detention were placed there pursuant to a disruptive behavior clause in our statute which allows status offenders to be placed in juvenile detention facilities for a period of up to 72 hours if their behavior in a shelter care facility warrants secure placement. Attachment "X" is a copy of this statute. A similar statement must be provided for each circumstance.)

Criterion C

The extent to which an acceptable plan has been developed which is designed to eliminate the non-compliant incidents within a reasonable time, where the instances of non-compliance either (1) indicate a pattern or practice, or (2) appear to be consistent with State law or established executive or judicial policy, or both.

If the State determines that instances of non-compliance (1) do not indicate a pattern or practice, *and* (2) are inconsistent with an in apparent violation of State law or established executive or judicial policy, then the State must explain the basis for this determination. In such case no plan would be required as a part of the request for a finding of full compliance under this policy.

The following must be addressed as elements of an acceptable plan for the elimination of non-compliance incidents that will result in the modification or enforcement of state law or executive or judicial policy to ensure consistency between the state's practices and the JJDP Act deinstitutionalization requirements.

1. If the instances of non-compliance 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 non-compliant placement so that it is consistent with the Federal deinstitutionalization requirement.

2. If the instances of non-compliance were in apparent violation of State law or executive or judicial policy, but amount to or constitute a pattern or practice rather than isolated instances of non-compliance, the plan must detail a strategy which will be employed to rapidly identify violations and ensure the prompt enforcment 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 non-offenders in non-compliance with Section 223(a)(12)(A). It must include a specific strategy to eliminate instances of non-compliance through statutory reform, changes in facility policy and procedure, modification of court policy and practice, or other appropriate means.

Implementation of Plan and Maintenance of Full Compliance

If OJJDP makes a finding that a State is in full compliance with de minimis exceptions based, in part, upon the submission of an acceptable plan under Criteria C above, the State will be required to include the plan as a part of its current or next submitted formula grant plan as appropirate. OJJDP will measure the State's success in implementing the plan by comparison of the data in the next monitoring report indicating the extent to which non-compliant incidences have been eliminated.

Determinations of full compliance status will be made annually by OJJDP following the submission of the monitoring report due by December 31st of each year. Any State reporting less than 100% compliance in any annual monitoring report would, therefore, be required to follow the above procedures in requesting a finding of full compliance with de minimis exceptions. An annual monitoring report will continue to be due by December 31st of each year.

FOR FURTHER INFORMATION CONTACT: Mr. Doyle A. Wood, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW, Washington, DC 20531. (202) 724-8491.

Ira M. Schwartz,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

Appendix A—Supplemental Information: Review and Analysis of Comments in Response to Proposed Policy and Criteria

A total of 15 comments were received and included in the analysis. The response included comments from 15 of the 50 states participating in the formula grant program. All comments and recommendations were logged, reviewed and analyzed. The review and analysis consisted of recording each response as to whether or not a specific recommendation was presented. This recording effort was established to determine whether the respondent recommended each component of the policy and criteria to be: (1) retained, (2) eliminated, or (3) modified, or if no specific recommendation was made. The analysis also identified and recorded substantive responses for consideration during the revision process.

The results are presented according to each component of the proposed criteria.

Criterion (a)

"The extent of non-compliance is insignificant or of slight consequence in terms of the total juvenile population in the State"

In applying this criterion, a state's status offender and non-offender institutionalization rate per 100,000 population under age 18 will be compared to the average rate calculated for eight states. The eight states represent

two states from each of the four Bureau of Census regions having the smallest institutionalization rate *and* which also had an adequate monitoring system. The institutionalization rate is based on the data contained in the 1979 monitoring reports. The proposed criteria were initially developed before all 1979 reports were finalized and approved. Thus a recalculation, based upon all final 1979 reports, is reflected in the final policy. This recalculation resulted in a change of the eight state average annual rate from 15.8 to 17.6 incidences of status offenders and non-offenders held per 100,000 population under age 18. Also, the standard deviation below and above the mean is changed to 5.8 and 29.4 respectively. The eight states used in calculating the average rate include Massachusetts, Pennsylvania, Iowa, Wisconsin, Virginia, West Virginia, New Mexico and Washington. These states include both urban and rural states, states having an out-of-state runaway population, and states having an illegal alien and native American population.

Several comments were received which recommended exceptional circumstances which would justify a finding of full compliance with de minimis exceptions for any state which exceeded the rate of one standard deviation above the mean. Generally, the situations which states indicated should be exceptional circumstances include (1) states having recent changes in State law which will have substantial, significant, and positive impact on achieving full compliance (2) states which can document they did not achieve full compliance with de minimis exception because juveniles were held in State/local facilities who were Federal wards being held pursuant to Federal Codes, and (3) states which can document they did not achieve full compliance with de minimis exceptions because out-of-state runaways were being held pending return to their state of residence. As a result of these comments, criterion A was modified to delineate the acceptable exceptional circumstances and the conditions which must exist to enable a finding of full compliance.

The comment that a comparison should be made between the number of status offenders held and the number of youth charged with status offenders was not considered as an appropriate change because such comparison would reward states for charging an excessive number of youth with status offenses. The comment that states which can document a consistent decline in the rate of institutionalization should be eligible for a finding of full compliance, regardless of the absolute number held, is inconsistent with the intent of Congress to totally remove status offenders and non-offenders from inappropriate facilities within 5 years.

Five of the fifteen responses indicated the criteria go too far in giving an advantage to states which hold status offenders in secure facilities by allowing an excessive number to be held and still maintaining eligibility for a finding of full compliance. Several responders felt it was critically important that OJJDP not establish a policy which creates the impression that less than 100% compliance will satisfy the statutory requirement. The OJJDP is committed to the Congressional mandate to remove all status offenders and non-offenders from secure detention facilities and secure correctional facilities and under no circumstances should the de minimis policy and criteria be construed as a lessening of OJJDP's commitment to complete deinstitutionalization of youth under Section 223(a)(12)(A) of the JJDP Act.

Criterion (b)

"The extent to which the instances of non-compliance were in apparent violation of State law or established executive or judicial policy."

The information to be provided in response to this criterion is to demonstrate whether the instances of non-compliance with Section 223(a)(12)(A) were in apparent violation of state law or established executive or judicial policy or constitutes a pattern or practice. There were no substantial comments or recommendations on this criterion, thus the criterion is unchanged.

Criterion (c)

"The extent to which an acceptable plan has been developed which is designed to eliminate the non-compliant incidents within a reasonable time, where the instances of non-compliance either (1) indicate a pattern or practice, *or* (2) appear to be consistent with state law or established executive or judicial policy, or both."

The few comments on this criterion generally stated that plan elements one and three should be combined into a single element. The criterion has been modified to reflect these comments by combining these two plan components. Other comments which were received but did not result in a modification were that "the criterion should require the development of a plan even when there is no pattern or practice and when violations are inconsistent with state law and (2) the state can always develop a plan but implementation may be difficult thus some agreement as to what is practicable must be reached between the state and OJJDP." The review of the plan developed in response to this criteria and the negotiation, if necessary, between the state and OJJDP as to the viability and practicability of the plan will result in a mutual agreement as to what is expected from both parties. OJJDP technical assistance resources and capability will be available to assist states in the implementation of the states plan for 100% compliance.

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federal register

Monday
August 16, 1982

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Formula Grants for Juvenile Justice; Final Rule

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 rule and effective date.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJDP) is giving notice that its final rule published at 47 FR 21226, May 17, 1982, and the stayed portion of § 31.303(i)(3)(iv)(B) published in the **Federal Register** of June 30, 1982, 47 FR 28546, has been modified and will be effective August 16, 1982. OJJDP had requested further public comments on the stayed clause of the regulation which resulted in its modification. The regulation implements the Valid Court Order amendment to section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, establishing a basic framework within which non-criminal juvenile offenders who violate valid court orders may be placed in secure facilities.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Frank M. Porpotage, II, Formula Grants and Technical Assistance Division, OJJDP, 633 Indiana Avenue NW., Washington, DC 20531, Telephone: (202) 724-5911.

SUPPLEMENTARY INFORMATION: On June 30, 1982, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) published in the **Federal Register** a "Confirmation of Effective Date in Part and Stay of Effective Date in Part." OJJDP requested comments on one portion of its regulation to implement the Valid Court Order amendment to section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

The regulation is § 31.303(i)(3) of 28 CFR, Part 31 (Appendix A), which implements the formula grant program established by the Act. The portion for which additional comments were sought is § 31.303(i)(3)(iv)(B), which establishes the conditions under which a juvenile *accused* of violating a valid court order may be held in secure detention after a judicial determination has been made, based on a hearing, that there is probable cause to believe the youth violated the court order. Prior to this modification, the first clause of § 31.303(i)(3)(iv)(B) provided the following two circumstances under which detention pending a violation hearing would be sanctioned.

(B) the juvenile has a demonstrable recent record of willful failure to appear at family court preceedings *or* a demonstrable recent record of violent conduct resulting in physical injury to self or others.

The OJJDP received 75 written comments from private citizens, private not-for-profit organizations, State and local public agencies and national organizations and associations. All comments have been considered by the OJJDP in adopting the final rule for the Valid Court Order provision.

Discussion of Comments

The central issue related to the subject clause was whether the limitation on judicial authority to place a status offender charged with a violation of a valid court order in secure detention was consistent with the amended Statute, section 223(a)(12)(A) of the Act, and its legislative history.

The majority of commentators recommended retention of the two conditions stressing that abandoning them would weaken the deinstitutionalization thrust of the Act. In addition, it was argued that the legislative history of the amendment indicated that Congress wanted the exception applied sparingly for those chronic status offenders who "continually flout the will of the court."

Comments from judicial associations recommended that the conditions to permit detention of an alleged violator beyond the 24-hour grace period should be reflective of the plain language of the amendment or be increased to cover other circumstances reflected by State law. First, courts must be provided with the ability to authorize detention of the juvenile if: (1) There is reason to believe that the juvenile may abscond and not appear at hearings, and (2) for protective purposes such as when the juvenile seeks the protective intervention of the court or may be a danger to himself or others or when no parent, guardian, or custodian can be found for the juvenile. In the first case, it is pointed out that chronic and habitual runaways may appear at court hearings, but not abide by court ordered non-secure placement or other orders of the court. By retaining this authority the court will be able to enforce their orders and provide needed services to the chronic status offender who has failed to accept non-secure treatment. Protective intervention of the court would be used in limited instances to provide protection to a juvenile who may need some form of protection from outside community factions. In the second instance, "protective" purposes were anticipated by the drafters of the amendment to enable courts to fulfill their basic statutory purpose.

OJJDP has determined that the proposed limits to detention circumstances lacked a substantive legal basis. It was concluded that the commentary of the judicial organizations is in keeping with the plain reading of the statute which provides an exception for all juveniles "charged with" violation of a valid court order and would address needed judicial discretion for enforcing valid court orders. It is believed that the reference to "protective purposes" and assurance of "appearance" in Subsection (iv) is consistent with the purposes of the statute and consistent with administration policy to implement legislation in as simple manner as possible with a concern to its effects on existing State law. Subsection (iv) basically covers situations where a judge has reason to believe, based on a record of failure to appear at a family court proceeding, that the juvenile will not appear at a hearing; or, has reason to believe, based on a record of conduct resulting in physical injury to self or others, that the juvenile may be a danger to self or others; or, that the juvenile is a habitual or chronic runaway who will not appear at the violation hearing or remain in non-secure placement; or, where the juvenile requests the protective custody of the court; or, where no parent, guardian, or custodian can be found who is willing to provide proper supervision.

While few commentators specifically suggested that any of these circumstances are inappropriate, an underlying theme was expressed which emphasized limited use of the authority granted in the amendment. We are aware of no other circumstances, permitted by State law, which are relevant to the amendment or under which this authority would be properly exercised. However, laws and procedures change and individual cases do not always fit into neat regulatory classifications. Consequently, the general "protective purpose" which is the purpose intended by the amendment is set out in Subsection (iv).

Section 31.303(i)(3)(vi) of the final portion of regulation addressed procedural requirements when judges enter any order that directs or authorizes placement in a secure facility. A clarification was requested to reflect that a separate action or statement that a "determination" had been made on the record was not intended.

All juvenile courts are "courts of record." The clause "on the record" has been eliminated since the determination will automatically be recorded in a court of record and the record will reflect the provision of due-process rights and elements of the order. Secondly, the clause "in the case of a violation hearing" is added to the last clause of the Section. This will require judicial determination of the least restrictive alternative at the time of violation hearings only which is the intent of section 223(a)(12)(B) of the Act from which this clause was drawn.

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.

Finally, because this regulation will not have significant economic impact on a substantial number of small entities, no analyses of the impact of these rules on such entities is required by the Regulatory Flexibility Act, U.S.C. 601, et seq., 28 CFR Part 31 is accordingly amended by adding a new § 31.303(i)(3) as shown in Appendix A.

Charles A. Lauer,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

List of Subjects in 28 CFR Part 31

Grant programs, Law, Juvenile delinquency.

PART 31—FORMULA GRANTS

Section 31.303(i)(3) (iv) and (vi) are revised to read as set forth below. For the convenience of the user, we are reprinting the final rule as published at 47 FR 21226, May 17, 1982 and republished at 47 FR 28546, June 30, 1982, with the modifications discussed herein included.

§ 31.303 Substantive requirements.

* * * * *

(i) * * *

(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 his attorney and/or to his 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 juvenile 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 (i)(3), (i), (ii), (iii) of this section) and the applicable due process rights (paragraph (i)(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.

John J. Wilson,

Acting General Counsel.

[FR Doc. 82-22268 Filed 8-13-82; 8:45 am]

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Wednesday
November 2, 1988

Part VI

Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Criteria for de Minimis Exceptions to Full Compliance With the Jail Removal Requirement; Final Rule

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Criteria for De Minimis Exceptions to Full Compliance With the Jail Removal Requirement

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Final rule.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 262(d) (42 U.S.C. 5672(d)) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (JJDP Act), revises its Formula Grants Regulation to include criteria for determining full compliance with de minimis exceptions to the jail removal requirement of section 223(a)(14) (42 U.S.C. 5633(a)(14)) of the JJDP Act, as amended.

EFFECTIVE DATE: This rule is effective November 2, 1988.

FOR FURTHER INFORMATION CONTACT: Emily C. Martin, Director, State Relations and Assistance Division. OJJDP, 633 Indiana Avenue NW., Room 768, Washington, DC 20531, (202) 724–5921.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Section 223(a)(14) of the JJDP Act requires that States participating in the Formula Grants Program "(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 1989, 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 appearance within twenty-four hours after being taken into custody (excluding weekends and holidays) * * *." Section 223(a)(14) limits this exception to areas that are outside a standard metropolitan statistical area.

Section 233(c) of the JJDP Act further provides that a State's "(c) * * * Failure to achieve compliance with the requirements of Subsection (a)(14) within the five-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 requirement 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 three additional years."

Section 31.303(f)(6)(iii) of the OJJDP Formula Grants Regulation, which was published in the June 20, 1985, **Federal Register**, at pages 25550–25561, 28 CFR Part 31, establishes three ways for a State to demonstrate full compliance with the section 223(a)(14) requirement. First, "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)" (28 CFR 31.303(f)(6)(iii)).

The remaining two ways to demonstrate full compliance involve the legal concept of de minimis. First, a State may be found in full compliance with de minimis exceptions where all instances of noncompliance violated a State law, court rule, or other statewide executive or judicial policy; the instances of noncompliance do not indicate a pattern or practice; an enforcement mechanism exists; and, an acceptable plan has been developed to eliminate the noncompliant incidents (28 CFR 131.303(f)(6)(iii)(A)).

Second, a State may demonstrate full compliance by achieving a rate of noncompliant incidents, per 100,000 juvenile population in the State, that falls below the de minimis rate established by OJJDP. This de minimis rate, as set forth below, is being added to the OJJDP Formula Grants Regulation at § 31.303(f)(6)(iii)(B) which is currently designated "Reserved."

Office of Justice Programs Office of General Counsel Legal Opinion 76–7 provides the legal basis upon which OJJDP establishes this de minimis exception. Specifically, the legal opinion allows OJJDP to tolerate a limited number of instances of noncompliance (the legal opinion addressed the deinstitutionalization of status offenders requirement) that are of "slight consequence" or "insignificant" in making a determination regarding a State's achieving full compliance.

II. Discussion of Comments

A proposed policy was published in the **Federal Register** on June 9, 1988, for public comment. One comment was received and has been considered by the OJJDP in the issuance of a final policy.

1. *Comment:* Each State should have the option of providing the juvenile population figure to be used in calculating the de minimis rate for the year in which this exception is requested. The U.S. Bureau of Census juvenile population figures used by the OJJDP may not accurately reflect rapid changes in a State's juvenile population.

Response: The OJJDP will continue to use the U.S. Bureau of Census juvenile population figures, which are annually updated by the Bureau, to calculate each State's rate of compliance with the jail removal provision of the JJDP Act. This is necessary in order to ensure a uniform basis for making de minimis calculations.

However, when juvenile population figures available within the State demonstrate a rate below the allowable de minimis rate, while use of U.S. Bureau of Census figures indicate a rate above the allowable de minimis rate, the State may request the OJJDP to accept the State's figures. Such requests will be reviewed on a case by case basis, and must be submitted each year the State wishes to be exempted from the requirement to use U.S. Bureau of Census figures. The OJJDP may accept the State's juvenile population figures when they are the product of an established annual information collection system. The information collection system and its primary usage must be described in the State's annual request for a finding of full compliance with de minimis exceptions, and must be approved by the Administrator as valid and reliable.

III. Policy and Criteria for De Minimis Exceptions to Full Compliance with the Jail Removal Requirement

The criteria presented below and set forth in the final regulation will be applied by OJJDP in determining whether a State has achieved, and subsequently maintained, a numerical finding of full compliance with de minimis exceptions with the jail and lockup removal requirement of section 223(a)(14). Also specified is the time frame for submitting information which each State must provide when requesting an initial or subsequent finding of full compliance with a de minimis exceptions under 28 CFR 31.303(f)(6)(iii)(B).

Discussion of Criteria

The criteria for finding full compliance with de minimis exceptions is that the incidents of noncompliance are insignificant, or of slight consequence, in

terms of the total juvenile population in the State.

In applying this criteria, OJJDP will compare each State's noncompliance rate per 100,000 population under age 18 to the average rate that has been calculated for 12 States (three States from each of the four Bureau of Census regions). The 12 States selected by OJJDP were those having the lowest rates of noncompliance per 100,000 juvenile population and which had an adequate system of monitoring for compliance. Those States using the non-MSA exception, provided for in section 223(a)(14), were not included in calculating the average. Inclusion of these States would have created an artifically low average because the exception expires in 1989.

The information provided by the 12 States' 1986 Monitoring Reports indicated an average annual rate of nine (9) incidents of noncompliance per 100,000 juvenile population. Consequently, those States which have a noncompliance rate in excess of nine (9) per 100,000 juvenile population will be considered presumptively ineligible for a finding of full compliance with de minimis exceptions, pursuant to § 31.303(f)(6)(iii)(B) of the Formula Grants Regulation.

When a State can demonstrate, however, that recently enacted changes in State law which have gone into effect can reasonably be expected to have a substantial, significant and positive impact on the State's level of compliance, OJJDP will consider this exceptional circumstance in making its determination of full compliance with de minimis exceptions. This exceptional circumstance will only be applied where the legislation is expected to produce full (100%) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

OJJDP deems it to be a requirement of critical importance that all States annually demonstrate continued and meaningful progress toward 100 percent compliance in order to remain eligible for a finding of full compliance with de minimis exceptions pursuant to § 31.303(f)(6)(iii)(B) of the Formula Grants Regulation.

Executive Order 12291

This regulation 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) 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 regulation 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

No new collection of information requirements are contained in this regulation (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

List of Subjects in 28 CFR Part 31

Grant programs-law, Juvenile delinquency, Reporting and recordkeeping requirement.

Final Regulation

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. A new paragraph (f)(6)(iii)(B), currently designated as "Reserved" in 28 CFR 31.303, is added to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(f) * * *

(6) * * *

(iii) * * *

(B)(*1*) *Standard.* The State must demonstrate that each of the following requirements 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.

(*2*) *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.

(*3*) *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)(*1*) (*i*) and (*ii*) 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.

(*4*) *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) (A) or (B) of § 31.303. 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.

Date: October 28, 1988.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88-25362 Filed 11-1-88; 8:45 am]

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Monday
August 1, 1994

Part VIII

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Delinquency Prevent Program Guideline; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Delinquency Prevention Program Guideline

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of final guideline for the Office of Juvenile Justice and Delinquency Prevention's Title V Delinquency Prevention Program.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) published a proposed guideline for the Title V Delinquency Prevention Program on February 11, 1994, and solicited public comments. Based on the analysis of those public comments, OJJDP is issuing this final guideline. This Program is of interest to all Federal, State, local, and private organizations involved with prevention planning and services for children, youth and families.

DATES: This final guideline is effective on August 1, 1994.

ADDRESSES: Office of Juvenile Justice and Delinquency Prevention, Room 742, 633 Indiana Avenue, N.W., Washington, DC 20531

FOR FURTHER INFORMATION CONTACT: Paul E. Steiner, Social Science Program Specialist, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, at the above address. Telephone (202) 307–5924.

SUPPLEMENTAL INFORMATION: Section 504(1) of the JJDP Act directs OJJDP to issue "such rules as are appropriate and necessary to carry out" the Title V—Incentive Grants for Local Delinquency Prevention Programs.

Changes to Proposed Guideline

The following changes are made to the proposed guideline. New language is italicized.

Throughout the guideline, references to "units of local government" are changed to "units of *general* local government."

The following sentence is added to the last paragraph under "Local Subgrantee Qualifications": *State Advisory Groups may not arbitrarily exclude an eligible unit of general local government from competing for Title V funds.*

Under "Application Requirements for State Agencies," the first sentence is amended as follows: State agencies must provide evidence of the State Advisory Group's authority to approve the award of Title V subgrants *or, where a separate supervisory board is vested with such authority, to review and recommend approval to the board. No Title V subgrants can be made to a unit of general local government absent the approval or recommendation of the State Advisory Group.*

Under "Application Requirements for State Agencies," the following paragraph is inserted after the fifth paragraph of that section: *The application must include a time-task plan providing a description of the major tasks which the State will employ to implement the Title V program, and the timeframes for completing each of those tasks.*

Under "Application Requirements for State Agencies" the fourth paragraph is amended as follows: 2. To monitor and *assure* the audit of subgrants for performance, outcome, and fiscal integrity, including cash and in-kind match, *as specified in the current edition of the Office of Justice Programs Guideline Manual M–7100, "Financial and Administrative Guide for Grants."*

The first sentence under "Process for Subgrant Award and Administration" is amended to read: State agency grantees shall use essentially the same process for making Title V subawards as that used for the Formula Grant awards, with the State Advisory Group *establishing applicant eligibility criteria to target specific types of communities, if needed, and making or recommending* the final decision on funding *individual applications.*

Under "Application Process for Units of general local government," subsection 3. "Local Three-Year Delinquency Prevention Plan," the following sentence is inserted between the second and third sentence of the second paragraph of the subsection: *The applicant should also assure that the PPB, to the extent possible, contains one or more members under the age of twenty-one, one or more parents or guardians with children who have had contact or are at risk of having contact with the juvenile justice system, and an overall membership that generally reflects the racial, ethnic, and cultural composition of the community's youth population.*

Under the section titled "Application Process for Units of General Local Government," subsection 3. "Local Three Year Delinquency Prevention Plan," the eleventh paragraph (paragraph j.) is amended to read: A description of how the PPB will *provide general oversight for developing the plan, approve the plan prior to submission to the State, and* make recommendations to the responsible local agency for the distribution of funds and evaluation of funded activities.

Under the section titled "Duration of Grants and Continuation Funding," the following changes are made: (1) The following sentence is stricken: Grants may be awarded for project periods of 12 to 36 months, with initial awards of up to one year. The following two sentences replace the stricken sentence: *OJJDP will award grants to States for a project period beginning on the date of award and ending on September 30, 1996. States will award grants to units of general local government in annual increments covering not more than 12 months each, with overall project periods of 12 to 36 months;* and (2) in the second sentence the word "continuation" is stricken and replaced with *Subsequent years'.* At the end of that sentence, "subsequent fiscal years" is stricken.

Background

A new program was authorized in the 1992 amendments to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (hereafter "the Act" or "the JJDP Act") in Title V, Sections 501–506, "Incentive Grants for Local Delinquency Prevention Programs Act." For Fiscal Year 1994, Congress appropriated $13 million for initial implementation of Title V.

Prevention has been one of the primary goals of the Act since its enactment in 1974. The premise is that preventing delinquent behavior is a much more cost-effective means of reducing juvenile crime than attempting to rehabilitate adjudicated delinquents. Prevention is also a much more cost-effective way to deal with juvenile delinquency. In addition to reducing the human and financial losses caused by crime, effective delinquency prevention also reduces the need for costly juvenile justice system processing and adjudication. Each year, juvenile courts handle approximately 1.4 million delinquency and status offense cases, resulting in nearly 130,000 out-of-home placements. On any given day, approximately 90,000 juveniles are held in juvenile detention, correctional and shelter facilities. Nationally, nearly $2 billion a year is spent operating these facilities. The average annual cost of confining a juvenile in a training school exceeds $45,000 in many States. The cost for intensive, private residential treatment for a serious juvenile offender can run as high as $100,000 per year. The cost for construction of secure facilities for juveniles is currently about $100,000 per bed.

In order to be eligible to fully participate in the Formula Grants Program of the JJDP Act, States must develop and adhere to policies, practices, and laws which deinstitutionalize status offenders and nonoffenders, separate adults and juveniles held in secure institutions, and eliminate the practice of detaining or confining juveniles in adult jails and lockups. In addition, States must address efforts to reduce the disproportionate representation of minority juveniles in secure facilities, where such condition exists. These four goals (deinstitutionalization of status offenders, separation, jail removal, and disproportionate minority confinement) are commonly called the Formula Grants Program "mandates," and are a major focus of States' Federally funded efforts under the Act. In order to meet statutory requirements for compliance, approximately 70% of the States at one time or another have devoted 100% of all available formula grant funds toward meeting the mandates. Thus, many States have been limited in the amount of JJDP Act funds that could be devoted to prevention.

Title V of the JJDP Act is designed to provide a dedicated fund source for States to award grants for delinquency prevention and early intervention programs for local communities, provided that the applicant unit of general local government, or combination thereof, is in compliance with the JJDP Act mandates.

Congress has structured the Title V Delinquency Prevention Program to support such units that have formulated a community-wide strategy to address the prevention of delinquency. A community will be required to have a prevention strategy based on assessment of risk factors associated with the development of delinquent behavior in the community's children.

Title V authorizes the Administrator of OJJDP to make grants to a State, to be transmitted through the State Advisory Group, to units of general local government for delinquency prevention programming. The State agency which administers the JJDP Act Formula Grant in each State will be eligible to apply for funding and receive an amount determined by a formula based on the State's population of youth under the maximum age of original juvenile court delinquency jurisdiction, with a minimum allocation of $75,000 per State and $25,000 per Territory.

States will invite units of general local government that meet the statutorily mandated eligibility requirements, and as further limited by the State Advisory Group, to apply for funding. In order to be eligible, local applicants must: (1) Be certified by the State Advisory Group to be in compliance with the JJDP Act Formula Grants mandates; (2) designate or convene a local Prevention Policy Board; and (3) develop a local, comprehensive delinquency prevention plan.

Approach

Many past delinquency prevention planning and programming efforts, while well intentioned, have been unsuccessful because of their negative focus on attempting to prevent juveniles from misbehaving. Another weakness of past delinquency prevention efforts is their narrow scope, generally focussing on only one or two aspects of a child's life such as individual behaviors or family problems. Successful delinquency prevention strategies must be positive in their orientation and comprehensive in their scope.

Positive approaches that emphasize opportunities for healthy social, physical and mental development and take into account individual, family, peer group, school, and community influences on a child's development have been shown to have a much greater likelihood of success.

Risk-focused delinquency prevention is a comprehensive approach based on the premise that in order to prevent a problem from occurring, the factors that contribute to the development of that problem must be identified and addressed.

Research conducted over the past half century has clearly documented five categories of risk factors for juvenile delinquency: (1) Individual characteristics such as alienation, rebelliousness and lack of bonding to society; (2) family influences such as parental conflict, child abuse, poor family management practices, and family history of problem behavior (substance abuse, criminality, teen pregnancy, and school dropouts); (3) school experiences such as early academic failure and lack of commitment to school; (4) peer group influences such as friends who engage in problem behavior (minor criminality, drugs, gangs and violence); and (5) neighborhood and community factors such as economic deprivation, high rates of substance abuse and crime, and neighborhood disorganization.

To counter these risk factors, protective factors must be introduced. Protective factors are qualities or conditions that moderate a juvenile's exposure to risk. Research indicates that protective factors fall into three basic categories: (1) Individual characteristics such as a resilient temperament and a positive social orientation; (2) bonding with pro-social family members, teachers, adults, and friends; and (3) healthy beliefs and clear standards for behavior. While individual characteristics are difficult to change, bonding and clear standards for behavior work together and can be changed. To increase bonding, children must be provided with: (1) Opportunities to contribute to their family, school, peer group and community; (2) skills to take advantage of opportunities; and (3) recognition for efforts to contribute.

At the same time, parents, teachers and communities need to set clear standards regarding pro-social behavior.

A risk-focused delinquency prevention approach calls on communities to identify the risk factors to which their children are exposed. Risked-focused delinquency prevention provides communities with a conceptual framework for prioritizing the risk factors in their community, assessing how their current resources are being used, identifying resources which are needed, and choosing specific programs and strategies that directly address those risk factors through the enhancement of protective factors.

This approach requires a commitment by and participation of the entire community in developing and implementing a comprehensive strategy. While the roles of governmental agencies in this strategy will vary, it is essential that the citizens of the community create a diverse and representative coalition in which public officials and agencies are equal members with private citizens and agencies. It is this coalition which leads the community's prevention strategy in addressing the needs of children and their families at risk.

Another key component of this approach is the coordination and use of existing programs and resources. A community-wide prevention strategy must inventory available State, local, private, and Federal resources, and develop vehicles for making these resources and programs readily accessible to children and families in need. Thus, applicants for Title V funds are encouraged to coordinate this prevention effort with other Federally funded efforts.

Target Population

The Title V Delinquency Prevention Program is based on a program design which addresses those risk factors which are known to be associated with delinquent behavior. The program seeks to address these factors at the earliest appropriate stage in each child's

development. The target population is all at-risk children in a given community. Funds awarded under this program will be used to address delinquency risk-factors in communities, and as such may be used to fund ameliorative services for at-risk children.

Funding Structure

Title V, Section 505 of the Act, authorizes the Administrator of OJJDP to make grants to a State, to be transmitted through the State Advisory Group, to units of general local government.

Technical Assistance

Because the Title V Delinquency Prevention Program is based on a risk-focused program structure, OJJDP will make training and technical assistance on risk-focused prevention available to representatives of units of general local government through the State agency administering the program.

Program Goal

The goal of this program is to reduce delinquency and youth violence by supporting communities in providing their children, families, neighborhoods, and institutions with the knowledge, skills, and opportunities necessary to foster a healthy and nurturing environment which supports the growth and development of productive and responsible citizens.

Program Objectives

The objectives of the program are:

1. To form coalitions within communities to mobilize the community and direct delinquency prevention efforts;
2. To identify those known delinquency risk factors which are present in communities;
3. To identify protective factors which will counteract identified risk factors, and develop local comprehensive, delinquency prevention plans to strengthen these protective factors;
4. To develop local comprehensive, delinquency prevention strategies which use and coordinate Federal, State, local and private resources for establishing a client-centered continuum of services for at-risk children and their families;
5. To implement the delinquency prevention strategies, monitor their progress, and modify the plans as needed.

Basic Program Design

The program will be implemented in two phases: the pre-award planning phase and the implementation phase. Applicant units of general local government may modify or enhance existing prevention planning boards, plans and strategies to meet the requirements for Title V funding.

Planning Phase

The planning phase for each local applicant will occur prior to the award of funds and consist of the designation or formation of a local policy board to direct the project, and the development of a three-year delinquency prevention plan. OJJDP is making training and technical assistance available through the State agency to interested potential local applicants during this phase. Eligible State agencies may apply for and receive Title V awards from OJJDP based on this final Title V Guideline.

Implementation Phase

The implementation phase will begin with the award of subgrants to units of general local government. Technical assistance will continue to be available to grantees.

Funding Structure and Grantee Qualifications

Title V authorizes the Administrator of OJJDP to make grants to States to be transmitted through the State Advisory Groups to qualified units of general local government or combinations thereof. The State Advisory Group is the board appointed by the chief executive officer of the State, as provided by Section 223(a)(3) of the Act (Section 503). A unit of general local government means any city, county, town, borough, parish, village, or other general purpose political subdivision of a State, and any Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior. . . . (Section 103(8)).

OJJDP will award grants to States based on a formula determined by each State's relative population of youth below the maximum age limit for original juvenile court delinquency jurisdiction. The States will subgrant the funds to qualified units of general local government based on a competitive process. Jurisdictions that do not have discrete units of general local government may award funds directly to governmental agencies or private nonprofit organizations to implement projects in furtherance of the jurisdiction's own comprehensive prevention strategy.

All Title V funds must be matched by recipient units of general local government or by the State with 50% of the amount of the grant. This match may be provided in cash or the value of in-kind contributions or services. States are encouraged to supplement Title V funds with Formula Grant funds. However, Formula Grant funds cannot be used as match for Title V funds.

State Grantee Qualifications

Each State, as defined in Section 103(7) of the Act, is eligible to apply for Title V funds, provided that it has a State agency designated by the chief executive under Section 299(c) of the Act, and a State Advisory Group appointed pursuant to Section 223(a)(3) of the Act. The applicant State agency must provide an assurance that the State Advisory Group has or will have the sole authority, consistent with State law or policy, to approve or recommend approval of Title V subgrants to units of general local government, pursuant to the provisions of this program guideline.

Local Subgrantee Qualifications

In order for a unit of general local government to be eligible to apply for Title V funds, such unit, or each unit applying in combination, must be certified by the State Advisory Group as in compliance with Sections 223(a)(12)(A), 223(a)(13), 223(a)(14), and 233(a)(23) of the JJDP Act. If a State is not currently in full compliance with any of the first three of these mandates, i.e. the quantifiable mandates, or is in full compliance with *de minimis* exceptions, only those units of general local government which are within the de minimis parameters provided in 28 CFR 31.303(f)(6)(i) and (f)(6)(iii)(A), based on the locality's most current census data, may be deemed in compliance with the mandates of Sections 223(a)(12)(A), (13), and (14).

In order to be in compliance with Section 223(a)(23), the State Advisory Group must certify that the unit of general local government is cooperating in data gathering and analysis to determine if disproportionate minority confinement exists, or if it is known to exist within the boundaries or jurisdiction of the unit of general local government, the unit has made or is making an adequate effort toward addressing, or assisting the State to address, this issue.

The State Advisory Group will competitively award, or recommend for award, Title V grants to units of general local government based on how well competing units meet the competitive criteria set forth below under *Priority Consideration for Funding*. State Advisory Groups may not arbitrarily exclude an eligible unit of general local government from competing for Title V funds.

Application Process—Eligible State Agencies

All State agencies designated by the chief executive under Section 299(c) of the Act are eligible to apply for Title V funds. A list of these agencies and the allocations of funds to the State for a particular fiscal year may be obtained from OJJDP.

Application Requirements for State Agencies

State agencies must provide evidence of the State Advisory Group's authority to approve the award of Title V subgrants or, where a separate supervisory board is vested with such authority, to review and recommend approval to the board. No Title V subgrants can be made to a unit of general local government absent the approval or recommendation of the State Advisory Group. Examples of such authority would be an executive order, a statute, a formal resolution of the State Advisory Group, a formal resolution of the supervisory board which the State Advisory Group advises, or a written agreement between the State agency and the State Advisory Group.

The application must also include an assurance that the State Advisory Group and the State agency will establish written subgrantee eligibility criteria, described above under *Local Subgrantee Qualifications*, and competitive criteria based on the criteria described below under *Priority Consideration for Funding*. The State may issue additional criteria, including criteria designed to focus delinquency prevention efforts toward those areas of the State displaying the greatest need of comprehensive delinquency prevention planning and programs.

Furthermore, the application must provide the following administrative assurances:

1. To report on all subgrant awards, within thirty days of award, on the OJJDP form, "Individual Project Report, Part I: Initial Report of Funding";

2. To monitor and assure the audit of subgrants for performance, outcome and fiscal integrity, including cash and in-kind match, as specified in the current edition of the Office of Justice Programs Guideline Manual M–7100, "Financial and Administrative Guide for Grants";

3. To collect quarterly progress and data reports, and forward semi-annual summary reports to OJJDP.

The application must include a time-task plan providing a description of the major tasks which the State will employ to implement the Title V program, and the timeframes for completing each of those tasks.

All awards will be conditioned with additional requirements which are standard for recipients of Federal grants.

State agencies which demonstrate a need to do so in their applications to OJJDP, may use up to 5% of the State's Title V allocation for the costs of administering the Title V subgrants and support for State Advisory Group activities related to Title V. A budget narrative must explain how the administrative funds will be spent, including provision of the required match by the State.

State Application Deadline

State applications are due to OJJDP not later than 60 days after the effective date of this guideline.

Technical Assistance Role of State Agency and State Advisory Group: In their capacities as the primary planning vehicles for juvenile justice and delinquency prevention programs within the State, the State agency and the State Advisory Group are encouraged to assume a role as a technical assistance resource for local subgrantees, as well as serving as a resource and information clearinghouse for all prevention activities in the State. The data and strategies developed on the local level should be incorporated in the State Advisory Group's and State agency's statewide, comprehensive planning efforts, as required by Section 223 of the Act. To this end, State agencies and State Advisory Groups are strongly encouraged to participate in risk-focused prevention training and technical assistance made available by OJJDP.

Process for Subgrant Award and Administration

State agency grantees shall use essentially the same process for making Title V subawards as that used for Formula Grant awards, with the State Advisory Group establishing applicant eligibility criteria to target specific types of communities, if needed, and making or recommending the final decision on funding of individual applications. This includes the Request for Proposals, competitive review of applications, and award of subgrants. Likewise, State agencies will monitor Title V subgrants in a similar manner as the Formula Grant subgrants, including the collection and reporting of data required by this program guideline.

In considering applications for awards, State Advisory Groups should be sensitive to the unique needs of rural areas and Native American tribes, including provision of special consideration in the competitive process.

All subgrants should be awarded within 180 days after receipt of the award from OJJDP.

Application Process for Units of General Local Government

1. Pre-application Certification of JJDP Act Compliance

Units of general local government must obtain a certification of compliance from the State Advisory Group prior to applying for an award of funds.

2. Delinquency Prevention Training

OJJDP is making training in risk-focused prevention available to 45 sites across the nation during fiscal year 1994. The only cost associated with this training for participants will be transportation and lodging, if necessary. Facilities for the training will be provided by the States or localities. Training is designed to assist communities in preparing the three year plans required for Title V funding. The initial training will consist of a one day introduction to the theories and strategies of risk-focused prevention planning. Units of general local government considering applying for Title V funding are strongly urged to take advantage of this training opportunity and send key community leaders to the initial training. A subsequent three day workshop will be held for planning teams from local Prevention Policy Boards to complete a risk and resource assessment. OJJDP has advised the State agencies on the process for units of general local government to participate in this training.

3. Local Three-Year Delinquency Prevention Plan

Each unit of general local government's application to the State agency must include a three-year plan describing the extent of risk factors identified in the community and how these risk factors will be addressed. A written explanation of the risk factors and protective factors can be obtained from the State agency grantee. The plan must, at a minimum, contain the following elements:

a. The designation or formation of a local Prevention Policy Board (PPB) consisting of no fewer than 15 and no more than 21 members from the community, representing a balance of public agencies, private nonprofit organizations serving children, youth, and families, and business and industry. Such agencies and organizations may include education, health and mental health, juvenile justice, child welfare,

employment, parent, family, and youth associations, law enforcement, religion, recreation, child protective services, public defenders, prosecutors, and private manufacturing and service sectors. The applicant should also assure that the PPB, to the extent possible, contains one or more members under the age of twenty-one, one or more parents or guardians with children who have had contact or are at risk of having contact with the juvenile justice system, and an overall membership that generally reflects the racial, ethnic, and cultural composition of the community's youth population. A specific local agency or entity must have responsibility for support of the PPB;

b. Evidence of commitment of key community leaders to supporting a comprehensive, delinquency prevention effort. Key leaders may include public and private individuals in key leadership and policy positions who are instrumental in effecting policy changes, controlling resources, and mobilizing the community;

c. Definition of the boundaries of the program's neighborhood or community;

d. An assessment of the readiness of the community or neighborhood to adopt a comprehensive delinquency prevention strategy;

e. An assessment of the prevalence of specific, identified delinquency risk factors in the community, including the establishment of baseline data for the risk factors. The assessment of risk factors must result in a list of priority risk factors to be addressed, as determined and approved by the PPB;

f. Identification of available resources and promising approaches, including Federal, State, local, and private, and a description of how they address identified risk factors, and an assessment of gaps in needed resources and a description of how to address them;

g. A strategy, including goals, objectives, and a timetable, for mobilizing the community to assume responsibility for delinquency prevention. This should include ways of involving the private nonprofit and business sectors in delinquency prevention activities;

h. A strategy, including goals, objectives, and a timetable, for obtaining and coordinating identified resources which will implement the promising approaches that address the priority risk factors. This strategy must include a plan for the coordination of services for at-risk youth and their families;

i. A description of how awarded funds and matching resources will be used to accomplish stated goals and objectives by purchasing of services and goods and leveraging other resources. This should include a budget which lists planned expenditures;

j. A description of how the PPB will provide general oversight for developing the plan, approve the plan prior to submission to the State, and make recommendations to the responsible local agency for the distribution of funds and evaluation of funded activities;

k. A plan for collecting data for the measurement of performance and outcome of project activities.

Priority Consideration for Funding

Only local government applicants certified by the State Advisory Group as in compliance with the mandates of the Act, that have convened a PPB, and have submitted a three year plan will be eligible for funding. In considering applications for funding, State Advisory Groups will give priority to eligible applicants which:

a. Provide a thorough assessment of risk factors and resources, including the quantified measurement of the risk factors which will serve as the baseline for determining project performance and outcome;

b. Identify key community leaders and members of the PPB, describe their roles in the comprehensive delinquency prevention strategy, and provide evidence of key community leaders support;

c. Clearly define the boundaries of the program's neighborhood or community;

d. Provide a realistic assessment, including evidence, of the readiness of the community or neighborhood to adopt a comprehensive delinquency prevention strategy;

e. Provide a coherent plan, including realistic goals and objectives, to mobilize the community and implement a strategy that will address priority risk factors, including innovative ways of involving the private nonprofit and business sectors in delinquency prevention activities;

f. Provide specific strategies for service and agency coordination, including collocation of services at sites readily accessible to children and families in need;

g. Provide a strategy for or evidence of collaborating with other units of local of government and State agencies to develop or enhance a statewide subsidy program to local governments that is dedicated to early intervention and delinquency prevention;

h. Provide a budget outlining the planned expenditures of grant funds and matching resources, including a budget narrative justifying these expenditures;

i. Provide a sound plan for collecting data for measuring performance and outcome;

j. Provide written statements of commitment from State or local public agencies to match in cash or kind, at least 50% of the funds awarded.

Local Application Deadline

The State Advisory Group will determine the application deadline. However, all local subgrant awards should be made within 180 days after the date that the State agency was awarded Title V funds.

Local Grant Administrative Requirements

After receipt of the award, local grantees will provide all required reports and data to the State agency, describing implementation of the program. Technical assistance for program implementation will be available upon request through the State agency.

Evaluation

OJJDP will collect and analyze data collected by each grantee for the purpose of developing national summary reports on the performance and outcome of the local prevention efforts. This evaluation will examine performance in meeting stated objectives as well as the outcome of the project's activities. In order for this evaluation to be meaningful, it is essential that, to the greatest extent possible, the local three year comprehensive delinquency prevention plans contain quantified objectives and baseline measurements of the identified risk factors.

Allocation of Title V Funds to States

The Title V Delinquency Prevention Program has a F.Y. 1994 appropriation of $13 million available for awards to States to support programs of units of general local government. Allocations are available to States based on the number of juveniles in the State who are subject to original juvenile court delinquency jurisdiction based on State law, with a minimum allocation of $75,000 for States and the District of Columbia and $25,000 for Territories and Possessions. A list of the allocations for States is available from OJJDP. The allocations for States not participating in this program in F.Y. 1994, or subsequent years, will be withheld for use in F.Y. 1995, or subsequent years, pursuant to the Title V Delinquency Prevention Program guidelines issued for that year.

Size of Awards to Units of General Local Government

The size of the award to each unit of general local government, or combination thereof, and the total number of awards will be determined by the State Advisory Group, based upon the amount of funds allocated to the State and the quality of the local three-year prevention plans.

Duration of Grants and Continuation Funding

OJJDP will award grants to States for a project period beginning on the date of award and ending on September 30, 1996. States will award grants to units of general local government in annual increments covering not more than 12 months each, with overall project periods of 12 to 36 months. Subsequent years' funding will be contingent upon satisfactory performance and the availability of funds. Future funding is dependent upon Congressional action.

Restrictions on Uses of Funds: Title V funds cannot be used for construction, land acquisition, or supplantation of Federal, State, or local funds supporting existing programs or activities.

Responses to Public Comments

Twenty-seven comments to the proposed guideline were received. A summary of the comments and OJJDP's responses follow. In many instances, the summary comments listed below incorporate specific comments from more than one respondent.

Comment. The guideline appears to focus on risk factors and reducing delinquency without providing adequate emphasis to protective factors and positive youth outcomes. A prevention approach which is protection focused or risk and protection focused seems more in line with OJJDP's strategy.

Response. The structure of the Title V program is based on identifying risk factors that can lead to the development of delinquency and violence in children and youth, and developing strategies to eliminate or ameliorate the risk factors. A key component of this strategy is to provide the protective factors which serve to buffer children and youth from the damaging effects of risk factors.

To better express this strategy, the Title V program will be referred to as a risk and protection focused strategy.

Comment. The guideline should refer to children and youth, and emphasis should go to youth eleven years and older, since this population most often lacks positive alternatives in their communities.

What age is the program targeting? Would programs for parenting skills and early infant bonding be appropriate? The program needs to place more emphasis on parental responsibility and skills training.

Response. The guideline states that "the program seeks to address these (risk) factors at the earliest appropriate stage in each child's development." The Title V program is structured to accommodate what each individual community has identified as the best strategy to reduce risk factors and increase protective factors. For some communities this may require emphasizing the ages of zero to three, for others it may mean eleven years and older, and in others it may require a focus on adolescents.

Comment. The clear thrust of the proposed guideline is toward primary prevention. Given the increasing emphasis on primary and secondary prevention in funding proposals now before Congress, OJJDP should make clear in the final guideline that in communities where the greatest need is for tertiary program, those communities are also encouraged to apply for these funds.

Response. OJJDP formulated the Title V program based on a risk and protection focused strategy. This decision was based on OJJDP's research and demonstration program experience, as well as the provisions of Title V. While the risk and protection focused strategy stresses secondary prevention, the comprehensive planning process employed by communities may also yield tertiary and primary prevention programs.

The three levels of prevention (primary, secondary, and tertiary) usually overlap to some degree, especially in a risk and protection focused strategy such as that employed in the Title V program. The risk and protection focus of the strategy analyzes and addresses the root causes of problem behavior and violence which can affect all children (primary prevention), including those who have been identified as at-risk (secondary prevention), and those who have committed offenses and have been referred to the juvenile justice system (tertiary prevention).

Section 505(a) under Title V states that grants may be used for "delinquency prevention programs and activities for youth who have had or 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 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." Information and technical assistance on these and other prevention programs and strategies are available from OJJDP.

Comment. Gender-specific services should be part of every community's comprehensive strategy.

Response. Through the risk and resource assessment, each community will have an opportunity to analyze service gaps and address those gaps with programs and strategies which have had positive or promising results. OJJDP is making technical assistance and training available to States and localities who would like to enhance their assessment skills in analyzing service gaps.

Comment. The guideline should list attention deficit disorder and lack of support for parents with children with disabilities as risk factors.

Response. The risk factors cited in the training that OJJDP is providing for potential Title V applicants includes three school related factors: Early and Persistent Antisocial Behavior, Academic Failure in Elementary School, and Lack of Commitment to School. Learning disabilities can be related to each of these risk factors.

Comment. A sixth program objective should be added which focuses on methodology. This would provide a basis for improving professional practice within and among the organizations working with youth.

Response. Although the guideline does not require a specific methodology for planning or programming, it does provide general guidance on methodology along the lines of a risk and protection focused strategy. The training and technical assistance that is available through OJJDP provides a means of improving professional practice.

Comment. Will private non-profit agencies have difficulty in being subgranted funds if a local unit of government does not wish to apply but does wish to participate?

Response. Section 505(a) under Title V of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) authorizes the Administrator to "make grants to a State, to be transmitted through the State Advisory Group, to units of general local government * * *" The only means by which private non-profit organizations can receive Title V funds would be through service contracts with units of general local government.

Comment. Are school districts eligible to apply for Title V funds?

Response. Section 503 of the JJDP Act provides for only units of general local government to be the applicants for Title V funds. A school district is not a unit of general local government.

The proposed guideline did not consistently use the term "unit of general local government." The final guideline is amended to use this term consistently.

Comment. The guideline appears to grant sole authority to award grants to the State Advisory Group. How will the awards be made if State statute does not grant the State Advisory Group such authority? If the Governor signs the grant, must the State Advisory Group approve the award?

Response. The guideline, under "State Grantee Qualifications," has been revised to require the State agency applicant to provide an assurance that the State Advisory Group has the sole authority, consistent with State law or policy, to approve or recommend the award of Title V subgrants.

Comment. Can private not-for-profit organizations participate in public-private partnerships with operational prevention coalitions?

Response. Under the Title V program, a unit of general local government could vest a public-private organization with significant responsibility for implementation of the program. However, the local government would still be responsible to the State for administering any Title V funds.

Comment. Municipalities with populations in excess of 3 million should be eligible to receive grants directly from OJJDP.

Response. Section 505 of the JJDP Act authorizes the Administrator to "make grants to a State, to be transmitted through the State Advisory Group to units of general local government."

Comment. The formula for allocating funds to States should be amended to include all youth up to 18 years of age, regardless of the maximum age of original juvenile court delinquency jurisdiction.

Response. Because a community can only prevent delinquency in a juvenile who is subject to a juvenile court's delinquency jurisdiction, the most logical and appropriate means for allocating Title V funds is to use a formula determined by each State's relative population of youth below the age limit for original juvenile court delinquency jurisdiction.

Comment. Regional plans for Title V should be permitted.

Response. The guideline allows for combinations of units of general local government to apply for Title V funds. However, the regional plan which is the product by such a regional collaboration must define the boundaries of the target neighborhoods or communities.

Comment. States will be implementing the Title V program using varying timetables and strategies. OJJDP should require the States' applications to include a time-task plan.

Response. This requirement has been added Under "Application Requirements for State Agencies," in the guideline.

Comment. Four respondents indicated that the match requirement was too onerous for small communities and private nonprofit organizations. The respondents recommended that a reduced level of match be allowed.

Response. Title V requires that "the unit or State has agreed to provide a 50% match of the amount of the grant, including the value of in-kind contributions, to fund the activity." (Section 505(b)(7)).

This provision provides some flexibility in the match requirement. First, the match, which is 50 cents on the dollar, has to be made for every dollar granted to the local level. However, the State can provide a portion of the funding through State program dollars. Second, the match can be made in cash or in-kind. In-kind match is discussed in a separate response.

It should be noted that the Title V provision does not require a match from any agency other than the State or the unit of general local government. It is the responsibility of the unit of general local government to provide the match, not nonprofit service providers.

Comment. Two respondents recommended that in certain instances, the match requirement should exclude in-kind match and require a cash match only.

Response. Congress intended the in-kind match provision to allow flexibility in providing local resources. Although the in-kind match provision may require more diligence on the part of the State in assuring that the match requirement is met, the State cannot restrict the match to cash because this is a benefit provided to local recipients by statute.

Comment. The guideline should require that local applications provide formal interagency agreements which promote "contractual" agreements vs. "intentional" agreements.

Response. The guideline allows for statements of commitment in order to give the State flexibility in determining what form those statements of commitment should take. Given the timeframes for the planning process in the guideline, it may not be possible for a locality to obtain formal interagency agreements prior to submission of the plan.

Comment. Can the State Advisory Group limit the availability of funds to a specific local government or a specific set of risk factors?

Response. The State Advisory Group and State agency may issue funding guidelines which focus available funds on areas with the greatest need. If a State chooses this approach, the award of funds is to still be determined through a competitive process that solicits proposals from areas which meet criteria established by the State Advisory Group. It is possible that these criteria may result in a limited number of units of general local government being eligible to apply.

In targeting communities with particular needs for purposes of soliciting proposals, the State Advisory Group may include specific risk factors in the targeting criteria. However, applicants must still analyze the incidence of all risk factors in their local comprehensive plans.

The State Advisory Group and the State agency may not limit the competition based solely on criteria which are not related to juvenile crime or other indications of need. For example, the State Advisory Group may not limit competition to particular communities based solely on population size. To do so would result in the arbitrary exclusion of communities from competition in the Title V program. The guideline is revised under "Local Subgrantee Qualifications" to reflect this requirement.

Comment. The timeframes allowed in the guideline for the development of local comprehensive plans are too restrictive, especially if a locality does not have any available planning resources. What happens if a local applicant cannot meet the 180 day deadline? OJJDP should allow States to award the first and second year of Title V funds through one RFP process after the new Federal fiscal year.

Response. The guideline states that "all subgrant awards should be made within 180 days after receipt of the award from OJJDP." OJJDP intends this 180 day timeframe to serve as a target date, particularly in States where localities are developing their Title V prevention plans on a base previously established through other risk-focused prevention planning efforts. OJJDP recognizes that some States and localities are new to prevention planning, and more time will be required to develop comprehensive three year plans. OJJDP is providing

technical assistance and training to States and localities to enhance their ability to implement the Title V program in the most expeditious manner possible without sacrificing quality.

Comment. The guideline suggests that Title V funds should be used in conjunction with the JJDP Act Formula Grant funds. The time frame for these two planning cycles do not coincide.

Response. Title V requires three year local plans and the Formula Grant requires three year State plans. OJJDP encourages the State Advisory Groups and State agencies to develop a mechanism whereby the local plans can be integrated in the State plan.

The proposed guideline, under "Duration of Grants and Continuation Funding" has been revised to more accurately describe the grant award process by providing that "OJJDP will award grants to States for a project period beginning on the date of award and ending on September 30, 1996. States will award grants to units of general local government in annual increments covering not more than 12 months each, with overall project periods of 12 to 36 months."

Comment. Will Title V funds be available in to States in future years?

Response. OJJDP will make future years' Title V funds available to States and localities through the process described in the guideline, pending satisfactory performance and availability of funds. OJJDP will determine satisfactory performance of State grantees and the States will determine satisfactory performance of local grantees.

Comment. The Title V program should be coordinated with other similar Federal programs, such as the Family Preservation Act.

The guideline should require local applicants to document collaboration with other Federal programs.

Response. OJJDP strongly encourages coordination with other Federal, State and local programs. OJJDP is working with the U.S. Department of Health and Human Services to establish mechanisms to facilitate coordination with the Family Preservation and Support Services provision and other programs which use a community coalition planning approach to prevention. In addition, OJJDP will provide technical assistance and training to States and localities on accessing and collaborating with other Federal programs.

The guideline indicates that a "key component of the prevention approach is the coordination and use of existing resources." The guideline encourages applicants to coordinate this effort with other Federally funded programs.

Comment. Who signs the local application? The highest elected local official?

Response. The local application may be signed by any official authorized to do so by the applicant unit of general local government.

Comment. Can a county, and municipalities within a county, both be eligible to apply?

Response. Yes, provided that funding is contingent upon coordination of the respective plans.

Comment. Can Title II, Part B Formula Grant funds be used to help localities develop local plans?

Response. Yes. The use of Formula Grant program funds for the development of local delinquency prevention plans is a permissible expenditure of these funds.

Comment. What if a local plan is missing one of the required elements?

Response. The local plan must contain all the required elements listed in the guideline before the locality can receive Title V funds.

Comment. It is not clear whether the funds can be used for service delivery or planning.

Response. Title V funds are used for service delivery.

Comment. The guideline refers to the "Communities that Care" model of risk-focused prevention. Can grant recipients employ other risk-focused prevention models?

Response. Yes. Localities may base their three year plan and strategy on other delinquency prevention models, provided that they are based on a risk and protection focused model that uses: (1) The analysis of risk factors which are grounded in sound theory and positive research results, and (2) protective factors which have a sound theoretical basis and positive or promising research results.

OJJDP is offering training and TA on risk and protection focused prevention which permits States and localities to use any risk and protection focused model.

Comment. We interpret the Title V audit requirements to be different than that of an A–128 audit.

Response. The provisions of OMB Circulars A–128 and A–133 apply to Title V funds.

Comment. The guideline indicates project periods for local grants of 12 to 36 months. It may be beneficial to allow for up to a 60 month project period to facilitate the measurement of outcomes of the projects.

Response. Title V is designed as a long term program. Based on the experience of communities that are implementing prevention programs of similar design, we anticipate that three to five years is not an unreasonable time to expect a community coalition, such as the Title V Prevention Policy Board, to establish itself as a viable organization with the influence necessary to help effect system change.

In the proposed guideline, OJJDP has provided a 12–36 month timeframe to provide flexibility for accommodating a wide range of community planning and coalition building experience by local Title V grant recipients. Some communities may only need a one year period to augment on-going risk focused prevention activities. For other communities, this may be their first attempt at this type of comprehensive prevention planning and programs. In addition, this timeframe will facilitate integrating the planning for Title V with that of the Formula Grants program.

In general, the use of Title V funds is intended to provide an incentive to plan and implement delinquency prevention programs at the local level. States may wish to provide competitive Title II funding for local prevention programs following Title V funding, and local grantees can seek funds for expansion from a range of State, Federal, and foundation sources.

The guideline requires the collection of performance and outcome data. OJJDP encourages States and local grantees to continue collecting this data for their prevention programs to measure outcomes beyond the period of Title V funding. OJJDP is also planning to continue collecting and analyzing data for selected jurisdictions through an on-going national evaluation of Title V.

Comment. Funding formulas have favored urban over suburban communities. The opportunity for equal programming throughout the State would be most desirable or at least a funding formula created that allows suburban communities to compete with like communities.

Response. Under the guideline, States have the discretion to target those communities in the State with the greatest need. The judgment the State Advisory Group can best determine whether to limit the competition for the grants to specific, targeted communities or to conduct a statewide competition. Given the limited amount of Title V funds available to each State and the local competition requirements, distribution of funds based on a population formula would not be feasible. The State Advisory Group and State agency could, however, conduct competitions among applicants of

specific types of geographic areas (urban, suburban, rural).

Comment. The guidelines should specifically prohibit or discourage the withdrawal of community funds from agencies to provide the match for Title V programs, especially in cases where collaborative efforts between agencies and government would serve the same purpose and clients.

Response. The guideline prohibits using Title V funds to supplant Federal, State, or local funds supporting existing programs. The guideline encourages collaboration of agencies and services. The planning process for Title V is designed to produce a more effective, efficient and responsive service system for children, youth and families. The locality can best determine how to design, coordinate, and fund programs to achieve this outcome, provided that the Title V funds are not used to replace funds for existing programs.

Comment. The guideline requires a great deal of local planning before localities can become eligible for funding. This provides little incentive for many units of general local government to engage in such efforts without a strong probability of being funded.

In order to reduce the burden on the local communities, a process for awards should be employed wherein communities first apply to the State Advisory Group, and then develop their plans after there is a much greater chance of being funded.

Another option would be for OJJDP to mandate that localities should build upon existing plans, where they exist.

Response. During the initial implementation of the Title V program, some localities will have the experience to initiate and develop a three year plan in a short timeframe. In order to establish effectively operating programs during this first year, State Advisory Groups may want to consider giving priority to applicant communities that have the capacity to develop strong plans. For instance, a State Advisory Group may target communities that already have planning boards involved in broad-based prevention planning.

OJJDP encourages localities to build upon existing prevention plans which are based on a risk and protection factor approach.

Comment. OJJDP should encourage or mandate that whenever possible, localities must designate existing coalitions or boards, with prevention responsibilities similar to those required by Title V, as the Prevention Policy Board.

It may be difficult to convene a representative Prevention Policy Board of not more than 21 members. Can the Prevention Policy Board exceed 21 members?

Response. The guideline requires the local applicants to designate or form a Prevention Policy Board. OJJDP encourages the use of existing similar boards to meet the Title V requirements. This would facilitate coordination of funding sources and collaboration among agencies and governments.

Title V expressly requires that the board membership consist of not less than 15 and not more than 21 members. Localities may convene boards of more than 21 members for broad-based prevention planning, but recommendations and other actions regarding the Title V three year plan and funds can only be made by a specified board (or committee of a larger board) comprised of 15 to 21 members.

Comment. Six respondents indicated that specified groups of people need to be represented on Prevention Policy Boards including youth, families with or parents of children in the system or at risk (consumers of prevention services), and members that reflect the racial, ethnic and gender composition of the community's youth population.

Response. The additional representation described by these six respondents furthers the goal of having representative local boards. However, overly prescriptive Board requirements reduce local flexibility, particularly in the use of existing planning bodies. Therefore, OJJDP has modified the guideline to encourage the inclusion of these interests on the Prevention Policy Boards, to the maximum extent possible.

Comment. Youth development organizations should be included in the planning process and considered as a primary existing resource for prevention services—they have extensive experience in primary prevention programs.

Response. All human services agencies that in any way deal with children, youth, and families, including youth development organizations, should be involved in the planning process and considered as resources to assist in implementation of the local prevention plan. Technical assistance to States and localities is available through OJJDP to help in identifying and accessing prevention resources, including youth development organizations.

Comment. Can a Prevention Policy Board consisting of a private nonprofit organization and a local government apply for grant funds? If allowable, must the local government administer the funds?

Response. Prevention Policy Boards are not eligible to apply for a Title V grants from the States. Only units of general local government are eligible.

A private nonprofit organization and a unit of general local government could enter into a partnership to implement the Title V program, provided that the unit of general local government is the applicant and all Federal fund administrative requirements are met.

Comment. The exact duties of the Prevention Policy Board are not clear. The Board should be charged with the development of the local prevention plan.

Response. One purpose of the Board is to provide a vehicle for community commitment to and involvement in making the community a healthy place for the development of children and youth. Involving the Board in the development of the plan is one way of gaining that commitment and involvement.

The guideline has been amended to require a description of how the Prevention Policy Board will provide general oversight for developing the plan, approve the plan prior to submission to the State, and make recommendations to the responsible local agency for the distribution of funds and evaluation of funded activities.

Each Prevention Policy Board is encouraged to develop by-laws in concert with the responsible local agency to define its duties and how it will operate. Technical assistance is available through OJJDP for Board development.

Comment. The Prevention Policy Board should be charged with the mission of producing positive outcomes for youth, not just delinquency prevention.

Response. OJJDP is promoting risk and protection focused delinquency prevention as a promising strategy for the Prevention Policy Board to use in addressing the complex and varied sources of delinquent behavior in children and producing positive outcomes for youth.

Comment. Will OJJDP provide application kits for States?

Response. A sample State application is available from OJJDP.

Comment. The training on risk focused prevention is an excellent idea. However, given the limited resources available to localities to travel to the training, the training should be targeted on the localities which have been selected to receive grants. Also, a training for trainers would develop in-state capacity to deliver training in a more cost-effective manner. The use of

teleconference training should also be considered.

Response. The purpose of the training is to introduce key community leaders to risk and protection focused prevention, and enhance the localities knowledge and skills in prevention planning. Planning must occur before grants are awarded.

OJJDP hopes to provide training for State training teams in fiscal year 1995. OJJDP is also examining the use of teleconferencing as a vehicle for the more efficient delivery of training.

Comment. OJJDP should take an aggressive stance on the delivery of technical assistance.

Response. OJJDP is developing a capacity, through its Part B technical assistance contract, to provide technical assistance to every community which is developing or implementing a delinquency prevention plan.

Comment. What is the role of the State Advisory Groups in implementing the Title V program?

Response. The role of the State Advisory Group is to establish program eligibility criteria, establish procedures for submission and review of local applications, and approve or recommend approval of Title V subgrant awards.

Comment. OJJDP should provide examples of prevention plans which meet the OJJDP requirements.

Response. OJJDP is making resource material on prevention, including sample plans, available through the Juvenile Justice Clearinghouse, 1600 Research Boulevard, Rockville, MD 20850, Telephone (800) 638–8736.

Comment. If a prevention project serves a specific service catchment area within the boundaries of a unit of general local government, is the compliance certification limited only to the catchment area or the entire area within the boundaries of the unit of general local government? Is certification limited to only those facilities operated by the local government, exclusive of facilities located within the boundaries of the local government but operated by other governments?

Response. In order to be eligible to receive Title V funds, a unit of general local government must be certified by the State Advisory Group as in compliance with the JJDP Act mandates. The compliance certification applies to all facilities operated or contracted by the unit of general local government. The certification is not limited to a specific catchment area within the boundaries of the unit of general local government. Likewise, the certification must also include any facilities that the unit of general local government operates, contracts for, or uses inside or outside its boundaries. However, the certification does not apply to facilities operated or controlled by other governmental units within the local governmental boundaries that are not used by the local government.

Comment. Compliance with the Disproportionate Minority Confinement mandate is difficult to assess since it is just beginning to unfold in many jurisdictions.

The guidelines need to specify how the State Advisory Group's should certify unit of general local government compliance with the Disproportionate Minority Confinement where the Phase II Study has yet to be completed.

Response. The inclusion in Title V of the provision requiring local compliance with the mandates reflects an intent to use Title V funds as an inducement to bring localities into compliance. The State Advisory Groups and the State agencies should use this provision to gain the cooperation and commitment of units of general local government to assess and address disproportionate minority confinement. To certify a unit of general local government on disproportionate minority confinement compliance, the State Advisory Group must determine that the level of cooperation and commitment is satisfactory to support efforts to achieve the goals of the disproportionate minority confinement provision.

Comment. The certification of compliance with the mandates should occur at the time the subgrantee application is submitted.

Response. The guideline requires that units of general local government must obtain a certification prior to applying for an award of funds. This requirement is intended to eliminate a local government developing a three year comprehensive plan as the basis for an application for a grant which the locality is ineligible to receive.

Comment. In States where the compliance monitoring data is generated by county-wide reporting, the State Advisory Groups should be allowed to certify a city's compliance based on the overall compliance status of the county.

Response. Section 505 of the JJDP Act requires that in order for a unit of general local government to be eligible to receive a grant of Title V funds, the unit must be "in compliance with the requirements of part B of Title II." OJJDP has interpreted this to mean that the unit of general local government which is seeking eligibility to apply for an award of Title V funds must be in compliance with the four "mandates" of part B of Title II. Thus, a city's eligibility must be determined by the compliance data relevant to that city.

Comment. The language under the heading "Local Subgrantee Qualifications" is unclear. It appears to say that all units of general local government must be certified by the State Advisory Group to be in compliance with the mandates of the JJDP Act.

Response. The guideline does not require the State Advisory Group to certify all units of general local government, only those that wish to apply for Title V funds.

Comment. Is it up to each State to define "at-risk?"

Response. The guideline states that "the target population is all at-risk children in a given community." The Title V program is based on analyzing and addressing research-based risk factors which are identified in target communities. All children and youth who are exposed to these identified risk factors are the target population. In many cases, this would mean all children and youth in a target community would be considered at-risk.

Comment. Define in-kind match, and identify what type of in-kind match is allowed.

Response. In-kind match is determined by the value of goods and services received and used in the program that do not have a money cost to the grantee. In-kind match may be provided by the grantee or donated by a third party, such as a volunteer or a public or private agency. For example, the value of the time donated by a recreational counselor who is not an employee of the grantee could be counted as in-kind match. Likewise, the value of office space or equipment donated by a private corporation could also be counted as in-kind match. Note that the value of the time of an employee of the grantee who is not being compensated by grant funds, but is providing service to the project funded by the grant, would be counted as cash match.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 94–18650 Filed 7–29–94; 8:45 am]

BILLING CODE 4410–18–P

Valid Court Order Checklist

For the purpose of determining whether a valid court order exception can be claimed, all of the following conditions must be present:

1. _____ Was the juvenile brought before a court of competent jurisdiction?

2. _____ Did the court order regulate future conduct of the juvenile?

3. _____ Did the juvenile receive adequate and fair warning of the consequences of violation of the order at the time it was issued?

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

5. _____ Was the warning reflected in the court record and proceedings?

6. _____ Was there a judicial determination, based on a hearing, that there was probable cause to believe the juvenile violated the court order?

7. _____ Was the probable cause hearing held within 24 hours of the juvenile's placement in secure detention, excluding weekends and holidays?

8. _____ Was the violation hearing conducted within 72 hours, excluding weekends and holidays?

9. _____ Prior to issuance of the court order, and during the violation hearing, were the following due process rights provided?

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

   _____ The right to a hearing before a court;

   _____ The right to an explanation of the nature and consequences of the proceedings;

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

   _____ The right to confront witnesses;

   _____ The right to present witnesses;

_____ The right to have a transcript or record of the proceedings; and

_____ The right of appeal to an appropriate court.

10. _____ At the violation hearing, did the judge determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community? This determination, if it results in a disposition of secure confinement (commitment to a secure facility), 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 other than a court or law enforcement agency.

If all of the above conditions are present, and the juvenile status offender is found in a violation hearing to have violated a valid court order, the juvenile may be held in a secure detention or correctional facility, but not an adult jail or lockup. However, a nonoffender such as a dependent or neglected child, cannot be placed in a secure detention or correctional facility for violating a valid court order.

U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Washington, D.C. 20531

May 14, 1997

MEMORANDUM

TO: State Juvenile Justice Specialists

FROM: Roberta Dorn, Director RD
State Relations and Assistance Division, OJJDP

SUBJECT: Collocated Facilities

The December 10, 1996, Formula Grant Regulation contained major changes to the criteria and process for approving collocated facilities. The purpose of this memorandum is to clarify these changes and explain the State and Federal roles in reviewing collocated facilities.

Enclosures

I have enclosed the following materials to assist in carrying out our respective responsibilities under the regulation:

- **Collocated Facilities Checklists A and B**

  Under the regulation now in effect (28 CFR 31.303(e)(3)(iii)), facilities approved after the December 10, 1996, must use the criteria contained in the December 10, 1996 regulation (Checklist B). Facilities concurred with by OJJDP before December 10, 1996 have the option of using criteria contained in either the December 10, 1997 regulation (Checklist B) or the regulation in effect at the time of the initial OJJDP concurrence (Checklist A).

  These checklists are designed for SRAD staff to use in verifying that a State's approval of a collocated facility complies with the regulation. We believe that you will find these checklists useful for approving collocated facilities as well for preparing for SRAD compliance audits.

- **List of Collocated Facilities**

  We are in the process of confirming our database of collocated facilities. Please review the attached list of facilities and let us know of information that is missing or in error. We would appreciate it if you would add your handwritten corrections to the list and fax it by June 7, 1997, to Paul Steiner, the collocated facilities program manager, at (202) 307-2819.

Summary of Changes in the Collocated Facilities Regulation

1. **State Approval and OJJDP Oversight of Collocated Facilities**

   The regulation calls for the State to approve collocated facilities, without the concurrence of OJJDP (28 CFR 31.303(e)(3)(ii)). Subsequent to approving a facility, States must conduct an annual on-site review of the facility as part of their compliance monitoring responsibilities (paragraph (e)(3)(iv)). OJJDP will, at a minimum, review and verify each State's approval of collocated facilities during regularly scheduled compliance audits. OJJDP is available to assist States at any point in the their review and approval of collocated facilities for interpretation of the regulation and technical assistance on planning for continua of services.

2. **Needs Assessment**

   The regulation no longer requires the State to conduct a needs assessment. OJJDP still encourages States to conduct a needs assessment, and technical assistance is available for this purpose, as well as for any facet of facility and system planning.

3. **Spatial Separation**

   The regulation still requires total separation of juveniles and adults via architecture for residential areas, e.g., sleeping and bathroom. For nonresidential areas, e.g., recreation, intake, educational, and food service, the regulation now allows for common use of these areas by juvenile and adult populations, provided that written policies and procedures direct the time-phased use of these areas.

4. **State Standards and Licensing**

   For States that have standards or licensing requirements for free-standing juvenile detention or correctional facilities, collocated facilities must meet these same requirements. If there are no State standards or licensing requirements for juvenile facilities, OJJDP encourages States to establish such administrative requirements and apply them to collocated facilities. OJJDP has technical assistance available for States interested in examining standards based on prevailing national standards.

Please review the enclosed list of facilities and fax us any corrections you may have by June 6, 1997. If you have any questions, please call your OJJDP State Representative or Paul Steiner at (202) 307-5924.

Enclosures

A

COLLOCATED FACILITIES CHECKLIST A

Use this checklist for verification of compliance in States electing to conform to the regulation in effect before 12/10/96.

STATE: _____

NAME AND ADDRESS OF FACILITY: _____

_____

_____

Section 31.303(e)(3) of OJJDP Formula Grants Regulation (28 CFR 31) establishes criteria that must be met in order for a State and OJJDP to determine whether a separate juvenile detention or correctional facility exists within the same building, or on the same grounds as an adult jail or lockup. The following information must be provided in order for OJJDP to verify a State's finding of a separate facility under the regulation in effect prior to December 10, 1996.

	YES	NO
A. COLLOCATED *31.303(e)(3)(i)(A)*		
Are the two facilities located in the same building	_____	_____
or		
are they part of a related complex of buildings located on the same grounds?	_____	_____

Describe what the two buildings share in common.

_____

_____

		YES	NO
B. NEEDS ASSESSMENT *31.303(e)(3)(i)(C)*			
1.	Has the jurisdiction(s) completed and submitted the results of a needs assessment that is based on objective information regarding secure detention beds and alternatives?	_____	_____
2.	Was OJJDP's technical assistance contractor involved with the needs assessment (optional)?	_____	_____

3. Summarize the factors examined and the findings:

_____

_____

	YES	NO
4. Did the needs assessment take into consideration, and was it coordinated with the State's plans and efforts toward a continuum of juvenile detention services?	_____	_____

C. **COLLOCATED CRITERIA** - *31.303(e)(3)(i)(D)*

1. **Separate Physical Plant** - *31.303(e)(3)(i)(D)(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.

Note: This is a higher standard than the separation requirement contained in Section 223(a)(13) of the JJDP Act. The justification for this higher standard is that the regulatory provision for juvenile detention centers within adult jails is associated with the jail and lockup removal provision, Section 223(a)(14) of the JJDP Act.

	YES	NO
a. A legible floor plan for the proposed facility is provided?	_____	_____
b. All relevant areas of the physical plant are clearly labeled?	_____	_____
c. The floor plan, as well as other documents (list below), clearly indicate total spatial separation in all areas of the respective facilities, including:		
Entrance	_____	_____
Intake/Processing	_____	_____
Dining	_____	_____
Indoor Recreation	_____	_____
Outdoor Recreation	_____	_____
Education	_____	_____
Counseling	_____	_____
Medical	_____	_____
Living Units	_____	_____
Visitation	_____	_____
Day Rooms	_____	_____
Passageways /Halls	_____	_____
Other Programs (list below)	_____	_____

	YES	NO
d. Supporting documentation clearly indicates separation of facilities, viz., separation of juvenile and adult residents through time-phasing the use of spatial areas is **not** employed by the respective facilities?	_____	_____
e. Supporting documentation clearly describes resident movements, both scheduled and emergency? Note: Separation requirements may be suspended in emergencies.	_____	_____

f. List supporting documentation:

_____

_____

_____

2. **Separate Programming** - *31.303(e)(3)(i)(D)(2)*

Total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities.

	YES	NO
a. The State has provided a complete, narrative description of all programs that will be available for juveniles, and where the programs will be conducted?	_____	_____
b. Juvenile and adult residents do not share any program activities, including but not limited to those cited in the standard above?	_____	_____
c. There is an independent and comprehensive operational plan for the juvenile detention center which provides for a full range of separate program services?	_____	_____
d. Relevant sections of the juvenile facility's operations/program manual (draft or final) are on file that confirm total separation of all program activities?	_____	_____

YES NO

3. **Separate Staff** - *31.303(e)(3)(i)(D)(3)*

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.

a. The juvenile facility's organizational chart, and/or other documentation, clearly indicate a permanent, full time manager or superintendent for the juvenile facility (this manager or superintendent may report to the sheriff or jail administrator)? _____ _____

b. The juvenile facility's organizational chart, and/or other documentation, clearly indicate that the juvenile facility's line staff (as cited in the standard above) are permanently assigned to the juvenile facility, viz., juvenile and adult facility staffs are not rotated between the facilities based on occupancy in either facility? _____ _____

c. The juvenile facility's organizational chart, and/or other documentation, clearly indicate that staff from the adult jail will not serve as relief workers for the juvenile facility on their regularly scheduled work-days in the jail, viz., staff from the adult jail may only work in the juvenile facility in emergency, life-threatening situations, or as private citizens employed by the juvenile detention center? _____ _____

d. The juvenile facility's policies, organizational chart, and/or other documentation clearly indicate that adult residents (trustees) will never be permitted to supervise or provide direct services for juvenile residents, e.g., serving meals, dispensing reading materials, etc.? _____ _____

	YES	NO
e. Relevant sections of the juvenile facility's operations/program manual (draft or final) are on file that confirm total staff separation?	_____	_____

4. **Licensing** - *31.303(e)(3)(i)(D)(4)*

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.

a.	Juvenile detention centers must comply with established State standards in order to operate? Must be licensed to operate?	_____	_____
b.	Compliance with standards already documented?	_____	_____
c.	Licensing already documented?	_____	_____
d.	If there are no State standards or licensing requirements, the facility's physical plant, staffing patterns, and programs have been reviewed in relation to prevailing national juvenile detention standards?	_____	_____

Describe the findings of the facility review:

_____

_____

_____

_____

Did this review inform the State's approval process? _____ _____

Who conducted the review?

_____

_____

YES NO

D. **ANNUAL REVIEW** *31.303(e)(3)(iv)*

All collocated facilities approved after June 30, 1995, must be reviewed on-site each year by the State Planning Agency or its designee (contractor, subgrantee), and resubmitted to OJJDP for concurrence.

1. This facility is located in a criminal justice complex (need only demonstrate compliance with the criteria in Section C.)? If yes, no response is needed to Items 2 and 3 below. _____ _____

2. This facility is not located in a criminal justice complex (must demonstrate compliance with the criteria in Section C and with Item 3 below)? _____ _____

3. During its annual on-site review, the State Planning Agency examined the continuing need for the facility and the jurisdiction(s)' long term plan to move to a free-standing juvenile facility or other detention alternatives? _____ _____

   Describe the findings from the State's examination:

   _____
   _____
   _____
   _____

E. **Summary of SRAD Findings**_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

_____ _____

SRAD Staff Signature **Date**

COLLOCATED FACILITIES CHECKLIST B

Use this checklist for verification of compliance of each facility ***(1) approved by the State after publication of the 12/10/96 regulation, or (2) that the State elects to conform to the 12/10/96 regulation.***

STATE: _____

NAME AND ADDRESS OF FACILITY:_____

_____

_____

Section 31.303(e)(3) of OJJDP Formula Grants Regulation (28 CFR 31) establishes criteria that must be met in order for a State to approve and OJJDP to verify whether a separate juvenile detention or correctional facility exists within the same building or on the same grounds as an adult jail or lockup. Each State must at a minimum maintain the following information for each collocated facility in order for OJJDP to verify the State's approval of a collocated facility as a separate juvenile detention or correctional center.

	YES	NO
A. INITIAL FACILITY REVIEW *31.303(e)(3)(ii)*		
Did the State Agency conduct an on-site review to determine compliance with the four criteria of the collocated facility regulation?	____	____
Or, for facilities in the planning or construction phase...		
Did the State Agency review the full construction and operations plans?	____	____
Date of State determination_____		
B. COLLOCATED DEFINITION *31.303(e)(3)(i)(A)*		
Are the two facilities located in the same building?	____	____
or		
Are they part of a related complex of buildings located on the same grounds?	____	____

Describe what physical features the two buildings share or what services two programs share in common. _____

_____

YES NO

C. COLLOCATED CRITERIA - *31.303(e)(3)(i)(C)*

1. Separation between Juveniles and Adults - *31.303(e)(3)(i)(C)(1)*

Separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and incarcerated adults. Total separation must be achieved in residential areas, e.g. sleeping and bathroom, through architectural design such that no contact is possible. In program areas, e.g., educational, vocational, and recreational, separation must be achieved either through architectural design or through time-phased use of areas as directed by written policies and procedures

a. A legible floor plan for the proposed facility is provided? _____ _____

b. All relevant areas of the physical plant are clearly labeled? _____ _____

c. The floor plan, as well as other documents (list below) clearly indicate total spatial separation in the residential areas (e.g., sleeping, bathrooms, lavatories) of the respective facilities? _____ _____

d. The floorplan or policies and procedures clearly indicate either total spatial separation or time-phased use of the following areas:

	Time-phased	Spatial
Entrance	_____	_____
Intake/Processing	_____	_____
Dining	_____	_____
Indoor Recreation	_____	_____
Outdoor Recreation	_____	_____
Education	_____	_____
Counseling	_____	_____
Medical	_____	_____
Religious Services	_____	_____
Visitation	_____	_____
Other Programs (list below)	_____	_____

_____

		YES	NO
e.	Supporting documentation clearly describes resident movements, both scheduled and emergency? Note: Separation requirements may be suspended in emergencies.	_____	_____

f. List supporting documentation:

_____

_____

_____

2. **Separate Programming** - *31.303(e)(3)(i)(C)(2)*

Total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities.

a.	The facility has provided a complete, narrative description of all programs that will be available for juveniles, and where the programs will be conducted?	_____	_____
b.	Juvenile and adult residents do not share any program activities, including but not limited to those cited in the standard above?	_____	_____
c.	There is an independent and comprehensive operational plan for the juvenile detention center which provides for a full range of separate program services?	_____	_____

3. **Separate Staff** - *31.303(e)(3)(i)(C)(3)*

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.

		YES	NO
a.	The juvenile facility's organizational chart, and/or other documentation, clearly indicate a permanent, full time manager or superintendent for the juvenile facility (this manager or superintendent may report to the sheriff or jail administrator)?	_____	_____
b.	The juvenile facility's organizational chart, and/or other documentation, clearly indicate that the juvenile facility's line staff (as cited in the standard above) are permanently assigned to the juvenile facility, viz., juvenile and adult facility staffs are not rotated between the facilities based on occupancy in either facility?	_____	_____
c.	The juvenile facility's organizational chart, and/or other documentation, clearly indicate that staff from the adult jail will not serve as relief workers for the juvenile facility on their regularly scheduled work-days in the jail, viz., staff from the adult jail may only work in the juvenile facility in emergency, life-threatening situations, or as private citizens employed by the juvenile detention center?	_____	_____
d.	The juvenile facility's policies, organizational chart, and/or other documentation clearly indicate that adult residents (trustees) will never be permitted to supervise or provide direct services for juvenile residents, e.g., serving meals, dispensing reading materials, etc.?	_____	_____

4. **Licensing** - ***31.303(e)(3)(i)(C)(4)***

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.

		YES	NO
a.	Juvenile detention centers must comply with established State standards in order to operate? Must be licensed to operate?	_____	_____
b.	If the answer is "yes," States' approval clearly indicates that it is contingent upon the juvenile facility being found in compliance with the State standards, and (if applicable) being licensed by the State to operate as a juvenile detention center?	_____	_____
c.	Compliance with standards already documented?	_____	_____
d.	Licensing already documented?	_____	_____

D. **ANNUAL ON-SITE REVIEW** *31.303(e)(3)(iv)*

The State Agency or its designee (contractor, subgrantee) annually reviewed the collocated facility on-site and determined the facility to be in compliance with the four criteria.

List date of initial on-site review: _____

List dates of each subsequent annual on-site review: _____

_____

_____

E. Summary of SRAD Findings:_____

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____

SRAD Reviewer Signature **Date**

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 08/95

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 facilities which have been classified as a secure detention or correctional facility as defined in the JJDP Act and OJJDP regulation.

1. 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
Current Data			
Juvenile Detention Centers			
Juvenile Training Schools			
Adult Jails			
Adult Lockups			
Other			

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

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

If all facilities from Item 2 (above) are not reporting, describe the State's projection techniques to account for non-reporting facilities, and list the major jurisdiction facilities not reporting (10 largest cities).

_____

_____

_____

4. DOES THE STATE PLANNING AGENCY EXEMPT ANY FACILITIES FROM REPORTING? IF SO, PLEASE DESCRIBE (DOES EACH FACILITY ANNUALLY CERTIFY IN WRITING THAT JUVENILES ARE NOT SECURELY DETAINED PURSUANT TO A WRITTEN POLICY AND PROCEDURE)? DOES THE STATE VERIFY A SAMPLE OF EXEMPT FACILITIES ON AN ANNUAL BASIS?

_____

_____

_____

5. 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	_____	_____	_____

6. 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 VALID COURT ORDER PROCEEDING, OR PURSUANT TO SECTION 922(x) OF TITLE 18 UNITED STATES CODE, OR A SIMILAR STATE LAW.

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, or juveniles accused of violating Section 922(x) of U.S.C. 18, or a similar State law. It does, however, include out-of-state runaways and Federal wards.

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

7. TOTAL NUMBER OF ACCUSED STATUS OFFENDERS AND NONOFFENDERS SECURELY DETAINED IN ADULT JAILS, LOCKUPS, OR NONAPPROVED COLLOCATED FACILITIES FOR LESS THAN 24 HOURS. THIS INCLUDES STATUS OFFENDERS ACCUSED OF VIOLATING A VALID COURT ORDER, FEDERAL WARDS AND OUT-OF-STATE RUNAWAYS. IT EXCLUDES 922(x) VIOLATORS.

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

8. 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, OR JUVENILES HELD FOR VIOLATION OF 922(x) OR A SIMILAR STATE LAW.

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 and who are held in a secure facility other than an adult jail or lockup, and juveniles held for violation of 922(x)or a similar State law.

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

9. TOTAL NUMBER OF STATUS OFFENDERS HELD IN ANY SECURE JUVENILE 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
Current Data			
Juvenile Detention Centers			
Juvenile Training Schools			
Other			

NOTE: The valid court order exception is not available for nonoffenders. Also, status offenders accused of or adjudicated for violating a valid court order who are securely detained in a jail or lockup for any length of time are violations of Section 223(a)(12)(A).

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 and a 10 percent verification was conducted, or every case was individually verified through a check of court records)? _____

_____

_____

10. TOTAL NUMBER OF JUVENILES HELD PURSUANT TO TITLE 18 U.S.C., SECTION 922(x) (The Youth Handgun Safety Act).

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

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 status offenders and nonoffenders securely detained for any length of time in adult jails and lockups 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 _____

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

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 other 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 State and local 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, or for return to their lawful residence or country of citizenship? _____

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 a 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

A. 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. CURRENT REPORTING PERIOD _____
_____

2. 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
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Other	_____	_____	_____

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

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

4. 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
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Other	_____	_____	_____

5. 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. THIS INCLUDES ADULT JAILS, LOCKUPS, COLLATED FACILITIES NOT APPROVED BY THE STATE AND CONCURRED WITH BY OJJDP, AND SECURE CORRECTIONAL FACILITIES.

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

6. 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 collocated juvenile detention centers and adult jails/lockups classified by the State planning agency as juvenile detention centers and concurred with 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 collocated facilities. (Attach additional sheets as necessary).

_____

_____

NOTE: Pursuant to the JJDP Act Amendments of 1992, OJJDP cannot approve collocated 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 collocated juvenile detention center.

Provide the names of the collocated facilities classified as juvenile detention centers and approved by the State planning agency, but not concurred with by OJJDP. (Attach additional sheets as necessary).

_____

_____

These facilities must be monitored as adult jails or lockups, and separation violations reported in Item 5 above.

7. TOTAL NUMBER OF JUVENILES DETAINED IN APPROVED COLLOCATED 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 collocated facilities approved by the State and concurred with by OJJDP 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._____

_____

_____

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

a. 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.)

_____

b. DID ALL INSTANCES OF NONCOMPLIANCE VIOLATE STATE LAW, COURT RULE, OR ESTABLISHED EXECUTIVE OR JUDICIAL POLICY?

_____

_____

c. DID THE INSTANCES OF NONCOMPLIANCE INDICATE A PATTERN OR PRACTICE?

_____

d. ARE EXISTING MECHANISMS FOR ENFORCING THE STATE'S SEPARATION LAW, COURT RULE, OR OTHER ESTABLISHED EXECUTIVE OR JUDICIAL POLICY SUCH THAT THE INSTANCES OF NONCOMPLIANCE ARE UNLIKELY TO RECUR IN THE FUTURE?

_____

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. 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
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
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
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____

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

	TOTAL	PUBLIC	PRIVATE
Current Data	_____	_____	_____

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

	TOTAL	PUBLIC	PRIVATE
Current Data	_____	_____	_____

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

Enter the total number of accused juvenile criminal-type offenders held in all adult jails, lockups, and collocated facilities not approved by the State and concurred with by OJJDP in excess of six hours during the report period. <u>This number includes juveniles held in those counties meeting the removal exception criteria</u>. This number should <u>not</u> 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
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Nonapproved Collocated	_____	_____	_____

8. TOTAL NUMBER OF ACCUSED JUVENILE CRIMINAL-TYPE OFFENDERS HELD IN ADULT JAILS, LOCKUPS, AND NONAPPROVED COLLOCATED FACILITIES FOR LESS THAN SIX HOURS FOR PURPOSES OTHER THAN IDENTIFICATION, INVESTIGATION, PROCESSING, RELEASE TO PARENT(S), OR TRANSFER TO COURT OR A JUVENILE FACILITY FOLLOWING INITIAL CUSTODY.

	TOTAL	PUBLIC	PRIVATE
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Nonapproved Collocated	_____	_____	_____

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

	TOTAL	PUBLIC	PRIVATE
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Nonapproved Collocated	_____	_____	_____

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

	TOTAL	PUBLIC	PRIVATE
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Nonapproved Collocated	_____	_____	_____

11. TOTAL NUMBER OF ADULT JAILS, LOCKUPS, AND NONAPPROVED COLLOCATED FACILITIES, 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, lockups and nonapproved collocated facilities, located in those counties or jurisdictions which are outside a Metropolitan Statistical Area.

Baseline Data _____

Current Data _____

Provide the names of the adult jails, lockups, and nonapproved collocated facilities and the county in which each is located. (Attach additional sheets as necessary).

_____

_____

_____

12. 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 AWAITING AN INITIAL COURT APPEARANCE IN ADULT JAILS, LOCKUPS, AND NONAPPROVED COLLOCATED FACILITIES 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, lockups and nonapproved collocated facilities located in counties which are outside a Metropolitan Statistical Area.

The 24 hour period should not include weekends and holidays.

	TOTAL	PUBLIC	PRIVATE
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Nonapproved Collocated	_____	_____	_____

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 by the State Planning Agency that no existing acceptable alternative placement was available.

13. TOTAL NUMBER OF JUVENILES ACCUSED OF A CRIMINAL-TYPE OFFENSE WHO WERE HELD IN EXCESS OF TWENTY-FOUR (24) HOURS BUT LESS THAN AN ADDITIONAL FORTY-EIGHT (48) HOURS AWAITING AN INITIAL COURT APPEARANCE IN ADULT JAILS, LOCKUPS, AND NONAPPROVED COLLOCATED FACILITIES, 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 an additional 48 hours in adult jails, lockups and nonapproved collocated facilities outside a Metropolitan Statistical Area, due to conditions of distance or lack of ground transportation.

	TOTAL	PUBLIC	PRIVATE
Current Data	_____	_____	_____
Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____
Nonapproved Collocated	_____	_____	_____

The State Planning Agency must verify and maintain documentation for each youth held under this exception.

14. TOTAL NUMBER OF JUVENILES ACCUSED OF A CRIMINAL-TYPE OFFENSE WHO WERE HELD IN EXCESS OF TWENTY-FOUR (24) HOURS AWAITING AN INITIAL COURT APPEARANCE IN ADULT JAILS, LOCKUPS, AND NONAPPROVED COLLOCATED FACILITIES 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, lockups, and nonapproved collocated facilities 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	_____	_____	_____
Nonapproved Collocated	_____	_____	_____

The State Planning Agency must verify and maintain documentation for each youth held under this exception.

15. 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.