

WORKSHOP IN POLITICAL THEORY & POLICY ANALYSIS

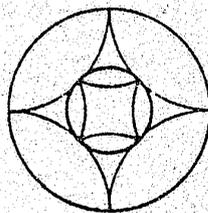
Police Services Study Technical Report

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A LEGISLATIVE DESCRIPTION OF THE OMNIBUS CRIME
CONTROL AND SAFE STREETS ACT

by

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Although the prevention and prosecution of local crime is a duty reserved to each State by the Ninth and Tenth Amendments to the United States Constitution, there can be no doubt that the framers of the Constitution intended the Federal government to maintain an active role in protecting and policing the citizens of this country:

"We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."
(Preamble to the Constitution)

The most visible evidence of federal assistance in policing the people of the United States is the existence of numerous types of federal agencies engaged in some aspect of law enforcement. There is also federal legislation which affects the patterns of law enforcement activity at the local level, the cost of such activity, or both. This report analyzes one of the major -- and most complicated -- pieces of such legislation, the Omnibus Crime Control and Safe Streets Act.

History of the Crime Control Act

The first attempt by Congress to help states in fighting crime was the Law Enforcement Assistance Act of 1965, the purpose of which was "to provide assistance in training State and local law enforcement officers and other personnel and in improving capabilities, techniques, and practices in State and local law enforcement and prevention and control of crime."¹

When the shortcomings of this bill became apparent, Congress repealed it² and enacted the Omnibus Crime Control and Safe Streets Act of 1968.³ This act was amended in 1971,⁴ evolved into the Crime Control Act of 1973,⁵ and was amended again in 1974.⁶ This report will focus on the 1973 Act and its 1974 amendments, with important changes from earlier legislation also noted.

Congressional Findings

The Congressional findings are set forth in 42 U.S.C. §3701:

"Congress finds that the high incidence of crime in the United States threatens the peace, security, and general welfare of the Nation and its citizens. To reduce and prevent crime and juvenile delinquency, and to insure the greater safety of the people, law enforcement and criminal justice efforts must be better coordinated, intensified, and made more effective at all levels of government.

Congress finds further that crime is essentially a local problem that must be dealt with by State and local governments if it is to be controlled effectively."

Some critical changes have been made with respect to these initial findings. In the first paragraph the 1973 Act substituted "To reduce and prevent crime and juvenile delinquency" for "To prevent crime," the 1968 Act making no mention of juvenile delinquency. "Law enforcement and criminal justice efforts" has been substituted for "law enforcement efforts" throughout the 1973 Act, perhaps widening the scope of the 1968 Act.

At this point, the 1974 amendments emphasize the concern with juvenile delinquency, first expressed in the 1973 Act, by adding a third finding:

"Congress finds further that the high incidence of delinquency in the United States today results in enormous annual cost and immeasurable loss in 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."

Purpose of the Crime Control Act

Although the 1973 Act recognized the problem of juvenile delinquency, the solution to this problem was not specifically addressed:

"It is the purpose of this chapter to (1) encourage States and units of general local government to develop and adopt comprehensive plans based upon their evaluation of State and local problems of law enforcement and criminal justice; (2) authorize grants to States and units of local government in order to improve and strengthen law enforcement and criminal justice; and (3) encourage research and development directed toward the improvement of law enforcement and criminal justice and the development of new methods for the prevention and reduction of crime and the detection, apprehension, and rehabilitation of criminals."

This apparent oversight, however, has been corrected by the Amendments enacted in 1974:

"It is therefore the further declared policy of Congress to provide the necessary resources, leadership, and coordination to (1) develop and implement effective methods of preventing and reducing juvenile delinquency; (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 justice and delinquency prevention."

Certain terms have to be defined before this framework of federal aid can be understood completely. Federal assistance is available to states and units of general local government. The local governmental units include:

"...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 or the United States Government performing law enforcement functions in and for the District of Columbia..."⁷

Plans must be developed, based upon the state and local problems of "law enforcement and criminal justice," defined as:

"...any activity pertaining to crime prevention, control or reduction or the enforcement of the criminal law, including, but not limited to police efforts to prevent, control, or reduce crime or to apprehend criminals, activities of courts having criminal jurisdiction and related agencies (including prosecutorial and defender services), activities of corrections, probation, or parole authorities, and programs relating to the prevention, control, or reduction of juvenile delinquency or narcotic addiction."⁸

The 1968 Act, without enumerating, referred only to "all activities pertaining to crime prevention or reduction and enforcement of the criminal law."⁹ Prosecutorial and defender services were not specifically included as related agencies until the 1973 amendments.

Finally, such law enforcement and criminal justice plans must be "comprehensive," which was not defined until 1973:

"The term 'comprehensive' means that the plan must be a total and integrated analysis of the problems regarding the law enforcement and criminal justice system within the State; goals, priorities, and standards must be established in the plan and the plan must address methods, organization, and operation performance, physical and human resources necessary to accomplish crime prevention, identification, detection, and apprehension of suspects; adjudication; custodial treatment of suspects and offenders, and institutional and noninstitutional rehabilitative measures."¹⁰

LEAA and the State Planning Agencies

The agency which oversees this program of federal assistance is the Law Enforcement Assistance Administration,¹¹ hereinafter referred to as the "Administration." The Administration may make grants to the states for the establishment and operation of state planning agencies, but each state must take the initial step by applying for such a grant.¹² These agencies are subject to the jurisdiction of the chief executive of

their respective states, and must be

"...representative of the law enforcement and criminal justice agencies including agencies directly related to the prevention and control of juvenile delinquency, units of general local government, and public agencies maintaining programs to reduce and control crime, and shall include representatives of citizens, professional, and community organizations including organizations directly related to delinquency prevention."¹³ (Author's emphasis.)

The 1971 amendments inserted provisions regarding public agencies maintaining crime programs, and for representation, within their respective jurisdictions, of law enforcement and criminal justice agencies. The 1973 Act authorized the inclusion of representatives of citizens, professional, and community organizations. The 1974 amendments made this latter representation mandatory, and also added the provisions, as underlined, pertaining to juvenile delinquency.

Each state planning agency, once funded by the Administration, must develop a comprehensive statewide plan for the improvement of law enforcement and criminal justice throughout the state. Arrangements must insure that

"...at least 40 per centum of all Federal funds granted to such agency...for any fiscal year will be available to units of general local government or combinations of such units... to participate in the formulation of the comprehensive State plan required under this subchapter."¹⁴

Major cities and counties within each state are also to receive sufficient funds to develop comprehensive plans and coordinate functions at the local level.¹⁵ Funds appropriated to make grants for these purposes are disbursed by the Administration, with a minimum of \$200,000 allocated to each state, with the remainder of any available funds distributed among the states according to their relative populations.¹⁶ The 1973 Act increased the amount of money allocated to each state from \$100,000 to \$200,000. However, a federal grant authorized for the above purposes, namely, the

establishment of State planning agencies and development of comprehensive state plans, may not exceed 90 percent of the expenses incurred by the State and units of general local government, with the State providing not less than one-half of the non-federal funding required of units of general local government.¹⁷

The State Plan

After a state plan has been drawn up, the next step is to submit it to the Administration for approval, and each plan shall be either approved or disapproved, in whole or in part, by the Administration no later than 90 days after the date of submission. If not disapproved with reasons, within those 90 days, a state plan is deemed approved. What determines the fate of a state plan once in the hands of the Administration? The two main criteria proposed by Congress are (1) the type of project or projects advocated by the state plan, and (2) the comprehensiveness of the state plan. Under the 1973 Act the Administration is authorized to make grants to states having comprehensive state plans for (1) public protection, including the development and implementation of methods and devices to reduce crime in public and private places; (2) recruitment and training of law enforcement and criminal justice personnel; (3) public education relating to crime prevention; (4) constructing buildings or other facilities to be used for law enforcement and criminal justice purposes; (5) fighting organized crime; (6) riot control; (7) recruitment and training of community service officers to serve with and assist local and state law enforcement and criminal justice agencies; (8) establishment of a Criminal Justice Coordinating Council, in certain areas, to assure coordination of law enforcement and criminal justice activities; (9) development and operation

of community-based delinquent prevention and correctional programs; and (10) the establishment of interstate metropolitan regional planning units.¹⁸ Projects (8) and (9) were added by the 1971 amendments, while (10) was not added until the 1973 Act. Among these potentially acceptable purposes, Congress has set certain priorities:

"In making grants...the Administration and each State planning agency...shall give special emphasis, where appropriate or feasible, to programs and projects dealing with the prevention, detection, and control of organized crime and of riots and other violent civil disorders."¹⁹

But having a state plan which proposes one of the above projects may not be enough: in addition to the general definition of comprehensiveness discussed earlier, the Administration will not approve a plan as comprehensive unless that plan deals with law enforcement and criminal justice problems in high crime areas, and also includes a comprehensive program for the improvement of criminal justice.²⁰ Further requirements are that each state plan (1) provides for the administration of grants received by the state planning agency; (2) provides that at least the percentage of federal assistance granted to the state planning agency which corresponds to the percentage of the state and local law enforcement expenditures funded and expended in the immediately preceding fiscal year by units of general local government will be made available to such units, and that the state will provide not less than one-half of the non-federal funding; (3) adequately takes into account the needs and requests of the units of general local government in the state; (4) provides for procedures under which plans may be submitted to the state planning agency from units of general local government; (5) incorporates innovations and advance techniques, and contains a comprehensive outline describing general needs and problems, existing systems, available resources, plans for implementation, direction and scope of future

improvements, and the relationship of the plan to other state or local plans; (6) provides for cooperation among units of general local government; (7) provides for research and development; (8) provides for appropriate review of procedures when the state planning agency disapproves the application of a unit of general local government; (9) demonstrates the willingness of the state and local governmental units to assume the costs of previously funded improvements; (10) demonstrates the willingness of the state to contribute technical assistance or services for programs and projects contemplated; (11) sets forth procedures to assure that federal funds will not supplant state or local funds; (12) provides for such fund accounting and auditing as may be necessary; (13) provides for the maintenance of such data and information as may be required for the submission of reports; (14) provides funding incentives to those units of general local government that coordinate or combine law enforcement and criminal justice activities with other such units; (15) provides appropriate procedures for applications by units of general local government;²¹ and (16) establishes statewide priorities for the improvement and coordination of all aspects of law enforcement and criminal justice, including improved court and correctional programs throughout the state.²² The final three requirements were added by the 1973 Act.

The Funding Process

If the Administration finds that a state plan is comprehensive, and involves one or more of the projects discussed above, a grant will be given to the state planning agency. The portion of any federal grant relating to these projects may be up to 90 percent of the cost of such projects, with the exception of construction projects, which may be funded only up to

50 percent of the cost of the project.²³ Not more than one-third of any grant for any of the listed projects may be expended for the compensation of police and other regular law enforcement and criminal justice personnel.²⁴ The funds appropriated each fiscal year for these projects are allocated to the state planning agencies in the following manner:

- (1) "Eighty-five per centum of such funds shall be allocated among the States according to their respective populations for grants to State planning agencies.
- (2) Fifteen per centum of such funds, plus any additional amounts made available by virtue of the application of ...sections 3735 and 3757 of this title²⁵ to the grant of any State, may, in the discretion of the Administration, be allocated...according to the criteria and on the terms and conditions the Administration determines consistent with this chapter."²⁶

Thus, the basis of the funding mechanism is a block grant of 85 percent of available funds to the states according to population, with the remaining 15 percent of appropriations to be distributed by the Administration at its discretion. Throughout the sections applying to planning and general law enforcement and criminal justice grants there are several "pass-through" and "match"²⁷ requirements, which we will briefly review in order to summarize and clarify.

A. Pass-through requirements

With respect to planning grants, the 1968 Act required 40 percent of all planning money allotted to a state to be made available to units of general local government or combination of such units "to participate in the formulation of the comprehensive State plan..."²⁸ In 1971, amendments were inserted enabling the Administration to waive this requirement, but providing that "major cities and counties within the State receive planning funds to develop comprehensive plans and coordinate functions at the local level."²⁹ Action grants -- grants to implement acceptable projects -- are

also subject to pass-through requirements. In the 1968 Act, 75 percent of all such funds had to be passed through for local use. The 1973 Act changed this by requiring state planning agencies to pass through at least the percentage of funds which "corresponds to the per centum of the State and local law enforcement expenditures funded and expended in the immediately preceding fiscal year by units of general local government," with the Administration having the authority to approve such percentage determinations.³⁰

B. Match requirements

With respect to planning grants, the requirements have not changed: federal assistance can provide up to 90 percent of the expenses incurred by the state and units of general local government, with the state providing not less than one-half of the non-federal funding.³¹ Match requirements for action grants, however, have been amended several times. The 1968 Act originally provided for a 60-40 match requirement for all projects other than construction, which was to be funded for only 50 percent of the cost. While this construction requirement has remained the same, the 1971 amendments increased from 60 to 75 percent, and the 1973 Act from 75 to 90 percent, the portion of federal assistance available for other programs or projects.³² The state must provide not less than one-half of the non-federal funding.³³

Special Projects

Supplementing the projects already discussed, other special projects are authorized by specific subchapters in the legislation. Subchapter IV attempts to

"provide for and encourage training, education, research, and development for the purpose of improving law enforcement and criminal justice, and developing new methods for the prevention

and reduction of crime, and the detection and apprehension of criminals."³⁴

The legislative provisions furthering this goal enact a variety of approaches:

- (1) The creation within the Department of Justice of a National Institute of Law Enforcement and Criminal Justice, whose purpose is to encourage research and development "to improve and strengthen law enforcement and criminal justice..."³⁵ To accomplish this, the Institute is authorized to (1) make grants to, or enter into contracts with, public agencies, institutions of higher education, or private organizations to conduct research, demonstrations, or special projects; (2) make continuing studies to develop new or improved approaches and devices; (3) carry out programs of behavioral research designed to provide more accurate information on the causes of crime; (4) make recommendations for action which can be taken; (5) carry out programs of instructional assistance; (6) assist in conducting, when requested, local or regional training programs; (7) collect and disseminate information obtained by the Institute; and (8) establish a research center to carry out programs.³⁶
- (2) The director of the Federal Bureau of Investigation is authorized to (1) establish and conduct training programs at the F.B.I. National Academy; (2) develop new or improved approaches and techniques; (3) assist in conducting, when requested, local and regional training programs; and (4) cooperate with the Institute.³⁷
- (3) The Administration is authorized, after consultation with the Commissioner of Education, to carry out programs of academic educational assistance. This includes loans with cancellation for service; payments for tuition, books, and fees, if there is a service agreement; aid to full-time teachers of these programs; grants to and contracts with institutions providing these programs; and payments not exceeding \$65 per week to persons enrolled in the intern programs.³⁸
- (4) The Administration is authorized to establish and support a training program for prosecuting attorneys. State and local personnel are allowed travel expenses and a per diem fee.³⁹

A grant authorized under this subchapter may be up to 100 percent of the total cost of each project. The only exception to this is a grant to or contract with an institution providing academic programs, in which case the funding may not exceed 75 percent of the total cost. Note that the "pass-through"

and "match" requirements discussed earlier are inapplicable to this subchapter.

Corrections Programs

Strangely absent from the list of funded project areas in the 1968 Act was any program involving corrections. This problem was corrected in 1971 by the addition of subchapter IV-A, a special funding section for corrections only. The purpose of this subchapter is to

"encourage States and units of general local government to develop and implement programs and projects for the construction, acquisition, and renovation of correctional programs and practices."⁴⁰

Any state desiring to receive a grant under this subchapter must incorporate its application in the comprehensive state plan,⁴¹ and the application must (1) set forth a comprehensive statewide program for the improvement of correctional facilities; (2) provide that the control of the funds and property be in a public agency; (3) provide that such a grant shall not reduce the amount of funds otherwise allocated for correctional purposes; (4) provide satisfactory emphasis on the development and operation of community-based correctional facilities and programs; (5) provide for advanced techniques in the design of institutions and facilities; (6) provide for the sharing of correctional facilities on a regional basis, where feasible; (7) provide advanced personnel standards and programs; (8) provide for projects and programs to improve recruitment and training of correctional personnel; (9) provide for the development of narcotic and alcohol treatment programs in correctional institutions; (10) comply with comprehensive requirements for state plans; (11) provide for the monitoring of the improvement of the correctional system; and (12) provide for the submission of annual reports, as required.⁴²

The allocation of funds appropriated under this subchapter is similar to the method used for other projects. However, the block grant is only 50 percent of the available funds, with the remaining 50 percent distributed at the discretion of the Administration.⁴³ Any grant made from funds available under this subchapter may provide up to 90 percent of the total cost of the program or project.⁴⁴ Again, there is no pass-through requirement, in contrast to the earlier listed projects.

Right of Appeal

What if a state planning agency is unhappy with a determination by the Administration regarding that agency's application for aid? The applicant can request a hearing, which must be granted, and findings of facts and determinations shall be made. If the applicant is still dissatisfied, the process is repeated.⁴⁵ If these steps are not satisfactory, the applicant may within 60 days of the final action file a petition for review with the United States Court of Appeals in the circuit in which the applicant is located.⁴⁶

Conclusion

The impact of the Crime Control Act of 1973, as amended, and as amending the Omnibus Crime Control and Safe Streets Act of 1968, cannot be analyzed thoroughly until we have collected data first-hand from law enforcement agencies throughout the country. This legislation is, however, the most dominating aspect of the federal role in policing metropolitan areas, representing millions of dollars of potential federal assistance in implementing approved state plans. Agencies will be in a better position to receive this money once they understand the legal requirements and policies of the Act.

Footnotes

- ¹Act of Sept. 22, 1965, Pub. L. No. 89-197, 79 Stat. 828, §1.
- ²42 U.S.C. §3745.
- ³42 U.S.C. §§3701 ---- 3795.
- ⁴Act of Jan. 2, 1971, Pub. L. No. 91 - 644, 84 Stat. 1881.
- ⁵Act of Aug. 6, 1973, Pub. L. No. 93 - 83, 87 Stat. 197.
- ⁶Act of Sept. 7, 1974, Pub. L. No. 93 - 415, 88 Stat. 1142.
- ⁷42 U.S.C. §3781(d).
- ⁸42 U.S.C. §3781(a).
- ⁹Act of June 19, 1968, Pub. L. No. 90 - 351, 82 Stat. 197.
- ¹⁰42 U.S.C. §3781(m).
- ¹¹Established in 42 U.S.C. §3711.
- ¹²42 U.S.C. §3722.
- ¹³42 U.S.C. §3723(a).
- ¹⁴42 U.S.C. §3723(c). The Administration may waive this requirement, in whole or in part, upon a finding that the requirement is inappropriate in view of the respective law enforcement and criminal justice planning responsibilities exercised by the State and its units of general local government. Id.
- ¹⁵Id.
- ¹⁶42 U.S.C. §3725.
- ¹⁷42 U.S.C. §3724.
- ¹⁸42 U.S.C. §3731.
- ¹⁹42 U.S.C. §3737.
- ²⁰42 U.S.C. §3733(a).
- ²¹42 U.S.C. §3733(a) (1) --- (15).
- ²²42 U.S.C. §3733(c).
- ²³42 U.S.C. §3731(c).
- ²⁴42 U.S.C. §3731(d).

²⁵42 U.S.C. §3735 refers to reallocation of funds when a State plan has failed to be approved. 42 U.S.C. §3757 pertains to the withholding of payments for noncompliance with certain terms.

²⁶42 U.S.C. §3736(a) (1) and (2).

²⁷These are terms commonly used to describe certain fund-use restrictions in the block grant apparatus. "Pass-through" requirements insure that a certain percentage of block grant funds are given to units of general local government. "Match" refers to the necessary ratio of federal to local dollars.

²⁸42 U.S.C. §3723(c).

²⁹Id.

³⁰42 U.S.C. §3733(a) (2).

³¹42 U.S.C. §3724.

³²42 U.S.C. §3731(c).

³³42 U.S.C. §3733(a) (2).

³⁴42 U.S.C. §3741.

³⁵42 U.S.C. §3742(a).

³⁶42 U.S.C. §3742(b) (1) --- (8).

³⁷42 U.S.C. §3744(a) (1) --- (4).

³⁸42 U.S.C. §3746(a) --- (f). Note: The amount of a grant to or contract with an institution may not exceed 75% of the total cost.
42 U.S.C. §3746(e).

³⁹42 U.S.C. §3747(a) and (b).

⁴⁰42 U.S.C. §3750.

⁴¹42 U.S.C. §3750a.

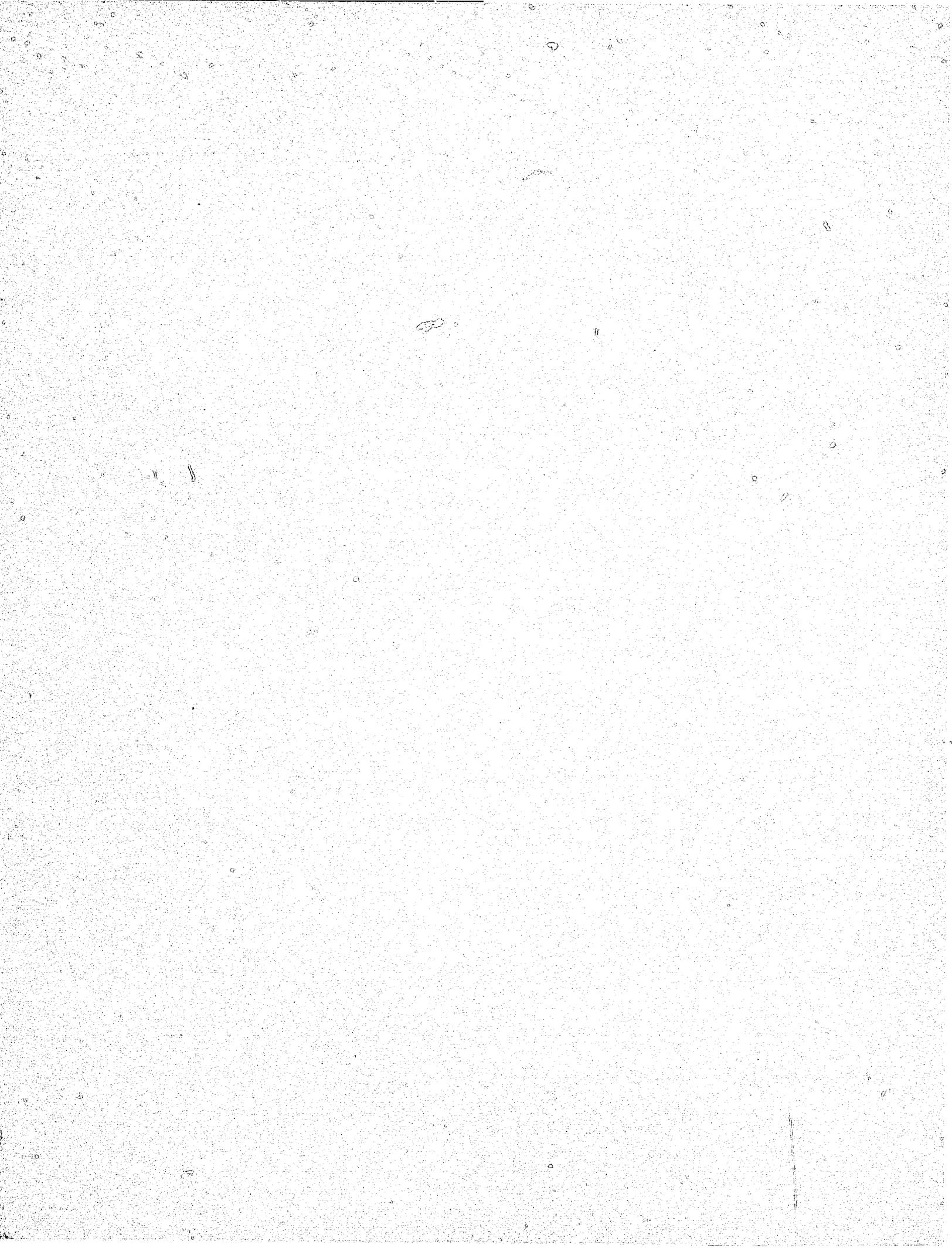
⁴²42 U.S.C. §3750b(1) --- (12).

⁴³42 U.S.C. §3750d.

⁴⁴Id.

⁴⁵42 U.S.C. §3758.

⁴⁶42 U.S.C. §3759.



END