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

OJJDP

OJJDP

Formula Grants Program Manual

Volume 1

April 1989

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

Prepared by the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, in conjunction with Community Research Associates, Inc., under contract number OJP-85-C-007.

The Assistant Attorney General, Office of Justice Programs, coordinates the criminal and juvenile justice activities of the following program Offices and Bureaus: National Institute of Justice, Bureau of Justice Statistics, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime.

TABLE OF CONTENTS

FOREWORD

The original OJJDP Monitoring Policies and Procedures Manual was designed to serve as a guide for OJJDP staff and State Juvenile Justice Specialists in the monitoring of compliance with the major mandates of the Juvenile Justice and Delinquency Prevention (JJDP) Act.

Based on recommendations from OJJDP staff and the State Juvenile Justice Specialists, this revised edition, OJJDP Formula Grants Program Manual: Volume I, retains the original purpose while adding features that make it even more valuable. In its new, streamlined form, you will be able to more quickly access the important information you need. In addition, the Manual is now formatted to allow for ready updating as new policy statements and legal opinions are issued by the OJJDP and the Office of General Counsel, respectively. In many cases, these policy statements and legal opinions are the direct result of issues raised by the field. In order to keep this Manual up to date, and thus useful, it is essential that you continue to share your suggestions on how to improve the Manual with the Office.

INTRODUCTION

Section 223(a) (15) of the Juvenile Justice and Delinquency Prevention (JJDP) Act, requires participating states and territories to monitor compliance with the deinstitutionalization, separation, and jail removal provisions of the JJDP Act. This Formula Grants Program Manual: Volume I, is a major revision of the existing OJJDP Monitoring Manual, and as such, provides the most up-to-date information on compliance monitoring. Volume II will address the grant administration requirements of the JJDP Act and OJJDP regulations.

The primary purpose of Volume I is to assist State Juvenile Justice Specialists to carry out their monitoring responsibilities. The intended audience for this manual includes: (1) new State Juvenile Justice Specialists and OJJDP State Representatives for whom it will serve as an orientation guide; and (2) current Juvenile Justice Specialists and OJJDP State Representatives for use as a reference document.

This Manual is divided into three chapters, a glossary, and several appendices. Chapter I contains OJJDP policy statements on the three major mandates of the JJDP Act: deinstitutionalization, separation, and jail removal. These policy statements replace the question and answer format from the original manual. In many instances, several questions and answers have been consolidated into one policy statement. All current policy statements are being assigned an issuance date of March 1988 to correspond with publication of this manual. Future policy statements will reflect their actual date of issuance.

In addition, each policy is numbered to reflect the subsection of the JJDP Act that it addresses: deinstitutionalization (1200), separation (1300), jail removal (1400), and monitoring (1500). As further illustration, there are currently four policy statements on deinstitutionalization. They are numbered 88-1201 through 88-1204. As new policy statements are issued, they will be assigned the next consecutive number, viz., 88-1205 and so forth.

Relevant legal opinions, letters, and memoranda pertaining to the three major mandates mentioned above are provided in Chapter II. Each opinion is preceded by a cover sheet which describes the opinion in summary form.

Chapter III contains relevant court cases. Again, each is preceded by a cover sheet.

The glossary of frequently used words and phrases is a new element of the Manual. The Appendices contain a copy of the JJDP Act, several regulations published in the Federal Register, monitoring guidelines, the Monitoring Report form, and a summary of state compliance.

This Manual is designed for easy access and continual updating. On a regular basis, OJJDP will delete outdated information, and add new material. Each time this occurs, State Juvenile Justice Specialists will receive a letter explaining the changes, any new material, and a new table of contents where needed.

The Office of Juvenile Justice and Delinquency Prevention greatly appreciates the effort and insight brought to this project by the task group members. They are:

Ilene Bergsmann
Washington, D.C.

Jim Kane
Delaware

Steve Nelsen
Montana

John Wilson
Washington, D.C.

CHAPTER I

OJJDP POLICY STATEMENTS

DSO

Policy Number:	89-1201
Date:	April 1989
Issue:	Latitude given to juvenile detention and correctional facilities to hold accused status offenders while contacting parents or arranging an appropriate placement.
Policy:	It is OJJDP's policy not to hold status offenders or nonoffenders in juvenile detention or correctional facilities. However, there may be rare situations where short-term secure custody of accused status offenders and nonoffenders is necessary. For example, detention for a brief period of time prior to formal juvenile court action for investigative purposes, for identification purposes, to allow return to the juvenile's parents or guardian, or detention for a brief period of time under juvenile court authority in order to arrange for appropriate shelter care placement, may be necessary. Thus, for the purpose of monitoring compliance with 223(a)(12)(A), the number of accused status offenders and nonoffenders held in juvenile detention or correctional facilities should not include (1) those held less than 24 hours following initial police contact, and (2) those held less than 24 hours following initial court contact. The 24-hour period should not include nonjudicial days. This provision is meant to accommodate weekends and holidays only. The first 24-hour period begins at the time the juvenile is placed in a secure detention status by law enforcement officials. At the time the juvenile is released to or is under the custody of the court or court intake, the second 24-hour period begins. There is no "grace" period for securely holding adjudicated status offenders. Thus, adjudicated status offenders should not be held in secure detention or correction facilities unless all the conditions of the valid court order provision have been met. Adjudicated youth found to be in the class of nonoffenders may not be held in secure detention facilities under any circumstances.
References:	Section 223(a)(12)(A), JJDP Act. Section 31.303, Formula Grants Regulation, Federal Register, June 1985. Deinstitutionalization De Minimis, Federal Register, January 1981. Legal Opinion Letter to Idaho, August 30, 1979. Legal Opinion Letter to New Mexico, February 24, 1981. Legal Opinion, May 23, 1983. Legal Memorandum, April 3, 1985.

Policy Number:	89-1202
Date:	April 1989
Issue:	Interstate placement
Policy:	When there is interstate placement of children and a state places a status or nonoffender in a secure detention or correctional facility of another state, the receiving state must count the youth in their annual monitoring report. It is OJJDP's position, however, that neither state is meeting the intent of the deinstitutionalization requirement because the sending state is not meeting its compliance assurance and are circumventing the system, and because the receiving state is housing a status offender or nonoffender in a secure detention or correctional facility. Likewise, out-of-state runaways held for return to their home state pursuant to the Interstate Compact, are the reporting responsibility of the state where the youth is being held.
References:	Section 31.303, Formula Grants Regulation, Federal Register, June 1985. Deinstitutionalization De Minimis, Federal Register, January 1981.

Policy Number:	89-1203
Date:	April 1989
Issue:	Secure mental health
Policy:	For the purposes of monitoring, Section 223(a)(12)(A) may be interpreted to include within its scope only juveniles who are before a juvenile, family, or other civil court for reasons which are unique to the individual's status as a juvenile. In other words, for the purposes of monitoring, 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 nonoffenders defined by Section 223(a)(12)(A) of the Act. This distinction for monitoring purposes does not permit placement of status offenders or nonoffenders in a secure mental health facility where the court is solely 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 Section 223(a)(12)(A).
References:	Section 223(a)(12)(A), JJDP Act. Section 31.303, Formula Grants Regulation, Federal Register, June 1985. Chapter 1, Paragraph 6, OJP Guideline Manual: Audit of Compliance Monitoring Systems.

Policy Number: 89-1204

Date: April 1989

Issue: Valid Court Order (VCO)

Policy: In order to be subject to secure detention or confinement under this provision, a juvenile must first have been brought into a court of competent jurisdiction and made subject to a "valid order."

A status offender who subsequently violates a valid court order remains a status offender and for the purposes of monitoring, is not reclassified as a criminal-type offender. Thus, a status offender who violates a valid court order cannot be held in an adult jail or lockup for any length of time.

In terms of the length of holding in a juvenile detention center prior to adjudication on the violation, if there has been 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, the juvenile may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy for such period of time as is provided by state law. However, detention prior to a violation hearing "should" not exceed 72 hours exclusive of nonjudicial days. The use of the term "should" provides states with the flexibility to accommodate existing state law and policy. State laws vary on the maximum length of secure detention permitted before an adjudicatory or fact finding hearing must be held. A factor in determining the time frame between the probable cause hearing (if any) and the hearing on the valid court order violation would include adequate time to obtain counsel and prepare witnesses and evidence for the hearing. The factual issues would generally not be complex. Therefore, it is OJJDP's policy, not a mandatory regulation, that if secure detention based on a probable cause determination is necessary, it should not exceed 72 hours exclusive of nonjudicial days.

Where state legislation currently prohibits or is silent on the secure confinement of status and nonoffenders who violate a valid court order, legislative amendment would be required if a state wanted to have the authority to confine status offenders who violate valid court orders. There are two reasons for this result: (1) the valid court order regulation limits such detention to the purposes of protection or to assure the juvenile's appearance at the violation hearing, and provides that these purposes must be "prescribed by the State law"; and (2) the JJDP Act does not provide substantive legal authority to a State. Consequently, more restrictive state legislation would take precedence over the latitude allowed by the valid court order exception to Section 223(a)(12)(A).

Policy Number: 88-1204

References: Section 223(a)(12)(A), JJDP Act.

Valid Court Order Criteria, Federal Register, August 1982.

Legal Opinion, May 23, 1983.

Separation

Policy Number: 89-1301

Date: April 1989

Issue: Separation

Policy: OJJDP discourages the placement of any youth in a facility which can be used for the detention and confinement of adult criminal offenders. However, minimal and acceptable separation for monitoring purposes of Section 223(a)(13) means that juvenile offenders and adult criminal offenders cannot see each other and no conversation is possible. This is commonly referred to as "sight and sound" separation and must be accomplished in the areas which include, but are not limited to admissions, sleeping, toilet and shower, dining, recreational, educational, vocational, transportation, health care and other areas as appropriate. This separation may be established through architectural design or time phasing the use of an area to prohibit simultaneous use by juveniles and adults.

Separation from adult offenders includes trustees.

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 requirements of Section 223(a)(13). Such juveniles may also, however, be incarcerated with other juveniles who are under the jurisdiction of a juvenile court?

This is because Section 223(a)(13) prohibits regular contact in institutions between two specific groups or categories of persons. The first is juveniles alleged to be or found to be delinquent, status offenders, and nonoffenders. The second is adult persons incarcerated because they have been convicted of a crime or are waiting trial on criminal charges.

Juveniles waived or transferred to criminal court are members of neither group or category subject to the Section 223(a)(13) prohibition. Therefore, such juveniles may be detained or confined in institutions where they have regular contact with either group or category covered by the prohibition. They are a "swing group" of individuals who can be placed with whomever the legislature or courts deem appropriate.

For purposes of monitoring compliance with Section 223(a)(13), separation is not required in nonsecure, community-based programs or facilities.

References: Section 223(a)(13), JJDP Act.

Section 31.303, Formula Grants Regulation, Federal Register, June 1985.

Legal Opinion No. 77-9, December 1, 1976.

Jail Removal

Policy Number: 89-1401

Date: April 1989

Issue: Jail removal exceptions

Policy: There are three (3) exceptions to the scope of Section 223(a)(14) as follows:

Exception 1:

OJJDP regulations implement a statutory exception allowing the temporary detention in adult jails/lockups of juveniles accused of nonstatus offenses who are awaiting an initial court appearance. An accused criminal-type offender can be detained for up to 24 hours in an adult jail or lockup if:

a. the geographical area is certified by OJJDP as non-MSA; and

b. the state has an enforceable 24-hour initial court appearance requirement for detained juveniles (for a detention or probable cause determination). Either the juvenile or his legal representative must personally appear (ex parte orders do not satisfy the requirement); and

c. a determination is made that there is no existing acceptable alternative placement available; and

d. the facility provides sight and sound separation.

As currently stated in the JJDP Act, this exception expires in 1989.

Exception 2:

If criminal felony charges have been filed against the juvenile in a court exercising criminal jurisdiction, then the juvenile can be detained in an adult jail or lockup.

Exception 3:

For the purpose of monitoring compliance with Section 223(a)(14), OJJDP has adopted a "6-hour" grace period which would permit the secure detention in an adult jail or lockup of those juveniles accused of committing criminal-type offenses (i.e., offenses which would be a crime if committed by an adult). This six hours is limited to temporary holding for the purposes of identification, processing, release to parent(s) or guardian(s), or transfer to juvenile court officials or juvenile shelter or detention facilities. Any such holding of juveniles should be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, but in no case overnight. Section 223(a)(13) would prohibit such accused juvenile criminal-type offenders from having regular contact with adult offenders during this brief holding period. A status offender or nonoffender cannot be securely detained, even temporarily, in an adult jail or lockup.

(cont.)

Policy Number: 89-1401 (cont.)

Adjudicated delinquents may not be held for any length of time in adult jails or lockups, e.g., as a disposition, or while awaiting transfer to a juvenile correctional facility.

References: Section 223(a)(14), JJDP Act.

Section 31.303, Formula Grants Regulation, Federal Register, June 1985.

Proposed Criteria for Defining Adult Lockups, Federal Register, January 1988.

Legal Opinion Letter to Idaho, August 30, 1979.

Legal Opinion, May 23, 1983.

Legal Memorandum, June 25, 1985.

Legal Memorandum, September 19, 1985.

OJJDP Letter to Florida, February 10, 1986.

Policy Number:	89-1402
Date:	April 1989
Issue:	Jail removal baseline period
Policy:	The base reporting period should be during the Calendar Year or Fiscal Year of the jail removal amendment (i.e., 1980 or FY 80-81). If data is not available during this period of time, a state may use a later period for which data is available to establish baseline information. However, states cannot use a period of time before 1980 in establishing baseline information for Section 223(a)(14). Where a state determines that a change in their baseline data is necessary, this change must be justified. A written request reflecting the justification, with both the prior and new numerical baseline data, must be forwarded and approved by OJJDP.
References:	Section 31.303, Formula Grants Regulation, Federal Register, June 1985.

DOCUMENT COVER SHEET

CHC-_____ NCJ-123171

Order no:_____

V# ___-_____

Date Received	For Related Material, see NCJ #'s:
	Notes:

Subject Screening: IN ☒ OUT ☐ NON-DOC ☐ By _____

Comments and Out Reasons

☐ POL	☒ JUV
☐ CTS	☐ CCP
☐ COR	☐
☐	☐

Policy Number:	89-1403
Date:	April 1989
Issue:	Jail Removal Timeline
Policy:	Section 223(a)(14) requires that no juvenile be detained or confined in any adult jail or lockup after December 8, 1985. Thus, the statutory date for full compliance is December 8, 1985. However, if a state fails to achieve full compliance by December 8, 1985, Section 223(c) allows three additional years if substantial compliance was achieved by December 8, 1985. These timelines apply to all states, regardless of when participation in the Act began, or whether participation is interrupted. OJJDP will use the monitoring report covering the period December 1985 and beyond to determine whether the state achieved full or substantial compliance. The monitoring report covering the period December 1988 and beyond will be used to determine whether full compliance was achieved within the three (3) additional years provided in Section 223(c).
References:	Sections 223(a)(14) and 223(c), JJDP Act. Section 31.303, Formula Grants Regulation, Federal Register, June 1985.

Policy Number:	89-1404
Date:	April 1989
Issue:	Substantial Compliance - Unequivocal Commitment
Policy:	In order to demonstrate substantial compliance with the jail removal requirements, states must achieve a 75% reduction in violations, and demonstrate an unequivocal commitment, through executive or legislative action, to achieving full compliance by December 1988. An appropriate executive or legislative action is one which demonstrates a commitment on the part of the governor, the executive branch of the state, or the legislative body of the state. This action can be in the form of an executive order, acceptance of the formula award with the express understanding that such acceptance is tantamount to an unequivocal commitment on behalf of the governor, or specific legislative action which constitutes an unequivocal commitment.
References:	Section 223(c), JJDP Act. Legal Memorandum, June 25, 1987.

Monitoring

Policy Number:	89-1501
Date:	April 1989
Issue:	Monitoring Authority
Policy:	A criminal justice council, State Advisory Group or state planning agency may be granted direct authority to perform the monitoring function or may contract with a public or private agency, under appropriate authority, for the performance of the monitoring function. The OJJDP holds the state agency implementing the JJDP program responsible for the monitoring effort and the validity of the monitoring report. However, the state does have some latitude in how monitoring efforts are undertaken. The monitoring plan must address specifically who the agency has authorized and/or contracted to assist in the monitoring function.
References:	Section 223(a)(15), JJDP Act. Section 31.303, Formula Grants Regulation, Federal Register, June 1985. Chapter 1, Paragraph 6, OJP Guideline Manual: Audit of Compliance Monitoring Systems.

Policy Number:	89-1502
Date:	April 1989
Issue:	Monitoring Universe, Classification, and Inspection
Policy:	The initial "universe" includes all facilities secure and nonsecure, which could potentially hold or have held juvenile offenders, status offenders, or nonoffenders. Every facility which has this potential, regardless of the purpose for housing the juvenile, comes under the purview of the monitoring requirements. All facilities classified as secure detention or correctional facilities, jails, lockups, and other facilities used for the detention and confinement of juveniles and adult offenders must have periodic, on-site inspections to determine compliance with Sections 223(a)(12)(A), (13) and (14). This includes public and private facilities. At a minimum, these inspections should include a review of admission and release records, and a determination, where applicable, of the adequacy of separation.
References:	Section 223(a)(15), JJDP Act. Section 31.303, Formula Grants Regulation, Federal Register, June 1985. Chapter 1, Paragraph 6, OJP Guideline Manual: Audit of Compliance Monitoring Systems. Legal Memorandum, April 3, 1985.

Policy Number:	89-1503
Date:	April 1989
Issue:	Data Collection
Policy:	States should select a monitoring period which will adequately reflect the actual level of compliance. This period of time must be a minimum of six months which can be projected for a full year in a statistically valid manner. States not having complete data may request OJJDP approval to use a statistically valid and randomly selected sample of facilities. Data that is self-reported by facilities, or reported by another state agency to the Formula Grants agency, must be verified on-site, at a sample of facilities by the Formula Grants agency.
References:	Section 31.303, Formula Grants Regulation, Federal Register, June 1985. Chapter 1, Paragraph 7, OJP Guideline Manual: Audit of Compliance Monitoring Systems.

CHAPTER II

LEGAL OPINIONS

DSO

SUMMARY

Issue: DSO: Jurisdiction of Juveniles by Native American Tribes

Source: Legal Opinion No. 77-7, dated October 7, 1976

States are not held accountable in their annual monitoring reports for the failure to meet deinstitutionalization and separation requirements of the Act when Native American tribal entities exercise sovereign court and correctional jurisdiction over juvenile offenders.

(Retyped from copy)

Legal Opinion No. 77-7–Applicability of Juvenile Justice and Delinquency Prevention Act Provisions to Indian Tribal Courts-October 7, 1976

TO: LEAA Regional Administrator
Region VIII - Denver

This is in response to your request for an opinion with regard to the applicability of provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. Section 5601, et seq., Public Law 93-415 (Juvenile Justice Act), to Indian tribal courts exercising jurisdiction over juvenile offenders.

The issue was raised by South Dakota. The South Dakota State Criminal Justice Planning Agency (SPA) has acted under the assumption that, because the State has no authority to enforce compliance with the Juvenile Justice Act's requirements for deinstitutionalization of status offenders {Section 223(a)(12)} and separation of adult and delinquent offenders {Section 223(a)(13)} where Indian tribal courts have sovereign jurisdiction over juvenile offenders, it would not be held accountable for the failure of Indian jurisdictions to meet these statutory requirements.

Issue

Will a State be held accountable for compliance with Juvenile Justice Act requirements by Indian tribal entities exercising sovereign court and correctional jurisdiction over juvenile offenders?

Discussion

The State planning agency is required under Section 223(a)(2) of the Act to include in its plan "satisfactory evidence that . . . (it) . . . has or will have authority, by legislation if necessary, to implement such plan in conformity with this part." This authority may be granted through legislation or by executive order. The effect of the grant of authority is to put the sovereign authority of the State behind, and to hold the State accountable for, the actions and activities of the State planning agency in carrying out the purposes and requirements of the Juvenile Justice Act.

An Indian tribe within a State may, of course, be the beneficiary of funds subgranted by the State planning agency, either as a "unit of general local government" {Section 103(8)} or as a tribal entity. The sovereign authority of the tribe with regard to civil and criminal jurisdiction over acts committed on the reservation, however, varies from State to State and, in some States, from tribe to tribe within the State.

These jurisdictional variations result from provisions of Federal law specifying permissible Federal, State, and tribal jurisdiction; State laws and State interpretation of Federal and State laws regarding State and tribal jurisdictional authority; and local practices which have evolved over time. Where a 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 statutory provisions of the Juvenile Justice Act. This office views the authority requirement of Section 223(a)(2) implicitly to limit the extent to which the State, through its designated State planning agency, can be held accountable for compliance with the requirements of the Act. Therefore, where the State has no authority to regulate or control the law enforcement activities of a sovereign Indian tribal entity, it cannot be held accountable for the failure of that tribal entity to meet requirements of the Juvenile Justice Act.

In South Dakota, all of the eight tribal entities recognized by the Secretary of the Interior as performing law enforcement functions exercise a full range of law enforcement functions (see LEAA

Financial Guideline M 7100.1 A, April 30, 1973, Appendix 7). South Dakota did not act under Section 7 of Public Law 280 (Public Law 83-280.67 Stat. 588) to assume civil and criminal jurisdiction over Indian country within the State. Therefore, insofar as the South Dakota tribes exercise sovereign jurisdiction over juvenile (and adult) offenders and, following adjudication, control institutional placement, the State of South Dakota is not accountable for tribal compliance with Sections 223(a)(12) and (13) of the Act. It follows that the State's compliance monitoring responsibility {Section 223(a)(14)} would not include tribal compliance with these Act requirements.

This opinion does not mean that South Dakota should fail to provide financial assistance to tribes which are desirous of meeting these important objectives of the Act, nor does it preclude the State from attaching appropriate special conditions to Crime Control Act and Juvenile Justice Act grants to Indian tribes in order to further these objectives.

Summary

It is the opinion of this office that where a State does not have jurisdiction over juvenile (and adult) offenders for acts committed in Indian country (jurisdiction is in a tribal court), the State may not be held accountable for the failure of the Indian tribal entity to comply with the statutory requirements of the Juvenile Justice Act for deinstitutionalization of status offenders {Section 223(a)(12)} and separation of adult and delinquent offenders {Section 223(a)(13)}.

SUMMARY

Issue: DSO: Minors in Possession of Alcohol

Source: Legal Opinion Letter to Pam Roylance from John J. Wilson, dated August 30, 1979

Juveniles under 18 years of age who violate Idaho Code and consume or possess alcoholic beverages are considered to be status offenders and fall within the deinstitutionalization requirements of the Act.

August 30, 1979

Legal Opinion Letter
(Retyped from copy)

TO: Ms. Pam Roylance
Juvenile Justice Specialist
Bureau of Law Enforcement
Planning Commission
Boise, Idaho 82720

This is in response to your request for an opinion as to whether Idaho must include alcohol offenses by a juvenile, i.e., illegal possession or consumption, in the annual monitoring report required by Section 223(a)(14) of the Juvenile Justice Act to determine a State's progress toward meeting the Section 223(a)(12)(A) deinstitutionalization of status offenders requirement.

Your letter states that under Idaho Code Section 23-949 it is a misdemeanor for any person under the age of 19 to consume or possess alcoholic beverages. The law thus applies both to juveniles age 17 and under who are subject to juvenile court jurisdiction and to 18 year olds who are adults under Idaho law. The issue is whether, because 18 year old adults fall under the alcohol beverage law, this would remove alcohol offenses committed by juveniles from the status offense category to the delinquency (criminal-type) offense category.

It is the opinion of this office that an alcohol offense that would be a crime only for a limited class of young adult persons must be classified as a status offense if committed by a juvenile.

Discussion

This particular issue has not previously been addressed by this office. In the Office of General Counsel Legal Opinion 77-13, December 31, 1976, we distinguished the three categories of criminal-type, status, and non-offender juvenile who are subject to juvenile court jurisdiction. Criminal-type offenders and status offenders were categorized on the basis of whether particular conduct of the juvenile would, in accordance with Section 223(a)(12)(A), "be a crime if committed by an adult" under the laws of a jurisdiction. The opinion did not, however, reach the question of whether an adult should be interpreted to mean any adult or all adults.

It is apparent from the legislative history of the 1974 Juvenile Justice Act's Section 223(a)(12) requirement for deinstitutionalization of status offenders that Congress considered it inappropriate, both from equal protection and effective treatment standpoints, to place juveniles who were not alleged or adjudicated to have engaged in substantive criminal conduct in juvenile detention or correctional facilities.

The Senate Judiciary Committee Report on the 1974 Act (S. Rep. No. 93-1011, July 16, 1974) strongly makes the point that noncriminal juveniles should be channeled to social service and other appropriate resources outside the juvenile system:

> "... it is well documented that youths whose behavior is non-criminal--although certainly problematic and troublesome--have inordinately preoccupied the attention and resources of the juvenile justice system. Nearly 40 percent (one-half million per year) of the children brought to the attention of the juvenile justice system have committed no criminal act, in adult terms, and are involved simply because they are juveniles. These juvenile status offenders generally are inappropriate clients for the formal police, courts and corrections process of the juvenile justice system. These children and youth should be channeled to those agencies and professions which are mandated and in fact purport to deal with the substantive human and social issues involved in these areas." (p. 221)

The results of such a diversion of status offenders would, according to the Report, be as follows:

> "... if the status offender were diverted into the social service delivery network, the remaining juveniles would be those who have committed acts which, under any circumstances, would be considered criminal. It is essential that greater attention be given to serious youth crime, which has increased significantly in recent years. These children and youth are appropriate clients for the formal process of the juvenile justice system." (Emphasis supplied) (p. 222)

The clear implication from this language is that the status offender category includes conduct that would, under circumstances, not be considered criminal. In Idaho this would include possession or consumption of alcoholic beverages by anyone over 18.

In its 1974 publication entitled, Status Offenders: A Working Definition. the Council of State Governments defines the term "status offense" as follows:

> "A "status offense," as used in the literature and in the delinquency field, is any violation of law, passed by the state or local legislative body . . . which would not be a crime if committed by an adult, and which is specifically applicable to youth because of their minority."

The definition adds an additional element to the concept of a status offense--that it is an offense applicable to a group of persons because of their minority or youth. It would be inconsistent with this concept to define "status offense" solely in terms of whether particular conduct is proscribed based on a person's reaching the age of majority or the age at which juvenile court jurisdiction ends.

In sum, it is more consistent with the overall thrust of the Juvenile Justice Act, the existing legislative history, and the concept of "status" as a determinant of proscribed behavior to define an offense that is applicable both to juveniles and a narrow range of young adults as a status offense.

Under the Idaho law an 18 year old violator of the alcoholic beverage law is an adult status offender, and as such, outside the scope of the Act's coverage. Those under the age of 18, who violate the alcoholic beverage law, are juvenile status offenders within the purview of the Section 223(a)(12)(A) requirement. Therefore, they would have to be considered in the State's monitoring report on compliance with the deinstitutionalization requirement.

John J. Wilson
Attorney advisor
Office of General Counsel

SUMMARY

Issues:

1) DSO: Placement of juveniles in secure facilities for diagnosis, treatment, and evaluation after adjudication

2) DSO: Use of Valid Court Orders

Source: Legal Opinion Letter to Richard Lindahl from John J. Wilson, dated February 24, 1981.

1) In keeping with the requirements for the deinstitutionalization of status offenders, youth adjudicated as in need of supervision must be placed in a nonsecure facility for the purposes of diagnosis, treatment and evaluation prior to a final disposition.

2) Because this letter was written prior to the 1982 Federal Register Regulation on the valid court order, it gives general guidance to New Mexico on proposed legislation on the use of valid court orders.

Legal Opinion Letter
(Retyped from copy)

February 24, 1981

TO: Mr. Richard Lindahl
Corrections Department
State of New Mexico
113 Washington
Santa Fe, New Mexico 87501

This is in response to your request of February 13, 1981 for OGC review of a bill recently introduced in the New Mexico legislature, SB 51. You asked for the review of three provisions of this bill to determine whether they are consistent with the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

Section 18, Amending 32-1-27

This section of the bill provides basic rights which must be accorded to a juvenile offender. I see no difficulty with this proposed provision.

Section 22, Amending 32-1-32(d)

This provision would permit a juvenile court to order a child adjudicated delinquent or in need of supervision transferred to an "appropriate facility" of the Corrections and Criminal Rehabilitation Department for up to 120 days for diagnosis, treatment, and education, with a subsequent report to be submitted recommending a final disposition. With regard to children in need of supervision, the only "appropriate facility" for purposes of compliance with Section 223(a) (12)(A), the deinstitutionalization of status offenders requirement, would be one which meets the OJJDP regulation definition of a nonsecure facility. To the extent that State statutory authority would permit placement of such juveniles in secure juvenile detention or correctional facilities, and such authority were exercised, it could jeopardize future compliance with the deinstitutionalization requirement.

Section 23, Amending 32-1-34(C)(3)

This provision would permit a child adjudicated as in need of supervision, and placed on probation under conditions and limitations prescribed by the court, and who violates conditions of probation more than twice, to be ordered by the court, after a hearing, to be held in a secure detention facility for nonadjudicated delinquents for a period not to exceed 21 days.

As you are aware, the Juvenile Justice Amendments of 1980, enacted December 8, 1980, amend Section 223(a)(12)(A) to exclude juveniles who violate a valid court order from the coverage of the deinstitutionalization requirement. Thus, were the above provision of SB 51 to be enacted and subsequently enforced in accordance with OJJDP regulations that will establish the requirements of a valid court order, then the proposed statutory change would not endanger New Mexico's compliance with the deinstitutionalization requirement. While I cannot state with certainty what the OJJDP regulations will require in order to establish that a court order is valid, the legislative history provides a basis for the following general guidance:

> A valid court order is an order entered by a court of competent jurisdiction which involves or results from a judicial controversy. This court must have the statutory power to act by entering a judgment or providing a remedy in accordance with due process requirements. To be a "valid" court order, the status offender must have received adequate and fair warning of the consequences of violating the order.

Further, at a judicial hearing on the alleged court order violation, the juvenile must receive full due process rights (as set forth in In re Gault) and, following the court's determination that there has been a violation, the court must further find that there is no rational alternative to incarceration of the juvenile.

John J. Wilson
Acting General Counsel

Separation

SUMMARY

Issue: Separation: Commingling of Adult and Juvenile Offenders in Community-Based Facilities

Source: Legal Opinion No. 77-9, dated December 1, 1976

The commingling of juvenile and adult offenders in nonsecure community-based residential treatment programs does not jeopardize a state's compliance with Section 223(a)(13).

(Retyped from copy)

Legal Opinion No. 77-9 - Placement of Juvenile Offenders in Community Residential Treatment Programs with Adults–December 1, 1976

TO: LEAA Regional Administrator
Region I - Boston

This is in response to your request for an opinion interpreting the scope of Section 223(a)(13) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. Section 5601, et. seq., as amended (Public Law 93-415, as amended by Public Law 94-503)(Juvenile Justice Act).

The Rhode Island State Criminal Justice Planning Agency or SPA has inquired whether its compliance with Section 223(a)(13) of the Juvenile Justice Act would be in jeopardy because Dismas House, a community halfway house operated by the Diocese of Providence, included in its residential population two juvenile offenders under the age of 18. It is the understanding of this office that some of the adults residing at Dismas House are under sentence following conviction for crime and that juveniles are placed there by the Juvenile Court following adjudication for delinquency.

Issue

Does Section 223(a)(13) of the Juvenile Justice Act prohibit the commingling of juvenile and adult offenders in community residential treatment programs?

Statutory and Guideline Provisions

Section 223(a)(13) of the Juvenile Justice Act requires that the State plan submitted under Section 223(a) in order to receive formula grant funds must:

> (13) provide that juveniles alleged to be or found to be delinquent shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges...

Section 123(12) of the Juvenile Justice Action (definitions section) defines the term "correctional institution or facility" as follows:

> (12) the term "correctional institution or facility" means any place for the confinement or rehabilitation of juvenile offenders or individuals charged with or convicted of criminal offenses....

LEAA State Planning Agency Grants Guideline M 4100.1E, Chap. 3, Par. 77 states the purpose of Section 223(a)(13) in subparagraph i(2):

> This provision is intended to assure that juveniles alleged to be or found to be delinquent shall not be confined or detained in adult jails, lockups or correctional facilities unless the juvenile can be kept totally separate from adult inmates, including inmate trustees, except that contact incidental to admission and booking.

Discussion

The key words of Section 223(a)(13) that must be considered in resolving the issue raised by Rhode Island are "institution" and "incarcerated." By the terms of the section, commingling is

prohibited only in "institutions" where adults are "incarcerated" in either pretrial or postconviction status.

The term "correctional institution or facility," as defined by Section 103(12) is not used in Section 223(a)(13). The term was not in the original Juvenile Justice Act legislation but appeared as Section 601(1) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. Section 3701, et seq., as amended (Public Law 90-351, as amended by Public Laws 93-83, 93-415, 94-430 and 94-503). In that act the term is used to define the scope of funding under the Part E corrections program and to define the scope of correctional plan requirements. Had Congress intended the term to apply to Section 223(a)(13), it could easily have used the term itself in place of the word "institution." That Congress failed to do so is indicative of a lack of such an intent. Therefore, this office does not feel constrained to define "institution" through a different term which was defined for a different purpose for a different act.

Senator Birch Bayh, cosponsor of S.821, the Senate bill that was the source of the Section 223(a)(13) requirement, discussed during floor debate the need to utilize community treatment programs for juveniles:

> Community-based treatment for delinquents is the most promising road to rehabilitation. Institutionalization has proven a failure, indicating that separation of a youth from his home environment does little to prepare him to cope in a law-abiding manner when he returns home. The cost of incarceration in a closed environment is at least four times as great as most community facilities, particularly non-residential services. The success of probation in general shows that at least half of the incarcerated population would succeed in the community under supervision. (120 Cong. Rec. S 13491, daily ed., July 25, 1974.)

Senator Bayh's statement distinguishes treatment and rehabilitation in an open, community-based treatment program from incarceration in closed, institutional environments. The statement provides a reasonable basis for distinguishing an "institution," as used in Section 223(a)(13), from community-based treatment facilities such as the halfway house facility administered by Dismas House.

Further, while the term "incarcerated" is not defined by the Act, the term "incarceration" is defined by Black as follows: "Imprisonment, confinement in a jail or penitentiary." (Black's Law Dictionary, 4th Ed., 19.)

This definition, although not binding, is indicative of a common understanding, reflected in Senator Bayh's statement, that an individual may be "incarcerated" in a jail, penitentiary, or closed institutional environment, but not in a residential community treatment program.

In light of the legislative history indicating an intention to distinguish traditional "institutional" treatment from community treatment programs and the law dictionary definition of "incarceration" as limited to jails and penitentiaries, this office is of the opinion that the placement of juvenile offenders in an open, community halfway house where they have regular contact with adult offenders is not in violation of Section 223(a)(13) of the Juvenile Justice Act.

For purposes of Section 223(a)(13) an "institution" may, therefore, be defined as a "jail, lockup, penitentiary, or similar place of secure incarceration (including juvenile detention and correctional facilities of such a nature) which may, under State law, be utilized for the secure detention or confinement of juvenile offenders and adult persons who have been convicted of a crime or are juvenile offenders and adult persons who have been convicted of a crime or are awaiting trial on criminal charges." We view this definition as consistent with the statutory and

implementing guideline provision, supra, and the intent of Congress to assist the States in providing more enlightened and effective treatment of juvenile offenders.

Conclusion

Section 223(a)(13) of the Juvenile Justice Act and the implementing LEAA guidelines do not prohibit the commingling of juvenile and adult offenders in nonsecure community-based residential treatment programs.

Jail Removal

SUMMARY

Issue: Jail Removal: Scope of Section 223(a)(14)

Source: Letter to Doyle Wood from John J. Wilson, dated May 23, 1983.

In this letter, the scope of Section 223(a)(14) is addressed in five separate issues; a definition of "juvenile" is provided; and the three exceptions to removal of juveniles from adult jails and lockups are reviewed. The five issues addressed are:

1. Juveniles charged with or adjudicated for traffic [non-felony] offenses cannot be confined in adult jails and lockups.

2. Juveniles arrested for felonies in states whose juvenile code places exclusive age/offense jurisdiction for such crimes in criminal court cannot be confined in adult jails or lockups unless one of the three exceptions applies.

3. Juveniles waived or transferred to criminal court can only be detained after criminal [felony] charges have been filed.

4. Juveniles charged with fish and game civil [or misdemeanor] violations, cannot be detained in adult jails or lockups.

5. Neither status offenders nor nonoffenders can be detained in adult jails or lockups, including the former who have violated valid court orders.

Note: OJJDP's 1985 Formula Grants Regulations modified the issues addressed in this opinion. The modifications are noted by the bracketed words.

Legal Opinion Memorandum
(Retyped from copy)

May 20, 1983

TO: Doyle Wood
Juvenile Justice Specialist
OJJDP

FROM: John J.Wilson
Attorney-Advisor
OGC

SUBJECT: Scope of Section 223(a)(14)
Jail Removal Requirement

This is in response to your request for an opinion as to the scope of Section 223(a)(14) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. Section 5601, et seq., as amended (Pub. L. 93-415, as amended by Pub. L. 94-503, Pub. L. 95115, and Pub. L. 96-506), hereinafter Juvenile Justice Act. Section 223(a)(14), added to the Juvenile Justice Act by the Juvenile Justice Amendments of 1980 (Pub. L. 96509), requires that each State participating under the formula grant program (Part B, Subpart I) submit a plan which shall --

> "(14) provide that, beginning after the 5-year period following the date of the enactment of the Juvenile Justice Amendments of 1980, no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which (A) recognize the special needs of areas characterized by low population density with respect to the detention of juveniles, and (B) shall permit the temporary detention in such adult facilities of juveniles accused of serious crimes against persons, subject to the provisions of paragraph (13) where no existing acceptable alternative placement is available;"

You state that questions have arisen as to whether this section pertains only to those juveniles who are under the jurisdiction of a juvenile or family court or whether the requirement extends to juveniles under the jurisdiction of civil, criminal, municipal, or other courts which may have jurisdiction because of traffic offenses, fish and game violations, waiver or certification, etc.

Specifically, you ask whether Section 223(a)(14) applies in the following circumstances:

1. A juvenile is charged with a traffic offense and the court having jurisdiction over traffic offenses is other than a juvenile or family court;

2. A juvenile is arrested for a felony in a state whose code specifies that the court of jurisdiction for this particular offense is the criminal court;

3. A juvenile is in the process of being waived to criminal court but formal charges have not yet been filed in a criminal court;

4. A juvenile is charged with a state or municipal fish and game law violation and the court of jurisdiction for such offenses is other than a juvenile or family court; and,

5. A juvenile is charged with a status offense or is a status offender charged with or found to have violated a valid court order and the court of jurisdiction is a juvenile or family court.

The answer to these questions requires a definition of the term "juvenile" and an examination of the legislative history of Section 223(a)(14) in order to determine whether Section 223(a)(14) applies to all juveniles, only to those juveniles who are under juvenile or family court jurisdiction, and the nature of the exceptions spelled out in OJJDP's Formula Grants Regulations (28 C.F.R. Part 31).

Discussion

Section 223(a)(14) does not define the term juvenile. The "Definitions" section of the Juvenile Justice Act, Section 103, does not define the term. The Federal Juvenile Delinquency Act defines a juvenile, for purposes of that Act, as follows:

> "For the purposes of this chapter, a ,juvenile, is a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday,..." (18 U.S.C. 5031)

It appears that Congress chose not to define the term "juvenile" in the Juvenile Justice Act, leaving the term to be defined by reference to state law. As this office stated in Office of General Counsel Legal Opinion 77-13, December 31, 1976, which considered the scope of Section 223(a)(13):

> "Generally, juvenile court jurisdiction is determined in each State through the establishment of a maximum age below which, for statutorily determined conduct or circumstances, individuals are deemed subject to the adjudicative and rehabilitative processes of the juvenile court. Such an individual, subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment for any conduct or circumstances defined by State law, is a 'juvenile' as this term is used, in the Juvenile Justice Act. This definition of 'juvenile' includes individuals who may be, for particular conduct:
>
> - Subject to the exclusive jurisdiction of the juvenile court;
> - Subject to the concurrent jurisdiction of the juvenile court and a criminal court;
> - Subject to the original jurisdiction of a criminal court which has authority to transfer to a juvenile court for purposes of adjudication and treatment (a form of concurrent jurisdiction); or
> - Subject to the exclusive jurisdiction of a criminal court for the particular conduct but subject to juvenile court jurisdiction for other statutorily defined conduct or circumstances.
>
> "The basis for this definition of 'juvenile' is the proposition that if State law subjects an individual to juvenile court jurisdiction for purposes of adjudication related to particular conduct or circumstances, it has thereby, juvenile,determined that the individual is considered a in the eyes of the law even though he may be treated as if he were an adult for other statutorily defined conduct or circumstances. The assumption or retention of jurisdiction over a juvenile by a criminal court does not, ipso facto, transform the juvenile into an adult. Rather, it reflects a judgment by the State legislature or court authorities that the interests of society and the juvenile are best served by treating the juvenile as if he were an adult in certain circumstances."

Some state code provisions expressly define the term "juvenile." Others define the scope of juvenile or family court jurisdiction which can be applied to define a "juvenile" as this term is used in the Juvenile Justice Act.

Legal Opinion 77-13, supra, went on to distinguish a court's "delinquency" jurisdiction from other jurisdictional bases because the Section 223(a)(13) separation requirement was specifically applicable only to juveniles "alleged to be or found to be delinquent."[1] However, Section (a) (14) is not so limited. On its face, its to extend to all juveniles, regardless of whether the individual has been arrested, taken into custody, or charged, and regardless of the basis for the jurisdiction exercised by any court.

However, pursuant to the terms of the statute, OJJDP's rulemaking authority under Section 223(a) of the Act, and consistent with the clear congressional intent expressed in the House Report on the Juvenile Justice Amendments of 1980,[2] there are three exceptions to the broad scope of Section 223(a)(14).

Exception 1 - Low Population Density--OJJDP regulations implement a statutory exception allowing, within narrowly defined limits, the temporary detention in adult jails and lockups of juveniles accused of serious crimes against persons in low population density areas. {See 28 C.F.R. Section 31,303(i)(4).}

Exception 2 - Juveniles Under Criminal Court Jurisdiction-While the House Report indicates the Committee's general intent that the jail removal amendment "extend to all juveniles who may be subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations established by state law" (House Report at 25-26), the Committee also expressed its intent to except juveniles from the scope of the requirement once they have been charged in court with a criminal offense:

> "If a juvenile is formally waived or transferred to criminal court by a juvenile court and criminal charges have been filed or a criminal court with original or concurrent jurisdiction over a juvenile has formally asserted its jurisdiction through the filing of criminal charges against a juvenile, the Section 223(a)(14) prohibition no longer attaches." (House Rept., ibid.)

However, the Committee Report continued:

> "...the new provision is not intended to encourage increased waivers of juveniles to criminal court, a decrease in the age of original or concurrent criminal court jurisdiction, or a lowering of the age of juvenile court jurisdiction for specific categories or classes of offenses committed by juveniles." (House Rept., ibid.)

OJJDP has implemented this exception in its formula grant regulation. {See 28 C.F.R. Section 31.303(h)(2).}

Exception 3 - Temporary 6-Hour Hold--In addressing the implementation of the jail removal amendment, the Report stated that the Committee expects a "rule of reason" to be followed;

> "For example, it would be permissible for OJJDP to permit temporary holding in an adult jail or lockup by police of juveniles arrested for committing an act which would

---

[1] The Juvenile Justice Amendments of 1977 expressly extended the scope of Section 223(a)(13) to include "youth within the purview of paragraph (12)," i.e.: status and nonoffender juveniles.

[2] House Report No. 96-946, May 13, 1980. The Section 223(a)(14) amendment originated in the House reauthorization bill. The Senate subsequently receded to the House bill, which became law.

be a crime if committed by an adult for purposes of identification, processing, and transfer to juvenile court officials or juvenile shelter or detention facilities. Any such holding of juveniles should be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, but in no case overnight. Section 223(a)(13) would prohibit such juveniles who are delinquent offenders from having regular contact with adult offenders during this brief holding period." (House Rept., ibid.)

OJJDP has adopted this suggested "rule of reason" by permitting a temporary 6-hour holding period in its formula grant regulation {see 28 C.F.R. Section 31.303(i)(5)(iv) (G) and (H)}.

Conclusion

Based on the express language of Section 223(a)(14), its legislative history, and the implementing OJJDP regulations (28 C.F.R. Part 31), it is the opinion of this office that only those "juveniles," as that term is defined by state law and in accordance with the cited principles of Legal Opinion 77-13,supra, who fall within one of the three exceptions discussed above, can be detained or confined in an adult jail or lockup consistent with Section 223(a)(14). It does not matter whether the juvenile is under the jurisdiction of any court (i.e., in police custody) or, if under court jurisdiction, the nature or source of the court's jurisdiction. Thus, any detention or confinement of a juvenile in an adult jail or lockup would constitute an incidence of noncompliance with Section 223(a)(14) unless such detention or confinement falls within one of the three exceptions noted above.

Applicability to Specific Circumstances

In answer to your questions:

(1) A juvenile charged with (or adjudicated/convicted of) a traffic offense in any court cannot, consistent with Section 223(a)(14), be detained or confined in an adult jail or lockup unless such offense constitutes a criminal act and criminal charges have been filed or the 6-hour hold exception is applicable.

(2) A juvenile arrested for a felony in a State whose juvenile code places exclusive age/offense jurisdiction for that particular crime in a criminal court cannot be detained or confined in an adult jail or lockup unless one of the three exceptions applies, i.e., all conditions for the statutory low population density exception are met; criminal charges have been filed in a court having criminal jurisdiction; or the juvenile is held under the 6-hour hold exception.

(3) A juvenile who has been waived to criminal court can be detained or confined in an adult jail or lockup only after criminal charges have been filed. Such a juvenile could also be held in a juvenile detention facility.

(4) A juvenile charged with (or adjudicated for) a fish and game violation (assuming that such violations are civil and not criminal in nature) may not be detained or confined in an adult jail or lockup consistent with Section 223(a)(14).

(5) A juvenile who is charged with (or adjudicated for) a status offense or who is a nonoffender, whether or not under juvenile or family court jurisdiction, may not be detained or confined in an adult jail or lockup consistent with Section 223(a)(14). A status offender charged with or found to have violated a valid court order may not be detained or confined in an adult jail or lockup.

OJJDP may wish to provide this opinion to participating States so that any remaining issues or questions with respect to who is a "juvenile" under particular State law provisions can be clarified, either through consultation with the State Attorney General, OJJDP, or this office.

SUMMARY

Issue: Jail Removal: Non-MSA Exception

Source: Memo to Doyle Wood from John J. Wilson, dated June 25, 1985.

Although two Wisconsin counties are included, per the Census Bureau, in Minnesota metropolitan statistical areas (MSA), neither has access to juvenile detention facilities in the neighboring Minnesota counties. Furthermore, because these Wisconsin counties do not qualify alone or in combination with contiguous Wisconsin counties as MSA's, they are not considered MSA's as used in the Act. They may, however, use the non-MSA exception.

Legal Opinion
(Retyped from copy)

Memorandum

June 25, 1985

TO: Doyle A. Wood
Juvenile Justice Specialist
SRAD, OJJDP

FROM: John J.Wilson
Associate General Counsel
OGC, OJP

SUBJECT: Wisconsin MSA's

This is in response to your request for an opinion regarding Wisconsin's request for a "special waiver" which could permit Douglas and St. Croix Counties to use the statutory exception to the Section 223(a)(14) jail removal requirement.

Section 223(a)(14) was modified by the 1984 Amendments to the Juvenile Justice Act to permit juveniles to be held in adult jails and lockups through 1989, under specific circumstances. The exception permits juveniles to be held in adult jails and lockups as follows:

(1) the juvenile is accused of a nonstatus (i.e., criminal-type) offense; and

(2) the juvenile is awaiting an initial court appearance pursuant to an enforceable State law requiring such an appearance within 24 hours after being taken into custody (excluding weekends and holidays);

However, this exception is limited by the statute to geographical areas which:

(i) are outside a Standard Metropolitan Statistical Area (SMSA);

(ii) have no existing acceptable alternative available; and

(iii) are in compliance with the Section 223(a)(13) requirement to separate juveniles from adults in institutions.

The Wisconsin request makes a compelling argument that Douglas and St. Croix Counties, which are included as Metropolitan Statistical Areas (MSA's) by the Census Bureau because of their proximity to Duluth and Minneapolis-St. Paul in the neighboring State of Minnesota, are no differently situated than other counties in Wisconsin which may qualify for the exception. Neither Douglas nor St. Croix County has access to juvenile detention facilities in the neighboring Minnesota counties that make up the respective MSA's.

Although there is no pertinent legislative history regarding the statutory exception outlined above, it is apparent that the exception was intended as a stop-gap measure to permit nonmetropolitan areas within particular States additional time to develop alternatives to the temporary use of adult jails and lockups. The reason for the rule should govern its application. Here, the two Wisconsin counties would not qualify alone or in combination with contiguous Wisconsin counties as MSAs. Consequently, for purposes of applying the statutory exception to them, they need not be considered "Standard Metropolitan Statistical Areas" as this term is used in Section 223(a)(14)(i).

All the other requirements of the exception would, of course, continue to apply to Douglas and St. Croix Counties.

Please note that OJJDP would not be granting a "waiver" of the statutory requirement. It is axiomatic that Federal statutory requirements cannot be waived by the agency charged with their implementation and enforcement unless there is specific waiver authority granted by the statute which establishes the requirement. This is particularly true where, as here, third parties are the beneficiary of the statutory provision or the public interest is served by the legislative policy.*

---

*The subject of waiver of statutory provisions, though not directly relevant to the resolution of this issue, is considered in OGC Legal Opinion 75-46, May 20, 1975.

SUMMARY

Issue: Jail Removal: Request by Iowa for approval of a 24-hour removal exception in counties outside metropolitan statistical areas

Source: Memorandum to Brunetta Centner from John J. Wilson, dated September 19, 1985.

Iowa requested that they be allowed to hold juveniles for 24 hours in adult jails and lockups when "...the detention is authorized by an oral court order." The Office of General Counsel indicated that a "written or oral court order" is not the same as an "initial court appearance" and denied the exception to the State. The denial is based on: 1) the juvenile defendant's right to be present physically in the court and 2) the hearing being held within 24 hours of detention, not 48 hours as the Iowa Juvenile Code provides.

Legal Opinion
(Retyped from copy)

Memorandum

September 19, 1985

TO: Brunetta Centner
Juvenile Justice Specialist
OJJDP

FROM: John J.Wilson
Associate General Counsel
OGC, OJP

SUBJECT:Proposed Iowa Exception to Section 223(a)(14) Jail Removal Requirement

THRU: Emily Martin
Director
SRAD, OJJDP

This is in response to your request for OGC review of Iowa's letter of June 17, 1985, requesting approval of a 24-hour removal exception in counties outside metropolitan statistical areas, pursuant to Section 223(a)(14) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (JJDP Act). In the letter, the State of Iowa asserts that it fulfills each of the conditions set forth in the JJDP Act and implementing formula grant regulation to qualify for an exception.

The regulation, set forth at 28 CFR §31.303(f)(4)(i), states the following requirement:

> 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);

Under Iowa's Juvenile Code, Chapter 232.22, subsection 4:

> A child shall not be detained in a facility under subsection 2, paragraph "c" (an adult jail or lockup) for a period in excess of twelve hours without the oral or written order of a judge or a magistrate authorizing the detention. When the detention is authorized by an oral court order, the court shall enter a written order before the end of the next day confirming the oral order and indicating the reasons for the order.

The question that arises is whether simply obtaining a "written or oral court order" authorizing detention qualifies as an "initial court appearance."

The legislative history of the 1984 amendments to the JJDP Act (Pub. L. 98-473), which amended the Section 223(a)(14) exception, does not directly address this issue. However, Senator Paula Hawkins, in a Floor Statement during consideration of an amendment to the Continuing Appropriations bill which would have adopted the Section 223(a)(14) exception language that subsequently was enacted, stated:

> "Finally, we have provided our most rural areas with a minor exception from the jail removal requirement for juvenile delinquents. In a limited way, we have allowed for a juvenile offender to be temporarily detained during the period before he can be brought before the Court." (130 Cong. Rec. S13077, October 4, 1984).

The reference to being "brought before the Court" is consistent with the standard legal definition of an "appearance":

> "A coming into court as a party to a suit, either in person or by attorney, whether as plaintiff or defendant." Black's Law Dictionary, Fifth Ed., West Publishing Co.

In the Federal system, Rule 5 of the Federal Rules of Criminal Procedure requires that an arresting officer take any person arrested before a Federal magistrate for an "initial appearance" without unnecessary delay. At that time, the defendant is informed of the complaint or charge, of his right to counsel, of the general circumstances under which he may secure pretrial release, of his privilege against self-incrimination, and of his right to a preliminary examination (which must be scheduled unless waived). Thus, by analogy, an "initial court appearance" under the JJDP Act exception would require that the defendant be brought before the court in person for the primary purpose of being charged, continued in detention, or for other purposes.

Consequently, OGC must conclude that an "initial court appearance" requires the physical presence of the juvenile before a judge, referee, or other judicial officer rather than a phone call, paper submission, or the appearance of a court officer before the court solely for the purpose of obtaining an ex parte detention authorization. Whether the initial appearance constitutes a detention hearing or a probable cause hearing, the Juvenile Justice Act requirement of a "court appearance" must be held to require that the juvenile be brought before the court for a preliminary judicial determination at the earliest possible moment, but in no case more than 24 hours. Once that appearance has taken place, the juvenile may be placed in a juvenile detention facility or released, but could not be returned to the adult jail or lockup without violating Section 223(a)(14).

As OGC reads the Iowa Juvenile Code, there is no requirement that a juvenile taken into custody for the alleged commission of a delinquent act be brought before a judge or other judicial officer within 24 hours. Although the Iowa statutory requirement for a written or oral court order within 12 hours may result in 71% of juveniles detained in an adult jail or lockup being released within 24 hours, as the State claims, it does not necessarily result in a "court appearance" for all such juveniles or an appropriate detention placement for the other 29%.

The operative provision for a court appearance is Section 232.44 of the Iowa Juvenile Code, which provides that:

> A hearing shall be held within forty-eight hours, excluding Saturdays, Sundays and legal holidays, of the time of the child's admission to a detention or shelter care facility....

It is at this hearing that the Code requires an appearance to determine both probable cause to believe the child committed the act alleged in the petition and whether the continued placement of the child in detention is authorized and warranted under Section 232.22 {see Iowa Code Section 232.44(4) and (5)}. If this statutory provision required the hearing to be held within 24 hours, rather than 48 hours, Iowa would qualify for the statutory exception.

In conclusion, OJJDP should notify Iowa that it cannot approve the 24 hour removal exception for counties outside metropolitan statistical areas in the State of Iowa because the State does not have a law requiring an "initial court appearance" for juveniles held in an adult jail or lockup within 24 hours after being taken into custody.

cc: Doyle Wood

SUMMARY

Issue: Jail Removal

Source: Letter to former Florida Governor Bob Graham from Doyle Wood, dated February 10, 1986 (reviewed and approved by the Office of General Counsel for legal content).

This letter provides guidance on four specific areas pertaining to the confinement of juveniles in adult jails and lockups. These are as follows:

1. Juveniles charged with felonies in criminal court may be held in adult jails or lockups. Juveniles charged with misdemeanors in criminal court may not be held, except for the six-hour or the 24-hour non-metropolitan statistical area (MSA) exceptions.

2. Although a juvenile's behavior is beyond control by juvenile detention center staff, the juvenile may not be transferred to an adult facility unless the juvenile, while at the detention center, is charged with a criminal offense and one of the three exceptions to Section 223(a)(14) applies.

3. Juveniles charged with or adjudicated of traffic offenses cannot be held in jails or lockups unless the offense is a felony or the six-hour or 24-hour non-MSA exception applies.

4. Juveniles charged (by police) but not yet indicted for capital or life crimes may not be held in jails or lockups unless applying the six-hour or 24-hour non-MSA exception.

February 10, 1986 (Retyped from original)

Honorable Bob Graham
Governor of Florida
State Capitol
Tallahassee, Florida 32301

Dear Governor Graham:

This is in response to your request regarding the scope of Section 223(a)(14) of the Juvenile Justice and Delinquency Prevention (JJDP) Act, 42 U.S.C. Section 5601, et seq., as amended. Section 223(a)(14) of the JJDP Act requires that each State participating under the Formula Grants Program submit a plan which shall--

> "(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 nonstatus offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within 24 hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which--
>
> (i) are outside a Standard Metropolitan Statistical Area (MSA),
> (ii) have no existing acceptable alternative placement available, and
> (iii) are in compliance with the provisions of paragraph (13)."

Section 223(c) of the JJDP Act requires the following:

> "Failure to achieve compliance with the requirements of subsection (a) (14) within the 5-year time limitation shall terminate any State's eligibility for funding under the subpart, unless the Administrator determines that (1) the State is in substantial compliance with such requirements through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the State has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed 3 additional years."

You indicate that concerns have arisen, and the Florida Juvenile Justice and Delinquency Prevention Advisory Group is asking for a response as to whether Section 223(a)(14) applies in the following circumstances:

1. Youth under age 18 who are formally charged in the adult criminal court either on felonies or misdemeanors in accordance with the provisions of Florida law, and held in jail;

2. Youth transferred from juvenile detention centers to jail for being beyond the control of detention staff as provided by Florida law;

3. Youths charged with the traffic offenses and under the sole jurisdiction of adult traffic court; and

4. Youths charged with capital or life crimes (murder, armed robbery, etc.) pending grand jury indictment.

In response to these questions, a determination is made that your use of the term "youth" is interchangeable to the term "juvenile" as used in Section 223(a)(14) of the Act. The answer to these questions requires a definition of the term "juvenile" and an examination of the legislative history of Section 223(a)(14) in order to determine whether Section 223(a)(14) applies to all juveniles, only to those who are under the juvenile or family court jurisdiction, and the nature of the exceptions spelled out in the Formula Grants Regulation (28 C.F.R. Part 31).

Section 223(a)(14) does not define the term "juvenile." The definitions section of the JJDP Act, Section 103, does not define the term. It appears that Congress chose not to define the term, leaving it to be defined by reference to State law. As stated in the Office of General Counsel Legal Opinion 77-13, December 31, 1976, which considered the scope of Section 223(a) (13):

> "Generally, juvenile court jurisdiction is determined in each State through the establishment of a maximum age below which, for statutorily determined conduct or circumstances, individuals are deemed subject to the adjudicative and rehabilitative processes of the juvenile court. Such an individual, subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment for any conduct or circumstances defined by State law is a "juvenile," as this term is used in the Juvenile Justice Act. This definition of "juvenile" includes individuals who may be, for particular conduct:
>
> - subject to the exclusive jurisdiction of the juvenile court;
> - subject to the concurrent jurisdiction of the juvenile court and a criminal court;
> - subject to the original jurisdiction of a criminal court which has authority to transfer to a juvenile court for purposes of adjudication and treatment (a form of concurrent jurisdiction); or
> - subject to the exclusive jurisdiction of a criminal court for the particular conduct but subject to juvenile court jurisdiction for other statutorily defined conduct or circumstances.
>
> The basis for this definition of "juvenile" is the proposition that if State law subjects an individual to juvenile court jurisdiction for purposes of adjudication related particular conduct or circumstances, it is thereby determined that the individual is considered a "juvenile" in the eyes of the law, even though he may be treated as if he were an adult for other statutorily defined conduct or circumstances. The assumption or retention of jurisdiction over a juvenile by a criminal court does not, ipso facto, transform the juvenile into an adult. Rather, it reflects a judgment by the State legislature or court authorities that the interests of society and the juvenile are best served by treating the juvenile as if he were an adult in certain circumstances."

On its face, the coverage of the term "juvenile," as used in Section 223(a)(14), is not limited and appears to extend to all juveniles, regardless of whether the individual has been arrested, taken into custody, or charged, and regardless of the basis for the jurisdiction exercised by any court.

However, pursuant to the terms of the statute, the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) rule making authority and consistent with the legislative history on the Juvenile Justice Amendments of 1980 (House Report No. 96-946, May 13, 1980. The Section 223(a)(14) Amendment originated in the House Bill. The Senate subsequently receded to the House Bill, which became law.), there are three exceptions to the broad scope of Section 223(a)(14).

Exception #1 - 24-Hour, Non-Metropolitan Statistical Area-OJJDP regulations implement a statutory exception allowing, within specifically defined limits, 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 located in non-MSA areas. {See 28 C.F.R. 31.303(f)(4).}

Exception #2 - Juveniles Under Criminal Court Jurisdiction-The House Committee report expressed its intent to except juveniles from the scope of the requirement once they have been charged in a court with a criminal offense. Thus, OJJDP has implemented this exception in the Formula Grants Regulation. The requirement of 223(a)(14) excepts those juveniles formally waived or transferred to a 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. {See 28 C.F.R. 31.303(e)(2).}

Exception #3 - Temporary Six-Hour Hold--In addressing the implementation of the jail removal amendment, the Report stated that the committee expects a "rule of reason" to be followed:

> For example, it would be permissible for OJJDP to permit temporary holding in an adult jail or lockup by police of juveniles arrested for committing an act which would be a crime if committed by an adult for purposes of identification, processing and transfer to juvenile court officials or juvenile shelter or detention facilities. Any such holding of juveniles should be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, but in no case overnight. Section 223(a)(13) would prohibit such juveniles who are delinquent offenders from having regular contact with adult offenders during this brief holding period."

OJJDP has adopted this suggested "rule of reason" by providing that a juvenile arrested or taken into custody for committing an act which would be a crime if committed by an adult may be temporarily held for up to six hours in an adult jail or lockup for purposes of identification, processing, or transferring. {See 28 C.F.R. 31.303(f)(5)(iv)(G) and (H).}

Conclusion

Based on the express language of Section 223(a)(14), its legislative history, and the implementing OJJDP regulations (28 C.F.R. Part 31), only those "juveniles," as that term is defined by State law and in accordance with the cited principles of Legal Opinion 77-13, who fall within one of the three exceptions discussed above can be detained or confined in an adult jail or lockup consistent with Section 223(a)(14). It does not matter whether the juvenile is under the jurisdiction of any court (i.e., in police custody) or if under court jurisdiction, the nature or source of the court's jurisdiction. Thus, any detention or confinement of a juvenile in an adult jail or lockup would constitute an incidence of noncompliance with Section 223(a)(14) unless such detention or confinement falls within one of the three exceptions noted above.

Applicability to Florida's Specific Circumstances

In answer to your questions:

(1) Juveniles that are formally charged in criminal court through the filing of felony charges can be held in an adult jail or lockup (exception #2).

However, if the juvenile is formally charged in criminal court with a misdemeanor only, the juvenile cannot be detained or confined in an adult jail or lockup except when the six-hour hold exception or the 24-hour non-MSA exception is applicable.

(2) Juveniles beyond the control of juvenile detention center staff cannot be transferred to an adult jail unless the juvenile, based upon actions while in the detention center, is being charged with a criminal-type offense, and one of the three exceptions is applicable.

(3) A juvenile charged with (or adjudicated/convicted of) a traffic offense in any court cannot be detained or confined in an adult jail or lockup unless such offense constitutes a felony act and felony charges have been filed, or either the six-hour or 24-hour, non-MSA exception is applicable.

(4) Juveniles charged (i.e., arrested by law enforcement officers) for capital or life crimes cannot be held in an adult jail or lockup pending grand jury indictment since criminal felony charges have not been filed, unless the six-hour hold exception or the 24-hour, non-MSA exception is applicable.

It should be noted that OJJDP added the term "felony" to 28 C.F.R. 31.303(e)(2) (exception #2), upon issuing the June 20, 1985, Formula Grants Regulation. The regulation prior to this date excepted all criminal charges. When OJJDP added the term "felony," an unintended loophole, whereby juvenile traffic offenders and violators of other misdemeanor laws could be jailed, was closed. Limiting this exception to "felony" violators may increase the number of compliance violations, thereby creating a problem in demonstrating substantial compliance (i.e., a 75 percent reduction in the number of juveniles held in jail). Thus, flexibility will be provided if Florida cannot or chooses not to reconstruct baseline data consistent with the change in 28 C.F.R. 31.303(e)(2) and is unable to demonstrate substantial compliance, because the current data excepts only "criminal felony charges" while the baseline data excepts all "criminal charges."

Under these circumstances, OJJDP will allow the State, upon request and approval, to modify the current data to also except juveniles having any "criminal charges" filed in a court with criminal jurisdiction in lieu of excepting only "criminal felony charges." This flexibility only pertains to demonstrating substantial compliance with Section 223(a)(14) of the JJDP Act. When full compliance is required, only juveniles having "criminal felony charges" filed will be exempted pursuant to exception #2.

I feel sure this information will assist in the process of proposing new legislation; however, if you desire additional information, please feel free to contact this Office.

Sincerely,

Doyle A. Wood
Assistant Director
State Relations and Assistance Division

cc: Ms. Nancy Linna, Chairperson
Juvenile Justice and Delinquency
Prevention Advisory Group

Monitoring

SUMMARY

Issue: Monitoring: Definition of a Secure Facility

Source: Memorandum to Alfred Regnery from John J. Wilson, dated April 3, 1985

Through a historical review of JJDP legislation and regulations, this memorandum defines the meaning of "staff secure" and clarifies OJJDP's legal basis for defining the term "secure." The distinguishing characteristic of a secure facility, as defined by the Act, is that "construction fixtures are designed to physically restrict the movements and activities of juveniles...."

Memorandum (Retyped from original)

April 3, 1985

TO: Alfred S. Regnery
Administrator
OJJDP

FROM: John J.Wilson
Associate General Counsel
OGC, OJP

SUBJECT: Staff Secure

The Office of Juvenile Justice and Delinquency Prevention's proposed formula grant regulations, 50 F.R. 6098, February 13, 1985, contain a "clarification" of the term "secure" as used to define a detention or correctional facility for purposes of the Section 223(a)(12)(A) deinstitutionalization requirement.

The regulation commentary states the purpose of this change to be as follows:

> The definition of "secure," as used to define a detention or correctional facility, {§31.304(b)} has been clarified to indicate that it does not include staff secure facilities. Under section 223(a)(12)(A) of the JJDP Act, status offenders and nonoffenders may be held for purposes of their own safety in a facility which is "staff secure," i.e., does not include fixtures designed to physically restrict the movements and activities of those placed therein. Such juveniles may be held for a limited and reasonable period of time, or such time allowed by State law, in order to assure their own protection and safety.

The regulation restates the prior (December 31, 1981) regulatory definition and adds an additional clarifying sentence:

> (b) Secure. As used to define a detention or correctional facility this term includes residential facilities which have fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities which are "staff secure," i.e., where physical restriction of movement or activity is provided solely through facility staff.

Issue

You have asked this office to clarify the meaning of the term "staff secure" and to specify OJJDP's legal basis for clarifying the definition of the term "secure."

Statutory and Regulatory Review

Section 223(a)(12)(A) of the Juvenile Justice Act provides that State formula grant plans must:

> (12)(A) provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities: and (emphasis supplied)

These terms are defined in Section 103(12) and (13) as follows:

> (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;

The definitions in Section 103(12) and (13) were added to the Act in 1980 (and were not changed in 1984). Prior to the 1980 Amendments, a definition of the term "secure" was provided in OJJDP formula grant regulations. In commenting on the House Bill's proposed definitions, House Report 96-946, May 13, 1980, stated at p. 18:

> H.R. 6704 redefines and clarifies the term "correctional institution or facility" in order to recognize the difference between detention and correctional facilities and to define the term secure, in conformance with current practice. The new definition is intended to provide more specificity and clarity. It is not intended, particularly with regard to the term "secure," to indicate a desire on the part of the committee for a change in current practice as expressed in existing regulations. The current definition of secure, as defined in current regulations, seems acceptable both to the States and to practitioners. Current practice as provided for by existing regulations, defines a secure facility as one which is designed and operated under the exclusive control of the staff of such facility, whether or not the person being has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, locked fences, or physical restraints in order to control the behavior of its residents.

As a consequence of the new definitions proposed by Congressman Andrews, Subcommittee on Human Resources, and incorporated in the statute on December 8, 1980, OJJDP felt constrained to modify its regulatory definition. The formula grant regulation which implemented the 1980 amendments (46 F.R. 63260, December 31, 1981) modified the definition of the term "secure" to make it consistent with the new statutory definition:

> (b) Secure. As used to define a detention or correctional facility this term includes residential facilities which have fixtures designated (sic) to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures.

In publishing this regulation on December 31, 1981, OJJDP responded to one public comment on the modified definition as follows:

11. (Public) Comment: The definition of "secure" as used in the terms "secure detention facility" and "secure correctional facility" has been substantially changed by removing the use of "staff security measures" in addition to other architectural means for restricting the movements and activities of residents. This change is not warranted.

(OJJDP) Response: The change noted in the draft regulations {31.304(b)} the revised definitions of "secure correctional facility" in Section 103(12) and (13) of the Act, as amended. (46 F.R. 63261)

Obviously, OJJDP had concluded back in 1981 that the new statutory definitions of "secure detention facility" and "secure correctional facility" represented a substantive change which required the removal of the "staff secure" aspect of OJJDP's regulatory definition.

As the House Report, supra, notes, OJJDP's formula grant regulation, as in effect prior to the enactment of the 1980 Amendments, set forth a comprehensive definition of the term "secure facility," as well as several related terms. Those regulatory definitions were as follows:

(h) Facility. A place, an institution, a building or part thereof, set of buildings or an area whether or not enclosing a building which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public or private agencies.

(i) Facility, Secure. One which is designed and operated so as to ensure that all entrances and exits from such facility are under the exclusive control of the staff of such facility, whether or not the person being detained has freedom of movement within the perimeters of the facility or which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents.

(j) Facility, Non-secure. A facility not characterized by the use of physically restricting construction, hardware and procedures and which provides its residents access to the surrounding community with minimal supervision.

(k) Lawful Custody. The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law of (sic) a judicial order or decree. (45 F.R. 53772 at 53778, August 12, 1980).

These OJJDP definitions had originated in 1978 as part of an effort to establish a comprehensive set of criteria to determine if a "facility" was a "juvenile detention or correctional facility" as that term was then used in Section 223(a)(12). In promulgating these definitions, OJJDP provided the following explanation in the Appendix to the final formula grant regulation published on August 16, 1978 (43 F.R. 36402):

The prohibition against placing status offenders and non-offenders in secure facilities is in keeping with the report of the advisory committee which recommends that status offenders not be placed in secure facilities, training schools, camps, and ranches. Cohen and Rutherford provide that:

> A secure facility is one that is used exclusively for juveniles who have been adjudicated as delinquents. (Standard 7.1)

The difficulty with any definition that prohibits placement of status offenders in secure facilities lies in determining what program and architectural features make a facility secure. Discussions between OJJDP staff and knowledgeable people in the field resulted in the definition of security being related to the overall operation of the facility. Where the operation involves exit from the facility only upon approval of staff, use of locked outer doors, manned checkout points, etc., the facility is considered secure. If exit points are open but residents are authoritatively prohibited from leaving at anytime without approval, it would be a secure facility.

This definition was not intended to prohibit the existence within the facility of a small room for the protection of individual residents from themselves or others, or the adoption of regulations establishing reasonable hours for residents to come and go from the facility. OJJDP recognized the need for a balance between allowing residents free access to the community and providing facility administrators with sufficient authority to maintain order, limit unreasonable actions on the part of residents, and insure that children placed in their care do not come and go at all hours of the day and night or absent themselves at will for days at a time.

Experts advising OJJDP recommend that security rooms be used only in an emergency situation, and not without court approval. The OJJDP definition does not include this requirement. However, the limited use of security in individual emergency cases will have to be monitored to insure it is not used in excess. (43 F.R. 36402 at 36409)

Discussion and Conclusion

Based on the above review, it is my opinion that it would probably be beyond OJJDP's rulemaking authority to define the terms "secure detention facility" and "secure correctional facility" in a manner that would add significant elements or characteristics to those specified by Congress in 1980 when it defined those terms in the statute. The statute specifies "construction fixtures designed to physically restrict the movements and activities of juveniles..." as the distinguishing characteristic of a secure detention or correctional facility. For OJJDP to have continued to include the "operational," "program," or "staff control" element in its regulatory definition of secure in 1981, or to reinsert it in the proposed 1985 regulations, would have exposed OJJDP to the very real possibility of legal challenge.

Based on the above chronology, I would define a "staff secure" facility, to distinguish such facilities from those prohibited for status and non-offender juveniles as follows: A "staff secure" facility may be defined as a residential facility which: 1) does not include construction fixtures designed to physically restrict the movements and activities of juveniles who are in custody therein; 2) may establish reasonable rules restricting entrance to and egress from the facility and access to the community which govern the conduct of all facility residents; 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 or other programmatic intervention strategies.

This definition represents a departure from the 1978-1980 regulatory concept of relating security to the "overall operation" of the facility and the extent of staff control over facility entrances and exits. However, in view of the 1980 statutory definition, it may be considered either a necessary departure or, at a minimum, a departure which is well within the rulemaking discretion of the Administrator.

CHAPTER III

COURT CASES

Tewksbury

SUMMARY

Issue: Jail Removal

Case: D.B. v. Tewksbury
U.S. District Court (Oregon), 1982

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

D.B., et al., Plaintiffs, v. GRAHAM TEWKSBURY, Individually and in his official capacity as Director of the Columbia County Juvenile Department, et al., Defendants.	Civil No. 80-817 FR FINDINGS OF FACT, CONCLUSIONS OF LAW, and ORDER

Susan M. Svetkey
1515 SW Fifth Avenue, Suite 550
Portland OR 97201

Alan Baily
Julie H. McFarlane
Margaret J. Nightingale
Jeanne Gross
Juvenile Rights Project
Oregon Legal Services Corporation
408 SW Second Avenue, Suite 412
Portland OR 97204

David B. Hatton
Oregon Legal Services Corporation
Oregon City Regional Office
704 Main Street
Oregon City OR 97045

David C. Howard
Adrienne E. Volenik
National Center for Youth Law
3701 Lindell Boulevard
St. Louis MO 63108

Attorneys for Plaintiffs

John C. McLean
James C. Rhodes
Special Columbia County Counsel
520 SW Yamhill Street, Suite 500
Portland OR 97204

Jill Thompson
Columbia County Counsel
Columbia County Courthouse
St. Helens OR 97051

Attorneys for Defendants

FRYE, Judge:

This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiffs and members of plaintiffs' class are all children who are presently confined, or who are subject to confinement in the Columbia County Correctional Facility (CCCF), an adult jail, in St. Helens, Oregon. Plaintiffs challenge the constitutionality of defendants' actions in confining plaintiffs and members of their class in CCCF. Plaintiffs seek declaratory and injunctive relief.

The case was tried to the court on February 2 - 12, 1982. Plaintiffs were represented by Susan F. Svetkey and David B. Hatton. Defendants were represented by Jill Thompson, Columbia County Counsel, and John McLean and John C. Rhodes, Oregon Attorney General's Office.

The court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1343(3) and (4).

SPECIAL FINDINGS OF FACT

The named plaintiffs are children, all of whom have been detained in CCCF. Plaintiffs and their next friend and next friend of the class, Susan F. Mandiberg, represent a class certified by the court as consisting of similarly situated children.

Defendant Graham Tewksbury is the Director of the Columbia County Juvenile Department. Defendants A. J. Ahlborn, Robert M. Hunt, and Marion Sahagian are commissioners of the Columbia County Board of Commissioners. Defendant Tom Tennant is the Sheriff of Columbia County. He is responsible for the general operation and supervision of the Sheriff's Department, including CCCF. Defendant Willard E. Jones is the corrections

supervisor of CCCF. He is responsible for the general operation and supervision of CCCF and for carrying out the Sheriff's policies and procedures in CCCF. Defendant James D. Taylor is the assistant corrections supervisor of CCCF. Defendants James E. Cox, Dale Len Durant, Larry C. Knowles, and Dale R. Stubbs are corrections officers in CCCF.

In acting and/or failing to act and in maintaining the conditions in CCCF, defendants, and each of them, separately and in concert, have been and are acting under color of and pursuant to the statutes, ordinances, regulations, customs, and usages of the State of Oregon and in their capacities as heretofore stated. Children have been and continue to be detained in CCCF with the knowledge of all the defendants.

CCCF houses both adults and children in the same facility. Many adults are convicted prisoners serving time on sentences already imposed. All children held in CCCF are pretrial detainees, i.e., there has been no adjudication with regard to these children's acts, status, or behavior. They range in age from 12 to 18. Many of the children are "status offenders." Status offenders are children who, by virtue of their ages, are confined for being beyond parental control or running away from home. Of 101 children held at CCCF during a nine month period in 1980, 36 were held on status offense charges. The remaining children during this period were held for acts which, if they had been done by an adult, would constitute crimes. Sometimes children are placed in CCCF for shelter care: for example, a child who has been raped can be placed in CCCF.

Children do not stay in CCCF for long periods of time, but status offenders ordinarily are confined longer than those detained for criminal acts. In any event, 70 percent of the children who were confined in CCCF in 1981 were released within 24 hours. Nearly 75 percent of the children held in CCCF are

released to their parents. A small number pose an immediate threat to community safety or their own safety or may flee from the court's jurisdiction. In 1980, of 124 children confined in CCCF, during a nine month period, only 25 required secure custody. The others could have been released without posing a serious threat to community safety, personal safety, or court jurisdiction.

CCCF is located on the ground floor of the Columbia County Courthouse in St. Helens, Oregon. It was built in 1962 and was altered in 1975. The offices of defendant Tewksbury and each of his three juvenile counselors are located in a building connected to the CCCF building.

Children detained in CCCF are usually placed in quarters consisting of multiple-occupancy cells with a common day space. They may be placed in isolation cells, however. Each multiple-occupancy cell contains steel bed frames, a toilet-sink installation, one overhead light, and a steel-barred wall with a sliding door. Children are locked inside the cells from 10 p.m. to 6 a.m.

The day room area, i.e., the common room, contains a metal picnic table, fluorescent lighting fixtures, and a single shower unit. There is no natural light in the cells occupied by children. Illumination is sufficient for overall visibility. All walls, floors, and ceilings are solid concrete or concrete block materials. The walls are painted blue.

Doors entering into these areas are either steel bars or solid metal. Each door contains a small viewing window and a food service slot. Children are detained in cells geared for as many as three children. Sometimes children ranging in age from 12 to 17 years are placed in the same cell.

Children held in CCCF are not issued sheets, mattress covers, or pillows. They sleep on mattresses covered with

urethane and they are given a wool blanket. Occasionally children are not given mattresses. Those children placed in isolation cells sleep on cement floors.

Female children are not advised by matrons that sanitary napkins or tampons are available. If requested, however, they are made available. Matrons are not stationed within the secure detention area of CCCF. They are stationed in the front office area and are in the jail only to make checks on the female children. In order to obtain a sanitary napkin or tampon, female children must strike their cell doors or yell to attract the attention of a male corrections officer, who in turn contacts a matron. There are no full-time matrons available during night shifts, but if a female child is detained during the night, a part-time matron is called and is available.

There is no 24-hour a day intake screening process at CCCF. The intake process at CCCF is essentially an admissions process rather than a screening process. Part of the reason that children are detained at CCCF rather than being placed elsewhere is that there are no written criteria upon which to make decisions regarding who should be detained in CCCF. There is no policy as to who makes a decision when a child is to be lodged in jail. There is a phone list for jail staff to use to try to reach juvenile counselors, but counselors are sometimes unavailable. Children are then lodged based upon the decision of the corrections officer (jailer). If an arresting officer can locate a juvenile counselor, there is nothing in writing that tells the officer or the juvenile counselor when to lodge the child. For example, D.P. was arrested with a friend. D.P.'s friend was released to his parents who came to pick him up. D.P., however, was lodged in CCCF because his custodial grandmother did not have a car and therefore could not pick him up. Even if a juvenile counselor is available, the juvenile counselor does not speak

directly with the child before he or she makes an intake decision. There are no written procedures for how to handle physically, mentally, or emotionally handicapped children. Jail personnel testified that none of these children are ever detained.[1]

All clothing of children detained in CCCF is confiscated. Children are issued jail clothes which consist of jeans, a shirt, and socks for boys, and slacks, a blouse, and socks for girls. No child lodged in CCCF may have underwear.[2]

Toilet facilities at CCCF are not screened from view and children using these toilet facilities are visible to other children and to corrections officers. The day room area has a shower which can be used at all times when the children are not locked in their cells. On occasion showers in CCCF are not equipped with shower curtains. Children showering are visible to other children and to corrections officers. Female children using the toilet or shower are visible to male corrections officers. Male children using the toilet or shower are visible to matrons.

Children in CCCF are sometimes placed in either of two isolation cells.[3] These are 8' x 8' windowless concrete block rooms, barren of all furniture and furnishings. Sometimes it is very cold in the isolation cells. Near the center of the isolation cell there is a sewer hole which is the only facility for urination and defecation.

Lighting and the mechanism for flushing the sewer hole for each isolation cell are controlled outside the cell by the corrections staff. Lights in the isolation cells are sometimes left on or off for long periods of time. Sometimes the sewer hole is not flushed for long periods. When the mechanism for the sewer hole is flushed by a corrections staff officer, water and sewage gushes onto the cell floor.[4]

The isolation cells are located across a corridor from the adult male dormitory cell which holds up to 18 prisoners. For a child to be placed in isolation, that child must be moved down a corridor immediately outside the adult male dormitory cell. The child can see the adult male prisoners, and the adult male prisoners can see him or her. When the isolation cell door is closed, children in isolation and the adults in the dormitory cell can and do communicate by talking in loud voices.[5] Children may also encounter adult inmates during the intake process.

There are no written standards for placement of children in isolation. There is no one designated to determine if and when a child should be placed in isolation. There is no absolute limit to the period of time that a child can be held in isolation. Isolation cells have been used when children were intoxicated or under the influence of drugs. Children have also been placed in isolation for perceived offenses or disputes between children held in the same cell. There is no psychological screening of children placed in isolation. No log is maintained when a child is placed in isolation.

Meals served to children are planned, prepared, and served by corrections officers. Corrections officers must prepare meals in addition to performing their other duties.[6] Corrections officers are not trained in nutrition or food preparation. They are not supervised by a nutritionist or a dietitian. There are no written menus. Meals are prepared from foods available in storage. Food served to children is the same as that served to adult prisoners and to the corrections personnel themselves, except that children at CCCF are not allowed to buy food through the commissary, while adult prisoners are. Special dietary needs of children, or special dietary needs of a child such as a diabetic child are not considered.

No medical screening procedure is used for children

admitted to CCCF other than a visual inspection by an untrained corrections officer. Children who are intoxicated or under the influence of drugs are admitted to CCCF. Corrections officers have no training in identifying or meeting the needs of intoxicated or drug dependent children. These children may be placed in isolation. For example, one of the plaintiffs, D.P., was arrested while intoxicated and was placed in isolation for uncooperative behavior. He received no counseling or assistance from anyone trained to deal with an intoxicated child. After shattering his finger and breaking out several teeth, he was transported to Dammasch Hospital.

K.K. was also detained at CCCF while intoxicated. Because of belligerent behavior, he was placed in a juvenile section in handcuffs. He received no medical screening, monitoring, or assistance, and was later found on his cell floor in a pool of vomit and urine. He was then taken to Columbia District Hospital where he was admitted for observation.

There is no daily sick call for children at CCCF. There is no regular program for a doctor or a registered nurse to visit the jail to identify or attend to the medical needs of children held in CCCF. Emergency medical equipment in the jail consists of a first aid kit and an oxygen tank.

Corrections officers determine whether a child needs medical treatment based upon perception, common sense, and experience. If a child believes he or she is ill, the child notifies a corrections officer, who decides whether the child should be taken to a doctor. There are no written criteria for corrections officers to follow in determining whether a child should see a doctor.

There are no special rules or procedures for the treatment of emotionally disturbed children who panic in a jail setting. There is no emergency medical health service. There

are no psychiatrists, psychologists, or counselors on call. Frequently children in CCCF do not see their juvenile court counselors at all during their incarceration in the jail. There is no written log kept of juvenile court counselor visits to the jail.

There are no educational programs for children at CCCF. Children are not allowed to have books or magazines or pencils and paper. This policy is not the jail's policy, but the policy of the Juvenile Department. Corrections officers have been instructed by the Juvenile Department not to give children reading material or pencils and paper. It is also the policy of the sheriff. C. H., a juvenile, was twice jailed for truancy. Jailers refused to give him any of his school books.

There are no recreational programs, materials, or activities for children at CCCF. Children have no access to televisions, radios, or any other recreational material, including books, magazines, and pencils and paper.

There are no facilities or equipment for exercise. There is no exercise room and there are no organized exercise classes or programs for children, although children may exercise in the cells or in the dayroom area.

Children are treated considerably differently from adults. Adults have access to books, television, radio, cards, and other recreational materials; children do not. Adults are allowed to have underwear brought to them at CCCF; children are not. Adults have regular visitation and may visit with friends as well as families; children have no regularly scheduled visitation. Adults are allowed to send and receive mail; children are not allowed to send or receive mail. Adults are provided paper, writing material, envelopes, and stamps. Children are not allowed to have paper, writing material, envelopes, or stamps. Adults are allowed to make one phone call

upon admission; children are not allowed to make a phone call upon admission. Adults are allowed to make phone calls during their period of incarceration. Children at CCCF, prior to the court entering its preliminary injunction dated June 10, 1981, were prohibited from making phone calls without Juvenile Department permission. When an attorney comes to CCCF to see an adult inmate, this visitation is allowed. If an attorney comes to CCCF to see a child, the attorney must go through the Juvenile Department to gain access to the child.[7] An inmate manual governs the conduct of adults held in CCCF. Children are not advised what behavior will result in disciplinary action or sanctions. There are no grievance procedures for children.

Parents are not allowed to visit children confined in CCCF without permission of the Juvenile Department. Jailers do not have the authority to allow parent-child visitation. Visitation with children in CCCF is controlled by the Juvenile Department and not the jail. The visitation policy for children is not in writing. There are no standards within the Juvenile Department for granting or denying visits with children in CCCF. No contact visits are allowed. Parents and detained children must talk to one another by means of a telephone and are separated by shatter-proof glass. Jailers sometimes will not tell inquiring parents whether or not their child is, in fact, in jail.

There are no formal written policies and procedures pertaining to the care and treatment of juveniles at CCCF. The policies that do exist are developed informally and handed down verbally. Therefore, many policies are in a constant state of flux and/or confusion. Furthermore, it is impossible to determine which policies are promulgated by the Juvenile Department and which policies are promulgated by the Sheriff's Department. There is no written contract between the Juvenile Department and

the Sheriff's Department or jail regarding confinement of children.

There are no written rules governing the conduct of children held in CCCF. Therefore, children are not notified of what behavior is expected of them. What behavior is expected of them is left to the individual whims and caprices of the various corrections officers in charge. For example, it is up to an individual officer's discretion to decide if a child should be locked in isolation. It is up to an individual officer's discretion what restraining physical tactic to employ in dealing with a child.

All full-time corrections officers at CCCF are men. There are three part-time matrons who are employed to handle female children. Matrons are not stationed within the security detention area of CCCF. The part-time matrons are not required to receive training that male corrections officers receive. If a female child wants to get the attention of a matron, she first must get the attention of a male guard, who in turn contacts the matron. Ordinarily, female children are not informed by jail staff as to how to get the attention of a matron. Frequently only one corrections officer staffs the jail.[8]

Corrections officers at CCCF are basically jail staff. They have no training and little time to work with children. For example, if a child locked in a cell is screaming or yelling, the officer may go to the cell and yell, "Quiet down." The personnel at CCCF are not prepared or trained to treat children in other than a manner consistent with a maximum security lock-up facility.

Although there is no evidence to indicate physical abuse such as beatings, there is evidence that corrections personnel have made verbal threats toward detained children and have refused to tell them the time of day when requested. Since there

is no natural light in the children's cells and since there are no clocks, children often become disoriented as to time.

Generally, the corrections staff has been insensitive to the needs of children in stressful situations. For example, when C.H. called for help when he and his brother were being harassed by older juveniles, the staff did not respond for a long time. One jailer told L.B. and other girls that they could bleed to death if they wanted to during an incident when the girls had broken a light bulb and were carving on their bodies. When D.B. called for help when he saw an adult inmate lying on the ground with slashed wrists, the corrections officer told him to "Shut up or go to the isolation cell." When D.P. refused to sign a paper during the booking process, a corrections officer grabbed D.P. by the hair and used an arm lock to pull D.P. to his cell. One corrections officer threatened to put D.P. in a cell with a "buck nigger" and showed D.P. a bloody shirt which the officer claimed indicated what happened to the last person who shared a cell with a "buck nigger."

Children in CCCF are allowed to see and hear adult inmates.[9] All entry ways, passages, and exits to and from the facility are the same for juveniles and adults. Children in both isolation and regular cells can and do communicate with adult inmates. Several of the plaintiffs have been subjected to sexually suggestive comments from adults. Corrections officers do not invite child-adult communication; however, they cannot prevent it.

In January, 1980, the Columbia County Circuit Judge appointed a special investigating Grand Jury to make a complete investigation into the conditions at CCCF. That Grand Jury inspected the jail and took testimony. In May, 1980, the Grand Jury found numerous deficiencies in the facility and specifically recommended that children not be kept in CCCF until these

conditions were remedied. The Grand Jury further expressed "hope" that alternatives to confinement of children in CCCF would be developed.

After the Federal Defender for the District of Oregon investigated conditions in CCCF, the United States Marshals Service discontinued placement of federal prisoners in CCCF.

Columbia County has some cost-effective alternative facilities for housing children. Shelter care is available. Defendants agree that removal of children from CCCF could result in a potential financial saving to Columbia County. Facilities in Cowlitz County, Washington, and at the Multnomah County Juvenile Detention Facilities, in Portland, Oregon are available. Columbia County participates in the Juvenile Services Act and in the 1981-82 biennium received approximately $100,000 under that act. Columbia County has been negotiating for and could receive funds in the amount of $36,000 under the Boys and Girls Aid Jail Removal Initiative Proposal. Columbia County has a special fund of approximately $25,000 given as a bequest for the betterment of conditions for children.

Data from a contiguous county, Clackamas County, indicate that children requiring secure custody in Clackamas County are housed in Multnomah County's Juvenile Detention Facility and that this program does not cost Clackamas County any more money than putting children into jails. Columbia County can request free technical assistance through the Federal Office of Juvenile Justice and Delinquency Prevention. At no cost to Columbia County, procedures, practices, programs, and planning can be provided so that Columbia County has access to expertise and planning and monitoring skills of experts in the field of juvenile care. It would take approximately 30 days to effect a 100% removal of children from CCCF and set up alternatives.

Current literature in the field of juvenile justice

indicates that behavior modification of socially-deviant children is best achieved when children are diverted from the criminal justice system and its jails and punishments whenever possible. Studies also indicate that whenever restraints of children are necessary for the protection of society or protection of the children themselves, these restraints are best carried out through diversion programs, home detention, shelter care, crisis or emergency centers, or through intensive counselling and monitoring. As a last resort, the literature indicates, children who need to be confined should be held - not in jails or dungeons - but in juvenile detention centers geared to meet the needs of these children.

The jailing of children in maximum security adult jails such as CCCF stigmatizes (or brands) them as criminals. This interferes with their relationships with their families, schools, and communities - and most of all with their ability to confront adolescent crises and emerge from those crises as law-abiding productive adults. It increases the chance that they will forever be "criminals." The fact that the confinement is brief does not reduce the harm.

The plaintiffs were credible witnesses. Details of their stories were corroborated by the testimony of defendants, themselves, the Columbia County Grand Jury report, the Federal Defender's report, the CCCF jail records (and absence of records), and the expert witnesses.

Defendant Tewksbury has publicly described CCCF as "pretty much a bare lock-up, just like the adult jail, but the kids don't get the same privileges . . . It's a boring place, a helluva place." He has further stated "Detention is punishment and I try to make it as unappetizing as possible. The last place a child wants to be."

/ / / / /

GENERAL FACTUAL FINDINGS

CCCF is designed for the purpose of confinement, without regard for human dignity or need. Nothing over and above the basic minimums necessary for the maintenance of bodily functions is provided to children at CCCF. Nothing at CCCF is responsive to the emotional and physical needs of children in conflict with the law and their families. CCCF is a maximum security lock-up facility.

Placement of children within cells without regard to their ages or levels of maturity and without adequate supervision by trained corrections staff and without regard to the reasons why they are being held, increases antisocial behavior such as violence and physical abuse.

To require a female child to strike a cell door or to yell for assistance in order to receive sanitary napkins causes needless embarrassment and humiliation to such child. To require any child to go without underwear in a culture in which underwear is considered a requirement of dress causes needless embarrassment and humiliation for the child.

The requirement that children wear jail "uniforms," and the lack of privacy for the use of showers and bathrooms contribute to feelings of anxiety and loss of self-esteem which are counterproductive to the goals of the juvenile justice system. The failure to provide counseling or psychiatric care for children in CCCF is also counterproductive to these goals.

The lack of programs and the method of "treatment" reflect policies of the Juvenile Department and the institution, rather than inadequate resources. These policies result in harsher treatment for pretrial detainee children than for adult prisoners, many of whom have been convicted and sentenced. The denial of access to family and friends by way of regularly scheduled visits, use of telephone, and use of mail, needlessly

creates or intensifies children's fears, hostilities, and rages, and is, again, counterproductive to the goals of the juvenile justice system.

The failure to have a written policy results in confusion, arbitrary decisions, and different treatment under similar situations. Without written rules children are at the mercy of the corrections staff and therefore subject to unnecessary anxieties about what to do or expect. There is nothing for children to do while confined at CCCF. This creates needless idleness, boredom, acute anxiety, fear, depression, and hostility. Idle, unattended, confined children present special supervisory problems. They frequently become destructive and cause physical harm to each other, themselves, or to their surroundings.

CCCF is inadequately staffed and the staff is inadequately trained to handle children. As a result, there is a lack of proper care of children. Jailers without special training in dealing with children under stress or emotionally distressed children are not qualified to provide the kind of counseling and therapy which is consistent with the goals of the juvenile justice system.

Confinement in CCCF is clearly and fundamentally intended to punish children. Punishment is the treatment of choice of Columbia County's Juvenile Department for its detained children. This "treatment" has little or nothing to do with simple detention, rehabilitation, or even the protection of society.

CONTENTIONS OF THE PARTIES

Plaintiffs contend inter alia that the conditions and restrictions imposed on plaintiffs and plaintiffs' class by defendants constitute punishment and thereby violate plaintiffs' rights as pretrial detainees not to be punished under the due

process clause of the 14th Amendment to the United States Constitution.

Plaintiffs seek (1) a declaration that their federal constitutional rights have been violated, and (2) a permanent injunction enjoining defendants from confining plaintiffs and members of their class in CCCF or any other adult correctional facility. Plaintiffs request an award of attorney fees and costs, and any other relief that the court deems just and proper.

Defendants contend that they have acted pursuant to Oregon statutory provisions and that the Oregon statutory provisions pertaining to the detention of juveniles do not violate the United States Constitution.

This case requires the court to examine the federal due process rights of children detained prior to a hearing or adjudication in CCCF, an adult maximum security correctional facility.

CONFINEMENT IN CCCF AS PUNISHMENT

Oregon statutory law allows a child to be detained in local correctional facilities such as CCCF so long as the portion of the facility holding the child is screened from the sight and sound of adult prisoners. ORS 419.575, ORS 169.079 (1979) (amended 1981; renumbered ORS 169.740). Under Oregon law, then, plaintiffs may legitimately be incarcerated in CCCF prior to an adjudication of their status or guilt. It is the scope of their federal constitutional rights during this period of confinement before a hearing that is the focus of this case.

The Due Process Clause of the Fourteenth Amentment to the United States Constitution requires that a pretrial detainee not be punished. Bell v. Wolfish, 441 U.S. 520, 99 S. Ct. 1861 (1979). A state does not acquire the power to punish a person - adult or child (assuming a child is convicted of committing a crime) - until after it has secured a formal adjudication of

guilt in accordance with due process of law. Not every disability imposed in preadjudication detention amounts to "punishment," however. The very fact of detention implies a measure of restriction of movement, choice, privacy, and comfort.

This court must determine whether the conditions imposed upon plaintiffs are imposed for the purpose of punishment or whether they are incidents of some other legitimate governmental purpose. In this case the determination is simple. Defendant Tewksbury has stated publicly and expressly that he intends to punish children detained in CCCF. It is the express intent of defendants that plaintiffs' confinements in CCCF be punishments. The intent to punish is carried out in the extraordinary conditions of confinement imposed on plaintiffs while confined in CCCF. Confinement of child pretrial detainees in CCCF as it now exists is punishment prior to an adjudication of guilt.

Defendants have violated plaintiffs' due process rights under the Fourteenth Amendment to be free from pretrial punishments by confining plaintiffs in CCCF. Those extraordinary conditions which alone and in combination constitute punishment are:

1. Failure to provide <u>any</u> form of work, exercise, education, recreation, or recreational materials.

2. Failure to provide minimal privacy when showering, using toilets, or maintaining feminine hygiene.

3. Placement of intoxicated or drugged children in isolation cells without supervision or medical attention.

4. Placement of younger children in isolation cells as a means of protecting them from older children.

5. Failure to provide adequate staff supervision to protect children from harming themselves and/or other children.

6. Failure to allow contact between children and their families.

7. Failure to provide an adequate diet.

8. Failure to train staff to be able to meet the psychological needs of confined children.

9. Failure to provide written institutional rules, sanctions for violation of those rules, and a grievance procedure.

10. Failure to provide adequate medical care.

CONFINEMENT IN JAILS AS PUNISHMENT FOR STATUS OFFENDERS

Plaintiffs also contend and ask the court to rule that even if the conditions of confinement at CCCF are corrected, plaintiffs and plaintiffs' class may not be detained in CCCF because the confinement of plaintiffs and plaintiffs' class in any adult jail constitutes punishment per se and is therefore unconstitutional. The court will address this contention first as it relates to status offenders, i.e., runaway children or children who are out of parental control.

The impact that a runaway child or a child out of the control of his or her parents has on the family and may have on the community causes alarm and often leads to the necessity for societal intervention. The runaway or out-of-control child can jeopardize the lives and property of other people as well as his own life. The question is: Does the status of such a child justify placing that child in a jail?

Society has historically used terror, confinement, and punishment as a means of dealing with "status." For example, insane people used to be beaten and imprisoned. Lepers were sent to remote and undesirable geographical areas. As recently as 1962 the legislature of the State of California enacted a law which made being a narcotic addict a crime for which punishment could be inflicted. That law was ruled unconstitutional by the United States Supreme Court. Robinson v. State of California, 370 U.S. 660, 82 S. Ct. 1417 (1962).

A child who has run away from home or is out of parental control is clearly a child in distress, a child in conflict with his family and his society. But nobody contends he is a criminal. A runaway child or a child out of control, as an addict or an insane person, may be confined for treatment or for the protection of society, but to put such a child in a jail -- any jail -- with its criminal stigma -- constitutes punishment and is a violation of that child's due process rights under the Fourteenth Amendment to the United States Constitution. No child who is a status offender may be lodged constitutionally in an adult jail.

CONFINEMENT IN JAILS FOR CHILDREN ACCUSED OF COMMITTING CRIMES

The court must now turn to the issue of whether it is constitutionally permissible to lodge children who have been accused of committing crimes in adult jails pending adjudication of the charges against them. The court has above ruled that confining children in CCCF pending adjudication of crimes or status constitutes punishment, and the court has further ruled that detaining children in any jails on the basis of their status or condition constitutes punishment and is an unconstitutional deprivation of due process. The court must now deal with children charged with committing crimes and must suppose that the jails in which these children are lodged are modern, "enlightened" kinds of jails - ones which provide different methods of discipline, care, and treatment appropriate for individual children according to age, personality, and mental and physical condition. The court must further suppose that these jails are adequately staffed and provide reasonable measures of comfort, privacy, medical care, food, and recreation. Would it be constitutionally permissible to lodge children accused of committing crimes in these jails?

In deciding this issue, the court declines to rule on the "punishment" aspect of the due process clause of the 14th Amendment. Instead the court will rely on the "fundamental fairness" doctrine enunciated in In Re Gault, 387 U.S. 1, 87 S.Ct. 1428 (1967) and juvenile cases decided after the Gault decision.

Due process - or fundamental fairness - does not guarantee to children all the rights in the adjudication process which are constitutionally assured to adults accused of committing crimes. For example, children are not entitled to a jury trial, to indictment by Grand Jury, or to bail. In lieu of these constitutional rights, children are not to be treated or considered as criminals. An adjudication of a child as guilty does not have the effect of a conviction nor is such child deemed a criminal. Even upon a finding of "guilt" as to the criminal charges, the child may not be imprisoned in adult jails as punishment for his acts. ORS 419.507, 419.509.

Juvenile proceedings, in the State of Oregon as elsewhere, are in the nature of a guardianship imposed by the state as parens patriae to provide the care and guidance that under normal circumstances would be furnished by the natural parents.[10] It is, then, fundamentally fair - constitutional - to deny children charged with crimes rights available to adults charged with crimes if that denial is offset by a special solicitude designed for children.

But when the denial of constitutional rights for children is not offset by a "special solicitude" but by lodging them in adult jails, it is fundamentally unfair.[11] When children who are found guilty of committing criminal acts cannot be placed in adult jails, it is fundamentally unfair to lodge children accused of committing criminal acts in adult jails.

In 1966 the United States Supreme Court envisioned the

problem confronting this court:

> ". . . There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."

Kent v. United States, 383 U.S. 541, 556, 86 S.Ct. 1045 (1966).

The supervisors at jails are guards - not guardians. Jails hold convicted criminals and adults charged with crimes. Jails are prisons, with social stigmas. Children identify with their surroundings. They may readily perceive themselves as criminals, for who goes to jail except for criminals? A jail is not a place where a truly concerned natural parent would lodge his or her child for care and guidance. A jail is not a place where the state can constitutionally lodge its children under the guise of parens patriae.

To lodge a child in an adult jail pending adjudication of criminal charges against that child is a violation of that child's due process rights under the Fourteenth Amendment to the United States Constitution.

CONCLUSION

Plaintiffs are entitled to a permanent injunction and to reasonable attorneys' fees including reasonable attorneys' fees for the hearing on the motion for preliminary injunction. Plaintiffs' counsel shall submit to the court a proposed judgment order disposing of this case. Plaintiffs' counsel shall at the same time file their claims for attorneys' fees with supporting data and a memorandum. Defendants' counsel shall have 20 days to object to the form of the judgment and to request a hearing on the amount of the attorneys' fees. If the court receives no objection or request for hearing, it will sign the judgment order and will allow such attorneys' fees as it deems reasonable in

/ / / / /

accordance with law.

DATED this 6 day of August, 1982.

Helen J. Frye,
United States District Judge

FOOTNOTES

1. Although the two new Columbia County Circuit Court Judges have taken steps to require that the court rather than counselors or jailers make detention choices, the procedure is still not in writing so as to be clearly articulated and understood.

2. For sanitary reasons personal clothing is confiscated from children and adult prisoners. Adults at CCCF can, however, have underwear brought to them, and children cannot.

3. The jailer and Juvenile Direcor contend the isolation cells are no longer in use. Word-of-mouth policy permits the use of isolation cells, however. There is nothing in writing that forbids the use of isolation cells.

4. This court in its tour of CCCF witnessed the water erupt several inches above the floor and splash on the cell floor around the sewer hole. A Columbia County Special Grand Jury recommended that the isolation cell not be used in its condition.

5. This court in its tour of CCCF entered an isolation cell and could hear and understand through the cell door a speaker standing in the corridor next to the adult dormitories.

6. A Columbia County Special Grand Jury found that officers did not always have time to prepare meals.

7. An attorney appointed by a Juvenile Court Judge may have access to a child without permission of the Juvenile Department. All of the plaintiffs and presumably many of the class, had no appointed attorney while detained in CCCF.

8. The Columbia County Special Grand Jury found that the jail is inadequately staffed, and therefore inmates do not receive proper care.

9. Although CCCF is in violation of the screening provisions of ORS 419.575, ORS 169.079 (1979) (amended 1981; renumbered ORS 169.740), statutory violations at CCCF will not be addressed in this opinion.

10. ORS 419.474(2) provides that juvenile court proceedings ". . . shall be liberally construed to the end that a child coming within the jurisdiction of the court may receive such care, guidance and control, preferably within his own home, as will lead to the child's welfare and the best interests of the public, and that when a child is removed from the control of his parents the court may secure for him care that best meets the needs of the child."

11. This opinion does not apply to children who are remanded to adult criminal courts and who are afforded all of the constitutional rights accorded to adults charged with crimes. This opinion also does not apply to children temporarily detained in police stations pending the obtaining of identifying information.

Hendrickson

SUMMARY

Issue: Jail Removal

Case: Hendrickson v. Griggs
U.S. District Court (Iowa), 1987

APR 1 3 1987

033187DeJMB

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

THOMAS NEIL HENDRICKSON, JR.; BERTHA M. FOY, a minor, by her next friend, Blake Parker; and SESSIONS HARPER, a minor, by his next friend, Blake Parker; individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

CHARLES GRIGGS, individually and in his capacity as Sheriff of Webster County; LEONARD HANSCH, Chairman, and ELMER PLINER, JOSEPH CUNNINGHAM, JILL MESERLY and MYRON GROAT, individually and as members of the Webster County Board of Supervisors; WEBSTER COUNTY, IOWA; TERRY E. BRANSTAD, individually and in his capacity as Governor of the State of Iowa; and RICHARD R. RAMSEY, individually and in his capacity as Executive Director of the Iowa Criminal and Juvenile Justice Planning Agency,

Defendants.

NO. 2C 84-3012

ORDER

The Court has before it:

- motions for dismissal under Rule 12(b)(6) and 12(b)(7), appointment of a guardian ad litem under Rule 17, and summary judgment filed by Defendants Griggs, Hansch, Pliner, Cunningham, Messerly, Groat, and Webster County

(hereinafter the "County Defendants");

- a motion for summary judgment and a motion for a temporary restraining order filed by the plaintiffs; and
- a motion for summary judgment filed by Defendants Branstad and Ramsey (hereinafter the "State Defendants").

Because the motion for a temporary restraining order was considered at a hearing at which all defendants were represented, the Court will treat that motion as a motion for a preliminary injunction. Walker v. O'Bannon, 487 F.Supp. 1151, 1153 (W.D.Pa. 1980). The plaintiffs have filed a motion to recertify the plaintiff class and create a defendant class, although this motion will be held in abeyance by the Court. While all motions for summary judgment were filed before the plaintiffs' motion for a TRO, the Court will address the motions for summary judgment today only to the degree necessary to determine whether the plaintiffs' request for a TRO must be denied as a matter of law. For the reasons given below, the Court denies the defendants' motions for summary judgment insofar as they involve the following assertions:

1) The plaintiffs' § 1983 claims are barred by res judicata and collateral estoppel.

2) The plaintiffs must exhaust administrative remedies.

3) The Office of Juvenile Justice and Delinquency Prevention ("OJJDP") has primary jurisdiction over the defendant's statutory § 1983 claim.

4) The plaintiffs' statutory § 1983 claim is not ripe for adjudication.

5) The plaintiffs must proceed through a guardian ad litem.

6) The plaintiffs' JJDPA claim must be dismissed because a necessary and indispensable party has not been sued.

7) Section 1983 does not provide a cause of action to seek redress for violations of rights created by § 5633 of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. § 5601, et seq. ("JJDPA").

The Court grants the state defendants' motion for summary judgment against the plaintiffs' prayer for an order compelling the state to return OJJDP funds already received and stop receiving such funds. The Court postpones consideration of the plaintiffs' motion for summary judgment and the remaining portions of the defendants' motions for summary judgment, and grants a substantially modified version of the plaintiffs' motion for a preliminary injunction.

All defendants have moved for dismissal or summary judgment on plaintiffs' claim that they are entitled to relief because several jailing practices of the county defendants violate the JJDPA. The plaintiffs claim that the state plan requirements in § 5633 of the JJDPA create rights enforceable under § 1983, or in the alternative, give rise to an implied cause of action under the four-step analysis of Cort v. Ash, 422 U.S. 66 (1975).[1]

---

[1]Two federal courts have previously addressed this question. One summarily found a cause of action, Kentucky Association of Retarded Citizens v. Conn, 510 F.Supp. 1223, 1247-48 (W.D.Ky. 1980), aff'd, 674 F.2d 582 (6th Cir. 1982), cert. denied, 459 U.S. 1041 (1983). Another court summarily found no cause of action, Doe v. McFaul, 599 F.Supp. 1421, 1430 (S.D.Ohio 1984). Because of the brevity of the analysis in each of these decisions, this is akin to a case of first impression.

The Juvenile Justice and Delinquency Prevention Act was enacted in 1974, with relevant amendments in 1977, 1980 and 1984. Title II of the original Act established a formula grant program under which states and local governments could seek funds from the OJJDP for projects and programs related to juvenile justice and delinquency. Pub. L. No. 93-415, Title II, § 221, 88 Stat. 1119 (1974)(codified as amended at 42 U.S.C. § 5631 (1982)). Section 223 of the Act required states seeking formula grants to submit a plan for carrying out the purposes of the Act and established a list of state plan requirements. Section 223, supra (codified at § 5633). Under a 1980 amendment, participating states have been required to submit annual performance reports to "describe the status of compliance with state plan requirements." Pub. L. No. 96-509, § 11(a)(1)(codified at § 5633(a)).

This case involves the defendants' compliance with three such requirements:

1. The deinstitutionalization of status offenders. Section 5633(a)(12)(A), as amended in 1977 and 1980, requires each plan to "provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities."[2] (Hereinafter "subsection 12").

---

[2] 1980 and 1984 amendments produced the following proviso:

Failure to achieve compliance with the requirement of subsection (a)(12)(A) of this section within the three-year time limitation shall terminate any state's eligibility for funding under this subpart unless the Administrator determines the state is in substantial

2. The ban on regular contact between juveniles and incarcerated adults. Section 5633(a)(13) of the original Act requires the plan to "provide that juveniles alleged to be or found to be delinquent and youth within the purview of paragraph 12 shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial or criminal charges." (Hereinafter "subsection 13").

3. The jail removal mandate. Finding that "the time has come to go farther," Congress added subsection (a)(14) in 1980. H.Rep.No. 946, 96th Cong., 2d Sess. 24 (1980). As amended in 1984, it states that a plan must "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 appearances within 24 hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which--(i) are outside a Standard Metropolitan Statistical Area, (ii) have no existing acceptable alternative placement available, and (iii) are in compliance with the provisions of paragraph 13.[3] (Hereinafter "subsection 14").

(Note 2 continued)
compliance with the requirement, through achievement of deinstitutionalization of not less than seventy-five percentum of such juveniles or through removal of one hundred percent of such juveniles from secure correctional facilities, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding two years. Section 5633(c).

[3]The 1980 amendment contained a "substantial compliance provision for subdivision 14 which is very similar to the (12)(A) provision quoted in note 2, supra. As amended in 1984, it permits the state to retain eligibility after the December 5, 1985 deadline for compliance if the Administrator determines the state has achieved 75% removal and the state has made an unequivocal commitment to achieving compliance by 1988. Section 5633(c).

Claiming that Webster County fails to comply with each of these requirements and that the state is not substantially complying with subdivisions 12 and 14, the plaintiffs seek declaratory, compensatory and equitable relief under § 5633 alone and in combination with § 1983.[4]

I. PRELIMINARY ISSUES

As the plaintiff class is presently certified, its members have been or will be placed in the Webster County Jail by a juvenile court. The county defendants argue that the plaintiffs' § 1983 claims are precluded under the doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion) because they could raise these issues in juvenile court.[5] This argument can only pertain to those plaintiffs who have already been placed in the jail, because with the exception of those now in jail, the plaintiffs who would be protected by the injunction have not had their day in court.

The Court finds that neither issue nor claim preclusion can bar the claims of the previously jailed plaintiffs. Issue

---

[4]Because the Court finds that a cause of action is available under § 1983 to protect rights created by § 5633, the Court need not decide whether § 5633 itself gives rise to an implied cause of action.

[5]The county defendants have raised a related claim that the Court must defer to the state juvenile courts under Railroad Commission v. Pullman Co., 312 U.S. 496 (1941), or Younger v. Harris, 401 U.S. 37 (1970). However, a federal court may not use Pullman abstention to avoid a purely statutory question, and the Younger doctrine is really a form of the irreparable injury requirement. Because the Court finds, infra, that the plaintiffs commonly suffer an irreparable injury prior to juvenile court proceedings, the Court cannot defer under Younger.

preclusion is unavailable because the defendants have produced no evidence that these issues were actually litigated or necessarily decided in any juvenile court proceedings. Ideal Mutual Insurance Co. v. Winker, 319 N.W.2d 289, 296 (Iowa 1982). Iowa law governs the claim preclusive effect of an Iowa juvenile court's judgment, and the Court cannot find an Iowa case in which claim preclusion was successfully asserted against a civil plaintiff because he was a defendant in a prior criminal case, let alone a juvenile court defendant. The Restatement (Second) of Judgments does not give prior criminal judgments a claim preclusive effect. See id. at § 85 comment (a) (1980). Although a § 1983 plaintiff can be precluded from raising issues which she could have raised in a prior civil action which she initiated, Migra v. Warren City District Board of Education, 465 U.S. 75 (1984), a footnote in Migra suggested that former state court defendants should be treated differently because they do not voluntarily go to state court first. Id. at 85 n.7. In a very important case, the Second Circuit recently held that Migra does not apply to federal plaintiffs who were the defendants in a prior state court action. Texaco v. Pennzoil, 789 F.2d 1133, 1144 (2d Cir.), reversed on other grounds, No. 85-1798 (U.S. April 6, 1987). In light of this authority, the Court finds that an Iowa court would not give a juvenile judge's placement decision a claim preclusive effect. The county defendant's motion to dismiss on this ground is denied.

The defendants assert that the plaintiffs must first file a complaint with the OJJDP, as permitted in 28 C.F.R. § 18.5(j)

(1986).[6] They contend that § 18.5(j) is a remedy which must be exhausted and that only the OJJDP has primary jurisdiction to decide whether states have complied with § 5633. If the plaintiffs can proceed under § 1983, no exhaustion requirement applies. Patsy v. Board of Regents, 457 U.S. 496 (1982). The doctrine of primary jurisdiction[7] presumes that the plaintiffs can "get relief" administratively, see Rosado v. Wyman, 397 U.S. 397, 406 n.8 (1970); Chowdhury v. Reading Hospital and Medical Center, 677 F.2d 317, 320 (3d Cir. 1982). However, the most important form of relief the plaintiffs seek--an order requiring compliance--is not available from the OJJDP. See § 18.5(a). The OJJDP can

---

[6]Section 18.5(j) states:

> Any person may request the responsible agency official to determine whether a grantee has failed to comply with the terms or the statute under which the grant was awarded, agency regulations or the terms and conditions of the grant. The responsible agency may, in its discretion, conduct an investigation into the matter and, if warranted, make a determination of noncompliance. Only a grantee determined to be in noncompliance may request a compliance hearing.

[7]In arguing that the OJJDP has primary jurisdiction, the county defendants rely in part upon deposition testimony from former OJJDP Administrator Alfred Regnery that he "would argue" that the plaintiffs must first use § 18.5(j). Although courts can sometimes defer to allow a non-judicial resolution of a legal question, the separate question of whether the Court can defer is for the Court alone to decide. Cf. AT&T Technologies, Inc. v. Communication Workers of America, 54 U.S.L.W. 4339, 4341 (U.S. April 7, 1986).

only cut off funding. The doctrine of primary jurisdiction therefore does not bar the plaintiffs' claim.[8]

In briefs filed prior to subsection 14's compliance deadline of December 5, 1985, the defendants argued that plaintiffs' claim under that subsection was not ripe. Following that date, they argued that the claim was not ripe because the Administrator had not yet decided whether the defendants had complied or substantially complied. To the extent that this argument implies that only the OJJDP has jurisdiction to decide whether the defendants satisfy § 5633, the argument merely restates their primary jurisdiction argument which the Court has already rejected. Ripeness depends upon whether the plaintiffs' injuries have occurred or are about to occur, not whether the illegality of that injury has already been established. That question is properly before the Court at this time.

The county defendants have argued that Fed.R.Civ.P. 17 requires a plaintiff class of minors to proceed through a guardian ad litem and have asked the Court to appoint one. Plaintiffs' counsel respond that one of them can represent the class as "next friend". Under standards set out in Child v. Beame, 412 F.Supp. 593, 599 (S.D.N.Y. 1976), the Court concludes that the class can

---

[8]The Court also believes the OJJDP lacks primary jurisdiction to determine the defendants' compliance with the JJDPA because the issue does not involve "technical questions of fact uniquely within the expertise and experience of an agency." Nader v. Allegheny Airlines, 426 U.S. 290, 304 (1976). The task of applying law to fact is not unusually complex, the standards require little interpretation, and the Court can rely upon the same fact-gathering system of performance reports upon which the OJJDP would rely.

be adequately represented by the plaintiffs' counsel, so that a guardian ad litem need not be appointed at this time.

Finally, the Court must decide whether the plaintiffs' JJDPA claim must be dismissed for failure to name an indispensable party. The county defendants argue that the plaintiffs must sue the juvenile judges who order the sheriff to place class members in jail, and that their failure to do so warrants dismissal under Rule 12(b)(7). The Eighth Circuit's decision in R.W.T. v. Dalton, 712 F.2d 1225, 1233 (8th Cir. 1983), indicates that juvenile judges are not indispensable parties to actions of this sort. The motion is therefore denied.

II. THE PLAINTIFFS' § 1983 CAUSE OF ACTION FOR RIGHTS CREATED BY § 5633

Prior to 1980, citizens could only enforce federal statutory rights if a cause of action was expressly provided for in the statute or if one could be implied under general principles stated in Cort v. Ash, 422 U.S. 66, 78 (1975). Under these principles, a cause of action could only be implied if the plaintiff was one of the class for whose especial benefit the statute was enacted, a congressional intent to create a remedy could be found, such a remedy would be consistent with legislative purposes, and it would not inappropriately interfere with a traditionally state area. Id. In effect, these requirements placed the burden on the plaintiff to find a specific intent to permit this particular form of a remedy.

Since 1874, § 1983 has expressly provided a private cause of action for claims arising from "the deprivation of any rights,

privileges or immunities secured by the Constitution and laws" by individuals acting under color of state law. Until Maine v. Thiboutot, 448 U.S. 1 (1980), the "and laws" phrase was generally ignored. In Thiboutot, the court formally recognized that § 1983 provided a private cause of action for "claims based on purely statutory violations of federal law" by state actors. Now plaintiffs suing state actors who cannot satisfy Cort v. Ash by showing that the same Congress which created a statutory right also intended to give them a civil remedy may rely upon the general purpose of § 1983--"to provide a remedy, to be broadly construed, against all forms of official violations of federally protected rights." Monell v. New York City Department of Social Services, 436 U.S. 465, 701 (1978).

Two requirements persist. A separate federal statute must create enforceable rights, privileges or immunities, Pennhurst State School and Hospital v. Halderman, 451 U.S. 1, 19 (1981) (hereinafter "Pennhurst I"), and Congress must not have specifically foreclosed the § 1983 remedy, Middlesex County Sewerage Authority v. National Sea Clammers Association, 453 U.S. 1, 20 (1981).

A. Does § 5633 Create Enforceable Rights?

The easy part of answering this question is deciding where to look; "the key to the inquiry is the intent of the legislature." See Clammers Association at 13; Hill v. Group Three Housing Development Corp., 799 F.2d 385, 394 n.10 (8th Cir. 1986). The difficult part is deciding what reflects an intent to create a right. As usual, Congress "has voiced its wishes in muted strains

and left it to the courts to discern the theme" indirectly. Rosado v. Wyman, 390 U.S. at 412. If the Court were to define the term "right" so narrowly that no right would exist unless the Court could find an intent to permit a private suit, nothing would be left of Thiboutot.[9] On the other hand, the purpose behind the quiet inclusion in § 1983 of the phrase "and laws" is too uncertain to permit that statute to give rise to a remedy against any state official who has violated any federal law. See Consolidated Freightways Corp. v. Kassel, 730 F.2d 1139 (8th Cir. 1984); First National Bank of Omaha v. Marquette National Bank, 636 F.2d 195, 198-99 (8th Cir. 1980).

A right was easily found in Thiboutot because the case involved an entitlement program. The existence of a right was easily rejected in Pennhurst I, when plaintiffs sought to enforce a provision labeled as a bill of rights for persons with developmental disabilities, but which created no separate obligation upon those states receiving funds under the law to respect those rights. The Supreme Court found that because the law "does no more than express a congressional preference for certain kinds of treatment," the "rights" described were not rights enforceable under § 1983. 451 U.S. at 19.

---

[9]For this reason, the Court must reject the urge to analogize § 1983 rights to the rights of third-party beneficiaries in contract law, because in most states third-party beneficiary rights exist only where both contracting parties intended to create a remedy enforceable in court by third parties. Martinez v. Socoma Companies, Inc., 11 Cal.3d 394, 113 Cal.Rptr. 585, 521 P.2d 841 (1974); Restatement (Second) of Contracts §§ 304 and 313.

However, in so finding, the court emphasized that the language in question was too informal to even condition the state's eligibility for funding upon compliance therewith. Id. at 13, 19, 20 n.15, 21-22. For that reason, it did not fully consider the Solicitor General's position that a § 1983 right would exist if the law created conditions upon the state's eligibility for grants. Id. at 22.

The Supreme Court recently decided a case presenting that issue. In Wright v. Roanoke Redevelopment and Housing Authority, 55 U.S.L.W. 4119 (U.S. Jan. 14, 1987), tenants in federally subsidized low-income housing sued their public housing authority, alleging that it overbilled them for their utilities and thereby violated a federal rent ceiling. The ceiling was an express funding condition; if a housing authority violated the standard, the agency could have cut off funds. Id. at 4121. The Fourth Circuit Court of Appeals had ruled that the rent ceiling did not create § 1983 rights because it was "highly unlikely that Congress intended federal courts to make the necessary computations regarding utility allowances that would be required to adjudicate individual claims of right." 771 F.2d 833, 836-37 (4th Cir. 1985). The Fourth Circuit had also reasoned that "the existence of such a right is essentially negatived by the provisions of the annual contributions contract" between the defendants and HUD permitting HUD to sue local authorities which violated the ceiling. Id. at 837-38 n.9.

The Supreme Court reversed the Fourth Circuit, finding "little substance" to the claim that the amendment created no

rights. The Supreme Court merely noted that the utility rule was a "mandatory" limitation, and that "the intent to benefit tenants is undeniable." 55 U.S.L.W. at 4122.

The reasoning of the Fourth Circuit in that case and the defendants in this case--that an agency's right to cut off funds forecloses recognition of a § 1983 right of beneficiaries--is inconsistent with the Supreme Court's decision in Wright. Furthermore, the Supreme Court did not decide this issue as the Fourth Circuit had and the defendants would, by asking whether Congress would have intended federal courts to decide whether the obligations were violated; it merely looked to the mandatory nature of the defendant's obligation and the clarity of the intent to benefit the tenants.

The Court finds that the same indices of an intent to create a right are present in this case. In enacting subsections 12 through 14, Congress clearly intended to confer a special benefit upon a distinct class--detained juveniles.[10] The county defendants would characterize the subsections as an attempt to solve a societal problem, and the Court does not necessarily disagree. But if the public at large also benefits from these

---

[10]The House Report accompanying the 1980 amendment which added subdivision (14) stated:

> Witnesses during the hearing pointed to potential physical and sexual abuse encountered by juveniles incarcerated in adult jails. It was pointed out that in 1978, the suicide rate for juveniles incarcerated in adult jails was approximately seven times the rate of children held in secure juvenile detention facilities. One Department of Justice official termed this a "national catastrophe." H. Rep. No. 946 at 24, U. S. Code Cong. & Admin. News at 6111.

requirements, it is only because juveniles benefit. Compare California v. Sierra Club, 451 U.S. 287, 295 (1981).

This conclusion is supported by the phrasing of subdivision 14, a factor which the Supreme Court has considered important in other cases. In Universities Research Association v. Coutu, 450 U.S. 754, 772 (1981), the court held that no private cause of action would be implied from § 1 of the Davis-Bacon Act in part because it was "simply phrased as a directive to federal agencies engaged in the disbursement of funds," and was not drafted with an unmistakable focus on a benefited class. Id. The case the Coutu court sought to distinguish, Cannon v. University of Chicago, 441 U.S. 677 (1979), involved a statute phrased much like subdivision 14's ("no juvenile shall be detained . . .") requirement.[11] In Cannon, the court found an unmistakable focus on a benefited class from the phrasing of Title IX, 20 U.S.C. § 1681, which provides that "no person in the United States shall, on the basis of sex . . . be subject to discrimination under any educational program or activity receiving federal financial assistance."[12]

---

[11]Of course, subsection 14 has an exception. But as Fourth Amendment case law shows, rights can have many exceptions and still be considered "rights."

[12]As a test for the existence of a right, this semantic distinction has its limitations. See, e.g., U. S. Const. Amend. No. 1 (Congress shall make no law . . . .). Thus, the fact that subdivisions 12 and 13 are not phrased like Title IX is not enough reason to find that they do not create rights, when juveniles are the primary beneficiaries of their enactment.

Furthermore, unlike the preferences in Pennhurst I but like the utility regulations in Wright, subsections 12 through 14 create mandatory funding eligibility conditions to which states such as Iowa subject themselves by receiving JJDPA funds. If Iowa has not satisfied the mandates, either through full compliance or substantial compliance and an unequivocal commitment to comply, the state loses its eligibility. Section 5633(c). For this reason, the subsections are not simply a "nudge in a preferred direction," as the defendants argue.

It is also very significant that these subsections are more than funding conditions; they have given rise to duties. In order to receive funds, the state has been required to describe its plans, procedures and timetables for "assuring" that the requirements of subsections 12 through 14 have been met or would be met by the proper deadline. 28 C.F.R. §§ 31.303(c)(1), 31.303(d)(i) and 31.303(e)(1) (1986). This language of "assurance" leaves little doubt that by receiving funds, the state has assumed responsibility for seeing that the eligibility conditions would occur.[13]

---

[13]For reasons best stated by Judge Cardozo, the Court finds a duty without asking whether Iowa formally promised to comply with these requirements:

> The law has outgrown its primitive stage of formalism where the precise word was the sovereign talisman, and every slip was fatal. It takes a broader view today. A promise may be lacking but yet the whole writing may be "instinct with an obligation", imperfectly expressed.

Wood v. Lucy, Lady Duff-Gordon, 222 N.Y. 88, 118 N.E. 214 (N.Y. 1917). As administered by the OJJDP, § 5633 is instinct with an obligation by any reasonable reading of the statute and its regulations.

The state defendants have argued that the mandates of subsections 12 and 14 are too generalized to give rise to an individual right because substantial compliance provisions permit the state to temporarily comply while only reducing jailing of juveniles and status offenders by 75%. This is an attractive argument, but the Eighth Circuit Court of Appeals has impliedly rejected a similar theory. In Crawford v. Janklow, 710 F.2d 1321 (8th Cir. 1983), the plaintiffs were low-income persons who had been excluded from eligibility for assistance under South Dakota's implementation plan for the Low Income Home Energy Assistance Act. The court recognized that the responsible federal agency could only enforce the grant conditions by withholding funds, and that this could only be done in cases of substantial noncompliance. Id at 1325, 1326, citing 42 U.S.C. § 8626(a)(1) (1982). Nevertheless, the court viewed this provision as another reason to recognize a cause of action, as a sign that "such a private remedy is virtually a necessity to complete the legislative scheme of effective and efficient distribution of benefits." Id. at 1325. Furthermore, the substantial compliance exception to subsection 14 is not presently available to Iowa because it has not demonstrated an unequivocal commitment through legislative or executive action to achieving full compliance by 1988.

After looking at § 5633 for the factors which the Supreme Court and the Eighth Circuit have considered as reflective of an intent to create a right, the Court finds that subdivisions 12 through 14 create enforceable rights.

B. Have the Defendants Demonstrated that Congress Has Foreclosed Enforcement of These Rights in a § 1983 Action?

Once the plaintiffs demonstrate that the statute creates enforceable rights, the burden shifts to the defendants to demonstrate that Congress intended to foreclose their enforcement through § 1983. Wright at 4120. This burden is particularly heavy because the Supreme Court has limited the sources from which such an intent may be inferred to "an express provision[14] or other specific evidence in the statute itself." Id. Even if the statute provides its own remedial mechanism, it must be "sufficiently comprehensive and effective to raise a clear inference that Congress intended to foreclose a § 1983 cause of action." Id.

The defendants have argued that the OJJDP's power to terminate funding is a sufficiently comprehensive remedy for violations of any rights created by § 5633. However, the Court cannot confuse remedies with mere sanctions. If the OJJDP cuts off funding for Iowa's failure to live up to its obligations, none of the juveniles whose rights were violated by improper placement in jails will be helped in the least bit. Because the power to cut off funds is "woefully inadequate as to persons in dire need" of the statutes benefits, Crawford at 1326, it cannot be termed a remedy in the proper sense of that term. Cf. Wright, 55 U.S.L.W. at 4121; Cannon, 441 at 704-05; Rosado, 397 at 420.

---

[14]The defendants do not argue that an express provision in the JJDPA forecloses private enforcement.

The remaining arguments of the defendants involving the statute itself presume that its provisions must be read exclusively. Under this theory, provisions showing a congressional intent to assist states constitute evidence of an intent to only assist, and provisions showing a congressional intent to cut off funds from non-complying states show an intent to only cut off funds. However, the Supreme Court has discouraged this type of "'excursion into extrapolation of legislative intent', Cort v. Ash, 422 U.S. at 83 n.14, unless there is other, more convincing, evidence that Congress meant to exclude the remedy." Cannon, 441 U.S. at 677.

Having failed to satisfy the tests in Wright, the county defendants attempt to distinguish Wright on its facts. In Wright, the Supreme Court noted that a comment section accompanying relevant regulations indicated that the responsible agency believed that a private cause of action was not foreclosed. In this case, former Administrator Regnery of the OJJDP made statements in a deposition which the county defendants believe show an opposite belief.

The Court recognizes that "some deference" is often due to agency interpretations of the laws they are charged with applying. NLRB v. Hearst Publications, Inc., 322 U.S. 111 (1974). But in deciding pure questions of law, the Court is reluctant to give equal respect to responses in a deposition given by a single administrator and the more formal agency statements involved in

Wright.[15] Furthermore, Regnery's testimony shows that he never addressed the question now before the Court--whether the statute shows that Congress wished to foreclose enforcement through § 1983. His most meaningful deposition testimony merely shows that he would require the plaintiffs to exhaust the procedures provided by 28 C.F.R. § 18. (Deposition of Alfred Regnery at 125).[16]

The defendants also contend that the failure of two bills which would have given juveniles an express cause of action to prevent the jailing of status offenders and the placement of juveniles in adult jails indicates that Congress intended to foreclose a § 1983 action to enforce similar rights created by the JJDPA and its amendments. S. 520 and S. 522, 98th Cong., 1st Sess. (1983). While this is not evidence "from the statute

---

[15]The marginal value of Mr. Regnery's deposition testimony is apparent from one of the excerpts upon which the county defendants rely most heavily:

> Q. You don't think [juveniles are] third-party beneficiaries to an arrangement between the Government and the state?
>
> A. I suppose the citizens of the state, all of the citizens. I'm not sure any of them have any better rights than any others. But I really don't know the answer to the question.

(Deposition of Alfred Regnery at 72).

[16]The county defendants also rely on Mr. Regnery's testimony before a Senate committee in opposition to S. 520 and S. 522. Upon review of this testimony, it is again apparent that Mr. Regnery did not address the question of whether the Congresses which passed the JJDPA and its amendments intended to foreclose a remedy. At most, it shows his own general hostility to civil rights suits and his belief that the JJDPA "is still working." Public Welfare of Juveniles: Hearing Before the Subcommittee on the Constitution of the Senate Judiciary Committee, 98th Cong., 2d Sess. 15 (1984).

itself, as Wright requires, it is relevant under separate principles described in Heckler v. Day, 467 U.S. 104 (1984). In Day, a federal court improperly granted a form of class-wide injunctive relief for agency violations of law after Congress had specifically considered, rejected and criticized that particular form of relief. The court noted that "our decision in this case is limited to the question of whether, in view of the unequivocally clear intent of Congress to the contrary, it is nevertheless appropriate for a federal court" to enter such relief. Id. at 104 n.33 (emphasis added).

The failure of these bills to progress does not show "the unequivocally clear intent of Congress" to foreclose a private cause of action to enforce the JJDPA. Unlike the JJDPA, these bills would have banned jailing practices in every state, regardless of whether the state accepted JJDPA funds. Furthermore, the text of each bill included an unqualified declaration that the jailing of status offenders and the placement of juveniles in adult jails is unconstitutional. As the hearing record shows, these provisions were more controversial than the private cause of action provisions. Public Welfare of Juveniles, supra at 1-36. Thus, the Court cannot attribute the failure of these bills to any particular section contained therein.

For the reasons stated above, the Court finds that Congress did not foreclose a § 1983 remedy, and such a remedy is therefore available.

III. ARE THE PLAINTIFFS ENTITLED TO A PRELIMINARY INJUNCTION?

The plaintiffs seek an order which would (1) forbid the defendants from permitting certain jailing practices, (2) prohibit the defendants from receiving or spending OJJDP funds until compliance with the JJDPA is achieved, and (3) require the State to pay back funds already received from the OJJDP if compliance is not achieved. Because the plaintiffs have failed to demonstrate that they have standing or a cause of action to seek the second or third types of relief, that part of their motion must be denied. See Linda R. S. v. Richard D., 410 U.S. 614 (1973).[17]

The plaintiffs seek to restrain three jailing practices as violative of the JJDPA and the Constitution, and have moved to restrain two other practices which they contend are prohibited by state law. However, they have not amended their complaints to state any state law claims, and even under liberal notice pleading rules, the Court cannot read state law claims into the plaintiffs' pleadings.[18] Thus, the only relief the Court can properly consider granting at this time is a preliminary injunction order

---

[17]The state defendants' motion for summary judgment is granted insofar as it challenges these two types of relief although the Court does not reach the Eleventh Amendment issues raised by the state in opposition to this relief.

[18]The only references to state law in the Second Amended Complaint are an assertion that the Court has pendent jurisdiction over the plaintiffs' state law claims and a statement that the plaintiffs have rights under state and federal contract law. Because these conclusory statements fail to provide notice to the defendants of what the plaintiffs' state claims would be, the plaintiffs have failed to satisfy Fed.R.Civ.P. 8. Rotolo v. Borough of Charleroi, 532 F.2d 920, 922-23 (3d Cir. 1976).

requiring the defendants to comply with the Constitution or federal law. The Court must consider the statutory claims first.

> Whether a preliminary injunction should issue involves consideration of
>
> 1. The threat of irreparable harm to the movant;
>
> 2. The state of the balance between this harm and the injury that granting the injunction will inflict upon the other parties litigant;
>
> 3. The probability that the movant will succeed on the merits; and
>
> 4. The public interest.

Dataphase Systems, Inc. v. C L Systems, 640 F.2d 109, 113 (8th Cir. 1981).

1. Probability of Success on the Merits.

The plaintiffs have already demonstrated that subsections 12-14 of § 5633 create rights enforceable under § 1983. The critical question is whether the plaintiffs are likely to show that the defendants are violating each of those rights. For the reasons below, the Court finds that the plaintiffs are unlikely to show violations of subsections 12 and 13, but are very likely to prove that subsection 14 is being violated.

Neither Congress nor the OJJDP have demanded perfect compliance with plan requirements by states receiving funds under the JJDPA.[19] Thus, the OJJDP has created provisions which excuse

[19]The House Committee Report accompanying the 1980 amendment states that "the committee expects a 'rule of reason' to be followed in the implementation of § 223(a)(14)." H.Rep. 946 at 26, 1980 U. S. Cong. & Admin. News at 6113.

minor failures to comply with subsections 12 through 14, see 46 Fed.Reg. 2566 (Jan. 9, 1981)(policy and criteria for de minimis exceptions to subsection (a)(12)(A)) and 28 C.F.R. § 31.303(f)(6)(ii) and (iii) (1986)(regulations creating de minimis exceptions to subsections 13 and 14). Thus, if a state's failure to comply is considered de minimis under these regulations, the state is technically not out of compliance.[20]

The state's failure to completely satisfy subsection 12 by deinstitutionalizing all status offenders must be considered a de minimis failure. Under the 1981 de minimis regulations, the state must report the number of accused status offenders and non-offenders held in secure detention facilities or secure correctional facilities in excess of 24 hours and the number of adjudicated status offenders and nonoffenders held in such facilities; if the sum is less that 5.8 persons for every 100,000 juveniles in Iowa (or 47.9[21]), the failure is de minimis. 46 Fed.Reg. at 2567. The most recent monitoring report indicates that only 23 status offenders and nonoffenders were jailed in Iowa during the last reporting period for the requisite length of time (State

---

[20]The de minimis exceptions should not be confused with the substantial compliance provisions of § 5633(c). The de minimis exceptions excuse minor deviations from full compliance once the statute requires full compliance, and the substantial compliance provisions permit a state to delay compliance with de minimis deviations by demonstrating substantial progress toward achieving full compliance, as demonstrated by a 75% reduction and an unequivocal commitment through executive or legislative action toward achieving full compliance by 1988. There are no de minimis exceptions to the substantial compliance provisions.

[21]There were 825,573 juveniles in Iowa in 1980 according to the most recent census. (State Monitoring Report for 1986 at 4).

Monitoring Report at 4). This is well within the regulations. Thus, the plaintiffs are not entitled to an order compelling compliance with subsection 12.

The state's failure to achieve complete separation of juveniles and adult offenders under subsection 13 also appears to be a de minimis failure. While the state report indicates that 50 juveniles were incarcerated in circumstances that would be violative of subsection 13, that constitutes a de minimis failure if Iowa law clearly prohibited each instance, such instances were isolated, and existing state mechanisms make repetition unlikely. 28 C.F.R. § 31.303(f)(6)(ii)(B). Iowa was found to have satisfied these requirements in 1984 (Exhibit A), and the plaintiffs have not shown that the state would fail to meet these requirements this year. For these reasons, the plaintiffs' request for an order requiring compliance with subsection 13 must be denied.

The jail removal mandate of subsection 14 is a different story. The state has all but conceded that it has not either substantially complied or fully complied with this provision. (Transcript of Oral Arguments at 30).[22] Using the state's own data in a formula for analyzing it which puts the state in the

---

[22]In 1984 Congress created an exception to subsection 14, so that in theory the Court might satisfy this subsection if every juvenile placed in Iowa jails beyond the de minimis level fit within this exception. However, that exception does not apply to juveniles jailed in Iowa's eight largest metropolitan areas, and the testimony of Tim Buzzell indicates that the number of juvenile jailings in Iowa's metropolitan areas alone might place the state out of compliance with subsection 14.

most favorable light,[23] the Court finds that the state has achieved no better than a 44% reduction in the jailing of juveniles. Moreover, there is every indication that the jailing of juveniles will continue at an impermissibly high rate. For these reasons, the plaintiffs have shown a very high probability of success on the merits of their claim that the defendants have violated subsection 14 and will violate it in the future.

2. Irreparable Injury.

The plaintiffs must also show that without an injunction, they will suffer an immediate and irreparable injury. Fenner v. Boykin, 271 U.S. 240, 243 (1926). A deprivation of the plaintiffs' rights not to be placed in an adult jail or lockup would fulfill the injury requirement, Henry v. Greenville Airport Commission, 384 F.2d 631, 633 (4th Cir. 1960), and without an order, those who become class members would by the nature of their membership in the class suffer this injury. In light of the number of such placements during the previous reporting period, the Court finds that the threat of future placement of class members in adult jails or lockups is sufficiently immediate to ripen the plaintiffs' claim and to satisfy the immediacy requirement. See Kolender v. Lawson, 361 U.S. 352, 355 n.3 (1983). Because placement in jail

---

[23] Where x equals the total number of juvenile-type offenders held in adult jails and lockups and y equals the total number of accused and adjudicated status offenders and nonoffenders held in adult jails and lockups: [x for 1980 (or 4031) plus y for 1977 (or 2159)] minus [x for 1986 (or 3232) plus y for 1986 (or 230)] equals a reduction of 2728, or 44%.

often precedes the only formal adjudication at which their right not to be placed there could conceivably be asserted, see Iowa Code § 232.22(4), the injury will commonly occur before any remedy at law is available. Compare Trucke v. Erlemeier, No. C 86-4181 (N.D.Iowa March 4, 1987). Therefore, the irreparability requirement has been satisfied. Gerstein v. Pugh, 420 U.S. 103, 108 n.9 (1975); R.W.T. v. Dalton, 712 F.2d 1225, 1234 (8th Cir. 1983).

3. Balancing the Hardships and the Public Interest.

Each party vigorously argues that the balancing of hardships and the public interest tip in their favor. The county defendants argue that the injury to the plaintiffs which would occur through placement in adult jail or lockup is too small to outweigh the "compelling interest of the state of Iowa in protecting Iowa citizens from the crimes which might be committed upon it by juvenile perpetrators." The plaintiffs argue that the jailing of juveniles merely serves the convenience of judges and law officers. They contend that the defendants cannot rely upon the objective of protecting society because their own statistics indicate that the majority of juvenile jailings only last for twelve hours or less, and conclude that even with a "wholesale release of all juveniles, there is simply no risk of harm or injury to any other parties litigant."

The Court must evaluate the hardships and the public interest by reference to some set of values and priorities. However, the Supreme Court has consistently held that when balancing the

hardships of enforcing federal law, a court cannot substitute its own values for the discernible values of Congress. "When Congress itself has struck the balance, and has defined the weight to be given the competing interests, a court of equity is not justified in ignoring that pronouncement under the guise of exercising equitable discretion." Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579, 609-10 (1952)(Frankfurter, J., concurring). As the Supreme Court noted in affirming a district court which enforced a federal law protecting the snail darter as an endangered species by enjoining the completion of a dam, "once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is for the executive to administer the laws and for the courts to enforce them when enforcement is sought." Tennessee Valley Authority v. Hill, 437 U.S. 153, 194 (1978).

Whether this Court likes it or not, Congress has consistently valued the removal of juveniles from adult jails over the administrative, protective and penological advantages of placing them there. It makes little difference at this stage that these values were embodied in a funding program rather than a nationwide prohibition. If the state did not share Congress' priorities or did not wish to implement them, it could have merely refused to seek OJJDP funding.

The greatest difficulty arises from the fact that the state and its subdivisions have failed to build an adequate "safety net" of juvenile detention centers and foster homes which might lessen the immediate risk to society of compliance with the jail removal mandate. Hearing testimony indicated that while many counties

have risen to the occasion by constructing juvenile detention centers of sufficient size to absorb the effects of jail removal, the facilities in many of Iowa's most populous counties can only accommodate a small fraction of the juveniles incarcerated in that county's jails. (Testimony of Tim Buzzell at 51-54). Thus, the Court must acknowledge that if it enters the order requested, in the short run juvenile authorities will probably release more accused and adjudged juvenile offenders back into society, and those authorities may send away to reformatories a greater number of the most dangerous delinquents who would have been kept closer to their families in county jails. However, the Court has no legitimate basis to conclude that Congress would find this result so objectionable that it would prefer to have the Court tolerate the regular deprivation of congressionally created rights.

Furthermore, it would be a mistake to view this issue as a choice between protecting criminals and protecting society from crime. Many supporters of the JJDPA and the jail removal mandate believe that placing juveniles in adult jails fosters more serious criminal conduct. Senator Arlen Specter--no coddler of criminals--stated that "the consequence of mixing juveniles and adults is simply to teach juveniles how to commit more crimes. They are training schools, and I have seen that again and again and again with the experience I have had as a prosecuting attorney." Public Welfare of Juveniles: Hearing Before the Subcommittee on the Constitution of the Senate Judiciary Committee, 98th Cong., 2d Sess. 10 (1984).

The defendants have argued that a compliance order would effectively compel the state and its subdivisions to spend hundreds of thousands of tax dollars to build separate juvenile facilities. It is significant for Eleventh Amendment purposes that the plaintiffs have not asked the Court to order such expenditures; they have asked the Court to enjoin the defendants from violating federally created rights. However likely it is that those officials would react to such an order by spending tax money, that discretion "rests entirely with the state, its agencies, [its subdivisions,] and legislature, not with the federal court." Quern v. Jordan, 440 U.S. 332, 348 (1979). In considering this cost as a legitimate hardship to be balanced, the Court must remember that if jail removal was politically and economically cheap, the need for congressional action might never have arisen. For this reason, such costs must be kept in perspective.

The Court finds that the balance of hardships, as evaluated with congressional priorities in mind, tips in favor of the plaintiffs, and that the public interest, as defined by Congress, would be served by some type of compliance order. The Court must now decide what type of order shall issue.

IV. TAILORING THE REMEDY.

Before the Court can decide what kind of order should issue, it must decide whether it has the authority to bind each defendant plaintiffs have named. The greatest limitation on that authority is § 1983 itself. As the Supreme Court held in Rizzo v. Goode,

423 U.S. 362, 370-71 (1975), "the plain words of the statute impose liability--whether in the form of payment of redressive damages or being placed under an injunction--only for conduct which 'subjects, or causes to be subjected' the complainant to the deprivation of a right secured by the Constitution and laws." Rizzo requires a link between the affirmative conduct of liable defendants and the deprivation of the plaintiffs' rights. Id. at 377.

The Court has the authority to bind Sheriff Griggs because the placement of juveniles in the Webster County Jail is the relevant deprivation, and he is involved, however involuntarily, in the task of placing juveniles in the jail. See Iowa Code § 256.2. It makes no difference that the Sheriff has played no role in Iowa's participation in the JJDPA program; that participation merely gave rise to the plaintiffs' rights, and those rights can be deprived by individuals with no connection to the program.[24]

While the state defendants' connection to each deprivation is less direct, the logic of the Eighth Circuit's decision in Messimer v. Lockhart, 702 F.2d 729 (8th Cir. 1983), leads the Court to conclude that they may be bound.[25] In Messimer, a

---

[24]Contrary to Defendant Griggs' argument that he should not be bound because he would be immune under principles of qualified immunity or derivative judicial immunity, the fact that an official is immune from liability for damages does not preclude injunctive or declaratory relief against him. Gross v. Tazewell County Jail, 533 F.Supp. 413, 419 (W.D.Va. 1982).

[25]When the plaintiffs' second amended complaint was filed, Defendant Richard Ramsey was executive director of Iowa's Criminal and Juvenile Justice Planning Agency. At the hearing, Agency Employee Tim Buzzell testified that Mr. Jack Crandall has

prisoner sued the director of a State Department of Corrections, complaining of administrative decisions made by his subordinates at one of the state's prisons. Even though the director could not be liable for their actions under the common law doctrine of respondeat superior, the court found the "affirmative link" required by Rizzo:

> The plaintiffs are not complaining about isolated instances of alleged mistreatment; they are complaining about policy decisions made by those in charge of the prison. Lockhart has a statutory duty to administer the Department of Corrections and supervise the administration of all institutions, facilities, and services under the Department's jurisdiction. [Statutory citations omitted]. The state conceded at oral argument that Lockhart has the authority to change policies instituted by the warden of the Cummins Unit. Thus, Lockhart may be responsible for his own failure to act.

Messimer, 702 F.2d at 732.

In this case, the state defendants did not concede that they have the authority to prevent the jailing of juveniles. It is the state itself which made a policy decision to authorize the jailing of juveniles, see Iowa Code § 232.22, and the state defendants have argued that the separation of powers in Iowa government limits the authority of Governor Branstad and Mr. Crandall to unilaterally change the course of county and municipal jailing

---

(Note 25 continued)
replaced Defendant Ramsey in that position. Although Defendant Ramsey was sued in both his official and individual capacities, the Court finds no basis to bind him in his individual capacity. Because Mr. Crandall appears to have taken over Defendant Ramsey's official capacities, he will be substituted for Ramsey for purposes of this order under Rule 25(d)(1). Plaintiffs' counsel should notify the Court if they contend Mr. Ramsey should remain a party to this action.

practices. However, Congress evidently foresaw this problem and took an important step to solve it. Subsection 2 of the JJDPA's state plan requirements requires state plans to "contain satisfactory evidence that the state agency designated in accordance with paragraph 1 . . . has or will have the authority, by legislation if necessary, to implement such plan in conformity with this part." § 5633(a)(2). The Court does not know how the state fulfilled this requirement, but it does know that the state has received funds in every year since this provision was enacted. (Exhibit A). The Court infers from this that the state's plan contained assurances of agency authority upon which the OJJDP relied in extending funds. The Court has examined relevant Iowa law and is persuaded that the legislature need not act before the state defendants or agencies accountable to Defendant Branstad can take meaningful steps to comply with the jail removal mandate. The Iowa Department of Corrections is authorized under Iowa Code § 356.36 to "draw up minimum standards for the regulation of jails . . . and municipal holding facilities."[26] While a moratorium was adopted in 1981 which prevented the implementation of enforcement of such administrative rules, that moratorium is to terminate when

---

[26]The state defendants object that the Department of Corrections has not been named as a defendant and cannot be named under Alabama v. Pugh, 438 U.S. 781 (1978), because it is an agency of the state. The state defendants do not contend that Governor Branstad cannot be named and enjoined in his official capacity, however. See Ex parte Young, 209 U.S. 123 (1908). Because the Department of Corrections is accountable to the governor, the Court finds that the plaintiffs' failure to name corrections officials as separate defendants is not a fatal omission. See Fed.R.Civ.P. 65(d).

a "needs assessment of the individual county jails" has been completed, which presumably has occurred in the six years since the moratorium began or can occur by the end of the year. While the most direct solution may be to amend the statute authorizing judges to place juveniles in jail, see § 232.22, the Court recognizes that this is only one of several ways to meet the state's federal obligations. Thus, the Court finds that the "authority" element of the Messimer logic is satisfied. The Court finds that the state defendants' special duty to use this authority arises from the state's assurances that subsection 14 would be satisfied.[27]

The Webster County Board of Supervisors cannot be bound, however. Unlike the state defendants, none of the supervisors appear to have made assurances which would give rise to a duty to keep juveniles out of jail. The only relevant "affirmative conduct" which the Court can attribute to them is their decision well before the December 1985 deadline for compliance to construct a section for juveniles in their jail. This is not sufficient to create the "affirmative link" to each deprivation which Rizzo

---

[27] If actual knowledge that deprivations are occurring is a third prerequisite to the state defendants' liability--compare Tatum v. Houser, 642 F.2d 253, 254 (8th Cir. 1981), with Villanueva v. George, 659 F.2d 851, 854-55 (8th Cir. 1981), the Court finds that the plaintiffs are likely to show that Branstad and Crandall have such knowledge as a result of the December 1986 report. The Court emphasizes that the state defendants are not considered liable simply because they have the authority to prevent known deprivations from occurring. In this case, an additional factor is present--the state's duty to prevent them from occurring--which will seldom be present in other § 1983 cases.

requires. Morecver, they do not appear to be liable in their official capacities under a "official policy or custom" theory because the plaintiffs have not yet demonstrated a county policy to place juveniles in jail after December 1985, and the supervisors do not appear to be the "officials responsible for establishing final policy with respect to the subject matter in question." Williams v. Butler, 802 F.2d 296 (8th Cir. 1986)(quoting the plurality opinion in Pembaur v. Cincinnati, 106 S.Ct. 1292, 1300 (1986)). For the same reasons, the Court finds that the county itself cannot be bound.

Whether the sheriff and the two state defendants should be bound is a different question, and the answer will depend upon the form of relief that the Court deems appropriate. The plaintiffs have asked the Court to forbid "the defendants, their officers, agents, employees, attorneys, successors in office and other persons acting in concert or participation with them from confining plaintiffs and any members of the plaintiff class in any Iowa adult jail or municipal lockups . . . ." For the reasons below, the Court finds that even if this kind of absolute prohibition is authorized by the JJDPA, considerations of equity and comity require the Court to adopt a less intrusive and more flexible approach.

Not every instance of juvenile jailing after December 1985 constitutes a violation of § 5633. A de minimis exception to subsection 14 has been created. See 28 C.F.R. § 31.303(f)(6)(iii). Furthermore, if Iowa were to satisfy the substantial compliance provisions of § 5633(c), hundreds of juveniles could be jailed

this year without preventing the state from showing the 75% reduction needed to preserve its eligibility for funding.

The state does not presently qualify for either the de minimis exception or the substantial compliance provision. It cannot qualify for the de minimis exception without a "state law, court rule or other state-wide executive or judicial policy" which clearly prohibits detentions in violation of subsection 14, see 28 C.F.R. § 31.303(f)(6)(iii)(A)(1); and cannot qualify for the substantial compliance provision without "legislative or executive action" showing an unequivocal commitment to achieving full compliance by 1988. See § 5633(c). Thus, a strict interpretation of the JJDPA and its regulations suggests that until these kinds of legal changes are made, the state can only comply by totally complying with the jail removal mandate.

However, federal courts should avoid entering unworkable and excessively intrusive injunctive relief. O'Shea v. Littleton, 414 U.S. 488, 500 (1974). Under a total compliance order, each juvenile arrest or detention would present an opportunity for contempt. As the inevitable instances of juvenile jailing occur, the Court's docket could fill with requests for emergency relief, and its duty to enforce obedience to its own decrees could degenerate into day-to-day intervention into juvenile justice proceedings. As anything but a last resort, such an order would disturb "the special delicacy of the adjustment to be preserved between federal equitable power and state administration of its own law." City of Los Angeles v. Lyons, 461 U.S. 95, 112 (1983); Stefanelli v. Minard, 342 U.S. 117, 120 (1951).

At the same time, the Court is aware that other states have achieved remarkable progress toward full compliance within very short periods of time. Appendix B of the OJJDP's most recent summary of state compliance, which is attached to Exhibit A, compares the number of juveniles held in adult jails and lockups in 1985 with the number reported only one year before. In twelve states, juvenile jailings declined over 75% that year, and in Texas, juvenile jailings declined from 12,353 to 45. This data suggests that Iowa could achieve substantial compliance or full compliance with de minimis exceptions by the end of this year by modeling its policy after any of a number of other states.

The state will be permitted to submit a plan for achieving a combination of policy changes and reductions in the rate of juvenile jailing which would place the state in compliance with the JJDPA by the end of this year. The choice of whether to achieve substantial compliance, compliance with de minimis exceptions, or total compliance will be up to the state. Any particular decision to place a juvenile in jail will not constitute contempt and will not cause the Court to intervene. It will be the primary responsibility of the state defendants and not the Court to reduce juvenile jailings to a legal rate. However, a failure to do so will constitute contempt, and in this respect, the plan the state submits must be fundamentally different from the plans it has submitted to the OJJDP.[28] The plan should be submitted by April 30, 1987.

[28] As the reapportionment cases adequately demonstrate, it is occasionally necessary for federal courts to issue orders which will require a legislative or quasi-legislative act to insure compliance. See, e.g., Reynolds v. Sims, 377 U.S. 533 (1964).

Whether Defendant Griggs should be bound will depend upon the nature of the plan submitted; if the state defendants present an effective plan which does not rely upon the Court's power to enjoin Griggs, the Court has no reason to do so. For the same reason, the Court will hold the plaintiffs' motion for certification of a defendant class in abeyance pending receipt of the plan. The plaintiffs have moved for recertification of the plaintiff class to include "all juveniles who are currently or will in the future be confined in any county jail or municipal lockup within the state of Iowa." The Court will take this matter up at its next hearing, but the state should prepare its plan under the assumption that the Court will either recertify the plaintiff class as requested, or refuse to recertify it for the sole reason that an expansion of the class would be superfluous, as the county defendants argue.[29]

CONCLUSION

This Court recognizes that some might contend that it is acting outside of its normal scope of authority in entering this order, or that the order borders on "lawmaking." This Court has carefully weighed this matter and is persuaded that such contentions would be incorrect. While performing its constitutional duty to decide a case which it did not ask to be brought, the Court has found that two congressional enactments--42 U.S.C.

---

[29]Because the county defendants' 12(b)(7) motion was denied and their 12(b)(6) motion was treated as a motion for summary judgment and denied, they should file an answer within fifteen days of the receipt of this order.

§§ 5633 and 1983--combine to give these plaintiffs a remedy to prevent the deprivation of congressionally created rights. If this Court has departed in any degree from the wishes of Congress as expressed in these statutes, it has done so to accommodate the defendants by tempering the statutory remedy.

Accordingly,

IT IS HEREBY ORDERED that the defendants' motions are denied insofar as they involve the following conclusions of the Court:

1) The plaintiffs' § 1983 claims are not barred by res judicata and collateral estoppel.

2) The plaintiffs need not exhaust administrative remedies.

3) The Office of Juvenile Justice and Delinquency Prevention does not have primary jurisdiction over the defendant's statutory § 1983 claim.

4) The plaintiffs' statutory § 1983 claim is ripe for adjudication.

5) The plaintiffs need not proceed through a guardian ad litem.

6) The plaintiffs' JJDPA claim need not be dismissed because a necessary and indispensable party has not been sued.

7) Section 1983 provides a cause of action to seek redress for violations of rights created by § 5633 of the Juvenile Justice and Delinquency Prevention Act.

IT IS FURTHER ORDERED that the state defendants shall submit for the Court's approval a plan for achieving a combination of policy changes and reductions in the rate of juvenile jailing

Horn

SUMMARY

Issue: Jail Removal

Case: Horn v. Oldham County, Kentucky
U.S. District Court (Kentucky), 1985

RITA HORN & GREG HORN V. OLDHAM COUNTY, KENTUCKY

C - 83 - 0208 - L(B)

(W.D. Ky.: January 11, 1985)

CONSENT DECREE: In this federal civil rights action, the defendants agreed to "cease utilizing the Oldham County Jail for the incarceration of juveniles, including juveniles charged with motor vehicle offenses." EXCEPTION: The decree did not apply to persons under 18 transferred to circuit court. Defendants paid plaintiffs a total of $70,000. Defendants paid attorney fees of $18,499.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY

RITA HORN, on behalf of herself, and as Administratrix of the estate of Robert Lee Horn, Jr., and

GREG HORN, a minor, by and through RITA HORN, his mother and legal guardian, on behalf of himself and all others similarly situated,

Plaintiffs,

Civil Action No. C 83-0208-L(B)

V.

CONSENT DECREE

OLDHAM COUNTY, KENTUCKY;

JAMES E. SUMMITT, individually and in his official capacity as Jailer of Oldham County, Kentucky,

GLENN HANCOCK, individually and in his official capacity as Deputy Jailer of Oldham County, Kentucky,

JULIA FIELDS and ROBERT D. HAWKINS, in their official capacities as District Court judges of Oldham County, Kentucky;

WENDELL MOORE, MARTHA R. DAVIS, JOSEPH E. NAY, SHELTON FENDLEY, SR., GILBERT WINTERS, NANCY C. DOTY, NORMAN BROWN, L.A. HEDGES, PHILIP E. PARRISH, EMANUAL McMAHAN, individually and in their official capacities as members of the Fiscal Court of Oldham County, Kentucky,

Defendants.

This is a civil rights action involving the conditions of confinement and policies and practices of defendants regarding juveniles at the Oldham County Jail in LaGrange, Kentucky. Plaintiff Rita Horn brings this action for damages for wrongful death of her son, Robert Lee Horn, Jr., at the Oldham County Jail. Plaintiff Greg Horn, through Rita Horn, his mother and legal guardian, brings this action for declaratory, injunctive, and other equitable relief and damages, on behalf of himself and all other juveniles similarly situated who are, have been, or will be confined in the Oldham County Jail.

The Complaint in this action was filed on March 3, 1983. Plaintiffs alleged that the defendants subject juveniles confined in the Oldham County Jail to cruel, unconscionable and illegal conditions of confinement; to illegal incarceration in the jail without adequate separation from confined adult offenders; to unlawful secure confinement in the jail of juveniles who are charged with or who have committed offenses which would not be criminal if commited by adults ("status offenses"); and to denial of adequate and appropriate community placements as alternatives to the jail. The defendants duly answered and denied the material allegations of the complaint.

While neither admitting nor denying any allegations of fact or legal liability, the parties have now agreed to the

entry of a consent decree. Therefore, based upon the stipulation and agreement of all parties to this action, by and through their respective counsel, and based upon all matters of record in this case, it is hereby ORDERED, ADJUDGED and DECREED that:

1. This Court has jurisdiction over this matter.

2. The named plaintiffs in this matter are Rita Horn, on behalf of herself and as Administratrix of the estate of Robert Lee Horn, Jr., and Greg Horn, a minor, by and through Rita Horn, his mother and legal guardian.

3. The defendants in this action are Oldham County, Kentucky; James E. Summitt, individually and in his official capacity as Jailer of Oldham County, Kentucky; Glenn Hancock, individually and in his former official capacity as Deputy Jailer of Oldham County, Kentucky; Julia Fields and Robert D. Hawkins, in their official capacities as District Court judges of Oldham County, Kentucky; and Wendell Moore, Martha R. Davis, Joseph E. Nay, Shelton Fendley, Sr., Gilbert Winters, Nancy C. Doty, Norman Brown, L.A. Hedges, Philip E. Parrish, and Emanual McMahan, individually and in their officials capacities as members of the Fiscal Court of Oldham County, Kentucky.

4. This action is properly maintained as a class action under Rules 23(a) and (b)(2) of the Federal Rules of

Civil Procedure. The plaintiff class consists of all juveniles who are currently, have been since March 3, 1982, or in the future will be confined in the Oldham County Jail. The members of the class are so numerous that joinder of all members is impracticable. There are questions of law and fact common to the members of the plaintiff class regarding practices of the defendants, and the claims of the named plaintiff Greg Horn are typical of the claims of the members of the plaintiff class. The named plaintiff and plaintiff's counsel will fairly and adequately protect the interests of the members of the class. By their policies, the defendants have acted and continue to act on grounds and in a manner generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

5. The defendants will pay to the plaintiff Rita Horn, on behalf of herself and as Administratrix of the estate of Robert Lee Horn, Jr., the sum of fifty thousand dollars ($50,000) in consideration of a full and final release from all of her claims in this matter.

6. The defendants will pay to the plaintiff Greg Horn, a minor, by and through Rita Horn, his mother and legal guardian, the sum of twenty thousand dollars ($20,000) in consideration of a full and final release from all of his claims

in this matter.

7. Upon the entry of this Consent Decree by the Clerk of this Court, the defendants agree to cease utilizing the Oldham County Jail for the incarceration of juveniles, including juveniles charged with motor vehicle offenses. This Consent Decree does not apply to persons under the age of 18 years who are charged with serious offenses and who have been transferred from the jurisdiction of the District Court to the jurisdiction of the Circuit Court.

8. The plaintiffs reserve the right to request such attorneys' fees and costs as this Court deems appropriate and defendants reserve the right to oppose such request. It is agreed that the judicial defendants, Julia Fields and Robert D. Hawkins, will not be assessed for nor be responsible for any part of such attorneys' fees and costs as may be ultimately agreed or adjudged.

9. The agreement set forth herein constitutes a fair and reasonable resolution of plaintiffs' claims and is therefore approved by this Court.

Dated this 11 day of January, 1985.

Thomas A. Ballantine
United States District Court

Jack Lowery
Attorney for Plaintiffs

Mark I. Soler
Attorney for Plaintiffs

Stewart L. Prather
Attorney for Defendants Oldham County, Kentucky, James E. Summitt, Glenn Hancock, Wendell Moore, Martha R. Davis, Joseph E. Nay, Shelton Fendley, Sr., Gilbert Winters, Nancy C. Doty, Norman Brown, L.A. Hedges, Philip E. Parrish, and Emanual McMahan

Carl Miller
Attorney for Defendants Julia Fields and Robert D. Hawkins

GLOSSARY

GLOSSARY

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.

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.

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.

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.

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 or a status offender.

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.

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.

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.

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

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.

Other individual convicted of a criminal offense--An individual, adult or juvenile, who has been convicted of a criminal offense in a court exercising criminal jurisdiction.

Secure--As used to define a detention or correctional facility this term includes residential facilities which have fixtures designed to physically restrict the movements and activities of persons in custody, such as locked rooms and buildings, fences, or other physical structures.

Status offender--A juvenile offender who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult.

INDEX

-INDEX-

APPENDICES

APPENDIX A

SUMMARY

Source: Juvenile Justice and Delinquency Prevention Act, as amended through 1988.

99th Congress
2d Session

COMMITTEE PRINT

COMPILATION

OF THE

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

As Amended Through September 30, 1985

PREPARED FOR USE BY THE

COMMITTEE ON EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

JANUARY 1, 1986

Serial No. 99-J

U.S. GOVERNMENT PRINTING OFFICE
39-938 O WASHINGTON : 1986

COMMITTEE ON EDUCATION AND LABOR

AUGUSTUS F. HAWKINS, California, *Chairman*

WILLIAM D. FORD, Michigan
JOSEPH M. GAYDOS, Pennsylvania
WILLIAM CLAY, Missouri
MARIO BIAGGI, New York
AUSTIN J. MURPHY, Pennsylvania
DALE E. KILDEE, Michigan
PAT WILLIAMS, Montana
MATTHEW G. MARTINEZ, California
MAJOR R. OWENS, New York
FREDERICK C. BOUCHER, Virginia
CHARLES A. HAYES, Illinois
CARL C. PERKINS, Kentucky
TERRY L. BRUCE, Illinois
STEPHEN J. SOLARZ, New York
MERVYN M. DYMALLY, California
DENNIS E. ECKART, Ohio
TIMOTHY J. PENNY, Minnesota
CHESTER G. ATKINS, Massachusetts

JAMES M. JEFFORDS, Vermont
WILLIAM F. GOODLING, Pennsylvania
E. THOMAS COLEMAN, Missouri
THOMAS E. PETRI, Wisconsin
MARGE ROUKEMA, New Jersey
STEVE GUNDERSON, Wisconsin
STEVE BARTLETT, Texas
ROD CHANDLER, Washington
THOMAS J. TAUKE, Iowa
JOHN R. McKERNAN, JR., Maine
RICHARD K. ARMEY, Texas
HARRIS W. FAWELL, Illinois
PAUL B. HENRY, Michigan

SUBCOMMITTEE ON HUMAN RESOURCES

DALE E. KILDEE, Michigan, *Chairman*

TERRY L. BRUCE, Illinois
CARL C. PERKINS, Kentucky
DENNIS E. ECKART, Ohio
MAJOR R. OWENS, New York
AUGUSTUS F. HAWKINS, California
(ex officio)

THOMAS J. TAUKE, Iowa
E. THOMAS COLEMAN, Missouri
THOMAS E. PETRI, Wisconsin
JAMES M. JEFFORDS, Vermont
(ex officio)

CONTENTS

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974 [1]

AN ACT To provide a comprehensive, coordinated approach to the problems of juvenile delinquency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Juvenile Justice and Delinquency Prevention Act of 1974".

(*42 U.S.C. 5601 note*)

TITLE I—FINDINGS AND DECLARATION OF PURPOSE

FINDINGS

SEC. 101. (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) understaffed, overcrowded juvenile courts, 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;

(3) 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;

(4) existing programs have not adequately responded to the particular problems of the increasing numbers of young people who are addicted to or who abuse alcohol and other drugs, particularly nonopiate or polydrug abusers;

(5) juvenile delinquency can be reduced through programs designed to keep students in elementary and secondary schools through the prevention of unwarranted and arbitrary suspensions and expulsions;

(6) State 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;

[1] This Compilation reflects amendments made to the Juvenile Justice and Delinquency Prevention Act of 1974 by the Fiscal Year Adjustment Act (Public Law 94-273; 90 Stat. 375), the Crime Control Act of 1976 (Public Law 94-503; 90 Stat. 2407), the Juvenile Justice Amendments of 1977 (Public Law 95-115; 91 Stat. 1048), the Juvenile Justice Amendments of 1980 (Public Law 96-509; 94 Stat. 2750) and the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984 (Public Law 98-473; 98 Stat 2107).

(7) existing Federal programs have not provided the direction, coordination, resources, and leadership required to meet the crisis of delinquency; and

(8) the juvenile justice system should give additional attention to the problem of juveniles who commit serious crimes, with particular attention given to the areas of sentencing, providing resources necessary for informed dispositions, and rehabilitation.

(b) Congress finds further that the high incidence of delinquency in the United States today results in enormous annual cost and immeasurable loss of human life, personal security, and wasted human resources and that juvenile delinquency constitutes a growing threat to the national welfare requiring immediate and comprehensive action by the Federal Government to reduce and prevent delinquency.

(42 U.S.C. 5601)

PURPOSE

SEC. 102. (a) It is the purpose of this Act—

(1) to provide for the thorough and ongoing evaluation of all federally assisted juvenile delinquency programs;

(2) to provide technical assistance to public and private agencies, institutions, and individuals in developing and implementing juvenile delinquency programs;

(3) to establish training programs for persons, including professionals, paraprofessionals, and volunteers, who work with delinquents or potential delinquents or whose work or activities relate to juvenile delinquency programs;

(4) to establish a centralized research effort on the problems of juvenile delinquency, including 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 State 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; and

(8) to assist State and local governments in removing juveniles from jails and lockups for adults.

(b) It is therefore the further declared policy of Congress to provide the necessary resources, leadership, and coordination (1) to develop and implement effective methods of preventing and reducing juvenile delinquency, including methods with a special focus on maintaining and strengthening the family unit so that juveniles may be retained in their homes; (2) to develop and conduct effective programs to prevent delinquency, to divert juveniles from the traditional juvenile justice system and to provide critically needed alternatives to institutionalization; (3) to improve the quality of juvenile justice in the United States; and (4) to increase the capacity of State and local governments and public and private agencies to conduct effective juvenile justice and delinquency prevention and rehabilitation programs and to provide research, evaluation, and training services in the field of juvenile delinquency prevention.

(42 U.S.C. 5602)

DEFINITIONS

SEC. 103. For purposes of this Act—

(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 Act;

(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 401 of the Omnibus Crime Control and Safe Streets Act of 1968; [1]

(B) the term "Office of Justice Programs" means the office established by section 101 of the Omnibus Crime Control and Safe Streets Act of 1968; [2]

(C) the term "National Institute of Justice" means the institute established by section 202(a) of the Omnibus Crime Control and Safe Streets Act of 1968; [3] and

(D) the term "Bureau of Justice Statistics" means the bureau established by section 302(a) of the Omnibus Crime Control and Safe Streets Act of 1968; [4]

(5) the term "Administration" means the agency head designated by section 201(c);

(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 de-

[1] (42 U.S.C. 3741).
[2] (42 U.S.C. 3711).
[3] (42 U.S.C. 3721).
[4] (42 U.S.C. 3732).

fender 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 title;

(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 activates 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; and

(16) the term "valid court order" 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.

(42 U.S.C. 5603)

TITLE II—JUVENILE JUSTICE AND DELINQUENCY PREVENTION

PART A—JUVENILE JUSTICE AND DELINQUENCY PREVENTION OFFICE

ESTABLISHMENT OF OFFICE

SEC. 201. (a) There is hereby established an Office of Juvenile Justice and Delinquency Prevention (hereinafter in this division referred to as the "Office") within the Department of Justice under the general authority of the Attorney General.

(b) The Office shall be headed by an Administrator (hereinafter in this title 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 Act to award, administer, modify, extend, terminate, monitor, evaluate, reject, or deny all grants and contracts from, and applications for, funds made available under this title. The Administrator shall report to the Attorney General through the Assistant Attorney General who heads the Office of Justice Programs under part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968.[1]

(c) There shall be in the Office a Deputy Administrator who shall be appointed by the Attorney General and whose function shall be to supervise and direct the National Institute for Juvenile Justice and Delinquency Prevention established by section 241 of this Act. The Deputy Administrator shall also 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. 5611)

---

[1] (42 U.S.C. 3711-3712).

PERSONNEL, SPECIAL PERSONNEL, EXPERTS, AND CONSULTANTS

SEC. 202. (a) 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) The Administrator is authorized to select, appoint, and employ not to exceed three officers and to fix their compensation at rates not to exceed the rate now or hereafter prescribed for GS–18 of the General Schedule by section 5332 of title 5 of the United States Code.

(c) 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 Act.

(d) The Administrator may obtain services as authorized by section 3109 of title 5 of the United States Code, at rates not to exceed the rate now or hereafter prescribed for GS–18 of the General Schedule by section 5332 of title 5 of the United States Code.

(42 U.S.C. 5612)

VOLUNTARY SERVICE

SEC. 203. The Administrator is authorized to accept and employ, in carrying out the provisions of this Act, voluntary and uncompensated services notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

(42 U.S.C. 5613)

CONCENTRATION OF FEDERAL EFFORTS

SEC. 204. (a) The Administrator shall implement overall policy and develop objectives and priorities for all Federal juvenile delinquency programs and activities relating to prevention, diversion, training, treatment, rehabilitation, evaluation, research, and improvement of the juvenile justice system in the United States. In carrying out the functions of the Administrator, the Administrator shall consult with the Council [1] and the National Advisory Committee for Juvenile Justice and Delinquency Prevention.[2]

(b) In carrying out the purposes of this Act, the Administrator shall—

(1) advise the President through the Attorney General as to all matters relating to federally assisted juvenile deliquency 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;

[1] Refers to the Coordinating Council on Juvenile Justice and Delinquency Prevention, established in section 206. Section 103 should be amended to identify the Council.

[2] Reference to the Advisory Committee should be stricken. Section 207 which established the Committee was repealed by section 624 of Public Law 98–473 (98 Stat. 2111).

(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) develop annually with the assistance of the Advisory Committee [1] and the Coordinating [2] Council and submit to the President and the Congress, after the first year following the date of the enactment of the Juvenile Justice Amendments of 1977, prior to December 31, an analysis and evaluation of Federal juvenile delinquency programs conducted and assisted by Federal departments and agencies, the expenditures made, the results achieved, the plans developed, and problems in the operations and coordination of such programs and a brief but precise comprehensive plan for Federal juvenile delinquency programs, with particular emphasis on the prevention of juvenile delinquency and the development of programs and services which will encourage increased diversion of juveniles from the traditional juvenile justice system, which analysis and evaluation shall include recommendations for modifications in organization, management, personnel, standards, budget requests, and implementation plans necessary to increase the effectiveness of these programs;

(6) provide technical assistance and training assistance to Federal, State, and local governments, courts, public and private agencies, institutions, and individuals, in the planning, establishment, funding, operation, or evaluation of juvenile delinquency programs; and

(7) provide for the auditing of monitoring systems required under section 223(a)(15) to review the adequacy of such systems.

(c) The President shall, no later than ninety days after receiving each annual report under subsection (b)(5), submit a report to the Congress and to the Council containing a detailed statement of any action taken or anticipated with respect to recommendations made by each such annual report.

(d)(1) The first annual report submitted to the President and the Congress by the Administrator under subsection (b)(5) shall contain, in addition to information required by subsection (b)(5), a detailed statement of criteria developed by the Administrator for identifying the characteristics of juvenile delinquency, juvenile delinquency prevention, diversion of youths from the juvenile justice system, and the training, treatment, and rehabilitation of juvenile delinquents.

[1] See footnote to subsection (a).

[2] Reference should be simply to "the Council".

(2) The second such annual report shall contain, in addition to information required by subsection (b)(5), an identification of Federal programs which are related to juvenile delinquency prevention or treatment, together with a statement of the moneys expended for each such program during the most recent complete fiscal year. Such identification shall be made by the Administrator through the use of criteria developed under paragraph (1).

(e) The third such annual report submitted to the President and the Congress by the Administrator under subsection (b)(5) shall contain, in addition to the comprehensive plan required by subsection (b)(5), a detailed statement of procedures to be used with respect to the submission of juvenile delinquency development statements to the Administrator by Federal agencies under subsection (l). Such statement submitted by the Administrator shall include a description of information, data, and analyses which shall be contained in each such development statement.

(f) 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.

(g) The Administrator may delegate any of the functions of the Administrator under this title, to any officer or employee of the Office.

(h) The Administrator is authorized to utilize the services and facilities of any agency of the Federal Government and of any other public agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement as may be agreed upon.

(i) The Administrator is authorized to transfer funds appropriated under this section to any agency of the Federal Government to develop or demonstrate new methods in juvenile delinquency prevention and rehabilitation and to supplement existing delinquency prevention and rehabilitation programs which the Administrator finds to be exceptionally effective or for which the Administrator finds there exists exceptional need.

(j) The Administrator is authorized to make grants to, or enter into contracts with, any public or private agency, organization, institution, or individual to carry out the purposes of this title.

(k) All functions of the Administrator under this title shall be coordinated as appropriate with the functions of the Secretary of Health and Human Services under title III of this Act.

(l)(1) The Administrator shall require through appropriate authority each Federal agency which administers a Federal juvenile delinquency program which meets any criterion developed by the Administrator under subsection (d)(1) to submit annually to the Council a juvenile delinquency development statement. Such statement shall be in addition to any information, report, study, or survey which the Administrator may require under subsection (f).

(2) Each juvenile delinquency development statement submitted to the Administrator under paragraph (1) shall be submitted in accordance with procedures established by the Administrator under subsection (e) and shall contain such information, data, and analyses as the Administrator may require under subsection (e). 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). Such development statement, together with the comments of the Administrator, shall be included by the Federal agency involved in every recommendation or request made by such agency for Federal legislation which significantly affects juvenile delinquency prevention and treatment.

(m) To carry out the purposes of this section, there is authorized to be appropriated for each fiscal year an amount which does not exceed 7.5 percent of the total amount appropriated to carry out this title

(42 U.S.C. 5614)

JOINT FUNDING

SEC. 205. 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. 5615)

COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

SEC. 206. (a)(1) There is hereby established, as an independent organization in the executive branch of the Federal Government a Coordinating Council on Juvenile Justice and Delinquency Prevention (hereinafter referred to as the "Council")[1] composed of the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Director of the Office of Community Services, the Director of the Office of Drug Abuse Policy, the Director of the ACTION Agency, the Director of the Bureau of Prisons, the Commissioner of the Bureau of Indian Affairs, the Director for the Office of Special Education and Rehabilitation Services, the Commissioner for the Administration for Chil-

[1] Section 103 should be amended to identify the Council, and matter in parentheses should be stricken.

dren, Youth, and Families, and the Director of the Youth Development Bureau, or their respective designees, Assistant Attorney General who heads the Office of Justice Programs, Director of the Bureau of Justice Assistance, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Deputy Administrator of the Institute for Juvenile Justice and Delinquency Prevention, the Director of the National Institute of Justice, and representatives of such other agencies as the President shall designate.

(2) Any individual designated under this section shall be selected from individuals who exercise significant decisionmaking authority in the Federal agency involved.

(b) 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) The function of the Council shall be to coordinate all Federal juvenile delinquency programs and, in consultation with the Advisory Board on Missing Children, all Federal programs relating to missing and exploited children. The Council shall make recommendations to the President and to the Congress at least annually with respect to the coordination of overall policy and development of objectives and priorities for all Federal juvenile delinquency programs and activities. The Council is authorized to review the programs and practices of Federal agencies and report on the degree to which Federal agency funds are used for purposes which are consistent or inconsistent with the mandates of section 223(a)(12)(A) and (13) of this title. The Council shall review, and make recommendations with respect to, any joint funding proposal undertaken by the Office of Juvenile Justice and Delinquency Prevention and any agency represented on the Council.

(d) The Council shall meet at least quarterly and a description of the activities of the Council shall be included in the annual report required by section 204(b)(5) of this title.

(e) 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 title.

(f) Members of the Council who are employed by the Federal Government full time shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Council.

(g) To carry out the purposes of this section there is authorized to be appropriated such sums as may be necessary, not to exceed $200,000 for each fiscal year.

(42 U.S.C. 5616)

PART B—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

Subpart I—Formula Grants

AUTHORITY TO MAKE GRANTS

SEC. 221. 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.

(42 U.S.C. 5631)

ALLOCATION

SEC. 222. (a) In accordance with regulations promulgated under this part, funds shall be allocated annually among the States on the basis of relative population of people under age eighteen. No such allotment to any State shall be less than $225,000, except that for the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands no allotment shall be less than $56,250.

(b) Except for funds appropriated for fiscal year 1975, if any amount so allotted 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. Funds appropriated for fiscal year 1975 may be obligated in accordance with subsection (a) until June 30, 1976, after which time they may be reallocated. Any amount so reallocated shall be in addition to the amounts already allotted 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) In accordance with regulations promulgated under this part, a portion of any allotment to any State under this part shall be available to develop a State plan or for other pre-award activities associated with such State plan, and to pay that portion of the expenditures which are necessary for efficient administration, including monitoring and evaluation. Not more than 7½ per centum of the total annual allotment of such State shall be available for such purposes, except that any amount expended or obligated by such State, or by units of general local government or any combination thereof, from amounts made available under this subsection shall be matched (in an amount equal to any such amount so expended or obligated) by such State, or by such units or combinations, from State or local funds, as the case may be. The State shall make available needed funds for planning and administration to units of general local government or combinations thereof within the State on an equitable basis.

(d) 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 223(a)(3) of this Act.

(42 U.S.C. 5632)

STATE PLANS

SEC. 223. (a) In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include

new programs, and the state shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall—

(1) designate the State agency described in section 261(c)(1) 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 appointed by the chief executive of the State to carry out the functions specified in subparagraph (F), and to participate in the development and review of the State's juvenile justice plan prior to submission to the supervisory board for final action and (A) which shall consist of not less than 15 and not more than 33 persons who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice, (B) which shall include locally elected officials, representation of units of local government, law enforcement and juvenile justice agencies such as law enforcement, correction or probation personnel, and juvenile or family court judges, and public agencies concerned with delinquency prevention or treatment such as welfare, social services, mental health, education, special education, or youth services departments, (C) which shall include (i) representatives of private organizations, including those with a special focus on maintaining and strengthening the family unit, those representing parents or parent groups, those concerned with delinquency prevention and treatment and with neglected or dependent children, and those concerned with the quality of juvenile justice, education, or social services for children; (ii) representatives of organizations which utilize volunteers to work with delinquents or potential delinquents; (iii) representatives of community based delinquency prevention or treatment programs; (iv) representatives of business groups or businesses employing youth; (v) youth workers involved with alternative youth programs; and (vi) persons with special experience and competence in addressing the problems of the family, school violence and vandalism, and learning disabilities, (D) a majority of whose members (including the chairman) shall not be full-time employees of the Federal, State, or local government, (E) at least one-fifth of whose members shall be under the age of 24 at the time of appointment, and at least 3 of whose members shall have been or shall currently be under the jurisdiction of the juvenile justice system; and (F) which (i) shall, consistent with this title, advise the State agency designated under paragraph (1) and its supervisory board; (ii) shall submit to the Governor and the legislature at least annually recommendations with respect to matters related to its functions, including State compliance with the requirements of paragraphs

(12), (13), and (14); (iii) shall have an opportunity for review and comment on all juvenile justice and delinquency prevention grant applications submitted to the State agency designated under paragraph (1), except that any such review and comment shall be made no later than 30 days after the submission of any such application to the advisory group; (iv) may be given a role in monitoring State compliance with the requirements of paragraphs (12), (13), and (14), in advising on State agency designated under paragraph (1) and local criminal justice advisory board composition, and in review of the progress and accomplishments of juvenile justice and delinquency prevention projects funded under the comprehensive State plan; and (v) shall contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system;

(4) provide for the active consultation with and participation of units of general local government or combinations thereof in the development of a State plan which adequately takes into account the needs and requests of local governments, except that nothing in the plan requirements, or any regulations promulgated to carry out such requirements, shall be construed to prohibit or impede the State from making grants to, or entering into contracts with, local private agencies or the advisory group;

(5) unless the provisons of this paragraph are waived at the discretion of the Administrator for any State in which the services for delinquent or other youth are organized primarily on a statewide basis, provide that at least 66⅔ per centum of funds received by the State under section 222, other than funds made available to the state advisory group under section 222(d), shall be expended through—

(A) programs of units of general local government or combinations thereof, to the extent such programs are consistent with the State plan; and

(B) programs of local private agencies, to the extent such programs are consistent with the State plan, except that direct funding of any local private agency by a State shall be permitted only if such agency requests such funding after it has applied for and been denied funding by any unit of general local government or combination thereof;

(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 222 within the State;

(8) provide for (A) an analysis of juvenile crime problems and juvenile justice and delinquency prevention needs within the relevant jurisdiction, a description of the services to be provid-

ed, and a description of performance goals and priorities, including a specific statement of the manner in which programs are expected to meet the identified juvenile crime problems and juvenile justice and delinquency prevention needs of the jurisdiction; (B) an indication of the manner in which the programs relate to other similar State or local programs which are intended to address the same or similar problems; and (C) a plan for the concentration of State efforts which shall coordinate all State juvenile deliquency 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 deliquency prevention;

(9) provide for the active consultation with and participation of private agencies in the development and execution of the State plan; and provide for coordination and maximum utilization of existing juvenile delinquency programs and other related programs, such as education, special education, health, and welfare within the State;

(10) provide that not less than 75 per centum of the funds available to such State under section 222, other than funds made available to the State advisory group under section 222(d), whether expended directly by the State, by the unit of general local government or combination thereof, or through grants and contracts with public or private agencies, shall be used for advanced techniques in developing, maintaining, and expanding programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to confinement in secure detention facilities and secure correctional facilities; to encourage a diversity of alternatives within the juvenile justice system, to establish and adopt juvenile justice standards, and to provide programs for juveniles, including those processed in the criminal justice system, who have committed serious crimes, particularly programs which are designed to improve sentencing procedures, provide resources necessary for informed dispositions, provide for effective rehabilitation, and facilitate the coordination of services between the juvenile justice and criminal justice systems. These advanced techniques include—

(A) community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, halfway houses, homemaker and home health services, twenty-four hour intake screening, volunteer and crisis home programs, education, special education, day treatment, and home probation, and any other designated community-based diagnostic, treatment, or rehabilitative service;

(B) community-based programs and services to work with parents and other family members to maintain and strengthen the family unit so that the juvenile may be retained in his home;

(C) youth service bureaus and other community-based programs to divert youth from the juvenile court or to support, counsel, or provide work and recreational opportunities for delinquents and other youth to help prevent delinquency;

(D) projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth impacted by the juvenile justice system;

(E) educational programs or supportive services designed to encourage delinquent youth and other youth to remain in elementary and secondary schools or in alternative learning situations, including programs to counsel delinquent youth and other youth regarding the opportunities which education provides;

(F) expanded use of probation and recruitment and training of probation officers, other professional and paraprofessional personnel and volunteers to work effectively with youth and their families;

(G) youth initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional youth assistance programs;

(H) statewide programs through the use of subsidies or other financial incentives to units of local government designed to—

(i) remove juveniles from jails and lockups for adults;

(ii) replicate juvenile programs designated as exemplary by the National Institute of Justice;

(iii) establish and adopt, based on the recommendations of the National Advisory Committee for Juvenile Justice and Delinquency Prevention made before the date of the enactment of the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984,[1] standards for the improvement of juvenile justice within the State;

(iv) increase the use of nonsecure community-based facilities and discourage the use of secure incarceration and detention; or

(v) involve parents and other family members in addressing the delinquency-related problems of juveniles;

(I) programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist law enforcement and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles;

(J) 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 juveniles;

[1] Division II of chapter VI of title II of Public Law 98-473 (98 Stat. 2107), approved October 12, 1984.

(K) programs and projects designed to provide for the treatment of juveniles' dependence on or abuse of alcohol or other addictive or nonaddictive drugs; and

(L) law-related education programs and projects designed to prevent juvenile delinquency;

(11) provide for the development of an adequate research, training, and evaluation capacity within the State;

(12)(A) provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities; and

(B) provide that the State shall submit annual reports to the Administrator containing a review of the progress made by the State to achieve the deinstitutionalization of juveniles described in subparagraph (A) and a review of the progress made by the State to provide that such juveniles, if placed in facilities, are placed in facilities which (i) are the least restrictive alternatives appropriate to the needs of the child and the community; (ii) are in reasonable proximity to the family and the home communities of such juveniles; and (iii) provide the services described in section 103(1);

(13) provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges;

(14) provide that, beginning after the five-year period following December 8, 1980, no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall, through 1989, promulgate regulations which make exceptions with regard to the detention of juveniles accused of nonstatus offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within twenty-four hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which—

(i) are outside a Standard Metropolitan Statistical Area,

(ii) have no existing acceptable alternative placement available, and

(iii) are in compliance with the provisions of paragraph (13).[1]

(15) provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraph (12(A), paragraph (13), and paragraph (14) are met, and for annual reporting of the results of such monitoring to the Administrator, except that such reporting requirements shall not apply in the

[1] Period should be a semicolon. As added by Public Law 98-473, Sec. 626(b)(6), 98 Stat. 2113.

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 assistance will be available on an equitable basis to deal with disadvantaged youth including, but not limited to, females, minority youth, and mentally retarded and emotionally or physically handicapped youth;

(17) provide assurance that consideration will be given to and that assistance will be available for approaches designed to strengthen and maintain the family units of delinquent and other youth to prevent juvenile delinquency. Such approaches should include the involvement of grandparents or other extended family members when possible and appropriate;

(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 Act 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 Act; 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 title;

(21) provide reasonable assurances 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 analy-

sis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, which it considers necessary; and

(23) contain such other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of the programs assisted under this title.

(b) The State agency designated under subsection (a)(1), after receiving and considering the advice and recommendations of the advisory group referred to in subsection (a), shall approve the State plan and any modification thereof prior to submission to the Administrator.

(c) The Administrator shall approve any State plan and any modification thereof that meets the requirements of this section. Failure to achieve compliance with the subsection (a)(12)(A) requirement within the three-year time limitation shall terminate any State's eligibility for funding under this subpart unless the Administrator determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 per centum of such juveniles or through removal of 100 percent of such juveniles from secure correctional facilities, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding two additional years. Failure to achieve compliance with the requirements of subsection (a)(14) within the 5-year time limitation shall terminate any State's eligibility for funding under this subpart, unless the Administrator determines that (1) the State is in substantial compliance with such requirements through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the State has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed 3 additional years.

(d) 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 802, 803, and 804 of title I of the Omnibus Crime Control and Safe Streets Act of 1968,[1] determines does not meet the requirements of this section, the Administrator shall endeavor to make that State's allotment under the provisions of section 222(a) available to local public and private nonprofit agencies within such State for use in carrying out the purposes of subsection (a)(12)(A), subsection (a)(13), or subsection (a)(14). 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 to those States that have achieved full compliance with the requirements under subsection (a)(12)(A) and subsection (a)(13) within the initial three years of participation or have achieved full compliance within a reasonable time thereafter as provided by subsection (c).[1]

[1] (42 U.S.C. 3783, 3784, 3785).

(42 U.S.C. 5633)

Subpart II—Special Emphasis Prevention and Treatment Programs

AUTHORITY TO MAKE GRANTS AND CONTRACTS

SEC. 224. (a) From not less than 15 percent, but not more than 25 percent, of the funds appropriated for a fiscal year to carry out this part, the Administrator shall, by making grants to and entering into contracts with public and private nonprofit agencies, organizations, institutions, or individuals provide for each of the following during each fiscal year:

(1) developing and maintaining community-based alternatives to traditional forms of institutionalization of juvenile offenders;

(2) developing and 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) developing and supporting programs stressing advocacy activities aimed at improving services to youth impacted by the juvenile justice system, including services which encourage the improvement of due process available to juveniles in the juvenile justice system;

(4) developing model programs to strengthen and maintain the family unit in order to prevent or treat juvenile delinquency;

(5) developing and 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; and

(6) developing and implementing further a coordinated, national law-related education program of delinquency prevention, including training programs for persons responsible for the implementation of law-related education programs in elementary and secondary schools.

(b) From any special emphasis funds remaining available after grants and contracts are made under subsection (a), but not to exceed 10 percent of the funds appropriated for a fiscal year to carry out this part, the Administrator is authorized, by making grants to and entering into contracts with public and private nonprofit agencies, organizations, institutions, or 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 youth 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 prevent unwarranted and arbitary 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 and organizations and business and industry programs for youth employment;

(4) develop and support programs designed to encourage and enable State legislatures to consider and further the proposes of this title, both by amending State laws if necessary, and devoting greater resources to those purposes;

(5) develop and implement programs relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist law enforcement personnel and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles;

(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 Deliquency Prevention made before the date of the enactment of the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984,[1] standards for the improvement of juvenile justice within each State involved;

(7) development and implement model programs, relating to the special education needs of delinquent and other youth, which develop locally coordinated policies and programs among education, juvenile justice, and social service agencies.

(c) 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, or institutions which have had experience in dealing with youth.

(d) Assistance provided under this section shall be available on an equitable basis to deal with female, minority, and disadvantaged youth, including mentally, emotionally, or physically handicapped youth.

(e) 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, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(42 U.S.C. 5634)

[1] Division II of chapter VI of title II of Public Law 98-473 (98 Stat. 2107), approved October 12, 1984.

CONSIDERATIONS FOR APPROVAL OF APPLICATIONS

SEC. 225. (a) Any agency, institution, or individual desiring to receive a grant, or enter into any contract under section 224, shall submit an application at such time, in such manner, and containing or accompanied by such information as the Administrator may prescribe.

(b) In accordance with guidelines established by the Administrator, each such application shall—

(1) provide that the program for which assistance is sought will be administered by or under the supervision of the applicant;

(2) set forth a program for carrying out one or more of the purposes set forth in section 224 (such purpose or purposes shall be specifically identified in such application);

(3) provide for the proper and efficient administration of such program;

(4) provide for regular evaluation of the program;

(5) indicate that the applicant has requested the review of the application from the State planning agency and local agency designated in section 223 (if such State or local agency exists) and indicate the response of such agency to the request for review and comment on the application;

(6) provide that regular reports on the program shall be sent to the Administrator and to the State planning agency and local agency;

(7) provide for such fiscal control and fund accounting procedures as may be necessary to assure prudent use, proper disbursement, and accurate accounting of funds received under this title; and

(8) attach a copy of the response of the State agency or the local agency to the request for review and comment on the application.

(c) In determining whether or not to approve applications for grants and for contracts under section 224, the Administrator shall consider—

(1) the relative cost and effectiveness of the proposed program in effectuating the purposes of this part;

(2) the extent to which the proposed program will incorporate new or innovative techniques;

(3) the extent to which the proposed program meets the objectives and priorities of the State plan, when a State plan has been approved by the Administrator under section 223(c) and when the location and scope of the program makes such consideration appropriate;

(4) the increase in capacity of the public and private agency, institution, or individual to provide services to address juvenile delinquency and juvenile delinquency prevention;

(5) the extent to which the proposed project serves communicaties which have high rates of youth unemployment, school dropout, and delinquency; and

(6) the adverse impact that may result from the restriction of elibility, based upon population, for cities with a population

greater than forty thousand, located within States which have no city with a population over two hundred and fifty thousand.

(d)(1)(A) Except as provided in subparagraph (B) new programs selected after the effective date of the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984 [1] for assistance through grants or contracts under section 224 or part C 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 the availability of funds for such assistance, the general criteria applicable to the selection of applicants to receive such assistance, and 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—

(i) the Administrator has made a written determination that the proposed program is not within the scope of any program announcement or any announcement expected to be issued, but can otherwise be supported by a grant or contract in accordance with section 224 or part C of this title, and if the proposed program is of such outstanding merit, as determined through peer review conducted under paragraph (2), that the award of a grant or contract without competition is justified; or

(ii) the Administrator makes a written determination, which shall include the factual and other bases thereof, that the applicant is uniquely qualified to provide proposed training services as provided in section 244, and other qualified sources are not capable of carrying out the proposed program.

(C) In each case where a program is selected for assistance without competition pursuant to the exception provided in subparagraph (B), the Administrator shall promptly so notify 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. Such notification shall include copies of the Administrator's determination under clause (i) or clause (ii) of such subparagraph and the peer review determination required under paragraph (2).

(2) New programs selected after the effective date of the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984 [1] for assistance through grants or contracts under section 224 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. 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, 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 program proposals when necessary to avoid any delay which would preclude carrying out the program.

(e) No city should be denied an application solely on the basis of its population.

(f) Notification of grants and contracts made under section 224 (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.

(42 U.S.C. 5635)

[1] Division II of chapter VI of title II of Public Law 98-473 (98 Stat. 2107), approved October 12, 1984.

GENERAL PROVISIONS [1]

Withholding

SEC. 226. Whenever the Administrator, after giving reasonable notice and opportunity for hearing to a recipient of financial assistance under this title, finds—

(1) that the program or activity for which such grant was made has been so changed that it no longer complies with the provisions of this title; or

(2) that in the operation of the program or activity there is failure to comply substantially with any such provision;

the Administrator shall initiate such proceedings as are appropriate.

(42 U.S.C. 5636)

USE OF FUNDS

SEC. 227. (a) Funds paid pursuant to this title to any public or private agency, organization, institution, or individual (whether directly or through a State planning agency) may be used for—

(1) planning, developing, or operating the program designed to carry out the purposes of this part; and

(2) not more than 50 per centum of the cost of the construction of innovative community-based facilities for less than twenty persons which, in the judgment of the Administrator, are necessary for carrying out the purpose of this part.

(b) Except as provided by subsection (a), no funds paid to any public or private agency, institution, or individual under this part (whether directly or through a State agency or local agency) may be used for construction.

(c) Funds paid pursuant to section 223(a)(10)(D) and section 224(a)(3) to any public or private agency, organization, or institution or to any individual (whether directly or through a State criminal justice council)[2] shall not be used to pay for any personal

[1] So in original. Should be designated as Subpart III.

[2] Reference to State criminal justice advisory council should be stricken because of amendments made by section 626 of Public Law 98-473 (98 Stat. 2111), approved October 12, 1984.

service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence a Member of the Congress or any other Federal, State, or local elected official to favor or oppose any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure by the Congress, any State legislature, any local council, or any similar governing body, except that this subsection shall not preclude such funds from being used in connection with communications to Federal, State, or local elected officials, upon the request of such officials through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved. The Administrator shall take such action as may be necessary to ensure that no funds paid under section 223(a)(10)(D) or section 224(a)(3) are used either directly or indirectly in any manner prohibited in this subsection.

(42 U.S.C. 5637)

PAYMENTS

SEC. 228. (a) Whenever the Administrator determines that it will contribute to the purposes of part A or part C, the Administrator may require the recipient of any grant or contract to contribute money, facilities, or services.

(b) Payments under this part, pursuant to a grant or contract, may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursements, in such installments and on such conditions as the Administrator may determine.

(c) Except as provided in the second sentence of section 222(c), financial assistance extended under the provisions of this title shall be 100 per centum of the approved costs of any program or activity.

(d) In the case of a grant under this part to an Indian tribe or other aboriginal group, if the Administrator determines that the tribe or group does not have sufficient funds available to meet the local share of the cost of any program or project to to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent the Administrator deems necessary. Where a State does not have an adequate forum to enforce grant provisions imposing any liability on Indian tribes, the Administrator is authorized to waive State liability and may pursue such legal remedies as are necessary.

(e) 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 subpart II of this part for that fiscal year will not be required by the applicant or will become available by virtue of the application of the provisions of section 802 of the Omnibus Crime Control and Safe Streets Act of 1968,[1] as amended, that portion shall be available for reallocation in an equitable manner to States which have complied with the requirements in section 223(a)(12)(A) and section 223(a)(13), under section 224(b)(6) of this title.

[1] (42 U.S.C. 3783).

(42 U.S.C. 5638)

CONFIDENTIALITY OF PROGRAM RECORDS

SEC. 229. Except as authorized by law, program records containing the identity of individual juveniles gathered for purposes pursuant to this title may not be disclosed except with the consent of the service recipient or legally authorized representative, or as may be necessary to perform the functions required by this title. Under no circumstances may project reports or findings available for public dissemination contain the actual names of individual service recipients.

(42 U.S.C. 5639)

PART C—NATIONAL INSTITUTE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION

ESTABLISHMENT OF NATIONAL INSTITUTE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION

SEC. 241. (a) There is hereby established within the Juvenile Justice and Delinquency Prevention Office a National Institute for Juvenile Justice and Delinquency Prevention.

(b) The National Institute for Juvenile Justice and Delinquency Prevention shall be under the supervision and direction of the Administrator, and shall be headed by a Deputy Administrator of the Office appointed under section 201(c).

(c) 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 201(b).

(d) 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, family counselors, child welfare workers, juvenile judges and judicial personnel, probation personnel, 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) In addition to the other powers, express and implied, the Institute may—

(1) request any Federal agency to supply such statistics, data, program reports, and other material as the Institute deems necessary to carry out its functions;

(2) arrange with and reimburse the heads of Federal agencies for the use of personnel or facilities or equipment of such agencies;

(3) confer with and avail itself of the cooperation, services, records, and facilities of State, municipal, or other public or private local agencies;

(4) make grants and enter into contracts with public or private agencies, organizations, or individuals for the partial performance of any functions of the Institute;

(5) compensate consultants and members of technical advisory councils who are not in the regular full-time employ of the United States, at a rate now or hereafter prescribed for GS–18 of the General Schedule by section 5332 of title 5 of the United States Code and while away from home, or regular place of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code for persons in the Government service employed intermittently; and

(6) assist through training, the advisory groups established pursuant to section 223(a)(3) or comparable public or private citizen groups in nonparticipating States in the accomplishment of their objectives consistent with this Act.

(f) The Administrator, acting through the Institute, shall provide, not less frequently than once every 2 years, for a national conference of member representatives from State advisory groups for the purpose of—

(1) disseminating information, data, standards, advanced techniques, and program models developed through the Institute and through programs funded under section 224;

(2) reviewing Federal policies regarding juvenile justice and delinquency prevention;

(3) advising the Administrator with respect to particular functions or aspects of the work of the Office; and

(4) 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) Any Federal agency which receives a request from the Institute under subsection (e)(1) may cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information and advice to the Institute.

(h) the authorities of the Institute under this part shall be subject to the terms and conditions of section 225(d).

(42 U.S.C. 5651)

INFORMATION FUNCTION

SEC. 242. The National Institute for Juvenile Justice and Delinquency Prevention is authorized to—

(1) serve as an information bank by collecting systematically and synthesizing the data and knowledge obtained from studies and research by public and private agencies, institutions, or individuals concerning all aspects of juvenile delinquency, including the prevention and treatment of juvenile delinquency;

(2) serve as a clearinghouse and information center for the preparation, publication, and dissemination of all information regarding juvenile delinquency, including State and local juvenile delinquency prevention and treatment programs and

plans, availability of resources, training and educational programs, statistics, and other pertinent data and information.

(42 U.S.C. 5652)

RESEARCH, DEMONSTRATION, AND EVALUATION FUNCTIONS

SEC. 243. The National Institute for Juvenile Justice and Delinquency Prevention is authorized to—

(1) conduct, encourage, and coordinate reseach and evaluation into any aspect of juvenile delinquency, particularly with regard to new programs and methods which seek to strengthen and maintain the family unit 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) provide for the evaluation of all juvenile delinquency programs assisted under this title in order to determine the results and the effectiveness of such programs;

(4) provide for the evaluation of any other Federal, State, or local juvenile delinquency program, upon the request of the Deputy Administrator; [1]

(5) 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 related matters, including—

(A) recommendations designed to promote effective prevention and treatment, particularly by strengthening and maintaining the family unit; and

(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 possible ameliorating roles of familial relationships, special education, remedial education, and recreation, and the extent to which youth in the juvenile system are treated differently on the basis of sex, race, or family income and the ramifications of such treatment;

(C) examinations of the treatment of juveniles processed in the criminal justice system; and

(D) recommendations as to effective means for detering involvement in illegal activities or promoting involvement in lawful activities on the part of gangs whose membership is substantially composed of juveniles.

(6) disseminate the results of such evaluations and research and demonstration activities particularly to persons actively working in the field of juvenile delinquency; and

(7) disseminate pertinent data and studies to individuals, agencies, and organizations concerned with the prevention and treatment of juvenile delinquency.

(42 U.S.C. 5653)

[1] So in original. Apparently should be "Administrator".

TRAINING FUNCTIONS

SEC. 244. The National Institute for Juvenile Justice and Delinquency Prevention is authorized to—

(1) develop, conduct, and provide for training programs for the training of professional, paraprofessional, and volunteer personnel, and other persons who are working with or preparing to work with juveniles, juvenile offenders, and their families;

(2) 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, and other court personnel, probation officers, correctional personnel, and other Federal, State, and local government personnel who are engaged in work relating to juvenile delinquency;

(3) devise and conduct a training program, in accordance with the provisions of sections 248, 249, and 250,[1] of short-term instruction in the latest proven-effective methods of prevention, control, and treatment of juvenile delinquency for correctional and law enforcement personnel, teachers and special education personnel, family counselors, child welfare workers, juvenile judges and judicial personnel, probation personnel (including volunteer lay personnel), persons associated with law-related education, youth workers, and organizations with specific experience in the prevention and treatment of juvenile delinquency; and

(4) develop technical training teams to aid in the development of training programs in the States and to assist State and local agencies which work directly with juveniles and juvenile offenders.

(42 U.S.C. 5654)

ANNUAL REPORT

SEC. 245. The Deputy Administrator for the National Institute for Juvenile Justice and Delinquency Prevention shall develop annually and submit to the Administrator after the first year the legislation is enacted, prior to September 30, a report on research, demonstration, training, and evaluation programs funded under this title, including a review of the results of such programs, an assessment of the application of such results to existing and to new juvenile delinquency programs, and detailed recommendations for future research, demonstration, training, and evaluation programs. The Administrator shall include a summary of these results and recommendations in his report to the President and Congress required by section 204(b)(5).

(42 U.S.C. 5656) Formerly section 246. Original section 245 was repealed October 12, 1984, by Public Law 98-473, sec. 634, (98 Stat. 2119).

[1] Reference should be to sections 247, 248, and 249. Amendments made by sections 637, 638, and 639 of Public Law 98-473 (98 Stat. 2120), approved October 12, 1984, redesignated sections.

ADDITIONAL FUNCTIONS OF THE INSTITUTE

SEC. 246. (a) The National Institute for Juvenile Justice and Delinquency Prevention shall review existing reports, data, and standards, relating to the juvenile justice system in the United States.

(b) The National Institute for Juvenile Justice and Delinquency Prevention is authorized to develop and support model State legislation consistent with the mandates of this title and the standards developed by National Advisory Committee for Juvenile Justice and Delinquency Prevention before the date of the enactment of the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984.[1]

(42 U.S.C. 5657) Formerly section 247. Redesignated by sec. 636 of Public Law 98-473 (98 Stat. 2120).

ESTABLISHMENT OF TRAINING PROGRAM

SEC. 247. (a) The Administrator shall establish within the Institute a training program designed to train enrollees with respect to methods and techniques for the prevention and treatment of juvenile delinquency. In carrying out 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. 5659) Formerly section 248. Redesignated by sec. 637 of Public Law 98-473 (98 Stat. 2120).

CURRICULUM FOR TRAINING PROGRAM

SEC. 248. The Administrator shall design and supervise a curriculum for the training program established by section 248 [2] which shall utilize and 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.

(42 U.S.C. 5660) Formerly section 249. Redesignated by sec. 638 of Public Law 98-473 (98 Stat. 2120).

PARTICIPATION IN TRAINING PROGRAM AND STATE ADVISORY GROUP CONFERENCES

SEC. 249. (a) Any person seeking to enroll in the training program established under section 248 [2] shall transmit an application

[1] Division II of chapter VI of title II of Public Law 98-473 (98 Stat. 2107), approved October 12, 1984.

[2] Reference should be to section 247, so redesignated by sec. 637 of Public Law 98-473 (98 Stat. 2120).

to the Administrator, in such form and according to such procedures as the Administrator may prescribe.

(b) 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 248(b).[1]

(c) While participating as a trainee in the program established under section 246 [2] or while participating in any conference held under section 241(f), 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, United States Code. No consultation fee may be paid to such person for such participation.

(42 U.S.C. 5661) Formerly section 250. Redesignated by sec. 639 of Public Law 98-473 (98 Stat. 2121).

PART D—ADMINISTRATIVE PROVISIONS

AUTHORIZATION OF APPROPRIATIONS

SEC. 261. (a) To carry out the purposes of this title there is authorized to be appropriated such sums as may be necessary for fiscal years 1985, 1986, 1987, and 1988. Funds appropriated for any fiscal year may remain available for obligation until expended.

(b) Of such sums as are appropriated to carry out the purposes of this title—

(1) not to exceed 7.5 percent shall be available to carry out part A;

(2) not less than 81.5 percent shall be available to carry out part B; and

(3) 11 percent shall be available to carry out part C.

(c) 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 223 and permit the State advisory group appointed under section 223(a)(3) 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) No funds appropriated to carry out the purposes of this title 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

[1] Reference should be to section 247(b). See preceding note.
[2] Reference should be to section 247. See the two preceding notes.

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).

(42 U.S.C. 5671)

ADMINISTRATIVE AUTHORITY

SEC. 262. (a) The Office shall be administered by the Administrator under the general authority of the Attorney General.

(b) Sections 809(c), 811(a), 811(b), 811(c), 812(a), 812(b), and 812(d) of the Omnibus Crime Control and Safe Streets Act of 1968,[1] as so designated by the operation of the amendments made by the Justice Assistance Act of 1984,[2] shall apply with respect to the administration of and compliance with this Act, except that for purposes of this Act—

(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 title" as it appears in such sections shall be deemed to be a reference to this Act.

(c) Sections 801(a), 801(c), and 806 of the Omnibus Crime Control and Safe Streets Act of 1968,[3] as so designated by the operation of the amendments made by the Justice Assistance Act of 1984,[4] shall apply with respect to the administration of and compliance with this Act, except that for purposes of this Act—

(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 title" as it appears in such sections shall be deemed to be a reference to this Act.

(d) The Administrator is authorized, after appropriate consultation with representatives of States and units of local government,

[1] (42 U.S.C. 3789 et seq.).
[2] Division II of chapter VI of title II of Public Law 98-473 (98 Stat. 2107), approved October 12, 1984.
[3] (42 U.S.C. 3782 et seq.).
[4] See note 2 above.

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 Act.
(42 U.S.C. 5672)

EFFECTIVE CLAUSE

SEC. 263. (a) Except as provided by subsections (b) and (c), the foregoing provisions of this Act shall take effect on the date of enactment of this Act.

(b) Section 204(b)(5) and 204(b)(6) shall become effective at the close of the thirty-first day of the twelfth calendar month of 1974. Section 204(l) shall become effective at the close of the thirtieth day of the eleventh calendar month of 1976.

(c) Except as otherwise provided by the Juvenile Justice Amendments of 1977, the amendments made by the Juvenile Justice Amendments of 1977 shall take effect on October, 1, 1977.
(42 U.S.C. 5601 note)

TITLE III—RUNAWAY AND HOMELESS YOUTH

SHORT TITLE

SEC. 301. This title may be cited as the "Runaway and Homeless Youth Act".
(42 U.S.C. 5701 note)

FINDINGS

SEC. 302. The Congress hereby finds that—

(1) the number of juveniles who leave and remain away from home without parental permission has increased to alarming proportions, creating a substantial law enforcement problem for the communities inundated, and significantly endangering the young people who are without resources and live on the street;

(2) the exact nature of the problem is not well defined because national statistics on the size and profile of the runaway youth population are not tabulated;

(3) many such young people, because of their age and situation, are urgently in need of temporary shelter and counseling services;

(4) the problem of locating, detaining, and returning runaway children should not be the responsibility of already overburdened police departments and juvenile justice authorities; and

(5) in view of the interstate nature of the problem, it is the responsibility of the Federal Government to develop accurate reporting of the problem nationally and to develop an effective system of temporary care outside the law enforcement structure.

(42 U.S.C. 5701)

RULES

SEC. 303. The Secretary of Health and Human Services (hereinafter in this title referred to as the "Secretary") may issue such rules as the Secretary considers necessary or appropriate to carry out the purposes of this title.
(42 U.S.C. 5702)

PART A—GRANTS PROGRAM

PURPOSES OF GRANT PROGRAM

SEC. 311. (a) The Secretary is authorized to make grants and to provide technical assistance and short-term training to States, localities and private entities and coordinated networks of such entities in accordance with the provisions of this part and assistance to their families.[1] Grants under this part shall be made equitably among the States based upon their respective populations of youth under 18 years of age for the purpose of developing local facilities to deal primarily with the immediate needs of runaway youth or otherwise homeless youth, and their families, in a manner which is outside the law enforcement structure and juvenile justice system. The size of such grant shall be determined by the number of such youth in the community and the existing availability of services. Grants also may be made for the provision of a national communications system for the purpose of assisting runaway and homeless youth in communicating with their families and with service providers. Among applicants priority shall be given to private organizations or institutions which have had past experience in dealing with such youth.[1]

(b) The Secretary is authorized to provide supplemental grants to runaway centers which are developing, in cooperation with local juvenile court and social service agency personnel, model programs designed to provide assistance to juveniles who have repeatedly left and remained away from their homes or from any facilities in which they have been placed as the result of an adjudication and to the families of such juveniles.

(c) The Secretary is authorized to provide on-the-job training to local runaway and homeless youth center personnel and coordinated networks of local law enforcement, social service, and welfare personnel to assist such personnel in recognizing and providing for learning disabled and other handicapped juveniles.
(42 U.S.C. 5711)

ELIGIBILITY

SEC. 312. (a) To be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund an existing or proposed runaway center, a locally controlled facility providing temporary shelter, and counseling services to juveniles who have left home without permission of their parents or guardians or to other homeless juveniles.

---

[1] Error in amendment made October 12, 1984, by P.L. 98-473, sec. 651(a), 98 Stat. 2123. The phrase "and assistance to their families" should appear before the period at the end of subsection (a).

(b) In order to qualify for assistance under this part, an applicant shall submit a plan to the Secretary meeting the following requirements and including the following information. Each center—

(1) shall be located in an area which is demonstrably frequented by or easily reachable by runaway youth;

(2) shall have a maximum capacity of no more than twenty children, with a ratio of staff to children of sufficient proportion to assure adequate supervision and treatment;

(3) shall develop adequate plans for contacting the child's parents or relatives and assuring the safe return of the child according to the best interests of the child, for contacting local government officials pursuant to informal arrangements established with such officials by the runaway center, and for providing for other appropriate alternative living arragements;

(4) shall develop an adequate plan for assuring proper relations with law enforcement personnel, social service personnel, school system personnel, and welfare personnel, and the return of runaway youths from correctional institutions;

(5) shall develop an adequate plan for aftercare counseling involving runaway youth and their families within the State in which the runaway center is located and for assuring, as possible, that aftercare services will be provided to those children who are returned beyond the State in which the runaway center is located;

(6) shall keep adequate statistical records profiling the children and family members which it serves, except that records maintained on individual runaway youths shall not be disclosed without the consent of the individual youth and parent or legal guardian to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual runaway youth, and reports or other documents based on such statistical records shall not disclose the identity of individual runaway youths;

(7) shall 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);

(8) shall demonstrate its ability to operate under accounting procedures and fiscal control devices as required by the Secretary;

(9) shall submit a budget estimate with respect to the plan submitted by such center under this subsection; and

(10) shall supply such other information as the Secretary reasonably deems necessary.

(42 U.S.C. 5712)

APPROVAL BY SECRETARY

SEC. 313. An application by a State, locality, or private entity for a grant under this part may be approved by the Secretary only if it is consistent with the applicable provisions of this part and meets the requirements set forth in section 312. Priority shall be given to grants smaller than $150,000. In considering grant applications under this part, priority shall be given to organizations which have

a demonstrated experience in the provision of service to runaway and homeless youth and their families.

(42 U.S.C. 5713)

GRANTS TO PRIVATE ENTITIES; STAFFING

SEC. 314. Nothing in this part 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 center. Nothing in this part shall give the Federal Government control over the staffing and personnel decisions of facilities receiving Federal funds.

(42 U.S.C. 5714)

ASSISTANCE TO POTENTIAL GRANTEES

SEC. 315. The Secretary shall provide informational assistance to potential grantees interested in establishing runaway and homeless youth centers. Such assistance shall consist of information on—

(1) steps necessary to establish a runaway and homeless youth center, including information on securing space for such center, obtaining insurance, staffing, and establishing operating procedures;

(2) securing local private or public financial support for the operation of such center, including information on procedures utilized by grantees under this title; and

(3) the need for the establishment of additional runaway youth centers in the geographical area identified by the potential grantee involved.

LEASE OF SURPLUS FEDERAL FACILITIES FOR USE AS RUNAWAY AND HOMELESS YOUTH CENTERS

SEC. 316. (a) 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 if the Secretary determines that—

(1) the applicant involved has suitable financial support necessary to operate a runaway and homeless youth center;

(2) the applicant is able to demonstrate the program expertise required to operate such center in compliance with this title, 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)(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.

REPORTS

SEC. 317. The Secretary shall annually report to the Congress on the status and accomplishments of the runaway centers which are funded under this part, with particular attention to—

(1) their effectiveness in alleviating the problems of runaway youth;

(2) their ability to reunite children with their families and to encourage the resolution of intrafamily problems through counseling and other services;

(3) their effectiveness in stengthening family relationships and encouraging stable living conditions for children; and

(4) their effectiveness in helping youth decide upon a future course of action.

(42 U.S.C. 5715)

FEDERAL SHARE

SEC. 318. (a) The Federal share for the acquisition and renovation of existing structures, the provision of counseling services, staff training, and the general costs of operations of such facility's budget for any fiscal year shall be 90 per centum. The non-Federal share may be in cash or in kind, fairly evaluated by the Secretary including plant, equipment, or services.

(b) Payments under this section may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

(42 U.S.C. 5716)

PART B—RECORDS

RECORDS

SEC. 321. Records containing the identity of individual youth pursuant to this Act may under no circumstances be disclosed or transferred to any individual or to any public or private agency.

(42 U.S.C. 5731)

PART C—AUTHORIZATION OF APPROPRIATIONS [1]

AUTHORIZATION OF APPROPRIATIONS

SEC. 331. (a) To carry out the purposes of part A of this title there is authorized to be appropriated such sums as may be necessary for fiscal years 1985, 1986, 1987, and 1988.

(b) The Secretary (through the Office of Youth Development which shall administer this title) shall consult with the Attorney General (through the Administrator of the Office of Juvenile Justice and Delinquency Prevention) for the purpose of cordinating the development and implementation of programs and activities funded under this title with those related programs and activities funded under title II of this Act and under the Omnibus Crime Control and Safe Streets Act of 1968,[1] as amended.

(c) No funds appropriated to carry out the purposes of this title—

(1) may be used for any program or activity which is not specifically authorized by this title; 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 title.

(42 U.S.C 5751)

[1] NOTE.—Original part C (relating to reorganization) was repealed October 12, 1984, by P.L. 98-473, sec. 656, 98 Stat. 2124.

TITLE IV—MISSING CHILDREN [2]

SHORT TITLE

SEC. 401. This title may be cited as the Missing Children's Assistance Act.[3]

FINDINGS

SEC. 402. 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.

[1] (42 U.S.C. 3701 et seq.).

[2] NOTE.—The original title IV of the Juvenile Justice and Delinquency Prevention Act of 1974 was repealed by section 10 of the Juvenile Justice Amendments of 1977 (Public Law 95-115; 91 Stat. 1061). Title V of such Act, which made various amendments to title 18, United States Code, is not included in this Compilation. The current title IV was added October 12, 1984, by Public Law 98-473, sec. 660, 98 Stat. 2125.

[3] So in original. Should show quotation marks around the short title.

DEFINITIONS

SEC. 403. For the purpose of this title—

(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.

DUTIES AND FUNCTIONS OF THE ADMINISTRATOR

SEC. 404. (a) The Administrator shall—

(1) issue such rules as the Administrator considers necessary or appropriate to carry out this title;

(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), to appropriate law enforcement entities;

(4) provide adequate staff and agency resources which are necessary to properly carry out the responsibilities pursuant to this title;

(5) analyze, compile, publish, and disseminate an annual summary of recently completed research, research being conducted, and Federal, State, and local demonstration projects relating to missing children with particular emphasis on—

(A) effective models of local, State, and Federal coordination and cooperation in locating missing children;

(B) effective programs designed to promote community awareness of the problem of missing children;

(C) effective programs to prevent the abduction and sexual exploitation of children (including parent, child, and community education); and

(D) effective program models which provide treatment, counseling, or other aid to parents of missing children or to children who have been the victims of abduction or sexual exploitation; and

(6) prepare, in conjunction with and with the final approval of the Advisory Board on Missing Children, an annual comprehensive plan for facilitating cooperation and coordination among all agencies and organizations with responsibilities related to missing children.

(b) The Administrator, either by making grants to or entering into contracts with public agencies or nonprofit private agencies, shall—

(1) establish and operate a national 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;

(2) establish and operate a national resource center and clearinghouse designed—

(A) to provide technical assistance to local and State governments, public and private nonprofit agencies, and individuals in locating and recovering missing children;

(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 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

(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.

(c) Nothing contained in this title shall be construed to grant to the Administrator any law enforcement responsibility or supervisory authority over any other Federal agency.

ADVISORY BOARD

SEC. 405. (a) There is hereby established the Advisory Board on Missing Children (hereinafter in this title referred to as the "Advisory Board") which shall be composed of 9 members as follows:

(1) a law enforcement officer;

(2) an individual whose official duty is to prosecute violations of the criminal law of a State;

(3) the chief executive officer of a unit of local government within a State;

(4) a statewide elected officer of a State;

(5) the Director of the Federal Bureau of Investigation or the Director's designee from within the Federal Bureau of Investigation; and

(6) 4 members of the public who have experience or expertise relating to missing children (including members representing parent groups).

(b) The Attorney General shall make the initial appointments to the Advisory Board not later than 90 days after the effective date of this title. The Advisory Board shall meet periodically and at the call of the Attorney General, but not less frequently than annually. The Chairman of the Advisory Board shall be designated by the Attorney General.

(c) The Advisory Board shall—

(1) advise the Administrator and the Attorney General in coordinating programs and activities relating to missing children which are planned, administered, or assisted by any Federal program;

(2) advise the Administrator with regard to the establishment of priorities for making grants or contracts under section 406; and

(3) approve the annual comprehensive plan for facilitating cooperation and coordination among all agencies and organizations with responsibilities relating to missing children and submit the first such annual plan to the President and the Congress not later than eighteen months after the effective date of this title.

(d) Members of the Advisory Board, while serving away from their places of residence or regular places of business, shall be entitled to reimbursement for travel expenses, including per diem in lieu of subsistence, in the same manner as is authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

GRANTS

SEC. 406. (a) 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; and

(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.

(b) In considering grant applications under this title, 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) In order to receive assistance under this title 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.

CRITERIA FOR GRANTS

SEC. 407. The Administrator, in consultation with the Advisory Board, shall establish annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 406 and, not less than 60 days before establishing such priorities, shall publish in the Federal Register for public comment a statement of such proposed priorities.

AUTHORIZATION OF APPROPRIATIONS

SEC. 408. To carry out the provisions of this title, there are authorized to be appropriated $10,000,000 for fiscal year 1985, and such sums as may be necessary for fiscal years 1986, 1987, and 1988.

RELATED PROVISIONS OF LAW

A. Juvenile Justice Amendments of 1980

REPORT REGARDING CONFINEMENT OF JUVENILES IN JAILS FOR ADULTS

SEC. 17. (a) The Administrator of the Office of Juvenile Justice and Delinquency Prevention, not later than 18 months after the date of the enactment of this Act, shall submit a report to the Congress relating to the cost and implications of any requirement added to the Juvenile Justice and Delinquency Prevention Act of 1974 which would mandate the removal of juveniles from adults in all jails and lockups.

(b) The report required in subsection (a) shall include—

(1) an estimate of the costs likely to be incurred by the States in implementing the requirement specified in subsection (a);

(2) an analysis of the experience of States which currently require the removal of juveniles from adults in all jails and lockups;

(3) an analysis of possible adverse ramifications which may result from such requirement of removal, including an analysis of whether such requirement would lead to an expansion of the residential capacity of secure detention facilities and secure correctional facilities for juveniles, thus resulting in a net increase in the total number of juveniles detained or confined in such facilities; and

(4) recommendations for such legislative or administrative action as the Administrator considers appropriate.

B. Chapters 319 and 403 of Title 18, United States Code

Chapter 319. NATIONAL INSTITUTE OF CORRECTIONS [1]

SEC. 4351. (a) There is hereby established within the Bureau of Prisons a National Institute of Corrections.

(b) The overall policy and operations of the National Institute of Corrections shall be under the supervision of an Advisory Board. The Board shall consist of sixteen members. The following six individuals shall serve as members of the Commission ex officio: the Director of the Federal Bureau of Prisons or his designee, the Administrator of the Law Enforcement Assistance Administration or his designee, Chairman of the United States Sentencing Commission, Director of the Federal Judicial Center or his designee, the

[1] As amended through 1984.

Associate Administrator[1] for the Office of Juvenile Justice and Delinquency Prevention or his designee, and the Assistant Secretary for Human Development of the Department of Health, Education, and Welfare or his designee.

(c) The remaining ten members of the Board shall be selected as follows:

(1) Five shall be appointed initially by the Attorney General of the United States for staggered terms; one member shall serve for one year, one member for two years, and three members for three years. Upon the expiration of each member's term, the Attorney General shall appoint successors who will each serve for a term of three years. Each member selected shall be qualified as a practitioner (Federal, State, or local) in the field of correction, probation, or parole.

(2) Five shall be appointed initially by the Attorney General of the United States for staggered terms, one member shall serve for one year, three members for two years, and one member for three years. Upon the expiration of each member's term the Attorney General shall appoint successors who will each serve for a term of three years Each member selected shall be from the private sector, such as business, labor, and education, having demonstrated an active interest in corrections, probation, or parole.

(d) The members of the Board shall not, by reason of such membership, be deemed officers of employees of the United States. Members of the Commission who are full-time officers or employees of the United States shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Board. Other members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Commission pursuant to this title, be entitled to receive compensation at the rate not to exceed the daily equivalent of the rate authorized for GS-18 by section 5332 of title 5, United States Code, including travel-time, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(e) The Board shall elect a chairman from among its members who shall serve for a term of one year. The members of the Board shall also elect one or more members as a vice-chairman.

(f) The Board is authorized to appoint, without regard to the civil service laws, technical, or other advisory committees to advise the institute [2] with respect to the administration of this title as it deems appropriate. Members of these committees not otherwise employed by the United States, while engaged in advising the Institute or attending meetings of the committees, shall be entitled to receive compensation at the rate fixed by the Board but not to exceed the daily equivalent of the rate authorized for GS-18 by section 5332 of title 5, United State Code, and while away from their

[1] So in original, Apparently should be "Administrator".
[2] So in original. Apparently should be "Institute".

homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(g) The Board is authorized to delegate its powers under this title to such persons as it deems appropriate.

(h) The Institute shall be under the supervision of an officer to be known as the Director, who shall be appointed by the Attorney General after consultation with the Board. The Director shall have authority to supervise the organization, employees, enrollees, financial affairs, and all other operations of the Institute and may employ such staff, faculty, and administrative personnel, subject to the civil service and classification laws, as are necessary to the functioning of the Institute. The Director shall have the power to acquire and hold real and personal property for the Institute and may receive gifts, donations, and trusts on behalf of the Institute. The Director shall also have the power to appoint such technical or other advisory councils comprised of consultants to guide and advise the Board. The Director is authorized to delegate his powers under this title to such persons as he deems appropriate.

SEC. 4352. (a) In addition to the other powers, express and implied, the National Institute of Corrections shall have authority—

(1) to recieve from or make grants to and enter into contracts with Federal, State, and general units of local govenment, public and private agencies, educational institutions, organizations, and individuals to carry out the purposes of this chapter;

(2) to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on corrections, including, but not limited to, programs for prevention of crime and recidivism, training of corrections personnel, and rehabilitation and treatment of criminal and juvenile offenders;

(3) to assist and serve in a consulting capacity to Federal, State, and local courts, departments, and agencies in the development, maintenance, and coordination of programs, facilities, and services, training, treatment, and rehabilitation with respect to criminal and juvenile offenders;

(4) to encourage and assist Federal, State, and local government programs and services, and programs and services of other public and private agencies, institutions, and organizations in their efforts to develop and implement improved corrections programs;

(5) to devise and conduct, in various geographical locations, seminars, workshops, and training programs for law enforcement officers, judges, and judicial personnel, probation and parole personnel, correctional personnel, welfare workers, and other persons, including lay ex-offenders, and paraprofessional personnel, connected with the treatment and rehabilitation of criminal and juvenile offenders;

(6) to develop technical training teams to aid in the development of seminars, workshops, and training programs within the several States and with the State and local agencies which work with prisoners, parolees, probationers, and other offenders;

(7) to conduct, encourage, and coordinate reseach relating to corrections, including the causes, prevention, diagnosis, and treatment of criminal offenders;

(8) to formulate and disseminate correctional policy, goals, standards, and recommendations for Federal, State, and local correctional agencies, organizations, institutions, and personnel;

(9) to conduct evaluation programs which study the effectiveness of new approaches, techniques, systems, programs, and devices employed to improve the corrections system;

(10) to receive from any Federal department or agency such statistics, data, program reports, and other material as the Institute deems necessary to carry out its functions. Each such department or agency is authorized to cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information to the Institute;

(11) to arrange with and reimburse the heads of Federal departments and agencies for the use of personnel, facilities, or equipment of such departments and agencies;

(12) to confer with and avail itself of the assistance, services, records, and facilities of State and local governments or other public or private agencies, organizations, or individuals;

(13) to enter into contracts with public or private agencies, organizations, or individuals, for the performance of any of the functions of the Institute; and

(14) to procure the services of experts and consultants in accordance with section 3109 of title 5 of the United States Code, at rates of compensation not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5 of the United States Code.

(b) The Institute shall on or before the 31st day of December of each year submit an annual report for the preceding fiscal year to the President and to the Congress. The report shall include a comprehensive and detailed report of the Institute's operations, activities, financial condition, and accomplishments under this title and may include such recommendations related to corrections as the Institute deems appropriate.

(c) Each recipient of assistance under this shall [1] keep such records as the Institute shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(d) The Institute, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for purposes of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

[1] So in original.

(e) The provision [1] of this section shall apply to all recipients of assistance under this title, whether by direct grant or contract from the Institute or by subgrant or subcontract from primary grantees or contractors of the Institute.

SEC. 4353. There is hereby authorized to be appropriated such funds as may be required to carry out the purposes of this chapter.

Chapter 403.—JUVENILE DELINQUENCY [2]

§ 5031. Definitions

For the purposes of this chapter, a "juvenile" is a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday, and "juvenile delinquency" is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult.

§ 5032. Delinquency proceedings in district courts; transfer for criminal prosecution

A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in section 841, 952(a), 955, or 959 of title 21, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State.

If an alleged juvenile delinquent is not surrendered to the authorities of a State or the District of Columbia pursuant to this sec-

[1] So in original. Apparently should be "provisions".
[2] As amended through 1984.

tion, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless he has requested in writing upon advice of counsel to be proceeded against as an adult, except that, with respect to a juvenile fifteen years and older alleged to have commited an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or an offense described in section 841, 952(a), 955, or 959 of title 21, criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice; however, a juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense that has as an element thereof the use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another may be used in committing the offense, or would be an offense described in section 32, 81, 844(d), (e), (f), (h), (i) or 2275 of this title, and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this subsection or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred to the appropriate district court of the United States for criminal prosecution.

Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer would be in the interest of justice: the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems.

Reasonable notice of the transfer hearing shall be given to the juvenile, his parents, guardian, or custodian and to his counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

Once a juvenile has entered a plea of guilty or the proceeding has reached the state that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions.

Whenever a juvenile transferred to district court under this section is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged with that crime, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

Any proceedings against a juvenile under this chapter or as an adult shall not be commenced until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile's record is unavailable and why it is unavailable.

Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile's official record.

§ 5033. Custody prior to appearance before magistrate

Whenever a juvenile is taken into custody for an alleged act of juvenile delinquency, the arresting officer shall immediately advise such juvenile of his legal rights, in language comprehensive to a juvenile, and shall immediately notify the Attorney General and the juvenile's parents, guardian, or custodian of such custody. The arresting officer shall also notify the parents, guardian, or custodian of the rights of the juvenile and of the nature of the alleged offense.

The juvenile shall be taken before magistrate forthwith. In no event shall the juventile be detained for longer than a reasonable period of time before being brought before a magistrate.

§ 5034. Duties of magistrate

The magistrate shall insure that the juvenile is represented by counsel before proceeding with critical stages of the proceedings. Counsel shall be assigned to represent a juvenile when the juvenile and his parents, guardian,, or custodian are financially unable to obtain adequate representation, In cases where the juvenile and his parents, guardian, or custodian are financially able to obtain adequate representation but have not retained counsel, the magistrate may assign counsel and order the payment of reasonable attorney's fees or may direct the juvenile, his parents, guardian, or custodian to retain private counsel within a specified period of time.

The magistrate may appoint a guardian ad litem if a parent or guardian of the juvenile is not present, or if the magistrate has reason to believe that the parents or guardian will not cooperate with the juvenile in preparing for trial, or that the interests of the parents or guardian and those of the juvenile are adverse.

If the juvenile has not been discharged before his initial appearance before the magistrate, the magistrate shall release the juvenile to his parents, guardian, custodian, or other responsible party (including, but not limited to, the director of a shelter-care facility [1] upon their promise to bring such juvenile before the appropri-

[1] So in original. Apparently should include a closing parenthesis.

ate court when requested by such court unless the magistrate determines, after hearing, at which the juvenile is represented by counsel, that the detention of such juvenile is required to secure his timely appearance before the appropriate court or to insure his safety or that of others.

§ 5035. Detention prior to disposition

A juvenile alleged to be delinquent may be detained only in a juvenile facility or such other suitable place as the Attorney General may designate. Whenever possible, detention shall be in a foster home or community based facility located in or near his home community. The Attorney General shall not cause any juvenile alleged to be deliquent to be detained or confined in any institution in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges. Insofar as possible, alleged delinquents shall be kept separate from adjudicated delinquents. Every juvenile in custody shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment.

§ 5036. Speedy trial

If an alleged delinquent who is in detention pending trial is not brought to trial within thirty days from the date upon which such detention was begun, the information shall be dismissed on motion of the alleged delinquent or at the direction of the court, unless the Attorney General shows that additional delay was caused by the juvenile or his counsel, or consented to by the juvenile and his counsel, or would be in the interest of justice in the particular case. Delays attributable solely to court calendar congestion may not be considered in the interest of justice. Except in extraordinary circumstances, an information dismissed under this section may not be reinstituted.

§ 5037. Dispositional hearing

(a) If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty court days after the juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (e). After the disposition hearing, and after considering any petinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994, the court may suspend the findings of juvenile delinquency, enter an order of restitution pursuant to section 3556, place him on probation, or commit him to official detention. With respect to release or detention pending an appeal or a petition for a writ of certiorari after disposition, the court shall proceed pursuant to the provisions of chapter 207.

(b) The term for which probation may be ordered for a juvenile found to be a juvenile delinquent may not extend—

(1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—

(A) the date when the juvenile becomes twenty-one years old; or

(B) the maximum term that would be authorized by section 3561(b) if the juvenile had been tried and convicted as an adult; or

(2) in the case of a juvenile who is between eighteen and twenty-one years old, beyond the lesser of—

(A) three years; or

(B) the maximum term that would be authorized by section 3561(b) if the juvenile had been tried and convicted as an adult.

The provisions dealing with probation set forth in sections 3563, 3564, and 3565 are applicable to an order placing a juvenile on probation.

(c) The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—

(1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—

(A) the date when the juvenile becomes twenty-one years old; or

(B) the maximum term of imprisonment that would be authorized by section 3581(b) if the juvenile had been tried and convicted as an adult; or

(2) in the case of a juvenile who is between eighteen and twenty-one years old—

(A) who if convicted as an adult would be convicted of a Class A, B, or C felony, beyond five years; or

(B) in any other case beyond the lesser of—

(i) three years; or

(ii) the maximum term of imprisonment that would be authorized by section 3581(b) if the juvenile had been tried and convicted as an adult.

(d) If the court desires more detailed information concerning an alleged or adjudicated delinquent, it may commit him, after notice and hearing at which the juvenile is represented by counsel, to the custody of the Attorney General for observation and study by an appropriate agency. Such observation and study shall be conducted on an outpatient basis, unless the court determines that inpatient observation and study are necessary to obtain the desired information. In the case of an alleged juvenile delinquent, inpatient study may be ordered only with the consent of the juvenile and his attorney. The agency shall make a complete study of the alleged or adjudicated delinquent to ascertain his personal traits, his capabilities, his background, any previous delinquency or criminal experience, any mental or physical defect, and any other relevant factors. The Attorney General shall submit to the court and the attorneys for the juvenile and the Government the results of the study within thirty days after the commitment of the juvenile, unless the court grants additional time.

§ 5038. Use of Juvenile records

(a) Throughout and upon the completion of the juvenile delinquency proceeding, the records shall be safeguarded from disclosure to unauthorized persons. The records shall be released to the extent necessary to meet the following circumstances:

(1) inquiries received from another court of law;

(2) inquiries from an agency preparing a presentence report for another court;

(3) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency;

(4) inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the court;

(5) inquiries from an agency considering the person for a position immediately and directly affecting the national security; and

(6) inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such juvenile by the court in accordance with section 5037.

Unless otherwise authorized by this section, information about the juvenile record may not be released when the request for information is related to an application for employment, license, bonding, or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have never been involved in a delinquency proceeding.

(b) District courts exercising jurisdiction over any juvenile shall inform the juvenile, and his parent or guardian, in writing in clear and nontechnical language, of rights relating to his juvenile record.

(c) During the course of any juvenile delinquency proceeding, all information and records relating to the proceeding, which are obtained or prepared in the discharge of an official duty by an employee of the court or an employee of any other governmental agency, shall not be disclosed directly or indirectly to anyone other than the judge, counsel for the juvenile and the Government, or others entitled under this section to receive juvenile records.

(d) Whenever a juvenile is found guilty of committing an act which if committed by an adult would be a felony that is a crime of violence or an offense described in section 841, 952(a), 955, or 959 of title 21, such juvenile shall be fingerprinted and photographed. Except a juvenile described in subsection (f), fingerprints and photographs of a juvenile who is not prosecuted as an adult shall be made available only in accordance with the provisions of subsection (a) of this section. Fingerprints and photographs of a juvenile who is prosecuted as an adult shall be made available in the manner applicable to adult defendants.

(e) Unless a juvenile who is taken into custody is prosecuted as an adult neither the name nor picture of any juvenile shall be made public in connection with a juvenile delinquency proceeding.

(f) Whenever a juvenile has on two separate occasions been found guilty of committing an act which if committed by an adult would be a felony crime of violence or an offense described in section 841, 952(a), 955, or 959 of title 21, the court shall transmit to the Federal Bureau of Investigation, Identification Division, the information concerning the adjudications, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matters were juvenile adjudications.

§ 5039. Commitment

No juvenile committed to the custody of the Attorney General may be placed or retained in an adult jail or correctional institution in which he has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.

Every juvenile who has been committed shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care and treatment.

Whenever possible, the Attorney General shall commit a juvenile to a foster home or community-based facility located in or near his home community.

§ 5040. Support

The Attorney General may contract with any public or private agency or individual and such community-based facilities as halfway houses and foster homes for the observation and study and the custody and care of juveniles in his custody. For these purposes, the Attorney General may promulgate such regulations as are necessary and may use the appropriation for "support of United States prisoners" or such other appropriations as he may designate.

[§ 5041. Repealed] [1]

§ 5042. Revocation of probation

Any juvenile probationer shall be accorded notice and a hearing with counsel before his probation can be revoked.

○

[1] Section 5041 (relating to parole) was repealed October 12, 1984, by P.L. 98-473, title II, sec. 214(b), 98 Stat. 214.

APPENDIX B

SUMMARY

Issue: DSO: De Minimis Exceptions

Source: Federal Register, 1981

Federal Register

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 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 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.

[FR Doc. 81-822 Filed 1-8-81; 8:45 am]
BILLING CODE 4410-18-M

APPENDIX C

SUMMARY

Issue: DSO: Valid Court Order Criteria

Source: Federal Register, 1982

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 28548, 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 21228, May 17, 1982 and republished at 47 FR 28548, 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. 82-22288 Filed 8-13-82; 8:45 am]

BILLING CODE 4410-18-M

APPENDIX D

SUMMARY

Issue: Jail Removal: Juvenile Detention Center in Adult Jails

Source: Federal Register, 1984

Federal Register

Tuesday
January 17, 1984

Part II

Department of Justice

Office of Juvenile and Delinquency Prevention

Position Statement on Minimum Requirements of Section 223(a)(14) of the JJDP Act, as Amended; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Position Statement on Minimum Requirements of Section 223(a)(14) of the JJDP Act, as Amended

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of issuance of position statement on the minimum requirements of the jail removal mandate of Section 223(a)(14) of the Juvenile Justice and Delinquency Prevention (JJDP) Act, as amended.

SUMMARY: The Office of Juvenile Justice and Delinquency (OJJDP) is issuing a position statement on the minimum requirements of Section 223(a)(14) of the JJDP Act. The position statement addresses the jail removal requirements when a juvenile facility and an adult jail or lockup is in the same building or on the same grounds.

In determining whether or not a facility in which juveniles are detained or confined is an adult jail or lockup under the requirements of Section 223(a)(14), OJJDP will assess the separateness of the two facilities by determining whether four requirements contained in the position statement are met.

SUPPLEMENTARY INFORMATION:

Position Statement: Minimum Requirements for Juvenile Justice and Delinquency Prevention Act, Section 223(a)(14) (Jail Removal)

I. Background

Section 223(a)(14) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, requires States, as a condition for the receipt of formula grant funds, to: "provide that. . . . no juvenile shall be detained or confined in any jail or lockup for adults. . . ."

States have until December, 1985 to achieve compliance with this statutory provision. Section 223(c) of the Act allows two additional years, if substantial compliance is achieved by December, 1985.

The definitions of an adult jail and an adult lockup, as contained in 28 CFR Part 31, Subpart 31.304 (m) and (n), dated December 31, 1981, are:

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.

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.

States and localities have told OJJDP that the application of the definition of an adult jail and lockup has presented difficulty where a separate juvenile detention facility and an adult jail or lockup share a common building or are on common grounds. To assist in resolving this issue an OJJDP position statement is being provided.

In determining whether removal, pursuant to the statute, has been accomplished when the juvenile and adult facilities are in a common building or on common grounds, OJJDP will, upon request by the State, assess whether the juvenile and adult facilities are separate; i.e., that there are separate structural areas, staffs, administrations, and programs.

Set forth below are requirements which will be used to determine acceptability in the event both juveniles and adults are detained in one physical structure. Additionally, while these requirements are mandatory, it is noted that special and unique conditions may allow deviations from the statute. Such conditions will be addressed on a case-by-case basis.

Following the statement of "MANDATORY REQUIREMENTS" is a discussion of factors which are recommended to the states and which will be used by OJJDP in determining whether the criteria have been met. In addition, OJJDP has available many standards, policies and conditions of juvenile detention which will help jurisdictions meet the norm of good practice, meet accreditation standards, and meet legal requirements associated with detaining juveniles. This information is available from OJJDP.

II. Mandatory Requirements

In determining whether or not a facility in which juveniles are detained or confined is an adult jail or lockup under the requirements of Section 223(a)(14), in circumstances where the juvenile and adult facilities are located in the same building or on the same grounds, each of the following four criteria must be met in order to ensure the requisite separateness of the two facilities:

A. Total separation between juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities.

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

C. Separate juvenile and adult staff, including management, security staff, and direct care staff such as recreational, educational, 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.

D. In states that have established state standards or licensing requirements for secure juvenile detention facilities, the juvenile facility meets the standards and is licensed as appropriate.

III. Discussion

The four mandatory requirements must be fully met to ensure juveniles are not placed in, or subjected to, the same environment as adult offenders, thus meeting the minimum requirements of Section 223(a)(14) of the JJDP Act, as amended. In determining whether the criteria are met, the following list of factors is provided and will be used by OJJDP. Although the list is not exhaustive, it does enumerate conditions which enhance the separateness of juvenile and adult facilities when they are located in the same building or on the same grounds.

A. Juvenile staff are employee full-time by a juvenile service agency or the juvenile court with responsibility only for the conduct of the youth-serving operations. Juvenile staff are specially trained in the handling of juveniles and the special problems associated with this group.

B. A separate juvenile operations manual, with written procedures for staff and agency reference, specifies the function and operation of the juvenile program.

C. There is minimal sharing between the facilities of public lobbies or office/support space for staff.

D. Juveniles do not share direct service or access space with adult offenders within the facilities including entrance to and exit from the facilities. All juvenile facility intake, booking and admission processes take place in a separate area and are under the direction of juvenile facility staff. Secure juvenile entrances (sally ports, waiting areas) are independently controlled by

juvenile staff and separated from adult entrances. Public entrances, lobbies and waiting areas for the juvenile detention program are also controlled by juvenile staff and separated from similar adult areas. Adult and juvenile residents do not make use of common passageways between intake areas, residential spaces, and program/service spaces.

E. The space available for juvenile living, sleeping and the conduct of juvenile programs conforms to the requirements for secure juvenile detention specified by prevailing case law, prevailing professional standards of care, and by State code.

F. The facility is formally recognized as a juvenile detention center by the State agency responsible for monitoring, review, and/or certification of juvenile detention facilities under State law.

Certification of an area to hold juveniles within an adult jail or lockup (as provided by some State codes) may not conform to this. Basically, the State does not license the facility in which juveniles are held as a jail or lockup.

These and other conditions would serve to enhance the separateness of juvenile and adult facilities located in the same building or on the same grounds, thus ameliorating the destructive nature of juvenile jailing cited by Congress as the foundation for the 1980 amendment requiring removal of juveniles from adult jails and lockups.

In most cases, the States should have little difficulty in applying these four requirements and related factors to determine if sufficient separation exists to justify OJJDP concurring with a state finding that a separate juvenile detention facility exists where there is a common building or common grounds situation with a facility that is an adult jail or lockup. A *de minimis* allowance will be made for the occasions when juveniles are detained for a length of time and under conditions not in conformance with the Act. OJJDP will provide assistance and advice to States in the application of the criteria and relevant factors to any specific situation.

FOR FURTHER INFORMATION CONTACT: Doyle Wood, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Ave., NW., Washington, D.C. 20531, (202) 724–8491.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 84–1143 Filed 1–16–84; 8:45 am]

BILLING CODE 4410–18–M

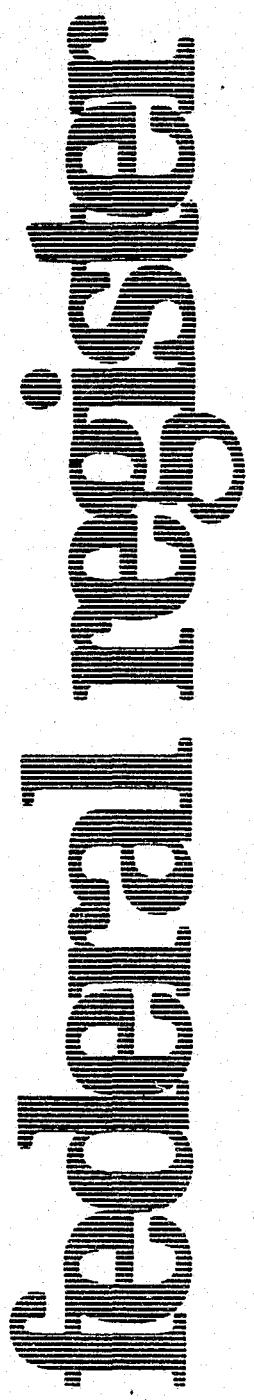
APPENDIX E

SUMMARY

Issue: Formula Grants Regulation

Source: Federal Register, 1985

6-20-85
Vol. 50 No. 119
Pages 25550-25561



Thursday
June 20, 1985

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants for Juvenile Justice

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

ACTION: Notice of final regulation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing a final regulation to implement the formula grant program authorized by Part B of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984 (Pub. L. 98–473, October 12, 1984). The 1984 Amendments reauthorize and modify the Federal assistance program to State and local governments and private not-for-profit agencies for juvenile justice and delinquency prevention improvements authorized under title II, Part B, Subpart I of the Act (42 U.S.C. 5611 et seq.). The regulation provides guidance to States in the formulation, submission, and implementation of State formula grant plans.

EFFECTIVE DATE: These regulations are effective June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Emily C. Martin, Acting Director, State Relations and Assistance Division, OJJDP, 633 Indiana Avenue, NW., Room 768, Washington, D.C. 20531; telephone 202/724–5921.

SUPPLEMENTARY INFORMATION:

Statutory Amendments

The statutory changes instituted by the new legislation include new programmatic emphasis on programs for juveniles, including those processed in the criminal justice system, who have committed serious crimes, programs which seek to facilitate the coordination of services between the juvenile and criminal justice systems, education and special education programs, involvement of parents and other family members in addressing the delinquency related problems of juveniles, drug and alcohol abuse programs, law-related education, and approaches designed to strengthen and maintain the family units of delinquent and other troubled youth. The regulation implements significant statutory changes related to the jail removal requirement, including a change in the statutory exception and an extension of the date for States to achieve full compliance from December 8, 1987 to December 8, 1988.

The regulation details procedures and requirements for formula grant applications under the revised Act. Additional requirements for grant administration and fund accounting are set forth in the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M 7100.1.

Objectives

OJJDP has revised the regulation to accomplish three objectives:

(1) Implement the 1984 Amendments which affect the formula grant program;

(2) Simplify the regulation, where possible, in order to maximize State flexibility and reduce paperwork, while still providing appropriate Federal guidance, where necessary; and

(3) Simplify and clarify the requirements of section 223(a) (12), (13), (14), And (15) in a way that will permit States the widest possible latitude in meeting these objectives in a manner that is consistent with both Federal law and State law, priorities, and resources.

Description of Major Statutory Changes

Family Programs

The Act places increased emphasis on programs which seek to address the

problem of delinquency and its prevention by strengthening and maintaining the family unit. Section 223(a) (10) and (17) was amended to reflect the role of the family in addressing problems of juvenile delinquency. The State must now provide an assurance that consideration and assistance will be given to programs designed to strengthen and maintain the family unit to prevent delinquency.

Deinstitutionalization

The 1984 Amendments defined "valid court order" in section 103(16). This definition has been incorporated in the regulation but, consistent with Congressional intent, it does not necessitate any change in § 31.303(f)(3) of the regulation.

Jail Removal

Section 223(a)(14) was amended to provide additional clarification and flexibility for the States in complying with the objectives of removing juveniles from adult jails and lockups. The Act was amended to provide an explicit, limited exception. The regulation (§ 31.303(f)(4)) parallels the statutory exception, establishing six conditions which must be met before a juvenile can be detained in an adult jail. They are: (1) The juvenile must be accused of a criminal-type offense; (2) the juvenile is awaiting an initial court appearance; (3) the State in which the juvenile is detained has an enforceable State law requiring an initial court appearance within 24 hours after being taken into custody, excluding Saturdays, Sundays and holidays; (4) the area is outside a Metropolitan Statistical Area; (5) no existing acceptable alternative is available; and (6) the jail or lockup provides sight and sound separation between juvenile and adult offenders.

The statutory amendment and the implementing regulation should be viewed as an attempt to assist States, particularly those with large rural areas, in complying with the jail removal requirement, while at the same time providing for both the protection of the public and the safety of those juveniles who require temporary placement in secure confinement.

Two other exceptions to the jail removal requirement serve this objective. The first excepts juveniles who are under criminal court jurisdiction, i.e. where a juvenile has been waived, transferred, or is subject to original or exclusive criminal court jurisdiction based on age and offense limitations established by State law and felony charges have been filed (See § 31.303(e)(2)). The second exception provides that a juvenile arrested or taken into custody for committing an act which would be a crime if committed by an adult may be temporarily held for up to 6 hours in an adult jail or lockup for purposes of identification, processing, or transfer to other facilities (See § 31.303(f)(5)(iv) (G) and (H)).

Section 223(c) of the JJDP Act was amended to allow States *three* additional years to achieve full compliance with the jail removal requirement if the State achieves a minimum 75 percent reduction in the number of juveniles held in adult jails and lockups and makes an unequivocal commitment to achieving full compliance within the additional three year period. Thus, full compliance must be demonstrated after December 8, 1988.

The regulation establishes, for the first time, criteria which will be applied by OJJDP in determining whether a State has achieved full compliance, with de minimis exceptions, with the jail removal requirement. States requesting a finding of full compliance with de minimis exceptions should submit the request at the time the annual monitoring report is submitted or as soon thereafter as all information required for a determination is available. Additional de minimis criteria, based on the model originally developed to measure full compliance with de minimis exceptions with section 223(a)(12)(A), will be developed by OJJDP after substantial compliance data have been received from the States. These criteria will establish a violation rate per 100,000 juvenile population which will be considered de minimis, thereby providing States with additional flexibility. Determinations of full compliance, with de minimis exceptions, with section 223(a)(14) would then be made annually by OJJDP and individual States required to show progress toward achieving a 100 per cent reduction in order to maintain eligibility for funding.

Audit of State Monitoring Systems

Section 204(b)(7) of the JJDP Act requires the OJJDP Administrator to provide for the auditing of State monitoring systems required under section 223(a)(15) of the Act. The State plan for monitoring compliance with sections 223(a) (12), (13) and (14) is a part of each State's three year plan. The monitoring plan requirements (§ 31.303(f)(1)) have been clarified to ensure that States establish a comprehensive monitoring plan and to enable OJJDP to review the plan for adequacy. The regulation does not expand the requirements for monitoring, rather it clarifies what constitutes an adequate system in order to assist the States in their monitoring efforts. OJJDP will undertake a periodic audit of each State's monitoring system and the reliability and validity of the data submitted in the State's monitoring report. The initial step in this process is to review the plans which States develop to monitor for compliance.

Discussion of Comments

A proposed regulation was published in the Federal Register on February 13, 1985 for public comment. Written comments from some 28 national, regional, and local organizations and individuals were received. All comments have been considered by the OJJDP in the issuance of a final regulation. A majority of the respondents commented favorably upon the regulation.

The following is a summary of the substantive comments and the response by OJJDP.

1. *Comment:* One State raised a concern over the relationship between the State agency head, who is by law responsible for carrying out the agency's functions, and the supervisory board. The concern was whether the agency head would be required, under the regulation, to "divest his authority and responsibility" in violation of State law.

Response: OJJDP has not been presented with a State law that would preclude the type of broad policy establishment, review and approval role that the JJDP Act and implementing regulations contemplate for the State agency supervisory board. Such a law would jeopardize a State's eligibility to participate in the formula grant program.

The supervisory board requirement of the statute, implemented in § 31.102 of the regulation, reflects a congressional judgment that the formula grant planning and funding process will be improved by the establishment of a policy board reflecting the diverse views of individuals involved in the law enforcement, criminal and juvenile justice systems.

Consequently, final decisionmaking authority on such matters as plan priorities, programs, and selection of sub-award recipients cannot be vested in a State agency head. Such decisions of necessity involve interplay between and joint action by the policy board and agency staff. Both the policy board and the agency are bound by laws, regulations, by-laws, and executive orders. Where the policy board and the head of the State agency cannot agree on some matter of policy, generally the policy board must prevail. However, the Governor, as the State's Chief Executive, and to the extent he or she reserves the power to resolve any intra-

agency conflicts or to determine major policy issues, would be the final decisionmaker.

2. *Comment:* The submission of a State's formula grant application should be allowed as late as 90 days subsequent to the start of the Federal fiscal year or at such date as mutually agreed to by the State and OJJDP.

Response: Section 31.3 of the regulation "encourages" States to submit their application 60 days prior to the beginning of the fiscal year. This would allow sufficient time for application review and award at the beginning of the fiscal year for which the funds are appropriated. It is OJJDP policy that a State's formula grant allocation remain available for obligation until the end of the fiscal year of appropriation, unless the State officially notifies OJJDP that it does not intend to apply for a formula grant award. Thus, flexibility exists for a State and OJJDP to mutually agree upon a date for application submission ranging from 60 days prior to the start of the fiscal year through the end of the fiscal year of appropriation.

3. *Comment:* OJJDP should provide the Formula Grant Application Kit, containing information and instructions for application preparation, to States no later than June 1st of each year.

Response: OJJDP intends to develop and disseminate an updated fiscal year 1985 Application Kit as soon as the final formula grant regulation is published. For those States whose fiscal year 1985 plan has already been submitted, separate instructions for supplementing the FY 1985 multi-year plan to meet any new or modified requirements imposed by the final regulation will also be issued. The fiscal year 1986 Application Kit will be available by July 15, 1985 and the fiscal year 1987 Kit by June 1, 1986 (See § 31.3).

4. *Comment:* Language should be added to the regulation which indicates OJJDP will notify the States of their formula grant allocation within 30 days after the fiscal year appropriation measure has been enacted.

Response: Section 31.301(a) has been modified by adding language specifying that OJJDP will notify States of the respective allocation within 30 days after the annual appropriation bill becomes law.

5. *Comment:* Several commentators expressed concern over OJJDP's explanation of how nonparticipating State funds are reallocated and awarded. These concerns revolve around the identity of the funds upon reallocation (formula or discretionary), their use (authorized purpose or purposes), and eligibility (State, local public and private agencies in the nonparticipating State, or States in full compliance with section 223(a) (12)(A), and (13)). Some confusion may have resulted from a Federal Register printing error which was later corrected (47 FR 9679, March 11, 1985).

Response: Although OJJDP sees no need to modify § 31.301(e) of the regulation, a brief clarification should suffice to alleviate the concerns raised.

OJJDP has treated reallocated formula grant funds as if they were discretionary funds since the 1980 Amendments established the current section 223(d) reallocation formula. This is because section 221 limits formula grant awards to "States and units of general local government or combinations thereof" while section 223(d) provides that reallocated formula grant funds may be awarded to "local public and private nonprofit agencies", a separate and distinct group of eligible receipients. However, OJJDP considers these funds to be subject to the following section 223(d) (rather than section 224) fund use limitations:

(1) The OJJDP Administrator must endeavor to make a State's reallocated funds available within that nonparticipating State;

(2) Funds are available only to local public and private nonprofit agencies; and

(3) Fund use is limited to carrying out the purposes of deinstitutionalization, separation, and jail removal.

In all other respects, however, OJJDP considers the award of these funds to be in the nature of discretionary awards under the Special Emphasis Program and, consequently, subject to the requirements of sections 225–229.

It is only after OJJDP has endeavored to make the reallocated funds available in the nonparticipating State that the Administrator can make the remainder (if any) of these funds available, on an equitable basis, to States in full compliance with sections 233(a)(12)(A) and 233(a)(13).

6. *Comment:* The State advisory group composition provision (§ 31.302(b)(2)) does not list all the membership and other statutory requirements related to State advisory group composition.

Response: OJJDP sees no need for the regulation to repeat all of the statutory advisory group composition requirements. However, § 31.302(b)(1) specifies that the advisory group must meet all of the section 223(a)(3) statutory requirements. These requirements will be specified in detail in the Formula Grant Application Kit. Section 31.302(b)(2), on the other hand, merely suggests that the Governor consider appointing representatives of areas and interests that OJJDP believes to be underrepresented on State advisory groups generally and important to a balanced perspective on juvenile justice policy and funding priorities. In addition, these individuals can provide a valuable contribution in assessing the programs marketed through OJJDP's State Relations and Assistance Division. Several minor clarifying changes have been made to the § 31.302(b)(2) language.

7. *Comment:* The permissive language of the § 31.303(b) serious juvenile offender emphasis provision was endorsed by one commentator because it provides needed discretion to States. Another commentator suggested removal of the "minimum" of 30% language because it interferes with State discretion.

Response: The provision encouraging States to allocate a minimum of 30% of their formula grant award to serious and violent juvenile offender programs was placed in the formula grant regulation in 1981 as a result of the 1980 Amendment's emphasis on serious and violent juvenile crime. Under this provision, the Office has simply "encouraged" the allocation of a minimum of 30% funding for serious and violent juvenile offender programs in States which have identified this as a priority program area. OJJDP sees no need to impliedly limit funding to a 30% level, particularly because as States come into compliance with the requirements of section 233(a) (12) to (14), additional formula grant funds will be available for other priority program needs. Therefore, in the final regulation, States are encouraged to provide a level of funding for serious and violent juvenile offender programs that is both adequate and sufficient to meet the level of need for such programs that has been identified through the State planning process.

OJJDP will continue to assist States in meeting their identified needs in the area as serious and violent juvenile offender programs through the provision of technical assistance, training, and Special Emphasis programming under section 224(a)(5).

8. *Comment:* When OJJDP added the term "felony" in § 31.303(e)(2) it closed an unintended loophole whereby juvenile traffic offenders and violators of other misdemeanor laws could be inappropriately jailed. Limiting this exception to "felony" violations is more restrictive and may increase the number of compliance violations, thereby creating a problem in measuring progress with section 223(a)(14) of the JJDP Act. Thus OJJDP should allow

affected States Flexibility for this particular element of the monitoring report.

Response: Flexibility will be provided to a State which cannot, or chooses not to, reconstruct baseline data consistent with the change in § 31.303(e)(2) *and* is unable to demonstrate substantial compliance with section 223(a)(14) because the current data excepts only "criminal felony charges" while the baseline data excepts all "criminal charges". Under these circumstances, OJJDP will allow the State, upon request and with OJJDP prior approval, to modify the current data to also except juveniles having any "criminal charges" filed in a court with criminal jurisdiction in lieu of excepting only "criminal felony charges".

9. *Comment:* The establishment, in § 31.303(e)(3), of the four criteria to be used in determining whether or not a facility in which juveniles are detained or confined is an adult jail or lockup, in circumstances where juvenile and adult facilities are located in the same building or on the same grounds, was the subject of several comments which made the following points:

(1) The criteria should mandate the provision of programs and services appropriate to the needs of incarcerated juveniles as determined by law and professional standards of practice; and

(2) The proposed regulation permits "enhanced separation" in lieu of complete removal as intended by Congress. To qualify as a separate facility, a place of juvenile detention or confinement should share no common wall or common roof with an adult jail or lockup.

Response: OJJDP believes it is beyond the office's statutory authority to prescribe the level of programs and services which must be provided in State juvenile facilities. These matters are best left to State law and regulation and State and Federal judicial determination. While OJJDP recognizes that these are important issues, the JJDP Act mandates provide only the framework within which States can continue to evolve a more efficient and effective juvenile justice system.

OJJDP intended the policy statement to be used only as a method to classify facilities as either adult jails and lockups or as separate juvenile detention facilities. It was never intended to be used as a guide to planning for or establishing "enhanced separation" of juvenile and adult offenders in lieu of jail removal. OJJDP had determined that it is entirely appropriate to provide flexibility to States in those situations where a truly separate facility for juveniles is located on the same grounds or in the same building as an adult jail or lockup. It should also be noted that, to date, *no* State has formally requested OJJDP approval of a State's determination of a separate juvenile facility under the terms and conditions of the policy.

OJJDP has learned that several counties are considering new jail construction or the expansion or renovation of existing jails to provide "enhanced separation" for the juvenile area or section of the facility.

OJJDP does not view this as a positive development because it: (1) Stifles consideration of the many viable alternatives to the use of adult jails and lockups which are available to States, counties, and local governments; (2) may lead to increased isolation of juveniles in secure facilities; (3) may lead to a failure to provide needed programs and services; and (4) is clearly not responsive to the thrust of the removal mandate.

OJJDP's primary objective in establishing the policy in the first instance was to permit existing juvenile facilities to continue to operate in circumstances where they are, in fact, separate from an adult jail or lockup. While it is possible that new facilities could come into existence that meet the four minimum requirements to establish that two separate facilities exist, the mere provision of "enhanced separation" of juveniles and adults within an existing facility will not serve to meet the minimum requirements. Consequently, OJJDP will only exempt facilities which fully meet each of the four criteria required to be met in order to establish facility separateness. For this purpose, the regulation continues to provide for an initial State determination that a particular facility meets the four criteria, submission to OJJDP of documentation establishing that the requirements are met for the particular facility, and OJJDP concurrence or nonconcurrence with the State determination.

OJJDP will make staff and technical assistance resources available to States to ensure that the full range of alternatives to the use of adult jails and lockups is considered by those jurisdictions which will need to modify their existing practices in order for the State to meet the applicable statutory deadlines for compliance with the jail removal requirement.

10. *Comment:* The designated State agencies established pursuant to section 223(a)(1) of the JJDP Act should have input into the design of the auditing methodology which OJJDP undertakes pursuant to section 204(b)(7) of the Act and any OJJDP audit activity should be conducted in coordination with State agency juvenile justice staff.

Response: OJJDP intends to involve the designated State agency juvenile justice staff in both the methodology development and actual conduct of any on-site audits of State monitoring systems (see § 31.303(f)).

11. *Comment:* OJJDP should reconsider the regulation requiring the monitoring of nonsecure facilities. The requirement to identify, classify, and inspect all facilities could be difficult given limited staff, the excessive amount of work involved, and the fact that compliance monitoring should focus on secure facilities. Also, because other State agencies oversee many of these facilities, the regulation would require a duplication of existing efforts.

Response: Section 223(a)(15) of the JJDP Act expresaly requires States to monitor jails, detention facilities, correctional facilities and *nonsecure facilities.* Thus, § 31.303(f)(1)(i) of the regulation reflects a statutory requirement which OJJDP cannot waive or delete by regulation. To enable a State to determine which facilities fall under the purview of section 223(a) (12), (13) and (14), all facilities which may hold juveniles must be identified and classified. Only those facilities classified as secure detention facilities, secure correctional facilities, adult jails, or adult lock-ups fall under the data collection and data verification monitoring requirements. Once a facility is classified as nonsecure, the State does not necessarily have to reinspect the facility annually, but should have adequate procedures to ensure its classification as a nonsecure facility remains accurate. Classification review should occur at least every two years. The regulation does not require the State agency designated pursuant to section 223(a)(1) of the JJDP Act to perform all monitoring tasks. If other agencies have monitoring responsibilities, the designated State agency can utilize their information. The regulation requires a description of the monitoring activities and identification of the specific agency responsible for each task. Also, formula grant funds, other than the 7½ allowed for administrative costs pursuant to section 222(c), may be used to pay costs associated with implementing the monitoring requirement of section 223(a)(15).

12. *Comment:* (1) The valid court order regulation (Section 31.303(f)(3)), allowing secure detention of a juvenile who is alleged to have violated a valid court order, provides too much latitude to States. The regulation should clarify that there must be "reasonable grounds" or

"probable cause" before securely detaining a juvenile who has allegedly violated a valid court order. (2) The regulation does not require that the court order be entered *after* the provision of all due process. If the juvenile is not provided with right to counsel at the initial proceeding when the order is entered, then it is not constitutionally "valid." (3) The regulation should prohibit the detention of juveniles for allegedly violating a valid court order until a formal judicial determination (adjudication) has been made that such violation occurred.

Response: OJJDP considered the legal and constitutional issues raised by these commentators in developing the existing valid court order regulation. This development process included hearings held at two sites and the receipt, review and analysis of many written comments. The final regulation was published on August 16, 1982 (47 FR 35686). Since that time, OJJDP has been presented with no allegations or documentation of abuse in the application and/or implementation of the regulation. Consequently, OJJDP sees no basis to consider modification to this section of the regulation.

13. *Comment:* The statutory exception which permits States to jail juveniles in non-MSA areas for up to 24 hours, provided they are sight and sound separated from adults, gives rise to the very isolation problems, such as increased suicides, which motivated Congress to require complete jail removal in the first place. Consequently, the regulation requiring sight and sound separation under the 24 hour non-MSA exception should be strengthened to ensure that no youth is placed in a situation where he or she is placed in "de facto" solitary confinement because of the desire to achieve separation from adult offenders.

Response: Congress established the six specific requirements for this exception. However, OJJDP agrees with the thrust of this comment. Consequently, language has been added to § 31.303(f)(4), which implements the non-MSA statutory exception provision, to strongly recommend the provision of continuous visual supervision for those juveniles held up to 24 hours in an adult jail or lockup, pursuant to the exception, during the period of their incarceration.

14. *Comment:* States have not collected data which parallels the new jail removal exception. Thus, for States demonstrating a good-faith effort in the area of jail removal monitoring, appropriate flexibility by OJJDP is needed.

Response: States which established baseline jail removal data using the original statutory exception for "low population density areas" *and* which fail to demonstrate substantial compliance solely because the current data reflects the revised statutory exception for non-MSA areas, will be permitted to modify their current data by using the original statutory exception, upon request and with OJJDP prior approval (see § 31.303(f)(4)).

15. *Comment:* The word "certify" in § 31.303(f)(4)(iv) should be removed and the regulation require only that a "determination" has been made that the adult jail or lockup provides for the sight and sound separation of juveniles and incarcerated adults.

Response: The use of the term "certify" was intentionally included to require that specific action be taken, both by the State and the facility administration, to ensure the facility provides for sight and sound separation of juveniles and incarcerated adults. Through a certification process, the facility would have to document it provides for both separation and visual supervision. This could be accomplished by the jail administration stating in writing that these requirements are met and agreeing to notify the State if the facility is unable or fails to maintain the required level of separation and supervision.

16. *Comment:* The regulation requirement of "at least 6 months of data" for the annual monitoring report will create problems with data collection and monitoring because of the lack of both staff and resources.

Response: OJJDP will provide assistance and guidance to those States which will need to expand the length of their reporting period to comply with § 31.303(f)(5). With regard to costs associated with accomplishing the monitoring requirement, see Comment 11.

17. *Comment:* The six-hour "grace period" for detaining juveniles in adult jails or lockups is extremely difficult to rationalize and justify and a less restrictive limit would allow the freedom to determine more accurately the needs of a juvenile. Does the six-hour provision preclude placing a juvenile in a jail late at night and releasing him or her the next morning? The six-hour grace period should be extended to 10, 12, or 24 hours because in some remote areas it is impossible to travel the distance necessary, particularly in foul weather, to pick up a youth within six hours.

Response: It is Congress' finding that juvenile offenders and nonoffenders should not be placed in an adult jail or lockup for any period of time. However, for the purpose of monitoring and reporting compliance with the jail removal requirement, the House Committee on Education and Labor stated, in its Committee Report on the 1980 Amendments, that it would be permissible for OJJDP to permit States to exclude, for monitoring purposes, those juveniles alleged to have committed an act which would be a crime if committed by an adult (criminal-type offenders) and who are held in an adult jail or lockup for up to six hours. This six-hour period would be limited to the temporary holding in an adult jail or lockup by police for the specific purpose of identification, processing, and transfer to juvenile court officials or to juvenile shelter or detention facilities. Any such holding of a juvenile criminal-type offender must be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, and in no case overnight. Even where such a temporary holding is permitted, the section 223(a)(13) separation requirement would operate to prohibit the accused juvenile criminal-type offender from being in sight or sound contact with an adult offender during this brief holding period. Under no circumstances does the allowance of a six-hour "grace period" applicable to juvenile criminal-type offenders permit a juvenile status offender or nonoffender be detained, even temporarily, in an adult jail or lockup under section 223(a)(14). In monitoring for compliance with section 223(a)(14), section 31.303(f)(5)(iv) of the regulation requires States to report the number of juvenile criminal-type offenders held in adult jails and lockups in excess of six hours. However, it should be noted that the six hours does not include time involved in transporting a juvenile to or from an adult jail or lockup.

18. *Comment:* The revised definition of the term "secure" in § 31.304(b), which clarified that "staff secure" facilities are outside the scope of the statutory definition, was the subject of several comments. Some commentators found the clarification helpful, recognizing the need to provide for the safety and protection of all juveniles in appropriate circumstances through therapeutic intervention. However, a number of others felt that better definitions of related terms such as "limited", "reasonable" and "for their own protection and safety" required further study, particularly in view of the due process and liberty interest implications of the staff secure concept, a perceived potential for abuse, and the need to identify effective staff secure programs in order to properly define the concept.

Response: OJJDP found these comments helpful. The use of the word "secure" in "staff secure" in the draft regulation apparently caused some confusion. Perhaps "staff restrictive" would have been a better descriptor. In any event, OJJDP has eliminated the use of the term "staff secure" in the final regulation. However, the office will continue to work with individuals and organizations in the field of juvenile justice to define this concept in the context of effective programs that use staff control techniques, which include procedures or methods other than the use of construction fixtures, that may physically restrict the movements and activities of individual facility residents. The objective is to insure that juveniles will remain in residential facilities to receive the care and treatment that is necessary to carry out the juvenile or family court custody order.

The JJDP Act defines the terms "secure detention facility" and "secure correctional facility" in sections 103 (12) and (13). In this context, the terms are expressly defined to include only those public or private residential facilities which "include(s) construction fixtures designed to physically restrict the movements and activities of juveniles . . .". The plain meaning of this statutory language is that facility features other than "construction fixtures", such as the use of staff to restrict physically or procedurally the movements and activities of juveniles, are not within the scope of the definition.

Executive Order 12291

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This final rule does not have "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96-354).

Paperwork Reduction Act

The collection of information requirements for compliance monitoring contained in this regulation have been approved by the Office of Management and Budget (Data Collection #1121-0069, expiration date June 30, 1988) under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 28 CFR Part 31

Grant programs, Juvenile delinquency.

Accordingly, 28 CFR Part 31 is revised to read as follows:

PART 31—FORMULA GRANTS

Subpart A—General Provisions

Subpart B—Eligible Applicants

Subpart C—General Requirements

Subpart D—Juvenile Justice Act Requirements

Subpart E—General Conditions and Assurances

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 et seq.)

Subpart A—General Provisions

§ 31.1 General.

This part defines eligibility and sets forth requirements for application for and administration of formula grants to State governments authorized by Part B, Subpart I, of the Juvenile Justice and Delinquency Prevention Act.

§ 31.2 Statutory authority.

The Statute establishing the Office of Juvenile Justice and Delinquency Prevention and giving authority to make grants for juvenile justice and delinquency prevention improvement programs is the *Juvenile Justice and Delinquency Prevention Act of 1974*, as amended (42 U.S.C. 5601 et seq.).

§ 31.3 Submission date.

Formula Grant Applications for each of Fiscal Year should be submitted to OJJDP by August 1st (60 days prior to the beginning of the fiscal year) or within 60 days after the States are officially notified of the fiscal year formula grant allocations.

Subpart B—Eligible Applicants

§ 31.100 Eligibility.

All States as defined by section 103(7) of the JJDP Act.

§ 31.101 Designation of State agency.

The Chief Executive of each State which chooses to apply for a formula grant shall establish or designate a State agency as the sole agency for supervising the preparation and administration of the plan. The plan must demonstrate compliance with administrative and supervisory board membership requirements established by the OJJDP Administrator pursuant to Section 261(c) of the JJDP Act. States must have available for review a copy of the State law or executive order establishing the State agency and its authority.

§ 31.102 State agency structure.

The State agency may be a discrete unit of State government or a division or other component of an existing State crime commission, planning agency or other appropriate unit of State government. Details of organization and structure are matters of State discretion, provided that the agency: (a) Is a definable entity in the executive branch with the requisite authority to carry out the responsibilities imposed by the JJDP Act; (b) has a supervisory board (i.e., a board of directors, commission, committee, council, or other policy board) which has responsibility for supervising the preparation and administration of the plan and its implementation; and (c) has sufficient staff and staff capability to carry out the board's policies and the agency's duties and responsibilities to administer the program, develop the plan, process applications, administer grants awarded under the plan, monitor and evaluate programs and projects, provide administration/support services, and perform such accountability functions as are necessary to the administration of Federal funds, such as grant close-out and audit of subgrant and contract funds.

§ 31.103 Membership of Supervisory Board.

The State advisory group appointed under section 223(a)(3) may operate as the supervisory board for the State agency, at the discretion of the Governor. Where, however, a State has continuously maintained a broad-based law enforcement and criminal justice supervisory board (council) meeting all the requirements of section 402(b)(2) of the Justice System Improvement Act of 1979, and wishes to maintain such a

board, such composition shall continue to be acceptable provided that the board's membership includes the chairman and at least two additional citizen members of the State advisory group. For purposes of this requirement a citizen member is defined as any person who is not a full-time government employee or elected official. Any executive committee of such a board must include the same proportion of juvenile justice advisory group members as are included in the total board membership. Any other proposed supervisory board membership is subject to case by case review and approval of the OJJDP Administrator and will require, at a minimum, "balanced representation" of juvenile justice interests.

Subpart C—General Requirements

§ 31.200 General.

This subpart sets forth general requirements applicable to formula grant recipients under the JJDP Act of 1974, as amended. Applicants must assure compliance or submit necessary information on these requirements.

§ 31.201 Audit.

The State must assure that it adheres to the audit requirements enumerated in the "Financial and Administrative Guide for Grants", Guideline Manual 7100.1 (current edition). Chapter 8 of the Manual contains a comprehensive statement of audit policies and requirements relative to grantees and subgrantees.

§ 31.202 Civil rights.

(a) To carry out the State's Federal civil rights responsibilities the plan must:

(1) Designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as liaison in all civil rights matters with OJJDP and the OJP Office of Civil Rights Compliance (OCRC); and

(2) Provide the Council's Equal Employment Opportunity Program (EEOP), if required to maintain one under 28 CFR 42.301, *et seq.*, where the application is for $500,000 or more.

(b) The application must provide assurance that the State will:

(1) Require that every applicant required to formulate an EEOP in accordance with 28 CFR 42.201 et seq., submit a certification to the State that it has a current EEOP on file, which meets the requirement therein;

(2) Require that every criminal or juvenile justice agency applying for a grant of $500,000 or more submit a copy of its EEOP (if required to maintain one under 28 CFR 42.301, et seq.) to OCRC at the time it submits its application to the State;

(3) Inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with OCRC for investigation;

(4) Cooperate with OCRC during compliance reviews of recipients located within the State; and

(5) Comply, and that its subgrantees and contractors will comply with the requirement that, in the event that a Federal or State court or administrative agency makes a finding of discrimination on the basis of race, color, religion, national origin, or sex (after a due process hearing) against a State or a subgrantee or contractor, the affected recipient or contractor will forward a copy of the finding to OCRC.

§ 31.203 Open meetings and public access to records.

The State must assure that the State agency and its supervisory board established pursuant to section 261(c)(1) and the State advisory group established pursuant to section 223(a)(3) will follow applicable State open meeting and public access laws and regulations in the conduct of meetings and the maintenance of records relating to their functions.

Subpart D—Juvenile Justice Act Requirements

§ 31.300 General.

This subpart sets forth specific JJDP Act requirements for application and receipt of formula grants.

§ 31.301 Funding.

(a) *Allocation to States.* Each State receives a base allotment of $225,000 except for the Virgin Islands; Guam, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands where the base amount is $56,250. Funds are allocated among the States on the basis of relative population under 18 years of age. OJJDP will officially notify the States and territories of their respective allocation within 30 days after the appropriation bill for the applicable fiscal year becomes law.

(b) *Funds for Local Use.* At least two-thirds of the formula grant allocation to the State must be used for programs by local government, or local private agencies unless the State applies for and is granted a waiver by the Office of Juvenile Justice and Delinquency Prevention.

(c) *Match.* Formula grants under the JJDP Act shall be 100% of approved costs, with the exception of planning and administration funds, which require a 100% cash match (dollar for dollar), and construction projects funded under section 227(a)(2) which also require a 100% cash match.

(d) *Funds for Administration.* Not more than 7.5% of the total annual formula grant award may be utilized to develop the annual juvenile justice plan and pay for administrative expenses, including project monitoring evaluation. These funds are to be matched on a dollar for dollar basis. The State shall make available needed funds for planning and administration to units of local government or combinations on an equitable basis. Each annual application must identify uses of such funds.

(e) *Nonparticipating States.* Pursuant to section 223(d), the OJJDP Administrator shall endeavor to make the fund allotment under section 222(a), of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, directly available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of achieving deinstitutionalization of status offenders and nonoffenders, separation of juveniles from incarcerated adults, and/or removal of juveniles from adult jails and lockups. Absent the demonstration of compelling circumstances justifying the reallocation of formula grant funds back to the State to which the funds were initially allocated, or the pendency of administrative hearing proceedings under section 223(d), formula grant funds will be reallocated on October 1 following the fiscal year for which the funds were appropriated. Reallocated funds will be competitively awarded to eligible recipients pursuant to program announcements published in the Federal Register.

§ 31.302 Applicant State agency.

(a) Pursuant to section 223(a)(1), section 223(a)(2) and section 261(c) of the JJDP Act, the State must assure that the State agency approved under Section 261(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.

(b) *Advisory Group.* Pursuant to section 223(a)(3) of the JJDP Act, the Chief Executive:

(1) Shall establish an advisory group pursuant to section 223(a)(3) of the JJDP Act. The State shall provide a list of all

current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in this section of the Act.

(2) Should consider, in meeting the statutory membership requirements of section 223(a)(3) (A) to (E), appointing at least one member who represents each of the following: A law enforcement officer such as a police officer; a juvenile or family court judge; a probation officer; a corrections official; a prosecutor; a representative from an organization, such as a parents group, concerned with teenage drug and alcohol abuse; and a high school principal.

(c) The State shall assure that it complies with the Advisory Group Financial support requirement of section 222(d) and the composition and function requirements of section 223(a)(3) of the JJDP Act.

31.303 Substantive requirements.

(a) *Assurances.* The State must certify through the provision of assurances that it has complied and will comply (as appropriate) with section 223(a) (4), (5), (6), (7), (8)(C), (9), (10), (11), (16), (17), (18), (19), (20), and (21), and sections 229 and 261(d), in formulating and implementing the State plan. The Formula Grant Application Kit can be used as a reference in providing these assurances.

(b) *Serious Juvenile Offender Emphasis.* Pursuant to sections 101(a)(8) and 223(a)(10) of the JJDP Act, the Office encourages States that have identified serious and violent juvenile offenders as a priority problem to allocate formula grant funds to programs designed for serious and violent juvenile offenders at a level consistent with the extent of the problem as identified through the State planning process. Particular attention should be given to improving prosecution, sentencing procedures, providing resources necessary for informed dispositions, providing for effective rehabilitation, and facilitating the coordination of services between the juvenile justice and criminal justice systems.

(c) *Deinstitutionalization of Status Offenders and Non-Offenders.* Pursuant to section 223(a)(12)(A) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable covering the three-year planning cycle, for assuring that the requirements of this section are met. Refer to § 31.303(f)(3) for the rules related to the valid court order exception to this Act requirement.

(2) Describe the barriers the State faces in achieving full compliance with the provisions of this requirement.

(3) For those States that have achieved "substantial compliance", as outlined in section 223(c) of the Act, document the unequivocal commitment to achieving full compliance.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(12)(A) may, in lieu of addressing paragraphs (c) (1), (2), and (3) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(5) Submit the report required under section 223(a)(12)(B) of the Act as part of the annual monitoring report required by section 223(a)(15) of the Act.

(d) *Contact with Incarcerated Adults.* (1) Pursuant to section 223(a)(13) of the JJDP Act the State shall:

(i) Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term *regular contact* is defined as sight and sound contact with incarcerated adults, including inmate trustees. This prohibition seeks as complete a separation as possible and permits no more than haphazard or accidental contact between juveniles and incarcerated adults. In addition, include a timetable for compliance and justify any deviation from a previously approved timetable.

(ii) In those isolated instances where juvenile criminal-type offenders remain confined in adult facilities or facilities in which adults are confined, the State must set forth the procedures for assuring no regular sight and sound contact between such juveniles and adults.

(iii) Describe the barriers which may hinder the separation of alleged or adjudicated criminal-type offenders, status offenders and non-offenders from incarcerated adults in any particular jail, lockup, detention or correctional facility.

(iv) Those States which, based upon the most recently submitted monitoring report, have been found to be in compliance with section 223(a)(13) may, in lieu of addressing paragraphs (d) (i), (ii), and (iii) of this section, provide an assurance that adequate plans and resources are available to maintain compliance.

(v) Assure that adjudicated offenders are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of segregating adults and juveniles in correctional facilities. This does not prohibit or restrict waiver of juveniles to criminal court for prosecution, according to State law. It does, however, preclude a State from administratively transferring a juvenile offender to an adult correctional authority or a transfer within a mixed juvenile and adult facility for placement with adult criminals either before or after a juvenile reaches the statutory age of majority. It also precludes a State from transferring adult offenders to juvenile correctional authority for placement.

(2) *Implementation.* The requirement of this provision is to be planned and implemented immediately by each State in light of identified constraints on immediate implementation. Immediate compliance is required where no constraints exist. Where constraints exist, the designated date of compliance in the latest approved plan is the compliance deadline. Those States not in compliance must show annual progress toward achieving compliance until compliance is reached.

(e) *Removal of Juveniles From Adult Jails and Lockups.* Pursuant to section 223(a)(14) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable for assuring that requirements of this section will be met beginning after December 8, 1985. Refer to § 31.303(f)(4) to determine the regulatory exception to this requirement.

(2) Describe the barriers which the State faces in removing all juveniles from adult jails and lockups. This requirement excepts only those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

(3)(i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. In circumstances where the juvenile and adult facilities are located in the same building or on the same grounds, each of the following four requirements initially set forth in the January 17, 1984 Federal Register (49 FR 2054–2055) must be met in order to ensure the requisite separateness of the two facilities. The requirements are:

(A) Total separation between juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities.

(B) Total separation in all juvenile and adult program activities within the

facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities.

(C) Separate juvenile and adult staff, including management, security staff, and direct care staff such as recreation, education, and counseling. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juvenile and adults, can serve both.

(D) In States that have established State standards or licensing requirements for secure juvenile detention facilities, the juvenile facility meets the standards and is licensed as appropriate.

(ii) The State must initially determine that the four requirements are fully met. Upon such determination, the State must submit to OJJDP a request to concur with the State finding that a separate juvenile facility exists. To enable OJJDP to assess the separateness of the two facilities, sufficient documentation must accompany the request to demonstrate that each requirement is met.

(4) For those States that have achieved "substantial compliance" with section 223(a)(14) as specified in section 223(c) of the Act, document the unequivocal commitment to achieving full compliance.

(5) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(14) may, in lieu of addressing paragraphs (e) (1), (2), and (4) of this Section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(f) *Monitoring of Jails, Detention Facilities and Correctional Facilities.* (1) Pursuant to section 223(a)(15) of the JJDP Act, and except as provided by paragraph (f)(7) of this section, the State shall:

(i) Describe its plan, procedure, and timetable for annually monitoring jails, lockups, detention facilities, correctional facilities and non-secure facilities. The plan must at a minimum describe in detail each of the following tasks including the identification of the specific agency(s) responsible for each task.

(A) *Identification of Monitoring Universe:* This refers to the identification of all residential facilities which might hold juveniles pursuant to public authority and thus must be classified to determine if it should be included in the monitoring effort. This includes those facilities owned or operated by public and private agencies.

(B) *Classification of the Monitoring Universe:* This is the classification of all facilities to determine which ones should be considered as a secure detention or correctional facility, adult correctional institution, jail, lockup, or other type of secure or nonsecure facility.

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

(D) *Data Collection and Data-Verification:* This is the actual collection and reporting of data to determine whether the facility is in compliance with the applicable requirement(s) of section 223(a) (12), (13) and/or (14). The length of the reporting period should be 12 months of data, but in no case less than 6 months. If the data is self-reported by the facility or is collected and reported by an agency other than the State agency designated pursuant to section 223(a)(1) of the JJDP Act, the plan must describe a statistically valid procedure used to verify the reported data.

(ii) Provide a description of the barriers which the State faces in implementing and maintaining a monitoring system to report the level of compliance with section 223(a) (12), (13), and (14) and how it plans to overcome such barriers.

(iii) Describe procedures established for receiving, investigating, and reporting complaints of violation of section 223(a) (12), (13), and (14). This should include both legislative and administrative procedures and sanctions.

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

(3) *Valid Court Order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to the juvenile's attorney and/or legal guardian in writing and be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juveniles may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

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

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

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

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

(E) The right to confront witnesses;

(F) The right to present witnesses;

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

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

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3) (i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.

(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

(4) *Removal Exception (Section 223(a)(14)).* The following conditions must be met in order for an accused juvenile criminal-type offender, awaiting an initial court appearance, to be detained up to 24 hours (excluding weekends and holidays) in an adult jail or lockup:

(i) The State must have an enforceable State law requiring an initial court appearance within 24 hours after being taken into custody (excluding weekends and holidays);

(ii) The geographic area having jurisdiction over the juvenile is outside a metropolitan statistical area pursuant to the Bureau of Census' current designation;

(iii) A determination must be made that there is no existing acceptable alternative placement for the juvenile pursuant to criteria developed by the State and approved by OJJDP;

(iv) The adult jail or lockup must have been certified by the State to provide for the sight and sound separation of juveniles and incarcerated adults; and

(v) The State must provide documentation that the conditions in paragraphs (f)(4) (i) thru (iv) of this Section have been met and received prior approval from OJJDP. In addition, OJJDP strongly recommends that jails and lockups which incarcerate juveniles pursuant to this exception be required to provide continuous visual supervision of juveniles incarcerated pursuant to this exception.

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

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

(A) Dates of baseline and current reporting period.

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

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

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

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

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

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

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

(A) Designated date for achieving full compliance.

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

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

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

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

(A) Dates of baseline and current reporting period.

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

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

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

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

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

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

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

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

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

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

(i) *Substantial compliance* with section 223(a)(12)(A) requires within three years of initial plan submission achievement of a 75% reduction in the aggregate number of status offenders and non-offenders held in secure detention or correctional facilities or removal of 100% of such offenders from secure correctional facilities only. In addition, the State must make an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within two additional years. *Full compliance* is achieved when a State

has removed 100% of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with *de minimis* exceptions pursuant to the policy criteria contained in the Federal Register of January 9, 1981 (46 FR 2566–2569).

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

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

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

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

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

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

(iii) *Substantial compliance* with section 223(a)(14) requires the achievement of a 75% reduction in the number of juveniles held in adult jails and lockups by December 8, 1985 and that the State has made an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within three additional years. *Full compliance* is achieved when a State demonstrates that the last submitted monitoring report, covering a full and actual 12 months of data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of section 223(a)(14). *Full compliance with de minimis exceptions* is achieved when a State demonstrates that it has met the standard set forth in either of paragraphs (f)(6)(iii) (A) or (B) of this section:

(A)(*1*) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of section 223(a)(14);

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

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

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

(*5*) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(A)(*4*) of this section.

(B) [Reserved]

(*7*) *Monitoring Report Exceptions.* States which have been determined by the OJJDP Administrator to have achieved full compliance with section 223(a)(12)(A) and compliance with section 223(a)(13) of the JJDP and which wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

(i) The State provides for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to enable an annual determination of State compliance with section 223(a) (12)(A), (13), and (14) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of section 223(a) (12)(A) and (13) of the JJDP Act; and

(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

(A) Authority for enforcement of the statute is assigned;

(B) Time frames for monitoring compliance with the statute are specified; and

(C) Adequate sanctions and penalties that will result in enforcement of statute and procedures for remedying violations are set forth.

(g) *Juvenile Crime Analysis.* Pursuant to section 223(a)(8) (A) and (B) the State shall conduct an analysis of juvenile crime problems and juvenile justice and delinquency prevention needs.

(1) *Analysis.* The analysis must be provided in the multiyear application. A suggested format for the analysis is provided in the Formula Grant Application Kit.

(2) *Product.* The product of the analysis is a series of brief written problem statements set forth in the application that define and describe the priority problems.

(3) *Programs.* Applications are to include descriptions of programs to be supported with JJDP Act formula grant funds. A suggested format for these programs is included in the application kit.

(4) *Performance Indicators.* A list of performance indicators must be developed and set forth for each program. These indicators show what data will be collected at the program level to measure whether objectives and performance goals have been achieved and should relate to the measures used in the problem statement and statement of program objectives.

(h) *Annual Performance Report.* Pursuant to section 223(a) and section 223(a)(22) the State plan shall provide for submission of an annual performance report. The State shall report on its progress in the implementation of the approved programs, described in the three-year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals. The annual performance report shall describe progress made in addressing the problem of serious juvenile crime, as documented in the juvenile crime analysis pursuant to section 223(a)(8)(A).

(i) *Technical Assistance.* States shall include, within their plan, a description of technical assistance needs. Specific direction regarding the development and inclusion of all technical assistance needs and priorities will be provided in the "Application Kit for Formula Grants under the JJDPA."

(j) *Other Terms and Conditions.* Pursuant to section 223(a)(23) of the JJDP Act, States shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the formula grant.

§ 31.304 Definitions.

(a) *Private agency.* A private non-profit agency, organization or institution is:

(1) Any corporation, foundation, trust, association, cooperative, or accredited institution of higher education not under public supervision or control; and

(2) Any other agency, organization or institution which operates primarily for scientific, education, service, charitable, or similar public purposes, but which is not under public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax-exempt under the provisions of section 501(c)(3) of the 1954 Internal Revenue Code.

(b) *Secure.* As used to define a detention or correctional facility this

term includes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

(c) *Facility.* A place, an institution, a building or part thereof, set of buildings or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.

(d) *Juvenile who is accused of having committed an offense.* A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

(e) *Juvenile who has been adjudicated as having committed an offense.* A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.

(f) *Juvenile offender.* An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations by defined as State law, i.e., a criminal-type offender or a status offender.

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

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

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

(j) *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

(k) *Other individual accused of having committed a criminal* [illegible] *inse.* [illegible] who [illegible] g a [illegible] ding

(l) *Other individual convicted of a criminal offense.* An individual, adult or juvenile, who has been convicted of a criminal offense in court exercising criminal jurisdiction.

(m) *Adult jail.* A locked facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

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

(o) *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word "valid" permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States.

(p) *Local Private Agency.* For the purposes of the pass-through requirement of section 223(a)(5), a local private agency is defined as a private non-profit agency or organization that provides program services within an identifiable unit or a combination of units of general local government.

Subpart E—General Conditions and Assurances

§ 31.400 Compliance with statute.

The applicant State must assure and certify that the State and its subgrantees and contractors will comply with applicable provisions of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, as amended, and with the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93–415, as amended, and the provisions of the current edition of OJP Financial and Administrative Guide for Grants, M 7100.1.

§ 31.401 Compliance with other Federal laws, orders, circulars.

The applicant State must further assure and certify that the State and its subgrantees and contractors will adhere to other applicable Federal laws, orders and OMB circulars. These general Federal laws and regulations are described in greater detail in the Financial and Administrative Guide for Grants, M 7100.1, and the Formula Grant Application Kit.

§ 31.402 Application on file.

Any Federal funds awarded pursuant to an application must be distributed and expended pursuant to and in accordance with the programs contained in the applicant State's current approved application. Any departures therefrom, other than to the extent permitted by current program and fiscal regulations and guidelines, must be submitted for advance approval by the Administrator of OJJDP.

§ 31.403 Non-discrimination.

The State assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination requirements, including:

(a) Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and made applicable by Section 262(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended;

(b) Title VI of the Civil Rights Act of 1964;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975; and

(f) The Department of Justice Non-discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 85–14830 Filed 6–19–85; 8:45 am]

BILLING CODE 4410–18–M

APPENDIX F

SUMMARY

Issue: Jail Removal/Monitoring: Criteria for Defining Adult Lockups

Source: Federal Register, 1988

federal register

Wednesday
November 2, 1988

Part V

Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of Final Policy

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups

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

ACTION: Notice of final policy.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (JJDP Act) is publishing a policy to provide guidance to states participating in the JJDP Act Formula Grants Program for determining when a juvenile held within a building that houses an adult jail or lockup facility is considered to be in nonsecure custody for purposes of state monitoring for compliance with section 223(a)(14) of the JJDP Act.

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

FOR FURTHER INFORMATION CONTACT: Emily C. Martin, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 633 Indiana Avenue, NW., Room 768, Washington, DC 20531; telephone (202) 724-5921.

I. Introduction and Background

In an effort to comply with the jail lockup removal mandate, section 223(a)(14) (42 U.S.C. 5633(a)(14)) of the JJDP Act, staff of state administering agencies and facility administrators are often called upon to identify alternatives to holding juveniles in jail cells or lockups while law enforcement officers carry out their responsibilities of identification, investigation, processing, release to parent(s) or guardian, hold for transfer to an appropriate juvenile detention or shelter facility, or transfer to court. the OJJDP recognizes that during this interim period, a balance must be struck between the statutory objective of not holding juveniles in jail cells or lockup areas beyond the six hour temporary holding period permitted for accused criminal-type offenders (a juvenile alleged to have committed, or charged with an offense that would be a crime if committed by an adult); and, not allowing juveniles in temporary law enforcement custody to disrupt police operations or to leave a police, sheriff or municipal facility without authorization.

Section 31.304(m) of the OJJDP Formula Grants Regulation published in the June 20, 1985, **Federal Register** on pages 25550-25561 (28 CFR Part 312, defines an *adult jail* as:

> 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.

Section 31.304(n) of the Formula Grants Regulation defines an *adult lockup* as:

> 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.

While these definitions provide general parameters, the efforts of state agency staff to monitor compliance with the JJDP Act jail and lockup removal requirement and to identify alternatives indicate a need for specific guidelines to identify when a juvenile is being securely detained or confined in an adult jail or lockup area. In making this determination, it is critical to distinguish between nonsecure custody and secure detention or confinement (for purposes of this policy, the terms secure detention or confinement, secure cutsody, and secure holding are synonymous). 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.

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.

This policy is designed to assist state agency staff and facility administrators in identifying non-secure alternatives for custody of juveniles within law enforcement facilities. The policy assumes that immediate access or transfer of a juvenile to a juvenile detention center or appropriate nonsecure facility is not possible, and that no area is available within the building or on the grounds that qualifies as a separate juvenile detention facility under the requirements set forth in the Formula Grants Regulation at 28 CFR 31.303(e)(3)(i). This policy provides guidance in identifying practices that do not constitute violations of the statutory jail removal requirement. As such, it reflects the effective strategies many law enforcement jurisdictions are using to achieve jail removal. The policy is not offered as standards for practice, nor does it surpersede any state laws, policies or guidelines.

II. Discussion of Comments

A proposed policy was published was published in the **Federal Register** on January 28, 1988, for public comment. Comments were received from 12 national, state, and local organizations. All comments have been considered by the OJJDP in the issuance of a final policy.

The following is a summary of the comments and the response by OJJDP:

1. *Comment:* Booking areas used to process juveniles and adults are different to classify because there are wide variations in their configurations and levels of security. Respondents indicated that it is unclear whether OJJDP considers booking areas to be secure or nonsecure.

Response: While a booking area may be secure, a juvenile being processed "through" this area is not considered to be in a secure detention status.

Where a secure booking area is all that is available, and continuous visual supervision is provided throughout the booking process, and the juvenile only remains in the booking area long enough to be photographed and fingerprinted (consistent with state law and/or judicial rules), the juvenile will not be considered 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.

2. *Comment:* Two respondents indicated that a prohibition on handcuffing juveniles to a cuffing rail or other stationary objects is not a viable restriction given safety and cost considerations.

Response: OJJDP understands that many juveniles taken into custody pose a potential risk to self and/or law enforcement officers. Clearly, the officer taking a juvenile into custody must rely on his or her judgement of the level of risk posed by the juvenile.

It is, however, OJJDP's responsibility to clearly define when a juvenile taken

into custody enters a secure detention status. Where an officer determines that a juvenile taken into custody as an *accused* criminal-type offender must be handcuffed to a cuffing rail or other stationary object, or placed in a cell or lockup area, this is permissible under § 31.303(f)(5)(iv)(H) of the OJJDP Formula Grants Regulation (28 CFR 31), for up to six hours. It should be noted, however, that for monitoring purposes, the six hour, "grace period" begins to run when the juvenile enters a secure detention status and ends six hours later.

It is also important to point out that handcuffing techniques that do not involve cuffing rails or other stationary objects will be considered nonsecure custody where the additional criteria for nonsecure custody set forth in this policy are adhered to. Thus, juvenile offenders can be considered in nonsecure custody, even though handuffed, where necessary, so long as a stationary object is not in use.

3. *Comment:* Two respondents expressed concern that without a time limit on nonsecure custody, juveniles could end up spending more time in law enforcement facilities than at present. It was recommended that nonsecure custody be limited to six hours.

Response: One criterion in the policy for determining that custody is nonsecure is that the area where the juvenile remains not be designed or intended for use as a residential area. This reflects OJJDP's policy that if a juvenile is to remain in custody long enough to require residential services, the juvenile should be moved to an apppropriate juvenile residential facility as soon as this need is identified. Once an area of a jail or lockup facility begins to be used for residential purposes, the juvenile will be considered to be in a secure detention status.

Beyond this "nonresidential" requirement, and the other limiting criteria in this policy, the JJDP Act does not confer upon the OJJDP the authority to limit the length of nonsecure custody.

4. *Comment:* One respondent stated that recordkeeping deficiencies at the facility level often make it difficult to determine when juveniles are placed in cells or other secure holding areas, and that this problem will also exist in attempting to monitor the handcuffing of juveniles to cuffing rails or other stationary objects.

Response: Each participating state is required, pursuant to section 223(a)(15) of the JJDP Act, to have an adequate monitoring system. It is expected that states will work with local facilities to develop adequate recordkeeping procedures.

As for recording juveniles placed in a holding cell or other secure area, many police departments handle this by adding the designation "cell" or "secure" to their juvenile admission/booking log. Departments should be particularly willing to do this when liability factors are taken into consideration, i.e., in the event of litigation, departments need to know if a juvenile was or was not placed in a secure area or in a secure detention status, and if so, for how long.

5. *Comment:* Three respondents suggested that the policy does not address the separation provision, section 223(a)(13) of the JJDP Act.

Response: The policy is designed to identify nonsecure alternatives for the custody and handling of juveniles within law enforcement facilities. The section 223(a)(13) separation requirement of the JJDP Act does not apply to juveniles in a nonsecure custody status.

6. *Comment:* One respondent indicated that court holding facilities should be subject to the Deinstitutionalization of Status Offenders provision, section 223(a)(12)(A) of the JJDP Act. Another suggested adding requirements for staff supervision and time limits for court holding facilities.

Response: Section 223(a)(12)(A) of the JJDP Act requires the removal of status and nonoffenders from secure detention and correctional facilities. Section 103 of the Act defines both facility categories to mean "residential" facilities.

This policy clearly states that in order for a court holding facility to be exempt from the adult jail and lockup removal provision of the JJDP Act, it must be nonresidential. The policy also states that the court holding facility cannot be used for punitive purposes or other purposes unrelated to a court appearance, and it confirms that the section 223(a)(13) separation requirement applies to court holding facilities. These requirements pertain to status and nonoffenders, as well as to criminal-type offenders.

As for time limitations, the nonresidential requirement does impose an inherent or practical time limitation. That is, the juvenile must be brought to and removed from the facility during the same judicial day.

The final policy does not address the level of supervision necessary in court holding facilities. However, it is clearly essential that sufficient levels of supervision be provided to ensure the safety of those juveniles before the court, and the integrity of the court process itself.

Executive Order 12291

This notice does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This policy does not have a "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96.354).

Paperwork Reduction Act

No collection of information requirements are contained in or effected by this guideline (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.

III. Policy: Criteria for Law Enforcement Facilities

The following policy criteria, if satisfied, will constitute nonsecure custody of a juvenile in a building that houses an adult jail or lockup facility:

(1) The area(s) where the juvenile is held is an unlocked multi-purpose 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 a 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 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.

IV. Policy: Criteria for 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 detail 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 for purposes of section 223(a)(14) of the JJDP Act. However, such facilities remain subject to the section 223(a)(13) (42 U.S.C. 5633(a)(13)) separation requirement of the Act.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88-25376 Filed 11-1-88; 8:45 am]

BILLING CODE 4410-18-M

APPENDIX G

SUMMARY

Issue: Jail Removal: De Minimis (numerical) Exceptions

Source: Federal Register, 1988

federal register

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]

BILLING CODE 4410-18-M

APPENDIX H

SUMMARY

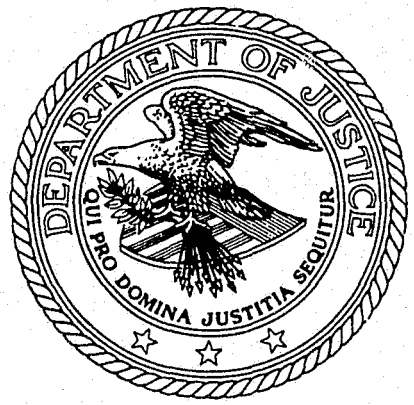
Issue: Monitoring/Field Audits

Source: OJP Guideline Manual: Audit of Compliance Monitoring Systems (OJP M 7140.7)

OJP Guideline Manual

OJP M 7140.7

AUDIT OF COMPLIANCE MONITORING SYSTEMS



November 6, 1987

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS

Distribution: **All Formula Grant Recipients; All OJJDP Professional Employees**

Initiated By: **Office of Juvenile Justice and Delinquency Prevention**

RECORD OF CHANGES

AFTER REMOVING OBSOLETE PAGES AND FILING REVISED PAGES, DATE AND INITIAL THE BLOCKS FOLLOWING THE CHANGE NUMBER. REQUEST ANY MISSING CHANGES FROM YOUR DISTRIBUTION POINT.

Change Number	Date of Change Transmittal	Date Filed	Initials
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

FOREWORD

1. **PURPOSE.** This Manual sets forth the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) policies and procedures governing the audit of state compliance monitoring systems.

2. **SCOPE.** The provisions of this Manual apply to OJJDP and all formula grant recipients.

3. **AUTHORITY.** Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. Sec. 5601, et.seq., as amended (Pub. L. 93-415, as amended by Pub. L. 94-503, Pub.

4. **EFFECTIVE DATE.** The provisions of this Manual are effective on its publication.

5. **REPORTS/FORMS.** Use of the following reports/forms are prescribed by this Manual.

   a. Monitoring Plan Checklist

   b. Notification Letter

   c. Field Audit Checklist

   d. Audit Report Format

6. **REGULATIONS.**

   a. OJJDP published the Final Regulation for Formula Grants in the June 20, 1985, Federal Register (50 FR 25550 - 25561). See also 28 CFR 31.

   b. Pursuant to Section 223(a)(15) of the JJDP Act and 28 CFR 31.303(f), the state must develop a plan which provides for an adequate system of monitoring jails, lockups, detention facilities, correctional facilities and nonsecure facilities to ensure that the removal of status offenders and nonoffenders from secure detention and correctional facilities, separation, and jail removal requirements are met. This section of the Multi-Year Application and Plan must describe the plan, procedure and timetable for the state's annual monitoring activities during the 3 year planning cycle. At a minimum, the plan must provide a detailed description of monitoring tasks which includes the identification of the specific agency or agencies

responsible for each task. The tasks to be included are (a) the identification of the monitoring universe, (b) the classification of facilities, (c) the inspection of facilities and, (d) data collection and verification.

c. Pursuant to Section 204(b)(7) of the JJDP Act, the Administrator shall provide for the auditing of monitoring systems required under Section 223(a)(15) to review the adequacy of such systems.

VERNE L. SPEIRS
Administrator
Office of Juvenile Justice
and Delinquency Prevention

TABLE OF CONTENTS

CHAPTER 1. GENERAL MONITORING INFORMATION

1. **MONITORING DEFINITION.** Monitoring means to watch, observe or check for a special purpose. In this instance, the special purpose is to see that the goals of deinstitutionalization of status and nonoffenders, the separation of alleged and adjudicated delinquents, status and nonoffender juveniles and adult offenders in institutions, and the removal of juveniles from adult jails and lockups are being met; to evaluate how well they are being met, and to take remedial action where necessary.

2. **MONITORING PLAN.** Each grantee must have a written plan providing for an adequate system of monitoring secure and nonsecure facilities to ensure that the requirements of the JJDP Act and Formula Grant Regulation are being complied with. The plan should describe the barriers faced in implementing and maintaining a monitoring system and the state and local strategies and plans to overcome such barriers. The plan should also describe the legislative and/or administrative procedures which have been established for the state to receive, investigate and respond to reports of compliance violations. At a minimum, the plan must provide a detailed description of monitoring tasks which includes the identification of the specific agency or agencies responsible for each task.

3. **MONITORING SYSTEM.** The development of a statewide monitoring system, if it is to be effective in achieving the monitoring requirements and goals, must be planned in such a way that the system can identify all secure and nonsecure residential facilities in which juveniles might be placed under court authority. At its optimal level, the system must be able to keep track of the juveniles at each step in the confinement process; it must be capable of locating and recording the number and classification of juveniles confined in each residential facility; and to correct incidences of noncompliance with the Act or situations which may endanger the juveniles or cause unnecessary detention. To this end, all applicable laws, regulations, standards, guidelines, policies, etc., must be clearly defined in written form, and made available to all persons involved with the incarceration of juveniles, on a need-to-know basis.

4. **MONITORING AUTHORITY.** The agency(s) responsible for monitoring should have legal authority to monitor all facilities in which juveniles might be placed under court authority. The authority should be sufficiently broad to permit the monitoring agency(s) to require each facility that could be classified as a secure detention or correctional facility, to be inspected for classification purposes, to maintain specific juvenile admission and release records and permit the designated monitors to review these records at selected intervals during the year.

   a. The basic authority should give the agency(s) the right to develop and enforce, pursuant to state statutes, standards for all secure facilities that might hold juveniles, to inspect the facilities for compliance, to cite the facilities for violations of the standards, and to enforce sanctions when violations are not corrected.

b. Such authority should permit monitors to review records containing detention information for the purposes of monitoring, with the written agreement that the monitors will respect the confidential nature of the information and will not knowingly record or divulge information which might identify a specific child except as may be required to protect the child.

c. Effective monitoring and enforcement can only be fully implemented when the agency's legal responsibility is defined in clear and understandable terms and is known to all concerned parties. The primary sanction should be prohibition against the facility admitting juveniles as long as the cited violations exist. An agency, other than the state designated agency, may be given legal authority to monitor, but the state designated agency retains accountability for the overall performance of the monitoring tasks.

5. **COMPATIBILITY OF DEFINITIONS.** In classifying facilities and identifying the types of behavior of the juveniles to be counted for monitoring purposes, governmental units need to operate under definitions that are compatible with those found in the Formula Grant Regulation. Preferably, compatible definitions will be included in the state code. Where this is not the case, monitoring agencies should adopt and follow the OJJDP definitions for monitoring.

6. **MONITORING TASKS.** The following descriptions of monitoring tasks are contained in the Regulation.

a. **Identification of Monitoring Universe.** This refers to the identification of all facilities which might hold juveniles pursuant to public authority and thus should be classified to determine if each should be included in the other monitoring tasks. This includes those facilities owned or operated by public or private agencies. Planning agencies, in cooperation with other state agencies and organizations, should develop a full list of facilities to be considered for possible inclusion in the monitoring universe. The list should include all jails, lockups, detention centers, juvenile correctional facilities, halfway houses, group homes, foster homes, and any other secure or nonsecure public or private facilities in which juveniles might be detained or placed. Depending on the scope of the jurisdiction and authority of the juvenile court, the list may need to include public or private mental health facilities, chemical dependency programs, and detoxification centers.

(1) Selection of the potential monitoring universe is a necessary step in identifying all facilities that might conceivably fall under the purview of the JJDP Act, regardless of the primary population served by the facility.

(2) Laws which prohibit the incarceration of juveniles in certain types of facilities, such as jails or lockups, do not guarantee the exclusion of juveniles from such facilities, and for this reason the mere existence of such laws would not exclude such facilities from the monitoring universe. Neither should the fact that the facility did not hold juveniles

during an earlier report period. These factors are, however, relevant to decisions about which facilities are to be inspected and actually monitored, viz., data collection and verification.

b. **Classification of the Monitoring Universe.** The classification of all facilities to determine which should be considered secure detention or correctional facilities, adult correctional institutions, jails, lockups or other types of secure facilities and thus should be monitored, requires an assessment of each facility based on the OJJDP regulations. Generally all jails, lockups, juvenile detention centers, training schools and other public and private facilities should be subject to classification.

c. **Inspection of Facilities.** Inspection of facilities is required to classify according to regulations and to review whether adequate sight and sound separation occurs for juveniles housed in facilities which also confine adult offenders. Such inspections are necessary to provide the protections required by the Act and to determine whether adequate data are maintained to determine compliance with the three statutory requirements. The inspection process should include a method for reporting compliance with the separation requirements for each secure facility which holds both juvenile and adult offenders. Reports on each facility's compliance or noncompliance should be made available to the facility as a record of findings of the inspection.

d. **Data Collection.** It is necessary to check each facility's admission/release records to obtain an accurate count of the juveniles admitted and other required information. Data taken on-site from the primary source can be easily verified. Questions that arise relating to the data can be answered on the spot, and data tabulation problems can be identified and hopefully corrected. On-site data collection increases the accuracy of the information.

(1) Obtaining data by questionnaire or self-report can provide the needed information, but the data must be verified unless the report is a verified copy of the admission/release record. Data collected by an agency other than the state designated agency must also be verified.

(2) Finally, all data must be analyzed to determine the progress towards deinstitutionalization of status offenders, the adequacy of separation and progress toward full compliance with the jail removal requirement.

(3) While the data is eventually presented in a summary form, the original information should be compiled to show the number of juveniles in each category that are held in each individual facility. This data should routinely be recorded by each secure facility as an integral part of its population control and recordkeeping responsibility. Included among the information recorded in the juvenile admission/release record should be the name of the youth (initials or numerical identifiers are acceptable), the date of birth, the most serious alleged offense, the date and time of admission, the date and time of release, and the name and relationship

of the person to whom the youth was released. The admission/release record may and probably should contain other information, but at minimum, the information listed is needed for monitoring purposes.

7. **MONITORING REPORT PERIOD.** Each state must select a monitoring report period. This is the period of time during which facility admission/release records will be recorded and later collected to determine compliance or progress toward compliance. The regulations permit each agency to set its own report period which should be 12 months but may not be less than 6 months. Because seasonal variations effect the information obtained, a 12-month report period is recommended. If less than 12 months of data is used, the data must be projected in a statistically valid manner to reflect a full year reporting period.

8. **METHOD OF REPORTING.** Regardless of who collects the monitoring data or inspects the facilities, the data and information must be provided to the designated state agency, where it is analyzed, reviewed, and finally written up in the form of an annual Monitoring Report. Once in final form, the report is submitted to OJJDP by December 31, each year.

9. **VIOLATION PROCEDURES.** Inspections or other mechanisms which identify incidences of noncompliance, or other deficiencies which may be dangerous to confined juveniles, are only of value when a particular agency can act to correct or eliminate the identified problem. Authority to deal with violations is essential. Written violation policies and procedures should be available so all concerned will know what is expected of them and what action may be taken. Such authority should allow the monitoring agency to cite a facility for specific violations and to temporarily restrict or prohibit the admission of juveniles to the facility while the conditions exist. The established violation procedures should permit the facility a reasonable time to correct the problem. The authority should also allow for the imposition of a permanent prohibition against the facility holding juveniles if the facility cannot eliminate the cited violation, or refuses to act. The established violation procedures should be made available to all classified facilities.

CHAPTER 2. AUDIT INFORMATION

10. **FUNCTION OF THE AUDIT.** The function of the audit is to determine how closely a state's monitoring system approaches the requirements stated in the Formula Grant Regulation. The auditor should be aware that each monitoring problem has several possible resolutions. There is no single right way to monitor.

The audit is basically composed of two steps. The first step is a review or desk audit of the state's compliance monitoring plan. The second step involves a site visit or field audit. Both steps are described below.

11. **DESK AUDIT.** Using a Monitoring Plan Checklist (appendix 1), the OJJDP State Representative will make an initial assessment of whether or not the monitoring plan adequately addresses the required monitoring tasks and any identified monitoring problems.

Corresponding to the monitoring tasks identified above in paragraphs 4-6, the desk audit examines the following issues:

a. **Agency's Authority to Monitor.** Does the agency have legal authority to monitor? If not, is the legal authority of another agency or court used?

b. **Compatibility of Definitions.** Are definitions contained in the state code or rules and regulations compatible with the OJJDP statute and regulations? If not, are the OJJDP definitions used for monitoring?

c. **Identification of Monitoring Universe.** What methods are used to identify facilities for inclusion in the monitoring universe?

d. **Classification of Monitoring Universe.** Are definitions compatible with OJJDP statute and regulations used to classify facilities? Were any facilities or group of facilities that should have been classified as secure detention and correctional facilities or as adult jails and lockups, excluded? If yes, why?

e. **Monitoring Report Period.** What period of time was selected by the monitoring agency during which detention data would be tabulated and collected for monitoring?

f. **Inspection of Facilities.** What process, methods, and personnel were used to inspect facilities to determine their classification and the adequacy of compliance with the statutory and regulatory requirements?

g. **Data Collection.** What process, method, and personnel were used to collect and verify monitoring data?

h. **Method of Reporting.** How was monitoring information compiled? Who prepared the annual Monitoring Report? Was the report used for purposes other than to comply with the JJDP Act reporting requirements?

i. **Violation Procedures.** Were established written violation policies and procedures available to deal with identified violations and to bring about the elimination of conditions found in violation of the regulation?

12. **FIELD AUDIT.** While the desk audit determines whether or not the monitoring plan addresses monitoring responsibilities and identified problems, the field audit goes beyond this. Through an on-site review of additional documentary evidence, interviews with persons responsible for monitoring, and data verification at selected facilities, the field audit assesses how well the state's monitoring plan is actually carried out.

a. The following documentary evidence should be supplied to the auditor when he or she arrives on-site:

(1) The State Monitoring Manual. Ideally, each state has a set of written procedures that describe the actual mechanics of the annual monitoring cycle. The monitoring manual, if detailed enough, would be sufficient documentation.

(2) The legal or administrative definitions of facility types. This material is necessary to determine whether the state classifies facilities and juveniles in accordance with the JJDP Act and Formula Grant Regulation.

(3) The legal or administrative definition of sight and sound separation. This definition is necessary to determine whether sight and sound separation is properly checked on the annual visits to institutions which hold juveniles and adults.

(4) Any legal or administrative procedures relating to the authority needed to complete the monitoring task. This includes the authority to monitor, and the authority to make annual inspections of secure facilities. Also important is the legal underpinning for the violations procedures component. The auditor must determine whether or not the monitoring agency or some other agency has the authority to investigate and sanction facilities that violate any of the regulations.

(5) A complete list of all public and private juvenile detention and correctional facilities in the state, including jails, lockups, detention centers and other secure institutions; group homes, shelter and other nonsecure residential facilities. This list should include the classification of each facility and the date of the last inspection. This list will allow the auditor to determine the scope of the state's

monitoring universe, the accuracy of the classification process and the frequency of inspections. This list should be accompanied by a discussion of how the list is updated.

(6) Forms used by local facilities and by the state agency(s) to collect and report data. The auditor will require these forms to determine whether the state collects the necessary data in the proper format.

(7) A list of the agencies responsible for each step of the monitoring process. This includes agencies responsible for facility identification and classification, inspection, data collection and reporting. This material should be included in the monitoring plan document itself.

(8) A timetable for the state's monitoring cycle, showing the allocation of tasks across the yearly cycle.

(9) A detailed explanation and justification of any sampling or projection techniques used in monitoring.

b. The following evidence should be submitted to the auditor prior to his or her arrival on-site:

(1) A written description of which of the exceptions allowed by the JJDP Act and Formula Grant Regulation are used, e.g., accused delinquents for up to 6 hours in jails and lockups, and how the criteria for using each one is satisfied by the state.

(2) Statutes, regulations, executive orders, or court rules that require the deinstitutionalization of status offenders and nonoffenders, separation of juveniles and adults, and jail removal.

c. Every state should supply the above materials to the auditor. In addition, the auditor should request further documentation to fill in gaps in this material or to clarify ambiguous points. The extent of this supplementary documentation is left to the auditor; it may be quite extensive if the state does not have a pre-existing monitoring procedures manual.

13. **NOTIFICATION OF THE SITE VISIT.** OJJDP will notify the grantee by letter at least 30 business days prior to the audit. The 30-day period will be counted from the intended date of arrival for beginning the audit. The Notification Letter in appendix 2 will be used to remind the state of the documentary evidence to be reviewed on-site, and to confirm staff interviews and facility visits.

14. **THE ON-SITE VISIT.** A truly complete and comprehensive audit includes an on-site visit to the state. The review of the monitoring plan and the accompanying documentation will probably uncover discrepancies or ambiguities that need to be resolved. The auditor can do this best by making an inspection visit to the state to gather the necessary information. The auditor can use the visit to determine why a state plan is weak in a certain area; the state may be facing constraints that are not detailed in the plan, and by a visit, the auditor can learn of these through

interviews with key state personnel. The visit will also be used to verify that the procedures outlined in the state plan are actually implemented. Finally, the auditor will undertake data verification. The final test of any monitoring plan is the quality of the compliance data produced by the plan. To the greatest extent possible the auditor and staff should use the visit to verify the monitoring system plan and the compliance figures reported by the state.

a. **Preparation.** To be fully effective, the on-site visit should be preceded by extensive preparation. The auditor, in a preparation phase, should review the monitoring plan and the documentation in great detail. The auditor should pay special attention to the Monitoring Checklist (appendix 1) and commentary and make note of areas in which the plan needs further development. The auditor should note areas of ambiguity and points that need to be clarified. Omissions and ambiguities in the plan may not indicate a serious flaw in the plan if the state agency inadvertently left out some available information.

   (1) This preparation will result in a set of questions specific to the state that the auditor will bring to the field, in addition to the Field Audit Checklist (appendix 3). These questions will guide the course of the field audit.

   (2) Further preparation includes an itinerary of the on-site visit. The auditor should have a list of the state personnel to be interviewed. The more complete this list, the more smoothly the visit will go. In addition, the auditor should have a list of facilities to be visited. The on-site verification of compliance data is too important to be left to the last minute. The auditor should enlist cooperation from the state agency in scheduling appointments with facility personnel. The facility review may indeed be the most sensitive part of the whole process. The facility visit should be handled with tact and courtesy.

   (3) The facilities selected should be as representative as possible. In most states, three to five facilities will be an adequate sample. These should include one metropolitan jail, one rural jail, a juvenile detention center, a juvenile correctional facility, and an adult lockup.

   (4) When leaving for the visit, the auditor should bring along information and notes based on the monitoring checklist analysis, supporting documentation, and a list of clarifications and questions. The auditor should also have all material needed to conduct on-site facility data verification.

b. **On-Site Interviews.** Once on-site, the first order of business should be to conduct the necessary interviews with the state personnel, or other persons who have monitoring responsibilities. The auditor should meet with as many of the key personnel involved in monitoring as possible. This group varies in numbers and composition from state to state. At a minimum, interviews

should be conducted with the personnel responsible for the design and maintenance of the monitoring system; the personnel responsible for collection and analysis of the monitoring data; the officials who inspect jails and juvenile facilities; and, those responsible for the violations mechanism.

Monitoring is a process that takes place in annual cycles, hence it is very difficult to observe a monitoring system in order to verify that it works in the way described in the monitoring plan. The auditor should first have the state agency personnel describe in detail the yearly operation of the system. The auditor should "walk through" the monitoring cycle when conducting these interviews. Next, the auditor should raise the questions and clarifications. At this point, the state agency's staff may be able to supply any information that was left out of the monitoring plan. However, it may also be the case that the state plan is flawed in some respect. If so, the auditor should point this out to the agency personnel and discuss ways in which these problems may be resolved.

c. **Verification of Compliance Data.** The next step in the visit involves the verification of compliance data. This verification proceeds at two levels. First, the auditor should determine that the data collected by the state are compatible with the data presented in the state monitoring report. This data should be examined to determine that the state is correctly reporting the numbers that it is collecting from local facilities.

(1) The second level of data verification focuses on data collection by local facilities. Through the on-site facility visits, the auditor will determine whether the sample facilities are correctly reporting compliance violations. The state should have from each facility a report giving the total number of admissions to that facility in violation of the JJDP Act. The state should arrange for on-site visits by the auditor and one of its own staff to verify these totals by referring to facility records such as admission logs. Some discrepancy should be expected, as no recordkeeping system is foolproof. However, serious differences between the facility logs and the admission reports to the state should be noted.

(2) For each facility visited, the auditor will prepare contemporaneous notes that contain, at a minimum:

(a) A general description of the jurisdiction the facility is located in.

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

(c) A description of the facility in terms of its residents, how they are processed, and their daily schedule.

(d) A description of the human and mechanical supervision of residents (visual and auditory).

(e) A diagram of the facility (sketched by the auditor), including the "juvenile area" of adult facilities.

(f) A detailed description of the provisions for sight and sound separation in adult facilities.

(g) A detailed description of the admission data reviewed.

(h) A list of the auditor's findings in relation to the admission data reviewed.

d. **Exit Conference.** Upon completion of the system review and facility data verification, the auditor will conduct an exit conference. This meeting will provide the auditor an opportunity to discuss his or her findings and for the state to make any final clarifying statements. The on-site visit is over once the exit conference is concluded.

15. **AUDIT CHECKLIST.** A Checklist (appendix 3) has been provided for use in preparing for and carrying out the audit. It should not be considered a complete guide to the audit process. Instead, it should be considered a starting point for the field audit. As issues are discussed and the information becomes clearer, the auditor will have to continue to investigate each nuance as necessary. In some instances additional documentation may be necessary to answer new questions that arise as the monitoring discussion goes on.

16. **AUDIT REPORT.** The major product of the site visit is a written report. The report should include a discussion of the strengths and weaknesses of each monitoring system; consideration of the constraints and limitations faced by each state in carrying out the monitoring tasks; concrete proposals made by the state or suggested by the auditor to overcome monitoring barriers; and, an assessment of the quality of the compliance data collected based on the data verification effort.

a. A copy of the report will be forwarded to the state within 30 business days of the completion of the on-site portion of the audit, requesting a written response and proposed resolution of any audit findings. This report should be treated and processed as a regular in-house audit report.

b. The Audit Report Format is outlined in appendix 4.

17. **RESPONSE TO THE AUDIT REPORT.** The state response to the audit findings should be returned within 30 business days from the date on the audit report and must answer the following questions:

a. What has been done to correct the problem?

b. Who corrected the problem?

c. When was the problem corrected?

d. If the problem has not already been resolved, what is the plan and timeline for resolving it?

e. Attach any documentation that may be needed to support the explanation of the resolution procedure.

18. **AUDIT CLEARANCE.** OJJDP must review and make an initial determination on the acceptability of the state's response within 30 business days of its receipt. In making the initial determination, OJJDP staff will assess the extent to which the following, critical elements of a state's compliance monitoring system are in place and functioning effectively, or will be as a result of the state's plan of action:

a. The agency with the authority to monitor must, at a minimum, be empowered to inspect secure residential facilities and to review records.

b. Facility inspections should be carried out annually with attention being focused on each facility's recordkeeping system, and the adequacy of sight and sound separation (where applicable).

c. The designated state agency must maintain a master list of all residential programs that might hold juveniles pursuant to court authority. The process for updating this list and classifying all facilities must reasonably be expected to capture any new facilities coming into existence.

d. There must be a timetable for carrying out all compliance monitoring tasks.

e. At least 6 months of monitoring data must be available during each reporting period.

f. The designated state agency must, at a minimum, have data from a representative sample of all secure, residential facilities available for analysis. Unless otherwise justified, a representative sample will be considered 50% of each type of secure, residential facility, e.g., jails, lockups, juvenile detention centers, and juvenile correctional facilities. This threshold is necessary to ensure the reliability of any data projections. While the reporting by facilities to the designated state agency is, in most cases, voluntary, each state is expected to strive for reporting by all secure, residential facilities.

g. The designated state agency must verify, on-site, self-reported data or data provided by another agency. On-site verification, unless otherwise justified, must take place at a minimum of 10% of the facilities in each classification category, e.g., jails, lockups, juvenile detention centers, and juvenile correctional facilities.

h. The monitoring data analyzed by the designated state agency must, at a minimum, include an identifier for each youth (name, initials, number), age, charge, date and time of admission, and date and time of release.

i. There must be evidence that the state's use of exceptions allowed by the JJDP Act and Formula Grant Regulation are proper, viz., the criteria for their use are satisfied.

j. There must be evidence that, where state and Federal definitions are incompatible, the latter are used for compliance monitoring.

k. Pursuant to Section 223(a)(12)(A) of the JJDP Act, instances of noncompliance with the deinstitutionalization provision (if above the de minimis rate of 5.8) must be in violation of a state law and there must be a plan to prevent recurrences.

l. Pursuant to Section 223(a)(13) of the JJDP Act, instances of noncompliance with the separation provision must be in violation of a state law and an enforcement mechanism must exist.

m. The designated state agency must have a plan to eliminate barriers to implementing an adequate compliance monitoring system, pursuant to Section 223(a)(15) of the JJDP Act.

n. After completing its assessment of the state's response, OJJDP will make an initial determination of whether the plan of action described by the state is acceptable or not:

(1) **Acceptable Plan of Action.** Where any of the auditor's findings involve one or more of the above critical elements, and the state's plan of action adequately addresses those elements, OJJDP will notify the state, in writing, of the following:

(a) OJJDP's initial determination is that the plan of action is acceptable.

(b) A date will be established (consistent with the plan of action) for the state to submit correspondence attesting to the fact that the activities described in its response have been fully implemented.

(2) Upon receipt of the state's certification, OJJDP will send a final written notification that all findings have been cleared, and that the state's compliance monitoring system is adequate. The state will also be advised to notify OJJDP in the event of changing circumstances that adversely effect its compliance monitoring system.

(3) **Unacceptable Plan of Action.** Where any of the auditor's findings involve one or more of the above critical elements, and the state's plan of action does not adequately address those elements, either because the activities described are deemed insufficient or the timelines for action are unreasonable, OJJDP will notify the state, in writing, of the following:

(a) OJJDP's initial determination is that the plan of action is unacceptable.

(b) OJJDP will indicate which activities in the state's plan of action need to be revised and how, any additional activities that are necessary, and what timelines would be acceptable.

(c) A date will be established for the state to submit a revised plan of action.

(d) If the state's revised plan of action adequately addresses the critical elements listed above, a date will be established (in writing) for the state to submit correspondence attesting to the fact that the activities described in its revised plan of action have been fully implemented.

(4) Upon receipt of the state's certification, OJJDP will send a final written notification that all findings have been cleared, and that the state's compliance monitoring system is adequate. The state will also be advised to notify OJJDP in the event of changing circumstances that adversely effect its compliance monitoring system.

NOTE: While no arbitrary timelines are being established for addressing the critical monitoring system elements, states are reminded that, failure to implement these requirements amounts to noncompliance with Section 223(a)(15) of the JJDP Act. Each state and territory's compliance with this section of the statute will be reviewed prior to OJJDP finding a state eligible for future Formula Grant Awards. Where necessary, future awards may be delayed or special conditions may be added to an award requiring specific action within narrowly prescribed time frames.

(5) **Critical Elements Not Involved.** Where the auditor's findings do not involve any of the critical elements of a compliance monitoring system, and the state has provided a plan of action for addressing other, noncritical elements, OJJDP will notify the state, in writing, of the following:

(a) The state's compliance monitoring system has been determined to be adequate.

(b) The state will be asked to notify OJJDP when the noncritical elements of its compliance monitoring system have been fully implemented. In addition, the state will be advised to notify OJJDP in the event of changing circumstances that adversely effect its compliance monitoring system.

APPENDIX 1. MONITORING PLAN CHECKLIST

Monitoring Plan Checklist **State** _____ **Date** _____

1.	Does the plan provide a timetable for annually monitoring jails and lockups?	Yes__	No__
2.	Does the plan describe how the universe of facilities will be identified and which agency(s) is responsible for identifying them?	Yes__	No__
3.	Does the plan include the monitoring of both public and private facilities?	Yes__	No__
4.	Is there a clear indication/description as to how facilities will be classified?	Yes__	No__
5.	Is there a description as to which agency(s) will classify facilities?	Yes__	No__
6.	Does the plan detail how facilities will be inspected and which agency(s) will actually do the inspections?	Yes__	No__
7.	Does the state indicate what will be reviewed during the inspections?	Yes__	No__
8.	Is there a detailed description of how data will be collected and verified?	Yes__	No__
9.	Does the plan indicate which agency will collect and verify the data?	Yes__	No__
10.	Does the reporting period cover at least a 6 month period?	Yes__	No__
11.	Does the monitoring include sampling techniques?	Yes__	No__
	If yes, is it statistically valid? Yes__ No__		
12.	Does the monitoring include data projection?	Yes__	No__
	If yes, is it statistically valid? Yes__ No__		
13.	Does the plan describe barriers in implementing and maintaining a monitoring system?	Yes__	No__

APPENDIX 1. (CONT'D)

14.	Does the plan address realistic approaches to overcome barriers?	Yes__	No__
15.	Does the state describe legislative and/or administrative procedures and sanctions for each of the following:		
	a. receiving violation complaints?	Yes__	No__
	b. investigating violation complaints?	Yes__	No__
	c. reporting violation complaints?	Yes__	No__

APPENDIX 2. NOTIFICATION LETTER

Dear Juvenile Justice Planner:

To confirm our telephone conversation of (date), I will be conducting a field audit of (state's) compliance monitoring system, (date).

In order to satisfy generally accepted auditing standards, I will need to review the following materials during the audit:

1. The legal and/or administrative definition of a secure facility as contained in the Juvenile Code, state regulations, or other documents.

2. The legal and/or administrative definition of sight and sound separation.

3. The legal and/or administrative policies and procedures that grant authority to your agency or another to conduct monitoring. This includes the collection or submission of monitoring data and the annual inspection of facilities.

   Related to this is the authority to receive and investigate complaints of violations and to impose sanctions where necessary.

4. A complete list of all public and private juvenile detention and correctional facilities in the state, including jails, lockups, prisons, youthful offender institutions, mental health facilities, juvenile detention centers, and training schools. Also include group homes, shelter care and other nonsecure juvenile residential facilities, public and private. A list of foster homes is not needed, although the total number of such homes is requested. This list should include the classification of each facility (public-private, juvenile-adult, and secure-nonsecure), the date of the last inspection, and the date of the next scheduled inspection. Please include a description of how the list gets updated and any guidelines that are provided to inspectors that require a review of the adequacy of each facility's recordkeeping system and, where applicable, provisions for sight and sound separation.

5. A clear description of the criteria for classifying facilities (legal and/or administrative definitions).

6. Forms used by local facilities and by the state to collect and report data.

7. A list of the agencies responsible for each step of the monitoring process and an organizational chart for each.

8. A timetable for the state's monitoring cycle showing the allocation of tasks across the yearly cycle.

APPENDIX 2. (CONT'D)

9. A detailed explanation and justification of any sampling or projection techniques used in monitoring.

Please have copies of these materials available for me when I arrive. Following my review, they will become a part of (state) monitoring file maintained by the OJJDP.

In order to help me prepare for the field audit, please send me the following materials within 2 weeks of receipt of this letter:

1. Statutes, regulations, executive orders, or court rules that require the deinstitutionalization of status offenders and nonoffenders, separation of juveniles and adults, and jail removal. These documents should be accompanied by a written description, showing which of the exceptions allowed by the JJDP Act and Formula Grant Regulation are used, e.g., accused delinquents for up to 6 hours in jails and lockups, and how the criteria for using each one is satisfied by the state.

In addition to my review of documents, I will need to interview those persons who have the major responsibility for carrying out compliance monitoring in (state). We agreed to the following schedule of appointments:

Dates	Times	Location	Name of Person	Agency	Role

Finally, the most recent monitoring data submitted to the OJJDP will need to be verified on a sample basis. We agreed on the following schedule of facility visits:

Date	Facility	Location

For each of these facilities, I will need to compare their admission logs with copies of the reports they submitted to your agency or that you prepared after on-site data collection, for the _____ monitoring period. Please have copies of these reports available for me to take into the field.

In closing, you will probably be asked a number of questions by the people who are participating in this field audit. Please refer to the OJJDP Handbook, Audit of Compliance Monitoring Systems, and feel free to contact me to help answer any questions.

I look forward to working with you to make this important process successful.

Sincerely,

Juvenile Justice Program Specialist

APPENDIX 3. FIELD AUDIT CHECKLIST

State:_____

Auditor:_____

1. COLLECTION OF BASIC INFORMATION

NOTE TO AUDITOR: This checklist is provided as a guideline to ensure the consistent collection of basic information. It should be considered a beginning point, not an end, to the field audit. The quality of this field audit will be determined by the depth of the response to each item and the usefulness of the auditor's findings and recommendations.

a. Authority to Monitor:

(1) Agency with legal authority to monitor?

Name:

Briefly describe the agency's structure and, if different from the state planning agency, its relationship with the state planning agency.

(2) Documentation on file?

Yes: No:

Cite authority:

(3) Can they require facilities to maintain specific admission and release information?

Yes: No:

Cite authority:

APPENDIX 3. (CONT'D)

(4) Can they require facilities to permit review of records by designated monitors?

Yes: No:

Cite authority:

(5) Do they have authority to set standards?

Yes: No:

Cite authority:

If not, describe the agency with such authority:

(6) Do they have authority to inspect?

Yes: No:

Cite authority:

If not, describe the agency with such authority:

(7) Do they have authority to cite for violations?

Yes: No:

Cite authority:

If not, describe the agency with such authority:

APPENDIX 3. (CONT'D)

(8) Do they have authority to enforce sanctions?

Yes: No:

Cite authority:

If not, describe the agency with such authority:

(9) Is there a state monitoring plan?

Yes: No:

Will be completed:

(10) Is there a state monitoring manual?

Yes: No:

Will be completed:

(11) Is there a written timetable for the monitoring cycle describing tasks by month?

Yes: No:

Describe the timetable in terms of the following:

(a) Facility Identification:
(b) Classification:
(c) On-site inspection:
(d) Data collection:
(e) Data verification:
(f) Data processing:
(g) Report writing:

Does it include agencies or individuals responsible for each step?

If not, when will it be completed:

NOTE: Latitude should be allowed for states that combine two or more steps into one (some states combine inspection, collection, verification and classification into a single on-site inspection, for example).

(12) Are barriers to implementing and maintaining a monitoring system addressed?

(13) Does the plan address realistic approaches to overcoming barriers?

b. Compability of definitions:

(1) 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.

State Definition:

(2) 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.

State Definition:

APPENDIX 3. (CONT'D)

(3) Delinquent

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.

State Definition:

(4) Sight and Sound Separation

As complete a separation as possible; no more than haphazard or accidental contact between juveniles and incarcerated adults.

State Definition:

(5) Secure

Residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

State Definition:

(6) Valid 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.

These rights are detailed on pages 25558-25559 of the Formula Grant Regulation. Focus on whether or not a detention hearing is provided within 24 hours.

NOTE: Does not apply to nonoffenders.

State Definition:

APPENDIX 3. (CONT'D)

(7) Deinstitutionalization of Status Offenders

No status and nonoffenders in secure facilities.

Exceptions: 24 hours after initial police custody.

Valid Court Order (see above)

State Definition:

(8) Separation

See (4) above

Exception: Does not apply to juveniles transferred to criminal court.

State Definition:

(9) Jail Removal

No juveniles in adult jails or lockups.

Exceptions: Accused delinquent in non-MSA if state laws requires detention hearing within 24 hours.

Accused delinquent may be held for up to 6 hours for processing.

Does not apply to juveniles transferred to criminal court on criminal felony charges.

Status and nonoffenders cannot be held in jails and lockups for any length of time under Section 223(a)(14).

State Defintion:

APPENDIX 3. (CONT'D)

(10) Juvenile

N/A

State Definition:

c. Monitoring Universe:

(1) Agency responsible for identifying facilities in monitoring universe?

Public Facilities Name:

Private Facilities Name:

(2) Method used to identify facilities in monitoring universe and update?

Documentation on file: Yes: No:

(3) Agency responsible for classification of monitoring universe?

Public Facilities Name:

Private Facilities Name:

Documentation on file: Yes: No:

Does it include:

(a) Explanation of how classified: Yes No
(b) Lists of facilities: Yes No
(c) Explanation of how updated: Yes No
(d) Do other agencies cooperate if not responsible:
Yes No

Describe:

APPENDIX 3. (CONT'D)

(4) Were any facilities or groups of facilities excluded?

Yes: No:

Excluded facilities with explanation:

How do they go about assessing the various facilities to determine their classification?

Self-Report

How is it verified:

Site-Visit

Personnel used:

How do they guarantee that nonsecure facilities have no secure component?

(5) Is there a list of all potential facilities on file?

Yes: No:

Will be completed:

(6) Is there a complete list of classified facilities on file?

Yes: No:

Will be completed:

(7) How does this list get updated?

d. Monitoring Report Period:

(1) Period of time selected:

(2) If less than 12 months, why?

(3) If not a minimum of 6 months, why?

e. Inspection of Facilities:

(1) Agency responsible for inspection?

Public Facilities Name:

Private Facilities Name:

(2) Describe Process/Methods:

Documentation on file? Yes: No:

(3) Personnel used?

Documentation on file? Yes: No:

(4) Is there a list showing each facility and date of last inspection?

Yes: No:

Will begin keeping such a list:

(5) Is there a schedule for future inspections of all facilities?

Yes: No:

Will begin to keep such a list:

(6) Are inspection reports on file?

Yes: No:

Will begin to keep on file:

(7) Are copies of the inspection reports supplied to each facility?

Yes: No:

Will begin supplying:

APPENDIX 3. (CONT'D)

(8) Issues examined during inspections?

(a) Recordkeeping review
(b) Sight and sound separation
(c) Secure component

Is there doucmentation of procuedures on file?

Yes: No:

Will be completed:

f. Data Collection:

(1) Agency Responsible:

Name:

(2) Describe Process/Methods:

Documentation: Yes: No:

Will be completed:

(3) Timeline?

Documentation: Yes: No:

Will be completed:

APPENDIX 3. (CONT'D)

(4) Personnel?

Documentation: Yes: No:

Will be completed:

(5) Verification and timeline?

Documentation: Yes: No:

Will be completed:

(6) Is there a sample admission log?

Does admission/release record include:

(a) Name of Youth (or initials, numerical identifier):
(b) Date of Birth:
(c) Most Serious Alleged Offense:
(d) Court of Jurisdiction:
(e) Date and Time of Admission:
(f) Date and Time of Release:
(g) Name and Relationship of Person to Whom the Youth was Released:

How can recordkeeping system be changed to include missing items:

(7) Are data collection records on file?

Yes: No:

Will begin:

(8) Are copies of forms used on file?

Yes: No:

Will begin:

APPENDIX 3. (CONT'D)

(9) What exceptions are used to calculate violations?

Does the use of each satisfy the statutory and regulatory criteria?

g. Method of Reporting:

(1) How was information compiled?

Self-Report:

How forwarded to collecting agency:

How Verified:

Action taken if discrepancy found:

On-Site:

How often:

Agency Responsible:

APPENDIX 3. (CONT'D)

Sampling:

Method used:

Justification:

Actual facilities selected for most recent sample and results:

Data Projection:

Straightline:

Other (explain):

Explain basis for projection:

(2) Who prepared annual report?

Name:

Relationship to Agency:

(3) Was report used for any other purpose?

h. Violation Procedures:

(1) Are there written policies for reporting violations?

Formal:

Informal:

Documentation: Yes: No:

Will be completed:

APPENDIX 3. (CONT'D)

(2) Are there written policies concerning investigation of violations?

Documentation: Yes: No:

Will be completed:

(3) Are there clearly defined sanctions for facilities found in violation?

Legislative:

Administrative:

Documentation: Yes: No:

Will be completed:

(4) How much time lapses between actual incident and report?

Documentation: Yes: No:

Will be completed:

(5) Are these policies made available to the facilities?

Yes: No:

Will be made available:

APPENDIX 3. (CONT'D)

2. FIELD TEST OF MONITORING

a. Auditor's Data Verification at Facilities:

(1) What data was reviewed for what period of time?

(a) All admissions on log were compared with admissions reported to the state.

(b) Only violations identified on log by auditor were compared to violations reported to the state.

(2) What reporting errors were discovered?

(a) Admissions not reported to the state.

(b) Discrepancies, e.g., time admitted and released.

(c) Violations not reported to the state.

(3) Quality of records?

(a) Contain minimum necessary data.

(4) Related findings?

(a) Arrest patterns

3. OTHER ISSUES

a. Describe any emerging issues that may effect compliance monitoring:

b. Questions specific to the audited state developed during pre-audit preparation: (List and describe response.)

APPENDIX 3. (CONT'D)

4. FINDINGS AND RECOMMENDATIONS

APPENDIX 4. AUDIT REPORT FORMAT

(1) **Purpose**

(2) **Field Audit Schedule**

(a) Contacts
(b) Purpose of each contact

(3) **Monitoring System**

(a) General description
(b) Which agencies responsible
(c) General timetable for monitoring and reporting
(d) Authority to Monitor

1/ Discuss legal documents that grant authority
2/ Assessment of their adequacy

(e) Compatibility of Definitions

1/ Status and nonoffenders, delinquents
2/ Secure facilities
3/ Sight and sound separation
4/ Valid Court Order
5/ Deinstitutionalization of Status Offenders and any exceptions used
6/ Separation and any exceptions used
7/ Jail Removal and any exceptions used

(f) Identification of Monitoring Universe

1/ Number of each type of facility
2/ Which agency identifies

(g) Classification of Monitoring Universe

1/ Criteria used
2/ Responsible agencies

(h) Monitoring Period

(i) Inspection of Facilities

1/ Review of inspection forms
2/ Responsible agencies
3/ Timelines
4/ What do agencies inspect for

APPENDIX 4. (CONT'D)

(j) Data Collection/Verification

1 Responsible agencies
2 Timelines
3 Reiterate statutory and/or regulatory exceptions used to calculate violations

(k) Method of Reporting

(l) Violation Procedures

(4) **Other Issues**

(a) Emerging circumstances that may effect the state's compliance monitoring activities.

(b) Questions specific to the audited state.

(5) **Compliance Data Verification**

(a) General description of the type of data reviewed across facilities
(b) Sampling techniques used
(c) General data limitations encountered
(d) Description of each facility, the specific data reviewed, and auditor findings.

(6) **Findings and Recommendations**

(7) **Documents Received (List)**

APPENDIX 5. FREQUENTLY ASKED QUESTIONS ABOUT AUDITING COMPLIANCE MONITORING SYSTEM

1. **"Does the plan provide a timetable for annually monitoring jails and lockups?"**

   Comment: The timetable should be as detailed as possible, giving at least the month in the cycle when each task is completed. The timetable should list the times for each major activity: facility identification, classification, on-site inspection, data collection, data verification, data processing and report writing. Latitude should be allowed for states that combine two or more steps into one (some states combine inspection, collection, verification and classification into a single on-site inspection). The agencies or individuals responsible for each step should also be identified.

2. **"Does the plan describe how the universe of facilities will be identified and which agency(s) is responsible for identifying them?"**

   Comment: The auditor should request documentation showing how identification is done. At a minimum this includes a list of all juvenile residential facilities, secure and nonsecure, in the state. Further, the documentation should indicate how the list is updated. Ideally, such updating should occur every year or two. Finally, the agency or agencies responsible for this list should be identified.

   The auditor should take special interest in the agencies involved in facility identification. The monitoring agency itself is probably not capable of identifying every residential facility in the state. Hence, the auditor should check to see that the agencies with jurisdiction over a given type of residential facility (jails, detention centers, group shelters) cooperate with the monitoring agency.

3. **"Does the plan include the monitoring of both public and private facilities?"**

   Comment: This question can be answered by reference to the above item. Many states may overlook private residential facilities when compiling the monitoring universe; this may be the most common violation of the regulations. For this reason, the auditor must be sure that a state monitors private residential facilities.

4. **"Is there a clear indication/description as to how facilities will be classified?"**

   Comment: The auditor needs two pieces of information here. First, the state must supply its definition of a secure facility; the definition should be compatible with OJJDP's definition. Second, the state must indicate how this definition is applied. That is, the states must supply documentation indicating whether facilities are classified by a self-report questionnaire or by an on-site visit. If a state uses self-report, it should indicate how it verified this classification.

   Some states automatically classify certain facility types as secure (i.e., jails, lockups, and detention centers). The states need not verify these classifications. In general, the auditor needs to know how the state can guarantee that nonsecure facilities do not have a secure component.

APPENDIX 5. (CONT'D)

5. **"Is there a description as to what agency(s) will classify facilities?"**

Comment: Supporting documentation here is similar to that required in question 2. The state should supply a discussion of which agency carries out the classification task. Again, the auditor should make sure that the proper agencies are involved in classifying the facilities under their jurisdiction.

6. **"Does the plan detail how facilities will be inspected and which agency(s) will actually do the inspections?"**

Comment: The state should present a timetable of inspections. Ideally, the auditor would want a list showing the dates each residential facility was last inspected. The future schedule for inspections should also be obtained. The documentation should describe the agencies responsible for inspection.

7. **"Does the State indicate what will be reviewed during the inspections?"**

Comment: The inspection must look at three things. It must determine whether a facility is secure; it must check for sight and sound separation between juvenile and adult offenders; and, it must review the facility's recordkeeping system. The state must supply sufficient documentation to demonstrate that each of these objectives is met during the inspection. The state should also supply its definition of sight and sound separation.

The state should indicate that it understands the minimum data collection requirements for monitoring purposes. The state should provide a sample copy of the jail log or detention intake form used in jails and secure facilities throughout the state. The auditor may use this form or log to determine whether the typical facility in a state collects the minimum data.

The facility should keep detailed information on the offense for each admission. This should include actual offense, the offense class (felony, misdemeanor, or status) and the court in which the youth will be tried. Both the state and the auditor must be sure that the proper data are being collected in accordance with the regulation.

8. **"Is there a detailed description of how data will be collected and verified?"**

Comment: For purposes of the audit, the state should supply documentation explaining in as great a detail as possible, the actual mechanics of data collection and verification. Documentation must include the timetable for collecting data and the agency responsible for collecting the data. If data are self-reported, the form used by the facility to report should be presented as well, to double check that adequate monitoring data are being collected. Further, the documentation should indicate how often data are forwarded from the facility.

If data are collected on-site, the documentation should indicate how often on-site visits are made, plus the agency responsible.

APPENDIX 5. (CONT'D)

Verification problems are more acute with self-report data. The state must describe how verification is done. Most states should verify data through on-site inspections. The audit documentation should include a timetable for verification. The actual verification process must be described as well. At the very least, the reported totals in each monitoring category for each facility should be checked. In addition, the documentation should describe what the monitoring agency does whenever a discrepancy is uncovered during verification between reported and actual totals.

9. **"Does the plan indicate what agency will collect and verify this data?"**

Comment: This information will be found in the documentation required for question #8.

10. **"Does the reporting period cover at least a 6-month period?"**

Comment: A six-month period is the minimum allowed by regulation.

11. **"Does the monitoring include sampling techniques? If yes, is it statistically valid?"**

Comment: Sampling techniques should be seldom used in monitoring, although it has been noted that sampling could probably make the verification progress much more efficient. The design of a sample for monitoring is rather complicated and the issues involved are extensive, thus a simple random sample of facilities is not a valid sample design for monitoring purposes. The auditor should request extensive documentation including the reasoning behind the type of sampling involved, a justification of the technique, the actual facilities selected for the sample, and the results gathered from use of the sample in the most recent year.

Note: This caveat on sampling is not intended to discourage sampling of data from an individual facility, e.g., one month of data from each quarter of the 12-month reporting period.

12. **"Does the monitoring include data projection? If yes, is it statistically valid?"**

Comment: Projection as used in monitoring refers to the estimation of a full year's count on the basis of a partial year's worth of data. Depending on seasonal variations in detention practices in the state, straightline projections may or may not be adequate. Whether straightline or variable rate projections are used, an explanation of the basis for the projection should be provided.

13. **"Does the plan describe barriers in implementing and maintaining a monitoring system?"**

Comment: Self-explanatory.

APPENDIX 5. (CONT'D)

14. **"Does the plan address realistic approaches to overcome barriers?"**

Comment: It is difficult to evaluate the monitoring obstacles according to any objective criteria. The auditor should request an elaboration of the obstacle section found in the most recent monitoring plan. A discussion of the progress made by the state in overcoming these problems would be useful. It is up to the auditor to determine whether these obstacles are valid and whether adequate progress is being made.

15. **"Does the state describe legislative and/or administrative procedures and/or sanctions for each of the following: (a) receiving violation complaints? (b) investigating violation complaints? (c) acting on violations?"**

Comment: The auditor should request documentation of the violation complaint procedure. The audit should be most interested in whether the following conditions are met:

(a) Does the agency have formalized channels for receiving violation complaints? Is it likely that every complaint will be reported?

(b) Are complaints received in a timely manner? That is, are complaints received and investigated relatively soon after the violation has occurred.

(c) Does the monitoring agency have the authority to correct violations? Does the agency have the authority to close a noncompliant institution?

*U.S. GOVERNMENT PRINTING OFFICE:1988-202-045:80004

APPENDIX I

SUMMARY

Issue: Monitoring

Source: OJJDP Monitoring Report Form

OMB # 1121-0089
EXPIRES: 9/90

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

STATE MONITORING REPORT

A. GENERAL INFORMATION

1. NAME AND ADDRESS OF STATE MONITORING 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 GRANT 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 9/88

SECTION 223(a)(12)(A)

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

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

1. BASELINE REPORTING PERIOD _____

_____

CURRENT REPORTING PERIOD _____

_____

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

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

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

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

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

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

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

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

Write in the number of accused status offenders and nonoffenders held in excess of 24 hours in the facilities during the report period. This number should not include (1) accused status offenders or nonoffenders held less than 24 hours following initial police contact, (2) accused status offenders or nonoffenders held less than 24 hours following initial court contact, or (3) status offenders accused of violating a valid court order for which a probable cause hearing was held during the 24 hour grace period.

The 24 hour period should not include weekends and holidays.

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

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

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

Write in the number of adjudicated status offenders and nonoffenders held in the 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.

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

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

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

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

violated the court order and the number of status offenders found in violation hearings to have violated a valid court order.

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

Has the state monitoring agency verified that the criteria for using this exclusion have been satisfied pursuant to the current OJJDP regulation?_____

_____

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

_____

C. DE MINIMIS REQUEST

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

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

ACCUSED		ADJUDICATED		TOTAL
_____	+	_____	=	_____

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

_____

If the 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 = _____ (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 criterion 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 incidences. Describe whether the instances of noncompliance were in apparent violation of state law, established executive policy or established judicial policy. Attach a copy of the applicable law and/or policy.

_____

_____

_____

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

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

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

Yes _____ No _____

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

Yes _____ No _____

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

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

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

(3) In addition, the plan must be targeted specifically to the agencies, courts, or facilities responsible for the placement of status offenders and nonoffenders in noncompliance with Section 223(a)(12)(A). It must include a specific strategy to eliminate

instances of noncompliance through statutory reform, changes in facility policy and procedure, or modification of court policy.

_____

_____

_____

_____

4. OUT OF STATE RUNAWAYS

Number of out of state runaways 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? _____

These juveniles may be excluded only if their presence created a noncompliance rate in excess of 29.4 per 100,000 juvenile population.

5. FEDERAL WARDS

Number of Federal wards held in the State's adult jails and lockups pursuant to a written contract or agreement with a Federal agency and for the specific purpose of affecting a jurisdictional transfer, appearance as a material witness, or for return to their lawful residence or country of citizenship? _____

These juveniles may be excluded 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**

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

_____

_____

_____

_____

_____

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 residential facilities which can be used for the secure detention and confinement of both juveniles offenders and adult criminal offenders.

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

1. BASELINE REPORTING PERIOD _____

_____

CURRENT REPORTING PERIOD _____

_____

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

_____

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

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

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

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

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

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

Adult Jails	_____	_____	_____
Adult Lockups	_____	_____	_____

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

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

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

(This summary should discuss the extent of the state's compliance in implementing Section 223(a)(13), and how reductions have been achieved, including the identification of state legislation which directly impacts on compliance. Discuss any proposed or recently passed legislation or policy which has either positive or negative impact on achieving or maintaining compliance. Attach additional sheets as necessary.)

_____

_____

_____

_____

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

_____

_____

_____

_____

SECTION 223(a)(14)

F. **REMOVAL OF JUVENILES FROM ADULT JAILS AND LOCKUPS.**

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

1. BASELINE REPORTING PERIOD _____

   CURRENT REPORTING PERIOD _____

2. NUMBER OF ADULT JAILS

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

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

3. NUMBER OF ADULT LOCKUPS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. TOTAL NUMBER OF ADJUDICATED CRIMINAL-TYPE OFFENDERS HELD IN ADULT JAILS FOR ANY LENGTH OF TIME.

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

10. TOTAL NUMBER OF ADJUDICATED CRIMINAL-TYPE OFFENDERS HELD IN ADULT LOCKUPS FOR ANY LENGTH OF TIME.

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

11. TOTAL NUMBER OF ACCUSED AND ADJUDICATED STATUS OFFENDERS AND NONOFFENDERS HELD IN ADULT JAILS FOR ANY LENGTH OF TIME, INCLUDING THOSE STATUS OFFENDERS ACCUSED OF OR ADJUDICATED FOR VIOLATION OF A VALID COURT ORDER.

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

12. TOTAL NUMBER OF ACCUSED AND ADJUDICATED STATUS OFFENDERS HELD IN ADULT LOCKUPS FOR ANY LENGTH OF TIME, INCLUDING THOSE STATUS OFFENDERS ACCUSED OF OR ADJUDICATED FOR VIOLATION OF A VALID COURT ORDER.

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

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

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

Baseline Data _____

Current Data _____

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

_____ _____ _____

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

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

The 24 hour period should not include weekends and holidays.

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

NOTE: The criteria for this exception includes the existence of a state law requiring detention hearings within 24 hours.

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 offender, 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 held in adult jails and lockups for any length of time.

TOTAL = _____

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

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

Data: _____

Statistical Method of Projection: _____

_____

Calculation of jail removal violations rate per 100,000 population under 18.

Total instances of noncompliance = _____(a)
Population under 18 = _____(b)

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

2. ACCEPTABLE PLAN

Describe whether an acceptable plan has been developed to eliminate the noncompliant incidences through the enactment or enforcement of state law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

3. RECENTLY ENACTED CHANGE IN STATE LAW

Describe recently enacted changes in state law which have gone into effect, and which can reasonably be expected to have a substantial, significant, and positive impact on the State's achieving full (100%) compliance, or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

H. **DE MINIMIS REQUEST: SUBSTANTIVE**

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

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

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

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

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

APPENDIX J

SUMMARY

Issue: State Compliance

Source: OJJDP 1987 Preliminary Summary of State Compliance

1987 - Preliminary Report
Summary of State Compliance with Section 223(a)(12), (13) and (14) of the Juvenile Justice and Delinquency Prevention Act of 1974, As Amended

There were 59 states and territories eligible to participate in the JJDP Act Formula Grant Program in 1987. At that time, 55 were participating. The four nonparticipating states were: Hawaii, North Dakota, South Dakota, and Wyoming.

The following is a preliminary summary of the compliance by states and territories with Section 223(a), Paragraphs (12)(A), (13), and (14) of the JJDP Act, based on their 1987 Monitoring Reports. Each participating state's annual Monitoring Report to OJJDP is based on data collected by the state from secure juvenile and adult facilities. Data collection by the states involves self-reporting by facilities to a state agency, on-site data collection by a state agency, or a combination of these methods. All state agencies administering the JJDP Formula Grants Program are required to verify data which is self-reported by facilities, and data received from other state agencies.

I. SECTION 223(a)(12)(A)
Deinstitutionalization of Status and Nonoffenders

The following 32 states and territories are in full compliance with Section 223(a)(12)(A) of the Act:

Alabama	Georgia	Michigan	Rhode Island
American Samoa	Idaho	Minnesota	South Carolina
Arkansas	Indiana[1]	Nebraska[1 and 2]	Vermont
California	Iowa	New Hampshire	Virginia
Colorado	Kansas	New Jersey	Virgin Is
Connecticut	Kentucky[3]	North Carolina[1]	Washington
Delaware	Louisiana	Ohio[1]	W Virginia
Dist. of Columbia	Maine	Oregon	Wisconsin

---

[1]Above the maximum allowable de minimis rate. Determined to be in full compliance with de minimis exceptions based on Exceptional Circumstance No. 1 (out-of-state runaways), pursuant to the January 8, 1981, Federal Register (46 FR 2567).

[2]Above the maximum allowable de minimis rate. Determined to be in full compliance with de minimis exceptions based on Exceptional Circumstance No. 2 (Federal Wards), pursuant to the January 8, 1981, Federal Register (46 FR 2567).

[3]Above the maximum allowable de minimis rate. Determined to be in full compliance with de minimis exceptions based on Exceptional Circumstance No. 3 (recently enacted legislation), pursuant to the January 8, 1981, Federal Register (46 FR 2567).

One State, Oklahoma, which began participation in 1983, was required to demonstrate substantial compliance, and did so.

Nevada began participation in 1987. The State's 1988 Monitoring Report will have to demonstrate progress in achieving full, or at least substantial compliance with Section 223(a)(12)(A).

The 1987 Monitoring Reports for the 13 states and territories listed below have received a preliminary review. Final determinations of compliance with Section 223(a)(12)(A) are awaiting the submission of additional information and/or the clarification of information previously submitted.

Alaska	New Mexico
Florida	New York
Guam	Northern Marianas
Maryland	Palau
Massachusetts	Puerto Rico
Missouri	Utah
Montana	

The 1987 Monitoring Reports for the eight states and territories listed below have not been submitted. In the majority of cases, the delay in submission is due to revisions being made in response to field audits of states' compliance monitoring systems. These audits were conducted by OJJDP pursuant to Section 204(b)(6) of the JJDP Act. These reports are expected to be submitted not later than June 30, 1989, at which time a final summary of state compliance will be completed.

Arizona	Mississippi
Illinois	Pennsylvania
Marshall Islands	Tennessee
Micronesia	Texas

II. SECTION 223(a)(13)

Separation of Juvenile and Adult Offenders

Twenty-five of the 55 participating states and territories demonstrated compliance with Section 223(a)(13) of the Act. Those states which have been found in compliance with this requirement pursuant to the regulatory requirements regarding compliance are:

Alabama	Kentucky	New Hampshire	Virginia
American Samoa	Louisiana	New Mexico	Washington
California	Maine	North Carolina	West Virginia
Connecticut	Michigan	Ohio	Wisconsin
Delaware	Minnesota	Oregon	
Georgia	Nebraska	Rhode Island	
Iowa	Nevada	South Carolina	

The following 10 states and territories are making progress toward achieving compliance, viz., designated date for achieving compliance pursuant to 28 CFR 31, has not been reached:

Arkansas	Kansas
Colorado	New Jersey
Dist. of Columbia	Oklahoma
Idaho	Vermont
Indiana	Virgin Islands

The 1987 Monitoring Reports for the 12 states and territories listed below have received a preliminary review. Final determinations of compliance with Section 223(a)(13) are awaiting the submission of additional information and/or the clarification of information previously submitted.

Alaska	Montana
Florida	New York
Guam	Northern Marianas
Maryland	Palau
Massachusetts	Puerto Rico
Missouri	Utah

The 1987 Monitoring Reports for the eight states and territories listed below have not been submitted. In the majority of cases, the delay in submission is due to revisions being made in response to field audits of states' compliance monitoring systems. These audits were conducted by OJJDP pursuant to Section 204(b)(6) of the JJDP Act. These reports are expected to be submitted not later than June 30, 1989, at which time a final summary of state compliance will be completed.

Arizona	Mississippi
Illinois	Pennsylvania
Marshall Islands	Tennessee
Micronesia	Texas

III. SECTION 223(a)(14)

Jail and Lockup Removal

All participating states' and territories' 1987 Monitoring Reports were required to demonstrate full, or at least substantial compliance with the jail and lockup removal requirement. Pursuant to the 1988 Amendments to the JJDP Act, substantial compliance may be demonstrated by a 75 percent reduction in violations from the baseline, or successfully meeting four criteria: (1) The removal of all status and nonoffenders; (2) meaningful progress in removing juvenile criminal-type offenders; (3) diligently carrying out the state or territory's jail removal plan; and (4) the state or territory has historically expended and continues to expend an

appropriate and significant share of its Formula Grant resources on jail and lockup removal. States and territories achieving substantial compliance under either definition, must also demonstrate an unequivocal commitment to achieving full compliance by December 8, 1988.

In addition, the 1988 Amendments established an alternative sanction for those states and territories that fail to achieve substantial or full compliance with Section 223(a)(14). The Administrator may waive termination of a state or territory's eligibility to receive Formula Grant funds if the state or territory agrees to expend all of its Formula Grant funds (except planning and administration, state advisory group, and Indian-tribe pass-through) on jail and lockup removal. Additional criteria have been proposed by the OJJDP in the April 12, 1989, Federal Register for public comment. Comments are due no later than May 12, 1989. Publication of the Final Rule in the Federal Register is projected for June 19, 1989.

The following six states and territories were determined to be in full compliance based on zero violations of Section 223(a)(14):

American Samoa	Oregon
District of Columbia	Virgin Islands
North Carolina	West Virginia

The following ten states demonstrated full compliance with Section 223(a)(14) pursuant to the policy and criteria for numerical de minimis exceptions published in the November 2, 1988, Federal Register (28 CFR 31):

Alabama	Iowa
California	New Jersey
Connecticut	Ohio
Delaware	Vermont
Georgia	Washington

No state or territory demonstrated full compliance with Section 223(a)(14) pursuant to the criteria for substantive de minimis exceptions set forth at Section 31.303(f)(6)(iii)(A) of the OJJDP Formula Grants Regulation, which was published in the June 20, 1985, Federal Register (28 CFR 31). While 30 states and territories have enacted some form of jail removal legislation, in many jurisdictions the legislation does not apply to all juveniles as required by the Regulation, viz., the initial legislative attempt in many states is limited to the removal of status and nonoffenders. The absence of mechanisms to enforce state removal laws is also a problem for many jurisdictions, particularly with regard to law enforcement lockups.

The eight states listed below achieved substantial compliance by reporting at least a 75 percent reduction in violations of Section 223(a)(14), and by demonstrating an unequivocal commitment to achieving full compliance:

Arkansas	Nebraska
Colorado	Oklahoma
Idaho	Rhode Island
Louisiana	Virginia

The three states listed below are projected to be eligible for a finding of substantial compliance based on the alternate standard (four criteria) set forth in the 1988 Amendments. These determinations will be made once the OJJDP 1989 Formula Grants Regulation is published in the Federal Register as a Final Rule.

Michigan
New Hampshire
South Carolina

The eight states listed below have not achieved full, or at least substantial compliance with Section 223(a)(14). However, these states and territories are projected to be eligible for a waiver of termination of eligibility for 1989 Formula Grant funds. These determinations will be made once the OJJDP 1989 Formula Grants Regulation is published in the Federal Register as a Final Rule.

Indiana	Minnesota
Kansas	Nevada
Kentucky	New Mexico
Maine	Wisconsin

The 1987 Monitoring Reports for the 12 states and territories listed below have received a preliminary review. Final determinations of compliance with Section 223(a)(14) are awaiting the submission of additional information and/or the clarification of information previously submitted.

Alaska	Montana
Florida	New York
Guam	Northern Marianas
Maryland	Palau
Massachusetts	Puerto Rico
Missouri	Utah

The 1987 Monitoring Reports for the eight states and territories listed below have not been submitted. In the majority of cases, the delay in submission is due to revisions being made in response

to field audits of states' compliance monitoring systems. These reports are expected to be submitted not later than June 30, 1989, at which time a final summary of state compliance will be completed.

Arizona	Mississippi
Illinois	Pennsylvania
Marshall Islands	Tennessee
Micronesia	Texas

Prepared: April 18, 1989