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Amendments

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PART V



DEPARTMENT OF JUSTICE

Law Enforcement
Assistance Administration

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ACQUISITIONS

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

Proposed Revision for
Implementation of Formula Grant
Provisions

Registered
Federal
Property

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[4410-18]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

JUVENILE JUSTICE AND DELINQUENCY
PREVENTION ACT OF 1974Proposed LEAA Guideline Revision for
Implementation of Formula Grant Provisions

Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601, et. seq., proposes to issue a revision of the State Planning Agency Grants Guideline Manual, M 4100.1F, January 18, 1977, Chapter 3, paragraphs 51 and 52.

This revision is made necessary by the Juvenile Justice and Delinquency Prevention Act Amendments of 1977 (Pub. L. 95-115) as well as the need to further emphasize the importance placed on juvenile justice and delinquency prevention by the Administration and by Congress.

The major areas of change in the 1977 Amendments, which are reflected in this revision, involve the use of Juvenile Justice formula grant funds for planning and administration purposes, formula grant matching funds, formula grant pass through requirements on the deinstitutionalization of status offenders and nonoffenders such as dependent and neglected children, provision for the confidentiality of program records, and the role of the Office of Juvenile Justice and Delinquency Prevention in formula grant development and plan review and approval.

Office of Juvenile Justice and Delinquency Prevention. Congress' concern about the role of the Office of Juvenile Justice and Delinquency Prevention in LEAA is reflected in new provisions that emphasize the intent of Congress that LEAA Juvenile programs, including the formula grants, be administered through the Office. This was evidenced by the following statement in the conference report on the amendments:

The conferees intend that the Department of Justice fully implement section 527 of the 1974 Act so as to assure that all Crime Control Act juvenile programs are actually administered by the Administrator of the Office or at least subject to the Office's policy direction and concurrence. In this regard, it is expected, as required by the 1978 maintenance of effort amendment and by comparable language in the 1974 Act, that each Crime Control Act program component of activity, including, but not limited to, all direct assistance, all collateral assistance, and management and operations, allocate at least 19.15 percent of its resources for juvenile justice and delinquency programs. (Conference Report, Juvenile Justice Amendments of 1977, Report No. 95-368, July 27, 1977, p. 15.)

The executive head of the Office is designated as Associate Administrator of LEAA and as the Administrator of

the Office of Juvenile Justice and Delinquency Prevention. The amendments provide that the Associate Administrator shall report directly to the LEAA Administrator and add the Associate Administrator to the executive schedule of Presidential appointees.

Formula Grants. The formula grant program is designed to help prevent delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to juvenile detention and correctional facilities, and to encourage a diversity of alternatives within the juvenile justice system. This is accomplished through developing, maintaining and expanding programs and services in the following areas:

1. Community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes for runaway, homeless, neglected or abused youth; group homes; halfway houses; home-maker and home health services; and any other designated community-based diagnostic, treatment or rehabilitative service.

2. 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 at home.

3. 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 youth in danger of becoming delinquent.

4. Educational programs or supportive services designed to keep delinquents and to encourage other youth to remain in elementary and secondary schools or in alternative learning situations.

5. Expanded use of probation and recruitment and training of probation officers, other professional and paraprofessional personnel, and volunteers to work effectively with youth.

6. Youth initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional assistance programs.

7. Provides for a statewide program through the use of probation subsidies, other subsidies, other financial incentives or disincentives to units of local government, or other effective means that are designed to:

- (a) Reduce the number of commitments of juveniles to any form of juvenile facility as a percentage of the State juvenile population;

- (b) Increase the use of nonsecure community-based facilities as a percentage of total commitments to juvenile facilities; and

- (c) Discourage the use of secure incarceration and detention.

The amendments. While reaffirming that the strengthening of families, traditional and nontraditional, is a major aim of the JJDP Act, Congress stressed additional specific priority areas in the amendments.

1. The scope of the definition of prevention programming is expanded to include all youth who would benefit from delinquency prevention services. This precludes the need to identify a youth as "in danger of becoming delinquent" in order to establish eligibility for program services.

2. A new emphasis is placed on programs and services designed to encourage a diversity of alternatives within and outside the juvenile justice system, a 24-hour intake screening, volunteer and crisis home programs, day treatment and home probation, youth advocacy programs aimed at improving services for and protecting the rights of youth and their families, and programs and activities to establish and adopt standards for the improvement of juvenile justice.

3. The special emphasis (discretionary) grant programs were amended in several respects to complement changes in the formula program, including new programs to:

- (a) Develop and support programs stressing advocacy activities aimed at improving services for and protecting the rights of youth impacted by the juvenile justice system;

- (b) Improve the juvenile justice system to conform to standards of due process, i.e., through implementation of existing judicial orders; and,

- (c) Encourage and enable State legislators to consider and further the purposes of the formula grant programs, both by amending State laws where necessary, and devoting greater resources to those purposes, i.e., through an incentive program.

Additionally, the amendments provided new research priorities for the Office in the following areas: To assess the role of family violence, sexual abuse or exploitation and media violence in delinquency, the improper handling of youth placed in one State by another State, the possible ameliorating role of recreation and the arts, and the extent and ramification of disparate treatment of youth in the juvenile justice system on the basis of sex. In addition, the amendments encourage the Office to develop and support model state legislation to implement the mandates of the formula grant program.

The integrated structure of the Office, which was designed to effectively carry out the purposes of the formula grant program, was highlighted during the reauthorization process by the following statement in the conference report:

The conferees strongly reaffirm the original integrated approach contemplated for

the Office of Juvenile Justice and Delinquency Prevention and each of its component parts, especially as regards its Institute, which has helped to assure that the Office has avoided most of the disappointing experiences of the Crime Control Act program. (Conference Report, *supra*, p. 22.)

In signing the amendments, President Jimmy Carter said, in part:

One of the most serious problems that faces our country, of course, is that of rampant crime. And we know from experience and from examining the statistics that almost half of the crimes are committed by juveniles. We also realize that, unfortunately, in our country there has been an absence of adequate distinction between those juveniles who commit serious crimes . . . and those who commit crimes that are no threat to their neighbors, like being a runaway child. In many communities of our country these two kinds of crime—one serious and one not very serious—are treated the same, and young people have been incarcerated for long periods of time who have committed offenses that would not even be a crime at all if they were adults . . . This Act very wisely draws a sharp distinction between these two kinds of crime. It also encourages local administrators, states and local governments to deinstitutionalize these young people who have not committed serious crimes. (Weekly Compilation of Presidential Documents, October 10, 1977, Volume 13, No. 41, pp. 1465-66.)

It is the formula grant program which the 1977 amendments strengthened to help accomplish this Congressional and Administration priority.

It was in recognition of this goal, the proven record of the Office's integrated approach, and, unfortunately, the clear need for stability, that those intimately familiar with the program on the Senate Judiciary and the House Education and Labor Oversight Committees provided the following guidance: "It is the strong intention of the conferees that the Office of Juvenile Justice and Delinquency Prevention be retained with the Department of Justice." (Conference Report, *supra*, p. 22.)

To help assure that the goals of the formula grant programs are reflected as a matter of Federal Government policy, the amendments require the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention 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 formula grant dual goals of deinstitutionalization and the separation of juvenile offenders and adults in the justice system.

These amendments are among the cornerstones of the Act and reflect the commitment of the Committee to such priorities. It is important to know whether the Federal Government is engaging in practices or providing funds for any programs or activities that are inconsistent with this commitment. (U.S. Senate Judiciary Report, *supra*, p. 59.)

The Office and the Council, which is chaired by the Attorney General and

vice-chaired by the Administrator of the Office, intend to work diligently to assure that the Federal Government responds consistently with the formula grant priority of deinstitutionalization which the states are pursuing. It is vitally important, not solely for consistency sake, but to provide necessary resources. It is intended that this topic will be the sole item on the Council's agenda at its next meeting.

Similarly, a fiscal year 1979 priority of the Office will be to fully implement a new section 341(b) of the Act which requires close coordination between the Office and programs within the Department of Health, Education and Welfare, particularly those designed exclusively to assist status offenders such as the runaway youth programs. Coordination in the development and implementation of such programs with the formula grant program designed to deinstitutionalize status offenders is essential.

The 1977 amendments raise the minimum formula grant allocation for each State from \$200,000 to \$225,000 (and from \$50,000 to \$56,250 for the smaller territories).

Beginning with fiscal year 1978, the non-Federal matching share for planning and administration funds will be set at a minimum of 50 percent cash and the Federal contribution to these activities will be limited to a maximum of 7.5 percent, rather than 15 percent, of a State's formula grant. The aim in this regard is to streamline the planning process while targeting more action money for the key objectives of the formula grant program for the next several years, namely, compliance with section 223(a)(12) and (13). To eliminate red tape, the amendments deleted the requirement that match be provided for formula grant programs. Thus, unnecessary and complex accounting for match and buy-in will be eliminated.

In sum, beginning in fiscal year 1979, planning and administration activities will require a 50-percent cash match and funded program activities will require no match.

State advisory groups, established by the 1974 Act to advise and assist the State Planning Agency (SPA), are strengthened by the addition of new resources and responsibilities. The amendments provide that 5 percent of the minimum annual allotment of any state (\$11,250) shall be available to assist an advisory group to carry out its functions. Further examples of private agency interests that may be represented on the state advisory groups were added by the amendments and provision made that at least three of the youth members must have been or currently be under the jurisdiction of the juvenile justice system.

The amendments require that a role be provided for the advisory group in

plan development as well as review, that the advisory group may, upon request, advise the Governor and legislature on matters related to its functions, and shall have an opportunity for review and comment on juvenile justice and delinquency prevention grant applications submitted to the State planning agency. SPAs are given additional authority to involve the advisory group in monitoring compliance, and program review activities.

The amendments also provide that the Chairperson and at least two other citizen members of the advisory group shall be appointed to the SPA Supervisory Board and, in addition, that any SPA executive committee shall include proportional representation of advisory group/SPA agency members.

The amendments modify the requirement that 66 2/3 percent of the formula grant award be passed through to units of general local government or combinations thereof by including programs of local private agencies as eligible for direct award of such funds. However, as a prerequisite it is required that the private agency have applied for and been denied funding by the cognizant local unit or combination prior to applying to the state planning agency. In a related development, the Congress made clear the relationship contemplated for the state planning agencies or local agencies regarding Office discretionary programs that "they have solely an advisory role and under no circumstances do the views of such agencies have a determinative effect. These sections were intended mainly to inform those agencies of special emphasis grants and contracts." (Senate Report, *supra*, p. 62.)

In 1974, States receiving Juvenile Justice and Delinquency Prevention Act funds were required to demonstrate that within 2 years after submission of the initial plan juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, or such nonoffenders as dependent or neglected children are removed from juvenile detention and correctional facilities.

The key deinstitutionalization of status offenders requirement (section 223(a)(12)) is modified to extend the 2-year period for compliance to 3 years and to specify that failure to achieve compliance shall terminate a state's eligibility for funding unless the Administrator, with the concurrence of the Associate Administrator, determines that the State is in substantial compliance with the requirement (defined as 75 percent deinstitutionalization) and has made, through appropriate executive or legislative action, an unequivocal commitment to full compliance within a reasonable time (defined as not to exceed

2 additional years). In addition, the amendments clarify that nonoffenders, such as dependent and neglected children, are within the scope of the deinstitutionalization requirement and that both status offenders and nonoffenders are within the scope of section 223(a)(13) requirement for separation of adult offenders from delinquent offenders in incarcerative institutions.

A new subpart (E) to section 223(a)(12) requires an annual report to the Associate Administrator on the State's progress toward deinstitutionalization and a review of the State's progress in meeting the goal of insuring that status offenders and nonoffenders, if placed in facilities, are placed in the least restrictive appropriate alternative, which is in reasonable proximity to the family and home community of the juvenile, and which provides services appropriate to the needs of the juvenile. Likewise, the amendments provide that the SPA submit its analysis and evaluation, including any modification and the survey of needs, to the Associate Administrator. Similarly, the Associate Administrator may prescribe additional terms and conditions to assure the effectiveness of assisted programs.

A significant new section is added by the Amendments to provide for confidentiality of program records in activities assisted by Juvenile Justice Act funds. This section restricts disclosure of program records unless otherwise authorized by law, with the consent of the service recipient or legally-authorized representative, or as necessary to perform the functions required by the Act.

Definitions Reconsidered. Although the definitions of correctional and detention facilities were developed over a several year period by the Ford Administration, working closely with the Council of State Governments and others, they are being reissued for comment. These definitions were originally issued on May 20, 1977, in M 4100.1F, Change 1, after all normal internal and external clearance procedures had been completed. Few comments were received. Subsequently, the Congress reviewed the definitions and found that they "fairly reflect Congressional expectations of the criteria to be applied in distinguishing juvenile detention and correctional facilities from other types of facilities * * ." (Senate Report, supra, p. 80.) In spite of this chronology, the Office has reluctantly concluded that an additional period of time for comment will help assure that those in the juvenile justice and child welfare field have had ample opportunity to provide the Office with specific documentation as to the impact of existing definitions.

Plain English. The Office has attempted to eliminate duplication and

to consolidate all juvenile justice requirements into a single comprehensive program. In addition to eliminating unnecessary, burdensome redtape, the guidelines have been rewritten in the interest of eliminating "gobbledygook" by converting bureaucratic babble into plain English. Additionally, the total length of the guideline has been reduced significantly, and it is anticipated that the FY 79 JJDP plan submission will be targeted on the key aspects of the Act but be significantly shorter, readable and understandable. The Office solicits comments that will improve the guideline to meet these objectives, as well as pure program or policy matters.

In order to ensure that interested organizations, agencies and individuals have an opportunity to review the revised guideline, this notice and opportunity to submit written views and comments is provided as a supplement to the formal LEAA guideline clearance process provided under Title IV of the Intergovernmental Cooperation Act (Pub L. 90-577) and the Office of Management and Budget Circular No. A-85 (January 20, 1971).

Interested persons are invited to submit written comments or suggestions to Mr. John M. Rector, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 442, Washington, D.C., 20531, on or before April 25, 1978.

It is therefore, proposed to revise LEAA State Planning Agency Grants Guideline Manual, M 4100.1F, January 13, 1977, Chapter 3, paragraphs 51 and 52 read as set forth below.

51. MAINTENANCE OF EFFORT REQUIREMENTS FOR JUVENILE JUSTICE UNDER THE CRIME CONTROL ACT

a. Act Requirement. Section 520(b) of the Crime Control Act of 1976 and section 261(b) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, require that in addition to funds appropriated under section 261(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, the Administrator shall maintain from the appropriation for the Law Enforcement Assistance Administration, each fiscal year, at least 19.15 percent of the total appropriation for the Administration for juvenile delinquency programs.

b. Individual Level of State funding. In order to maintain a proportionate share of the statutory maintenance level, the states will be required to allocate and expend, on a state-by-state basis, at least 19.15 percent of the total annual allocation of Parts B, C and E block grant funds for juvenile justice and delinquency prevention-related programs and projects.

c. Basis for Assuring Maintenance Requirement. (1) The basis for assur-

ing individual state allocations and expenditures equal to the state's proportional share of the maintenance requirement is to establish individual state allocations equal to 19.15 percent of the total Parts B, C and E allocations to the particular state. Each state's required minimum allocation level for Fiscal Year 1979 and succeeding fiscal years is equal to 19.15 percent of the sum of its Parts B, C and E allocations of Crime Control Act funds for each year. However, individual states may allocate and expend more than the required minimum allocation on juvenile justice and delinquency prevention programs.

(2) Funds allocated to meet the maintenance of effort requirement as well as formula grants and other funds available for allocation under the State Plan will be considered in making the determination that the State Plan includes a comprehensive program for the improvement of juvenile justice as required by section 303(a).

(3) Part B funds will be presumed to be allocated to juvenile justice planning and administration activities based on a percentage of Part B funding equal to the aggregate percentage of Parts C and E funds allocated for juvenile justice programs and projects. However, individual states may document that a greater amount of Part B funds are utilized for planning and administration activities related to juvenile justice.

d. Plan Requirement. The State Plan must identify Parts C and E funded programs and projects related to juvenile justice and delinquency prevention and their corresponding fund allocations.

e. Prohibition Against Reprogramming Out of Juvenile Justice Area. There is a general prohibition against reprogramming out of the juvenile justice area. The exercise of reprogramming authority out of the juvenile justice area is therefore subject to prior LEA approval when a state has allocated more than the minimum 19.15 percent level.

52. REQUIREMENTS FOR STATE PLANNING AGENCIES PARTICIPATING IN THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

a. Applicability. The provisions of this paragraph apply to those states that have elected to participate in the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (herein referred to as the JJDP Act). This paragraph now contains all of the requirements for application and receipt of funds under the JJDP Act.

(1) For those states participating in the JJDP Act, the provisions of the comprehensive program for the improvement of juvenile justice, as required by the Omnibus Crime Control

and Safe Streets Act, and the provisions of the JJDP Act are to be addressed jointly in a separate section of the comprehensive plan. The requirement of a separate juvenile section emphasizes the distinctions between the juvenile justice system and the criminal justice system, and the importance placed on juvenile justice by the Congress. Further, a separate juvenile section will facilitate review and monitoring of progress towards deinstitutionalization and separation.

(2) For those states not participating in the JJDP Act, the provisions of the comprehensive program for juvenile justice should address the requirements of the Omnibus Crime Control and Safe Streets Act.

b. *Plan Review Criteria.* The requirements of this paragraph are statutorily mandated and must be addressed. OJJDP has determined the following programmatic areas to be of critical concern: Deinstitutionalization of Status Offenders and Non-Offenders; Contact with Incarcerated Adults; Monitoring of Jails, Detention Facilities and Correctional Facilities; Advanced Techniques; Juvenile Justice Advisory Groups; and Detailed Study of Needs. Failure to fully address these programmatic areas shall result in plan disapproval. Failure to adequately address any other requirements may result in a special condition. Where indicated, an assurance is sufficient for compliance providing that no change has been made from the previous year. If a change has been made, the state shall revise and resubmit its response.

c. *Plan Supervision, Administration and Implementation.*—(1) *Act Requirement.* Sections 223(a) (1) and (2) of the JJDP Act require the State Plan to designate the State Planning Agency, established under section 203 of the Crime Control Act, as the sole agency for supervising and preparation and administration of the Plan, and that the Plan contain satisfactory evidence that the designated State Agency has or will have authority to implement the Plan.

(2) *Plan Requirement.* The State Planning Agency shall provide assurances:

(a) That it is the sole agency for plan administration and has the authority to carry out the mandate of the JJDP Act. If the SPA does not currently have such authority, indicate the steps to be taken to give it such authority.

(b) That, if an administrative mechanism other than the SPA is utilized for implementation of the Act, the SPA shall set forth a procedure for management of the Juvenile Justice Action Program by that implementing agency.

(c) That it will facilitate the coordination of human services to youth and

their families to insure effective delinquency prevention and treatment programs.

d. *Planning and Administration of Funds.*—(1) *Act Requirement.* Section 223(c) of the JJDP Act requires that 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 percent of the total annual allotment of the state shall be available for such purposes, except that any amount expended or obligated by such state, or by units of 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 combination, from state or local funds, as the case may be. The state shall make available needed funds for planning and administration within the state on an equitable basis.

(2) *Plan Requirement.* The state shall:

(a) Indicate on Attachment A the amount of planning and administration funds to be utilized by units of general local government. Planning and administration funds shall not exceed 7½ percent of the total JJDP award and must be matched on a dollar for dollar basis. Cash match must be provided.

(b) Describe the formula and rationale to be used in making available on an equitable basis an appropriate amount of its JJDP planning and administration funds to units of general local government.

(c) List the local planning units and specify the amount of planning and administration funds to be made available to them.

(d) Describe the procedure used to make local planning units directly aware of their eligibility for JJDP planning and administration funds, and the SPA's timetable for announcement and award of JJDP local planning and administration funds.

e. *Juvenile Justice Advisory Group.*—

(1) *Act Requirement.* (a) Section 223(a)(3) of the JJDP Act requires that the State Plan provide for the appointment of an advisory group by the chief executive of the state. Section 223(a)(3)(A) through (E) describes the eligibility criteria for membership and the overall composition of the juvenile justice advisory group which shall:

(1) Consist of not less than twenty-one and not more than thirty-three persons who have training, experience or special knowledge concerning the prevention and treatment of juvenile delinquency for the administration of juvenile justice.

(2) Include representation of units of local government, 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, or youth services departments.

(3) Include representatives of private organizations concerned with delinquency prevention or treatment; concerned with neglected or dependent children; concerned with the quality of juvenile justice education or social services for children which utilize volunteers to work with delinquents or potential delinquents; community-based delinquency prevention or treatment programs; business groups and businesses employing youth, youth workers involved with alternative youth programs, and persons with specialized experience regarding the problem of learning disabilities; and organizations which represent employees affected by this Act.

(4) Not have a majority of its members (including the chairperson) employed full-time with Federal, state, or local government.

(5) Have at least one-third of its members appointed to the board prior to their 26th birthday, at least three of whom must have been or must now be under the jurisdiction of the juvenile justice system.

(b) Section 223(a)(3)(F) specifies the roles and responsibilities of the advisory group. The advisory group shall:

(1) Participate in the development and review of the state's juvenile justice plan prior to submission to supervisory board for final action.

(2) Consistent with the provisions of Title II of the JJDP Act, advise the State Planning Agency and the supervisory board.

(3) Have an opportunity for review and comment on all juvenile justice and delinquency prevention grant applications submitted to the State Planning Agency other than those subject to review by the state's judicial planning committee established pursuant to section 203(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 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 and shall be given a role in:

(a) Monitoring state compliance with requirements of paragraph (13).

(b) Advising on State Planning Agency and regional supervisory board composition.

(c) Advising on the state's maintenance of effort under section 261(b) and section 520(b) of the Crime Control Act, as amended.

(d) Reviewing the progress and accomplishments of juvenile justice and

delinquency prevention projects funded under the comprehensive State Plan.

(e) Advising the Governor and Legislature on matters related to its function.

(2) *Plan Requirement.* The state shall demonstrate that the provisions of section 223(a)(3), related to the composition and roles and responsibilities of the advisory group, have been met by:

(a) Providing a list of all current advisory group members indicating their respective dates of appointment, and a description of how each current member meets the membership requirements specified in paragraph 52e(1).

(b) Indicating the roles, responsibilities and activities of the advisory group with respect to those duties listed in paragraph 52e(1)(b).

1. *Advisory Group Allotment.*—(1) *Act Requirement.* Section 222(e) of the JJDP Act requires that 5 percent of the minimum annual allotment to any State under Part B of the Act be available to assist the advisory group established under section 223(a)(3). For purposes of computing the 5 percent allotment, the following procedures shall be used.

(a) Each state shall allocate \$11,250 and the Virgin Islands, Guam, American Samoa, and the Trust Territories of the Pacific Islands shall allocate \$2,812.50. These funds are not to be part of the maximum 7½ percent monies set aside for planning and administration funds. The maximum 7½ percent funds for planning and administration is calculated on the total formula grant award.

(b) The funds allocated to the advisory groups may be used for such function and responsibilities consistent with Section 223(a)(3) of the JJDP Act. Funds allocated to the advisory group shall not supplant any funds currently allocated to them.

(c) The 5 percent allotment does not preclude the state from providing additional financial and technical assistance to the advisory groups. However, the provision of any additional funds for the advisory group shall be consistent with the approved JJDP Act Plan and must be from planning and administration monies unless the funded activities are of a program or project nature.

(2) *Plan Requirement.* Describe the steps taken to notify the advisory group of this requirement. The advisory group shall develop a plan for the utilization of these funds which, upon review by the state, shall be submitted as a part of the comprehensive plan. Indicate the amount of funds allocated to the advisory group.

g. *Consultation with and Participation of Units of General Local Government.*—(1) *Act Requirement.* Section

223(a)(4) and (6) of the JJDP Act require that the state provide for active consultation with an 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 the units of general local government. 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. The state shall assign responsibility for the preparation and administration of the local government's part of a State Plan to that agency within the local government 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 Act and shall provide for supervision of the programs funded under this part by that local agency.

(2) *Plan Requirement.* The state shall provide assurance that:

(a) The Chief Executive Officer of a unit of general local government has assigned responsibility for the preparation and administration of its part of the State Plan.

(b) The state recognizes, consults with, and incorporates the needs of units of general local government into the State Plan.

h. *Participation of Private Agencies.*—(1) *Act Requirement.* Section 223(a)(9) of the JJDP Act requires in part that the State provide for the active consultation with and participation of private agencies in the development and execution of the State Plan.

(2) *Plan Requirement.* The state shall provide assurance that private agencies have been actively consulted and allowed to participate in the development and execution of the State Plan.

1. *Pass-Through Requirement.*—(1) *Act Requirement.* Section 223(a)(15) of the JJDP Act requires that at least 86½ percent of funds received by the state under Section 222, other than funds made available to the State Advisory Group under Section 222(e) shall be expended through:

(a) Programs of units of general local government insofar as they are consistent with the State Plan.

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

(2) *Plan Requirement.* The state must specify the amount and percent-

age of funds to be passed through the units of general local government and local private agencies. Local private agency is defined as a private non-profit agency or organization that provides program services within an identifiable unit of general local government or combination thereof.

(3) *Inclusion and Compilation of Pass-Through.* Formula grant funds made available to units of general local government by the State Planning Agency for planning and administration purposes, as well as program purposes, may be included in calculating the amount of funds to be expended through programs of units of general local government. Formula grant funds made available to private agencies for programs that are consistent with the State Plan, after the agency has been denied funding by a unit of general local government, shall also be included in compilation of the pass-through. In instances where funding is distributed directly by the State Planning Agency, a private agency need not first apply to a unit of general local government for funding. These funds can also be included as pass-through. In addition, if a unit of general government receives pass-through funds from the state and, in turn, refuses to fund a project submitted by a private agency, the state can reduce the local award if it funds the project.

(4) *Waiver of Pass-Through Requirements.* The Administrator of OJJDP is authorized to waive the pass-through requirement for any state upon making a determination that the state's services for delinquent or other youth are organized primarily on a statewide basis. Upon granting the waiver, the Administrator of OJJDP shall substitute a pass-through requirement representative of the proportion of services organized primarily on a statewide basis. In making the determination under this section, the Administrator of OJJDP will examine the state's total program of juvenile justice and delinquency prevention, including the entire range of available youth services. A request for waiver must be accompanied by a statement setting forth the following:

(a) The extent of implementation of juvenile justice and delinquency prevention programs at the state level and at the local level.

(b) The extent of financial responsibility for juvenile delinquency programs borne at the state level and at the local level.

(c) The extent to which services provided by the state or direct outlays by the state are made for or on behalf of local governments (as opposed to statewide services.)

(d) The approval of the State Planning Agency Supervisory Board.

(e) Specific comments from local units of government which express their position regarding the waiver.

J. Rights of Privacy for Recipients of Services—(1) Act Requirement. Section 223(a)(16) requires that the state shall 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.

(2) Plan Requirement. As set forth in Section 229 of the JJDP Act, the state shall provide documentation that procedures have been established to ensure that programs funded by LEAA and OJJDP shall not disclose program records containing the identity of individual juveniles except with the consent of the service recipient or legally authorized representative. Under no circumstances may project reports or findings available for public dissemination contain the actual names of individual service recipients.

k. Equitable Arrangements for Employees Affected by Assistance Under this Act—(1) Act Requirement. Section 223(a)(17) requires that the State Plan provide that fair and equitable arrangements are made to protect the interests of employees affected by assistance under the Act. The Act further specifies the provisions which must be included in such protective arrangements.

(2) Plan Requirement. The state must provide assurance that all terms and conditions for protective arrangements of employees affected by the JJDP Act are established.

1. Deinstitutionalization of Status Offenders and Non-Offenders—(1) Act Requirement. (a) Section 223(a)(12)(A) of the JJDP Act requires that 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 such non-offenders as dependent or neglected children, shall not be placed in juvenile detention or correctional facilities.

(b) Section 223(a)(12)(B) of the JJDP Act provides that the state shall submit annual reports to the Administrator of OJJDP containing a review of the progress made by the state to achieve deinstitutionalization of juveniles described in subparagraph (A) of 223(a)(12) and a review of the progress made by the state to provide that juveniles, if placed in facilities, are placed in facilities which (1) are the least restrictive alternatives appropriate to the needs of the child and the community; (2) are in reasonable proximity to the family and home communities of such juveniles; and (3) provide the services described in Section 103(1) of the JJDP Act.

(c) Section 223(c) of the JJDP Act states that failure to achieve compliance with Section 223(a)(12)(A) within the three-year time limitation shall

terminate any state's eligibility for formula grant funds unless the LEAA Administrator, with the concurrence of the Administrator of OJJDP, determines that the state is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 percent of such juveniles, 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.

(2) Status offenders are juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult. Further classification defining this term for purposes of monitoring and reporting, as required in Section 223(a)(12)(B) and 223(A)(14) of the Act, can be found in "Status Offenders: A Working Definition," published under an OJJDP grant by the Council of State Governments.

(3) Plan Requirement. (a) Describe in detail the state's specific plan, procedure, and time-table for assuring that within three years of the date of its initial plan submission, that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, or such non-offenders as dependent or neglected children, shall not be placed in juvenile detention or correctional facilities.

(b) This plan must also include a description of the barriers, including financial, legislative, judicial and administrative, faced by the state in achieving full compliance with the provisions of this paragraph.

(c) All barriers discussed in 521(3)(b) shall be accompanied by a description of the technical assistance needed to overcome these barriers. The description of technical assistance needs shall include the recipient's name and the type of technical assistance needed.

(d) Reports required under Section 223(a)(12)(B) of the JJDP Act shall be submitted as part of the annual monitoring report required by paragraph 52n.

m. Contact with Incarcerated Adults—(1) Act Requirement. Section 223(a)(13) of the JJDP Act requires that juveniles alleged to be or found to be delinquent, and youths within the purview of Section 223(a)(12)(A), 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.

(2) Purpose. This provision is intended to assure that juveniles alleged to be or found to be delinquent, status offenders and non-offenders, if detained or confined in jails, lockups, detention or correctional facilities, shall not

have regular contact with adult inmates, including inmate trustees.

(3) Implementation. The requirement of this provision is to be planned and implemented immediately by each state in light of the constraints on immediate implementation to be described below. In addition, OJJDP encourages states to implement programs and procedures resulting in total separation of juveniles from adults, consistent with Section 223(a)(10)(H) of the JJDP Act.

(4) Regular Contact. The State Plan must 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. This prohibition against "regular contact" permits no more than haphazard or accidental contact between juveniles and incarcerated adults so as to effect absolute separation.

(5) Plan Requirement. (a) Describe in detail the state's specific plan and procedure for assuring that juveniles alleged to be or found to be delinquent, status offenders, and non-offenders will be removed from any institution in which they could have regular contact with incarcerated adults. In addition, a specific timetable for compliance shall be included. Any deviation from a previously approved time-table shall be justified.

(b) In those isolated instances where juvenile criminal type offenders remain confined in adult facilities or facilities where adults are confined, the state must set forth in detail the procedures for assuring no regular contact between such juveniles and adults for each jail, lockup and detention and correctional facility.

(c) Describe the barriers, including physical, judicial, fiscal, and legislative which may need to be altered to permit removal and separation of juveniles alleged to be or found to be delinquent, status offenders and non-offenders, from incarcerated adults in any particular jail, lockup, detention or correctional facility. The state must submit a plan for removing these constraints so that the various institutions can comply with the provisions of the JJDP Act.

(d) All barriers discussed in 52m(5)(c) shall be accompanied by a description of the technical assistance needed to overcome these barriers. The description of technical assistance needs shall include the recipient's name and type of technical assistance needed.

(e) The State must assure that juveniles alleged to be or found to be delinquent are not reclassified as adults in order to avoid the intent of segregating adults and juveniles in correctional facilities.

n. Monitoring of Jails, Detention Facilities, and Correctional Facilities.—

(1) *Act Requirement.* Section 223(a)(14) requires that the State shall provide for an adequate system of monitoring jails, detention facilities, correctional facilities and nonsecure facilities to insure that the requirements of paragraph (12)(A) and paragraph (13) are met, and for annual reporting of the results of such monitoring to the OJJDP Administrator.

(2) *For purposes of monitoring, a juvenile detention or correctional facility is:*

(a) any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders; or

(b) Any public or private facility used primarily (more than 50 percent of the facilities population during any consecutive 30-day period) for the lawful custody of accused or adjudicated criminal type offenders, even if the facility is nonsecure; or

(c) Any public or private facility that has the bed capacity to house 20 or more accused or adjudicated juvenile offenders or nonoffenders, even if the facility is nonsecure, unless used exclusively for the lawful custody of status offenders or nonoffenders, or is community-based; or

(d) Any public or private facility, secure or nonsecure, which is also used for the lawful custody of accused or convicted criminal offenders.

(3) *Plan Requirement.* (a) The State shall indicate how it plans, on an annual basis, to identify all juvenile detention and correctional facilities which can be used for the detention and confinement of juvenile offenders and adult criminal offenders. This includes those facilities owned and/or operated by public and private agencies.

(b) The State shall provide a plan for an annual onsite inspection of juvenile detention and correctional facilities and facilities which can be used for the detention and confinement of juvenile offenders and adult criminal offenders identified in paragraph 51n(3)(a). Such plan shall include the procedure for reporting and investigating compliance complaints with sections 223(a)(12) and (13).

(c) The State shall present a list of facilities identified under paragraph 52n(3)(a), a brief description of the facility, and the agency responsible for the onsite inspection.

(d) The State shall include a description of the technical assistance needed to fully implement the provisions of paragraph 52n.

(4) *Reporting Requirement.* The State shall make an annual report to the Administrator of OJJDP on the results of monitoring for both sections 223(a)(12) and (13) of the JJDP Act.

Three copies of the report shall be submitted to the Administrator of OJJDP no later than December 31 of each year. The monitoring report must indicate the results of monitoring for both sections 223(a)(12) and (13) of the JJDP Act and demonstrate the extent of the State's compliance with its plan, procedure and timetable for the implementation of these sections of this Act.

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

1 Dates of baseline and current reporting period.

2 Total number of public and private juvenile detention and correctional facilities and the number inspected onsite.

3 Total number of accused status offenders and nonoffenders who were held in any correctional, detention or secure facility as defined in paragraph 52n(2) for longer than 24 hours.

4 Total number of adjudicated status offenders and nonoffenders held in any correctional, detention or secure facility as defined in paragraph 52n(2).

(b) To demonstrate the progress and extent of the State's compliance with section 223(a)(13) of the JJDP Act, the report must include the following information for both the baseline and the current reporting periods.

1 Date designated as to when full compliance will be achieved.

2 Total number of facilities which can be used for the secure detention and confinement of both juvenile offenders and adult offenders.

3 Total number of facilities which were used for the secure detention and confinement of both juvenile offenders and adult criminal offenders during the past 12 months.

4 Total number of facilities which were used for the secure detention and confinement of both juvenile offenders and adult criminal offenders inspected onsite and by whom.

(c) To demonstrate compliance with section 223(a)(12)(B) of the JJDP Act, the report must include the number of accused and adjudicated nonoffenders who are placed in facilities which are not in their home community and are the least restrictive appropriate alternative.

(5) *Compliance.* It is incumbent on a State to demonstrate that it has achieved compliance with sections 223(a)(12)(A) and (13) of the Act. Should a State fail to demonstrate substantial compliance by the end of the 3-year time frame, their eligibility for formula grant funding shall terminate.

6. *Detailed Study of Needs and Utilization of Existing Programs.—*(1) *Act*

Requirement. Sections 223(a)(8) and 223(a)(9) of the JJDP Act require that the State set forth a detailed study of the State needs for an effective, comprehensive approach to juvenile delinquency prevention and treatment and the improvement of the juvenile justice system. The State is also required to provide an itemized cost for the development and implementation of programs to meet these needs. Further, the State shall provide for coordination and maximum utilization of existing juvenile delinquency programs and other related programs, such as education, health, and welfare within the State.

(2) *Plan Requirement.—*(a) *Detailed Study.* The State shall conduct a detailed study of the juvenile justice system. This study shall be summarized in the plan and include: An analysis of the juvenile crime for part I offenses and analysis of the status offenses and nonoffenses such as dependency and neglect; a listing and analysis of problems confronting the juvenile justice system; a description of the existing juvenile justice system; and a listing of the available resources to meet the delinquency and juvenile justice problems which confront the State and its subunits. These requirements correspond to the process described in paragraphs 34, 35, 36, 37 and 39 of M 4100.1F. The end product shall be a series of prioritized problem statements which reflect an analysis of the data, monitoring reports and requirements of the JJDP Act. The prioritized problem statements shall be the basis for the development of the Annual Action Program. The Juvenile Annual Action Programs shall follow the format described in paragraph 42 of M 4100.1F.

(b) *Utilization of Programs.* The State shall provide a brief description of all existing programs in the State for youth and how the activities of these programs are, or will be, coordinated. A program is defined as a major grouping or classification of projects designed to reach the same objective.

p. *Equitable Distribution of JJ Funds and Assistance to Disadvantaged Youth.—*(1) *Act Requirement.* Sections 223 (7) and (15) require that the State shall provide for an equitable distribution of funds received under section 222 within the State, and that equitable assistance be available to disadvantaged youth, particularly females, minority youth, and mentally retarded or emotionally handicapped youth.

(2) *Plan Requirement.* The State shall provide assurance that:

(a) Procedures developed by the State to insure equitable distribution of JJDP Act formula grant money are adhered to.

(b) The needs of disadvantaged youth have been analyzed in the De-

talled Study of Needs and that assistance will be available on an equitable basis. All subgrantees and contractors shall comply with General Grant Conditions and assurances regarding non-discrimination. See appendix 4.

(c) The State has developed and adheres to procedures by which grievances relating to equitable distribution of funds and equitable assistance to disadvantaged youth may be filed and considered.

q. *Standards and Priorities for Juvenile Justice and Delinquency Prevention.*—(1) *Act Requirement.* Section 102(a)(5) establishes that one of the purposes of the Act is 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 levels to facilitate adoption of Standards.

(2) *Plan Requirement.*—(a) *Description of Standards.* The State shall provide either a copy of its JJ Standards or reference to the document which contains those Standards.

(b) *Standards Development Process.* The State shall describe the processes it has used or will use to develop, adopt and disseminate state JJ Standards and indicate the role of the Juvenile Justice Advisory Group in these activities. Included in the Standards development process must be a review and consideration of the Standards recommended pursuant to section 247 of the JJDP Act.

c. *Establishment of Implementation Priorities.* The State shall identify the Standards which have been established as priority areas for implementation. Describe the process by which these priorities were or will be established and the Juvenile Justice Advisory Group's role in that process. Indicate what action is being taken by the state to implement those Standards in this year's Annual Action Program.

r. *Advanced Techniques.*—(1) *Act Requirement.* Section 223(a)(10) of the JJDP Act requires that not less than 75 percent of the funds available to the States under section 222, other than funds made available to the State Advisory Group under section 222(e), whether expended directly by the State, by the unit of general local government, or a combination thereof, or through contracts or grants with public or private agencies, shall be used for advanced techniques such as those described in section 223(a)(10), as well as those used 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 juvenile detention and correctional facilities, to encourage a diversity of alternatives within the juvenile justice

system, to establish and adopt juvenile justice standards, and to improve services and protect the rights of juveniles affected by the juvenile justice system.

(2) *Plan Requirement.* The State must clearly demonstrate in its Plan that at least 75 percent of the juvenile justice and delinquency prevention funds shall be used for projects which are designed to deinstitutionalize juveniles, separate juvenile and adult offenders, monitoring, and advocacy programs aimed at improving services for and protecting the rights of youth impacted by the juvenile justice system.

s. *Analytical and Training Capacity.*—(1) *Act Requirement.* Section 223(a) (11) and (20) require that the State develop an adequate research, training and evaluation capacity and provide a review of the comprehensive plans, at least annually, to be submitted to the administrator of OJJDP. The review shall include analysis and evaluation of the effectiveness of the program 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.

(2) *Plan Requirement.* The State shall indicate its capacity to conduct research, training and evaluation and shall provide an analysis of the effectiveness of the Plan it submitted 2 years ago, as described above.

t. *Continuation Support.*—(1) *Act Requirement.* Section 228(a) of the JJDP Act states that, in accordance with criteria established by the Administrator of OJJDP, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory.

(2) *Plan Requirement.* (a) The State shall provide assurances that all programs that receive a satisfactory yearly evaluation shall continue to receive financial assistance at the same level as their initial application.

(b) *Termination.* An award may be terminated if:

1 The level of Federal funding to the State under the JJDP Act is decreased materially, or

2 The applicant fails to comply with the terms and conditions of the award, or

3 The applicant fails to receive a satisfactory yearly evaluation.

(c) *Satisfactory Yearly Evaluation.* For purposes of this section, the term "satisfactory yearly evaluation" shall refer to a project meeting its approved goals and objectives. Project goals and objectives should be consistent with the goals and objectives of the program from which it is funded.

u. *Other Terms and Condition.*—(1) *Act Requirement.* Section 223(a)(21) states that the State plan shall con-

tain other conditions and terms which the Administrator of OJJDP may reasonably prescribe to assure the effectiveness of programs supported by JJDP Act funds.

(2) *Plan Requirement.* States shall provide a list of all delinquency projects funded under the prior year's approved plan. This includes projects funded with JJDP funds as well as Crime Control maintenance of effort funds. This list shall include the project title, a brief summary and the level of funding.

DEFINITIONS RELATING TO PARAGRAPH 52 SPECIAL REQUIREMENTS FOR PARTICIPATION IN FUNDING UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

1. *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.

2. *Criminal-Type Offender.* A juvenile 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.

3. *Status Offender.* A juvenile 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.

4. *Nonoffender.* A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other legally prohibited conduct of the juvenile.

5. *Accused Juvenile Offender.* A juvenile with respect to whom a petition has been filed in the juvenile court alleging that such juvenile is a criminal-type offender or is a status offender and no final adjudication has been made by the juvenile court.

6. *Adjudicated Juvenile Offender.* A juvenile with respect to whom the juvenile court has determined that such juvenile is a criminal-type offender or is a status offender.

5. *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 or private agencies.

6. *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.

7. *Facility, Nonsecure.* 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.

8. *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, counseling, alcoholism treatment, drug treatment, and other rehabilitative services.

9. *Lawful Custody.* The exercise of care, supervision and control over a juvenile or nonoffender pursuant to the provisions of the law or of a judicial order or decree.

10. *Exclusively.* As used to describe the population of a facility, the term

"exclusively" means that the facility is used only for a specifically described category of juvenile to the exclusion of all other types of juveniles.

11. *Criminal Offender.* An individual, adult or juvenile, who has been charged with or convicted of a criminal offense in a court exercising criminal jurisdiction.

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