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U.S. Department of Justice

Reauthorization Meeting Issue Papers

Justice System Improvement Act of 1979

Louisville, Kentucky
December 6 & 7, 1979

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PREFACE

Justice System Improvement Act

These papers have been developed from the Justice System Improvement Act and its legislative history. Each paper attempts to cover a single issue or grouping of related issues. Some overlap will exist. However, we feel that the explanation of issues and the statutory clauses that pertain to those issues is an aid to understanding the legislation. The issues following each paper were submitted by various States, localities and public interest groups. The responses which will be provided at this meeting contain a mixture of legal and policy decisions. These legal and policy decisions, as well as the input received at this conference, will form the basis for the FY 81 draft application guidelines presently under development. These guidelines will be published in the Federal Register for comment during the month of December, shortly after completion of the conference.

Some aspects of this legislation are substantially different from past activities. New legislation generates new processes and new issues. Actual implementation of the legislation and the decisions may show that a different response than the one originally indicated, may be required. Consequently, where necessary LEAA will be alert to any required policy changes during the implementation process.

Office of General Counsel
December 6, 1979

REISSUED WITH RESPONSES

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SUMMARY

JUSTICE SYSTEM IMPROVEMENT ACT OF 1979

The Justice System Improvement Act (Pub. L. 96-157) enacted into law on December 27, 1979, provides a four year authorization for justice assistance, research, and statistics programs. The Act is significantly different from the LEAA statute and makes major structural and substantive changes in the financial assistance, research, and statistical programs which have been administered by LEAA.

The new Act establishes four organizations within the Department of Justice under the general authority of the Attorney General. These new organizations are: Office of Justice Assistance, Research, and Statistics (OJARS) which will coordinate the activities and provide the staff support for the three new assistance offices: Law Enforcement Assistance Administration (LEAA), National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS).

Part A

Establishes the Law Enforcement Assistance Administration (LEAA). LEAA is authorized to operate a State and local assistance program of Formula Grants, a 50/50 match program of National Priorities, a discretionary program, training and personnel development programs, community anti-crime programs, juvenile justice and delinquency prevention programs, and Public Safety Officer Benefits. LEAA will be headed by an Administrator appointed by the President. The Administrator will have the final sign off authority in the award of grants and contracts for LEAA and OJJDP. The Office of Juvenile Justice and Delinquency Prevention remains as part of LEAA under the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

Part B

Establishes the National Institute of Justice (NIJ). NIJ will ensure a balance in basic and applied research; evaluate the effectiveness of programs carried out under the Act to determine their impact upon the quality of criminal and civil justice systems, test and demonstrate civil and criminal justice programs; disseminate information and give primary emphasis to State and local justice systems. NIJ will be headed by a Director appointed by the President. The Director will have the final sign off authority for the award of grants and contracts for NIJ. NIJ will have a 21 member Advisory Board appointed by the President.

Part C

Establishes the Bureau of Justice Statistics (BJS). BJS will provide a variety of statistical services for the criminal justice community; recommend standards for the generation of statistical data; analyze and disseminate statistics; and, provide for the security and privacy of criminal justice statistics. BJS will be headed by a Director appointed by the President. The Director will have the final sign off authority in the award of grants and contracts for BJS. BJS will have a 21 member Advisory Board appointed by the Attorney

General.

Part D

Establishes the formula grant program to provide assistance to State and local units of government for improvements in and coordination of their criminal justice activities. Grants are authorized for specified purposes. A single application consisting of program level information is required. This application covers a three year period.

Eighty percent of the total Parts D, E and F appropriation is reserved for this program. Funds appropriated are allocated to States and territories, which are all treated as States for the purposes of the legislation, on the basis of population or a four-part formula taking into account population, crime rate, tax rate, and criminal justice expenditures of each jurisdiction. The four-part formula only comes into effect if the Formula Grant appropriation exceeds LEAA's FY 1979 appropriation for Parts C and E. Each State will have a Criminal Justice Council to develop a three-year application for funds and generally set statewide priorities. Each State will receive a minimum of $300,000 annually.

Within each State, cities, counties and combinations of jurisdictions with a population of 100,000 or more are entitled to receive grants from the formula grant, if the entitlement jurisdiction expends at least .15 percent of total State and local criminal justice expenditures, and provided that the entitlement jurisdiction would receive at least $50,000. Combinations must be contiguous if not in the same county, but need not be solely within one State. Each entitlement jurisdiction will submit an application for funds which will be included with the State application submitted to LEAA. The amount each entitlement jurisdiction receives will be computed using a weighted formula which takes into account certain criminal justice expenditures and total criminal justice expenditures relative to the State's total. Entitlement jurisdictions will be required to establish criminal justice advisory boards.

Of the total formula grant 7 1/2 percent can be used for administrative costs. The State may use up to 7 1/2 percent of its allocation and the balance of State allocation for administrative purposes. This must be matched on a 50/50 basis. An additional $250,000 match free is allowed for administrative purposes ($200,000 for the State and $50,000 for a Judicial Coordinating Committee). Entitlement jurisdictions may use up to 7 1/2 percent of their allocations for administration. The first $25,000 of that amount is match free, the remaining funds must be matched dollar for dollar.

Each entitlement jurisdiction will determine which particular projects will be funded with its allocation. The State Criminal Justice Council will make the final decisions on projects which will be supported for statewide benefit or within jurisdictions not receiving an entitlement.

The Federal share of the cost of projects funded under the Formula Grant Program is up to 90 percent, with cash match being provided for the rest. Match can be waived for Indian tribes and in certain cases of financial hardships. Eventual assumption of program cost by the recipient is required. Because the legislation did not take effect until December 27, 1979, the

10 percent match requirement may be deferred until FY 1981.

Part E

A new National Priority Grant Program is established. This program provides grants to State and local governments to carry out programs that, on the basis of research, demonstration or evaluation, have been shown to be effective or innovative and to have a likely beneficial impact on criminal and juvenile justice. Priorities may include programs to improve planning and coordination activities.

Ten percent of the total Parts D, E, and F appropriation is reserved for this program. Grants require a 50 percent match. However, the match may come from any source of funds, including Part D formula grant monies.

The program is administered by LEAA. National priority grant programs are identified jointly by OJARS and LEAA based on nominations from NIJ, BJS, State and local governments, and other public and private organizations. Proposed programs will be published in the Federal Register and the public given at least 60 days to comment. Priorities for each fiscal year must be published in the Register prior to the start of each fiscal year, beginning in FY 1981.

National priority grants may be for up to three years, and may be extended for an additional two years if the program or project has been evaluated and found to be effective. Recipients are expected to assume the costs of effective programs unless State of local budget constraints preclude cost assumption.

Part F

As reauthorized by the Justice System Improvement Act, the discretionary grant program provides assistance to States, local government, and private nonprofit organizations for the following purposes: (1) programs to improve and strengthen the criminal justice system; (2) programs to improve planning and coordination; (3) programs to assure the equitable distribution of funds among criminal justice components; (4) programs to prevent and combat white collar crime and public corruption; (5) court and corrections system improvements; (6) organized crime programs, and activities to disrupt illicit commerce in stolen goods and property, and (7) community and neighborhood anti-crime efforts.

Section 602(a) emphasizes assistance to private nonprofit organizations for programs which otherwise might not be undertaken, including national court improvement; education and training programs; community and neighborhood anti-crime programs; victim-witness assistance programs; and efforts to develop, implement, evaluate and revise criminal justice standards. Innovative programs are encouraged.

Ten percent of the total Parts D, E, and F appropriation is earmarked for discretionary grants. Grants may be for up to 100 percent of program or project costs.

Part G

Training and Manpower Development are authorized by this part. Prosecuting attorney training and training of criminal justice personnel is provided.

Part H

The Office of Justice Assistance Research, and Statistics (OJARS) is established under the general authority and policy control of the Attorney General. The Director is appointed by the President with the advice and consent of the Senate. OJARS provides the staff support and coordinates activities between NIJ, BJS, and the LEAA.

LEAA is required to submit an annual report to Congress on the progress made through activities funded under Parts D, E, F and G during the preceeding fiscal year. A special report to Congress not later than three years after enactment of the Act is also required.

Civil rights requirements, requirements ensuring confidentiality of individually identifiable research data, and security and privacy of criminal justice information are set forth. There is an additional requirement that intelligence systems funded under Part D adhere to policy standards to be set by OJARS.

Part I

Defines terms used in the Act.

Part J

The program is authorized through September 30, 1983. Of the total appropriations authorized, 19.15 per centum must be maintained for juvenile delinquency programs, with primary emphasis on programs for juveniles convicted of criminal offenses or adjudicated delinquent on the basis of an act which would be a criminal offense if committed by an adult.

Part K

The criminal penalty provision and sanctions for misuse of funds are provided for in this part.

Part L

The Public Safety Officers death benefits program continues to be administered by LEAA.

Part M

Authorization is given to continue to use all or portions of prior Omnibus Crime Control legislative authority for up to one year during the transition to full implementation of the Justice System Improvement Act.

STATE AND LOCAL RELATIONSHIPS AND RESPONSIBILITIES

The Justice System Improvement Act of 1979 (Act) provides for a major alteration of the current Block Grant Program. A series of amendments must be read together to provide a complete view of the formula grant funding system and the manner in which it is designed to work. The amendments fall under three primary categories:

(i) responsibilities of a State council
(ii) responsibilities of local jurisdictions
(iii) rights of the parties and resolution of disputes

Overall Evaluation of the Provisions

The administration proposals in S. 241 and H.R. 2061 set out the basic structure of the entitlement process which has been enacted.

Section 402 of the Act sets out the basic system.

The proposal was based on the recommendations of the Department of Justice Study Group set up by Attorney General Griffin Bell in April of 1977, their report of June 23, 1977, a memorandum for the President dated June 23, 1977, public hearings held by the President's Reorganization Project on December 15 and 16, 1977 and formal positions by 26 major national interest groups representing affected parties.

Other groups recognized the difficulty of the problem and the focus of the solution. A 1977 study by the Advisory Commission on Intergovernmental Relations concluded that Congress should provide for no further categorization of funds, and that mini-block grants should be made to cities, urban counties, or combinations of such units, without review of specific project applications by SPA's. Advisory Commission on Intergovernmental Relations Safe Streets Reconsidered: The Block Grant Experience 1968-1975, at 193 (1977). The GAO in its 1978 report on LEAA observed:

> "Striking an acceptable balance between the needs of State and local governments and the goals and responsibilities of the Federal government is the essential nub of the issue - - and one for which there are no easy answers." Staff of the U.S. General Accounting Office, Federal Crime Control Assistance: A Discussion of the Program and Possible Alternatives, 121 (1978).

Both House and Senate Judiciary Committees agreed that a change was in order.

In the Senate:

> "The committee determined that a major alteration of the current block grant program was necessary. The modification was necessary to accomplish certain goals and

provide for the most effective administrative mechanism to ensure rapid and efficient flow of Federal funds for criminal and juvenile justice system improvements at the State and local level." S. Rept. No. 96-142, 96th Cong, 1st Sess., at 27, (1979).

In the House:

> "One of the more fundamental issues explored in the deliberations of the Subcommittee and the full Committee was the question whether the cornerstone of LEAA - - the block grant program - - should be retained, and, if so, in what form.
>
> . . . .
>
> Consideration by the Subcommittee and the full Committee leads to the conclusion that the mechanism for delivery of funds to local units of government needs to be improved. In addition to reduced planning requirements and streamlined application processes, the pass-through provisions regarding funding of local government need to be expanded and strengthened." H. Rept. No. 96-163, 96th Cong., 1st Sess., at 7 and 9 (1977).

Floor action of both Houses otherwise confirmed the new arrangements.

In the Senate:

> "The major reforms proposed in S. 241 include:
>
> . . . .
>
> Strengthened role for local governments. Large cities and counties are guaranteed a fixed allotment of funds and localities are granted greater control over the use of LEAA funds in their communities." Cong. Rec. S. 6203 (daily ed., May 21, 1979).

In the House:

> Congressman Sensenbrenner offered an amendment to delete the mini-block grant program. The amendment was defeated by a vote of 246 to 40. Cong. Rec. H. 9107 (daily ed., Oct. 12, 1979).

Thus, the final Act reflects the essential features of the first proposal.

These features include:

- o Recognition of State sovereignty - - all activity flows through the State;
- o Provision of greater autonomy to larger cities, counties and combinations and consequent loss of some State discretion;
- o Provision of options which allow a greater variety of organizational arrangements based upon individual differences within each State; and
- o Fixed fund allocations which provide for better governmental relations and more sensible budgetary policy development.

STATE COUNCIL RESPONSIBILITIES

I. Evaluation of the Provision

Section 402(b)(1) sets up a State Council for the purpose of - -

"(A) analyzing the criminal justice problems within the State based on input and data from all eligible jurisdictions, State agencies, and the judicial coordinating committee and establishing priorities based on the analysis and assuring that these priorities are published and made available to affected criminal justice agencies prior to the time required for application submission;

"(B) preparing a comprehensive State application reflecting the statewide goals, objectives, priorities, and projected grant programs;

"(C)(i) receiving, reviewing, and approving (or disapproving) applications or amendments submitted by State agencies, the judicial coordinating committee, and units of local government, or combinations thereof, as defined in section 402(a)(5) of this title, pursuant to section 405(a)(5) of this title;

"(ii) providing financial assistance to these agencies and units according to the criteria of this title and on the terms and conditions established by such council at its discretion; and

"(D) receiving, coordinating, reviewing, and monitoring all applications or amendments submitted by State agencies, the judicial coordinating committee, units of local government, and combinations of such units pursuant to section 403 of this title, recommending ways to improve the effectiveness of the programs or projects referred to in said applications, assuring compliance of said applications, with Federal requirements and State law and integrating said applications into the comprehensive State application;

"(E) preparing an annual report for the Governor and the State legislature containing an assessment of the criminal justice problems and priorities within the State; the adequacy of existing State and local agencies, programs, and resources to meet these problems and priorities; the distribution and use of funds allocated pursuant to this part and the relationship of these funds to State and local resources allocated to crime and justice system problems; and the major policy and legislative initiatives that are recommended to be undertaken on a statewide basis;

"(F) assisting the Governor, the State legislature, and units of local government upon request in developing new or improved approaches, policies, or legislation designed to improve criminal justice in the State;

"(G) developing and publishing information concerning criminal justice in the State;

"(H) providing technical assistance upon request to State agencies, community-based crime prevention programs, the judicial coordinating committee, and units of local government in matters relating to improving criminal justice in the State; and

"(I) assuring fund accounting, auditing, and evaluation of programs and projects funded under this part to assure compliance with Federal requirements and State law.

A cursory comparison of the new section 402(b) responsibilities of the Council and the old section 203(b) or 303 requirements gives this picture:

New	Old
o Crime Analysis	o Develop a State Plan
o Priority Setting	o Priority Setting
o Application to Federal Govt.	o All program development
o Review, award, coordination and monitoring and compliance of subgrants	o Community input
	o Technical Assistance
o Annual Report to Governor and Legislature	o Review, award, monitoring etc.
	o Accountability
o Develop and publish new criminal justice approaches.	o Annual Report to LEAA ($519)
o Technical Assistance	
o Accountability	
* Community Input is in section 402(f)	

The main statutory differences appear in the deletion of a Plan and substitution of a crime analysis, an application, and a lessening of the overall program development role. Other differences such as the development of new criminal justice approaches and the report to the Governor and legislature are significant from the standpoint of a Council role in total resource planning.

By virtue of the establishment of entitlement jurisdictions, the role given them by section 402(c) and the Council review criteria for entitlement jurisdiction applications in section 402(b)(3)(A)(ii), another

major feature of the legislation becomes clear, i.e., priority setting by the State is not necessarily the final word. This difference will be further developed in the next section.

Apart from this major difference, State Council responsibility, if it is changed at all, must be evaluated in the context of the meaning to be given to the deletion of the term "planning" and addition of the word "application."

The administration bill clearly was intended to eliminate the term planning for any activity which solely involved application for funding.

The Senate Judiciary Committee agreed with the wording change to the Act and the rationale for the elimination of "burdensome annual planning requirements" which "have led to annual State plans of extraordinary length, yet dubious value" S. Rept. No. 96-142, 96th Cong. 1st Sess., 13 (1979). The report also recognized the "broader" role of the Council:

> Under the Law Enforcement Assistance Reform Act, this two-step process is reduced to one. Each major city and county would prepare one application covering all of its projects over a 3-year period. This application would be submitted to the State for inclusion in the overall State application. State review, however, would be strictly limited, and broad discretion would be granted to the cities and counties to determine how they will use their share of available Federal funds. Once the State application is approved by LEAA, the local application is approved and no further application submission requirements are imposed on the locality. As a result, multiple and time-consuming reviews and approvals are eliminated. S. Rept. No. 96142, 96th Cong. 1st Sess., 65 (1979).

It further stressed the preeminent role of the State Council in coordination of activities (in lieu of plan development). (Id. at 32). Because the State Council is also bound by Federal law and guidelines, it can set requirements which are necessary to fulfill the requirements of the Federal law or guidelines.

The House Committee agreed with the wording change to the Act but not with the concept of dropping "planning" as a function:

> In his appearance before the Subcommittee, the Attorney General highlighted, as one of the major problems with LEAA, the "failure to achieve effective comprehensive planning." This shortcoming was, in varying degrees, perceived by a large number of the witnesses heard by the Subcommittee. Witnesses who had studied the operation of planning agencies at the State and local level found that there was no conceptual consistency in how the planners viewed their

role: Some saw it as being merely a conduit or check writer for revenue sharing funds; others as management efficiency experts who tried to steer the federal assistance funds in that direction; still others perceived their role and the objective of the federal funding to be the promotion of experimentation and innovation in criminal justice.

It was reported to the Subcommittee that in some jurisdictions--in far too few, however--something in the nature of comprehensive planning for the criminal justice system was being undertaken. In the overwhelming majority of jurisdictions heard from, however, the indication was that planning under the federal program encompassed only planning for the federal funds, representing less than five percent of total criminal justice expenditures. In many jurisdictions, the ultimate single objective of "comprehensive" planning has come to be the production of a compliance document--a compilation of papers, usually voluminous, which will pass federal muster; a document not to guide local decision making, but to meet federal guidelines and placate federal bureaucrats.

> While the Committee agrees with the Attorney General's conclusion that there has been a failure to achieve comprehensive planning under the LEAA program, it is of the opinion that positive contributions have been made in the planning process, and the Committee would continue federal support for criminal justice planning in the reorganized LEAA. An often heard assertion by planners in support of continuing the planning functions is "for the first time, we've gotten people (sheriffs, judges, police chiefs, etc.) from different agencies and different jurisdictions to at least sit down and talk about their common concerns and needs." While this sort of statement is a rather depressing reflection on the level of coordination and communication that has existed in what is misleadingly referred to as a criminal justice "system," it does underscore the difficulty of the task that has been assigned to the planners, and suggests that planning is making progress. H. Rept. No. 96-163, 96th Cong. 1st Sess., 10, (1979)

In addition, the Report went on to conclude:

> "The comprehensive planning requirement is dropped, and the degree of planning that takes place is left to State and local discretion." Id at 11. (See also P. 6.)

Senate floor action confirmed the committees' view, to some extent downplayed the distinction between planning and administration activities, and made it clear that "total resource planning" was to continue. Cong. Rec. S. 6203, 6205 and 6206 respectively (daily ed. May 21, 1979).

"As introduced, S. 241 would have almost totally elimiated the central role of the States in comprehensive criminal justice planning. As reported, however, at my initiative, the committee continues to encourage the type of total resource planning that would not have been possible without LEAA assistance. Language has been added to S. 241 to assure that planning continues to receive significant emphasis under the LEAA program." Floor statement of Senator Thurmond at p. 6206.

House floor action downplayed the elimination of the "planning" function by stressing that the "comprehensive plan," a voluminous, compliance document was what they intended to eliminate. Cong. Rec. H. 8901, 8903, (daily ed. Oct. 10, 1979).

From this review, we conclude:

(i) The State Council will administer Federal funds after developing an "application" not a "plan";

(ii) The State Council can and is encouraged to do "total resource planning" and work with the Governor and legislature on this function;

(iii) Priority setting, application review, coordination, monitoring and compliance activities continue unchanged (with the differences for entitlement jurisdictions developed later).

(iv) Technical assistance is still a Council function;

(v) Final accountability is still with the State;

(vi) A "crime analysis" is prepared for inclusion in the "comprehensive application;"

(vii) The states "coordination" role takes on added significance; and

(viii) The state has responsibility for assuring compliance with Federal law and regulations and can issue "administrative" guidelines "necessary" to this function, e.g. juvenile justice maintenance of effort.

Finally, the issue must focus on the "crime analysis." Is it any different than the old comprehensive plan?

The term "crime analysis" is not defined in the Act.

Comprehensive is defined in section 901(a)(8)

"(8) 'Comprehensive' with respect to an application, means that the application must be based on a total and

integrated analysis of the criminal justice problems, and that goals, priorities, and standards for methods, organization, and operation performance must be established in the application.

The section 402(b) requirement is for an analysis of the "criminal justice problems within the State based on input and data. . ." The term "comprehensive" includes "a total and integrated analysis of the criminal justice problems. . ." Priority setting cannot take place without this process. What then is different? A comparison with current practices leads to the conclusion that the difference is quantitative. The crime analysis, as the central feature of the application, is all that is required. It is not a State plan for LEAA funds disguised as a statewide plan for criminal justice.

II. Current Practices

An annual comprehensive plan is currently required. This plan includes numerous paperwork requirements generated by:

(i) Section 203 planning grant requirements;

(ii) Section 203-eight multi-year comprehensive plan requirements;

(iii) Section 303-eighteen more comprehensive plan requirements;

(iv) Section 303 (c)-thirteen more comprehensive plan requirements;

(v) Section 453-thirty-seven correctional related comprehensive plan requirements (more depending on applicable Guidelines).

III. Issues

1. Can the report for LEAA be used for the Governor and the Legislature's report?

   Yes. However, the report to the Governor and the Legislature is intended to serve a broader purpose than the report for LEAA. The report for the Governor and the Legislature is intended to be a report on the status of the criminal justice system throughout the State.

2. Will LEAA combine the funding and planning structures defined in the LEAA and Juvenile Justice Acts?

   The State may use the Council to either perform or supervise the planning and administrative responsibilities of the Juvenile Justice Act. The Juvenile Justice Act retains its separate identity and its requirements are different from those of the Justice System Improvement Act. See Section 223(a)(1)-(21) of the Juvenile Justice and Delinquency Prevention Act.

3. Can the State still retain "planners"?

   Yes. However the end result of the process under the new Act is an application for funds.

4. Can the State retain the informal title "State planning agency"?

   Yes.

5. How does the "Council" differ from the staff?

   The Council sets the policy and the staff administers the program.

6. Can the State delegate fund accounting, auditing or evaluation responsibilities?

   The State is legally accountable to the Federal government for all expenditures under the formula grant program. The State has responsibility for fund accounting and auditing and must make assurances to that effect. The arrangement to provide for these functions is up to the state. Every applicant for funds must make provision for funding, accounting, and auditing in order to assure fiscal control, proper management and efficient disbursement of funds. (Section 403(a)(6)).

LOCAL ENTITLEMENT JURISDICTIONS

I. Evaluation of the Provision

Section 402(a) provides for 3 groups of entitlement jurisdictions:

. . . .

> "(2) a municipality which has no less than 0.15 per centum of total State and local criminal justice expenditures, and which has a population of one hundred thousand or more persons on the basis of the most satisfactory current data available on a nationwide basis to the Administration but only if such municipality would receive at least $50,000 for the applicable year under section 405;
>
> "(3) a county which has no less than 0.15 per centum of total State and local criminal justice expenditures, and which has a population of one hundred thousand or more persons on the basis of the most satisfactory current data available on a nationwide basis to the Administration but only if such county would receive at least $50,000 for the applicable year under section 405;
>
> "(4) any combination of contiguous units of local government, whether or not situated in more than one State, or any combination of units of local government all in the same county, which has a population of one hundred thousand or more persons on the basis of the most satisfactory current data available on a nationwide basis to the Administration but only if such combination would receive more than $50,000 for the applicable year under section 405;

. . . .

The Administration bill and initial Senate Committee action proposed the establishment of entitlement jurisdictions that were somewhat different from the final bill. The original bills' entitlement provisions were considered a "starting place." The Senate Committee stated:

> Because the bill attempts to allow for more "individualized" treatment of local governments, a starting place for a workable intergovernmental funding system was necessary. The committee has determined this "starting place" in section 402(a) provides that cities and certain counties over 100,000 population, and other counties and regional units over 250,000 population may be recipients of fixed amounts of formula funds under the modified procedure. These population figures are candidly based "on a need to start somewhere." Increased appropriations would allow these minimum population figures to be scaled down. S. Rept. No. 96-142, 96th Cong., 1st Sess., 29 (1979).

Prior to submission of the bill, the population cutoff points were discussed at a variety of population levels. Other options were also considered. Population at the submitted levels was generally agreed upon as optimum, although approximately 32 other large urban counties (under 250,000 population) also fit the administration's rationale. Before it was finally determined, the proposal was submitted. It was expected that the sponsors of the legislation would give additional consideration to this feature of the proposal and be open to suggestions on the use of fixed population criteria.

House committee action standardized the entitlement population criteria at 100,000 for both cities and counties, added municipalities of less than 100,000 if it was within an SMSA, and contained the requirement of contiguity for combinations. Section 402(a) of H.R. 2061 and H. Rept. No. 96-163, 96th Cong. 1st Sess., 9, (1979).

House floor action failed to delete the entire entitlement process. Cong. Rec. H. 9107, (daily ed. Oct. 12, 1979). The House retained the Committee amendments and added as an eligible combination "any combination of units of local government in the same county" with a population of 100,000. Cong. Rec. H.___ (daily ed., Oct. 12, 1979) (Through clarifying amendments).

The final language was agreed to in conference as a compromise on the differences in the Senate-House bills. Conference Report on S. 241, Cong. Rec. H 10988 (daily ed., November 16, 1979).

The significant features of the compromise include:

(i) Inclusion of counties and combinations of at least 100,000 population;

(ii) Deletion of the largest city (under 100,000 pop.) in an SMSA

(iii) Retention of the requirement for contiguity of combinations which are not in the same county or state; and

(iv) Addition of a minimum dollar requirement of $50,000 in fund eligibility.

The last requirement is to be distinguished from the .15% criteria. The .15% criminal justice expenditure minimum is a requirement for eligibility. The $50,000 minimum is a condition for potential use of the rights obtained by being an eligible jurisdiction. Both clauses are designed for the same purpose--the practical aspects of the overall funding level of the programs do not make it worthwhile to use the provisions where the amounts of funds become less than needed to support two or so man-years of effort.

Apart from relationships with the State, the primary issues flowing from establishment of the eligible jurisdiction concept flow from the options available to local jurisdictions and the potential to continue or form combinations.

The Senate Report is instructive on the options available to eligible jurisdictions:

> "The bill, in an intergovernmental sense, is designed to allow each State to take account of the differences and preferences of local units of government or its regions.
>
> . . . .
>
> "The Committee recognizes that in authorizing entitlement grants to major units of local government some coordination may be made more difficult because major local governmental units may wish to receive funds directly without having the funds flow to a regional planning unit for ultimate distribution to the eligible units within the area covered by the regional planning unit. However, the bill expressly provides that combinations of units can receive funding and where two or more eligible units combine, the total funding that would go to those eligible units can go to the original unit.
>
> "Thus, in a given State, it is possible under this provision that all of the eligible units could waive their eligibility and compete with all other units of local government for the funding available under this program. In some States, such as Ohio, major city and county combinations now receive a greater share of the total funds passed through to the units of local government than they would receive under the pass-through provisions of the Law Enforcement Assistance Reform Act. Nothing in this bill is intended to prohibit those states from continuing those practices. What is provided, however, is an option." S. Rept. No. 96-142, 30, (1979).

The options available to eligible jurisdictions can be summarized as follows:

(i) Take the allocation under the "one application" procedure;

(ii) Join with other eligible cities or counties under the "one application";

(iii) Join with just one eligible city in one county;

(iv) Join with all other smaller cities or counties from the "balance of state" jurisdictions under the "one application" procedure;

(v) Join a regional unit or combination and merge eligibility on a competitive basis or on a formula basis through agreement with the region under the "one application" procedure; or

(vi) Waive eligibility and participate in competition with units of government in the "Others" column under the regular "project" application procedure.

The limitation to the exercise of options appear to be:

(i) State law which does not directly conflict with an express provision of Federal law or regulation,

(ii) The requirement that units, not otherwise eligible, which combine, be "contiguous"; and

(iii) The requirement that a combination be a combination as defined in section 901 (a) (5) which states:

> "(5) 'Combination' as applied to States or units of local government means any grouping or joining together of such States or units for the purpose of preparing, developing, or implementing a criminal justice program or project.

This last factor has been the subject of some debate as it relates to cities and counties which do not meet the population eligibility criteria individually, but can do so by joining together under State law, executive order or joint powers arrangements.

On this point Senator Thurmond, one of the Senate floor managers of the bill stated:

> I note, Mr. President, that S. 241, as reported, permits an entitlement for combinations of units of local government with populations of 250,000 or more. A requirement that these units be contiguous, included in the bill as introduced, has been deleted. This does not mean, however, that diverse geographical locations can form compacts and become a combination solely for the purpose of receiving an entitlement. Combining units must be reasonably close to each other, such as neighboring cities, or cities adjoining counties. Artificial conglomerations created just to obtain funds will not be permitted.

> The provision allowing combinations of units of local governments with populations of 250,000 or more persons to receive funds on an entitlement basis is intended to provide funds to those combinations of jurisdictions which share criminal justice services and conduct joint or common criminal justice functions. It is not intended merely to provide funds to jurisdictions which combine only for the purpose of receiving entitlement grants. Cong. Rec. S. 6205, (daily ed., May 21, 1979).

Coupled with the House action retaining the requirement for contiguity and the definitional requirement for combinations, the language does limit the option to combine to those instances where it is clear that the units are formally endeavoring to "share criminal justice services and conduct joint or common criminal justice functions." This criteria can be implemented by Guideline or on a case by case basis.

II. Current Practices

Section 303(a)(4) of the old act provided only for a procedure for mini block grants for jurisdictions of at least 250,000.

Both Senate and House Reports and floor debate referenced this procedure and the extent of its use. See S. Rept. No. 96-142, 96th Cong. 1st Sess., 31, (1979). H. Rept. No. 96-163, 96th Cong. 1st Sess., 9, (1979); Cong. Rec. S. 6205 (daily ed. May 21, 1979). Cong. Rec. H. 8908, (daily ed. Oct. 10, 1979 and Cong. Rec. H. 9105, (daily ed. Oct. 12, 1979).

Where the "procedure" was used, LEAA guidelines required a target allocation of funds and eliminated use of project applications, two of the main features of the amendment.

III. Issues

1. If a jurisdiction chooses to be an entitlement jurisdiction, does that preclude the entitlement from also getting "balance of State" funds from the SPA? Is it an either/or proposition?

   Yes. It is an either/or proposition. However, the State can award additional funds from the State share.

2. Do jurisdictions who are eligible to be entitlement but choose to be non-entitlement still get a portion of planning and administration funds?

   They are not entitled to get a portion of the administrative funds but the State may choose at its discretion to give them administrative funds.

3. Entitlement jurisdictions will qualify based on population. Which yearly population census will LEAA use to determine qualification as an entitlement jurisdiction?

   There is a standard government policy which requires Federal agencies administering grant-in-aid programs to use the most current population data available on a national basis from the Bureau of the Census. This population data is revised annually and becomes available in December of each year under the same population data that is used for general revenue sharing.

4. In California, a joint powers agreement is a legally binding agreement among cities creating special units of government. Can this legally constituted special unit of government be the recipient of the entitlement grant or do the specific contracts have to be made directly to the member city?

   It depends on the terms of the joint powers agreement and the limitations of State law. Where State law allows governments to combine to prepare, develop, or implement a criminal justice program, this combination would be eligible to receive funds on an entitlement basis. The local advisory board must be jointly appointed in such a manner as the chief executive of each unit of government in the combination determines by mutual agreement. Section 402(c).

5. There has been much concern about utilization of State laws in conjunction with the Federal Act. Does not the Federal Supremacy Clause become binding in areas of conflict under the proposed legislation?

   The Federal Supremacy Clause comes into play only when there is a clear and direct conflict between a provision of Federal law and a provision of State law. The general rule is that the Federal

law and the State law should be read as consistent wherever possible. The statute places a strong reliance on State law and requires that all applications be consistent with State law.

6. Can a State still use a crime weighted formula for sub-state fund distribution?

   A State can adopt a crime weighted formula for distribution of balance of State funds and if an entitlement jurisdiction chooses to go as a balance of State it could receive funding under the crime weighted formula rather than the entitlement allocation. If an entitlement jurisdiction retains entitlement status, the State may still make an award to them on the basis of the crime weighted formula. If the entitlement jurisdiction would receive additional funds under the weighted formula, the State can provide those additional funds from the State share. They cannot draw on the balance of State share for these additional funds.

7. Is an entitlement which does not participate as an entitlement still eligible to make up part of the one-third State Council?

   Yes. All entitlements which participate in the program are eligible to make up the one-third representation requirements for membership in the State Council.

8. Does the combination need to obtain waivers from entitlement jurisdictions?

   In order for a combination to represent a unit of local government, that unit of local government must agree to participate as part of the combination. See the answer to 4 above.

9. When must a decision to go "entitlement" be made?

   A deadline for the decision to determine entitlement status for FY 81 will be established in the guidelines for Fiscal Year 1981. Tentatively, the guidelines are proposing that this decision be made by March 1, 1980. These guidelines must go through the clearance process before a firm deadline is established.

10. Can entitlement jurisdictions between 100,000 and 250,000 which had not given notice of going to entitlement status in the survey by the State, still utilize their statutory status for FY 81?

    Yes.

11. How can a small (100,000 plus) rural RPU survive in FY 80 in a waiver State?

Under current lEAA guidelines, there is no requirement that any entitlement jurisdiction receive administrative funds in Fiscal Year 1980. This policy is authorized by the transition provisions of the Justice System Improvement Act. However, LEAA would expect the states to take reasonable steps within the limitations of available funding to enable jurisdictions which would be entitlement jurisdicitons under the statute to continue in operation in Fiscal Year 1980 in order to phase into entitlement status in Fiscal Year 1981. LEAA is exploring the possibility of using reverted funds from the prior year's funds to provide allocations for the use of potential entitlement jurisdictions in Fiscal Year 1980.

12. If an entitlement jurisdiction elects entitlement and then changes its mind at a later point in time, can it renounce entitlement status? If yes, what kind of time frame would be involved in making the change?

The statute contemplates a three-year application cycle. The three-year cycle is designed to assure certainty in funding and minimize red tape associated with the submission of annual plans. LEAA strongly supports the certainty of the three-year funding cycle and strongly encourages the jurisdictions to carefully consider whether to participate as an entitlement jurisdiction and to elect participation as an entitlement jurisdiction on the basis of a three-year commitment. If, however, an entitlement jurisdiction does not want to participate, neither LEAA nor the State intends to force the jurisdiction to continue to accept funds. If a jurisdiction chooses to waive its entitlement status during the three-year application cycle, the State is not obligated to provide any set amount of funds to that entitlement jurisdiction for action or administrative funds. The funds that the entitlement jurisdictions would otherwise have been eligible to receive will be transferred to the balance of State share for distribution by the State under such terms and conditions as the State deems appropriate consistent with the State's three-year application.

13. Can an entitlement jurisdiction delay its decision to accept entitlement status for one year, two years?

We strongly prefer that every jurisdiction make its decision to participate for three years as an entitlement jurisdiction by March 1, 1980. However, we recognize that some entitlement

jurisdictions are on a different budget cycle and the ability to phase into an entitlement status does not exist. Under these circumstances, a one year delay is not unreasonable.

14. Does an entitlement jurisdiction combination have to utilize any particular formula for distribution within the combination?

No. The particular distribution of funds is a matter for mutual agreement between jurisdictions participating in the combination.

15. Can an area wide region create any number of sub-regions?

Yes. Internal organizational areas are a matter of mutual agreement by participating jurisdictions.

16. Do the eligible jurisdictions need to have a Council if they do not combine?

Every entitlement jurisdiction must have a local board which meets the representational requirements of Section 402(c).

17. Does having an entitlement city or county in a combination automatically bless any combination?

Yes. Any combination of contiguous units of local government whether or not situated in more than one State or any combination of units of local government all in the same county which have met the population and funding level requirements can combine for entitlement status if two conditions are met. First, the combination must be authorized or not prohibited by State law; and second, the combination must come together for the purpose of preparing, developing, or implementing a criminal justice project. The combination must make appropriate provision for fiscal responsibility, management, and the other assurances required by the statute. Jurisdictions may not combine solely for the purposes obtaining an entitlement allocation. Where one of the units already has an entitlement, it would appear that this reason would not exist.

18. Combinations:

(1) Must the combinations have a historical nexis? No
(2) Must the combination include a sizeable population center? No
(3) Must the combination include an entitlement city or county? No
(4) Must the combination have taxing power or some other device to recover any misspent monies by employees or subgrantees? No, so long as the constituent units agree to be legally bound to repay any unallowable costs.

ENTITLEMENT JURISDICTIONS RESPONSIBILITIES AND DISPUTE RESOLUTION

I. Evaluation of the Provision

Section 402(c) provides that "eligible" jurisdictions set up an office and board to function as follows:

> "(c) The chief executive(s) of an eligible jurisdiction as defined in section 402(a) (2), (3), and (4) shall create or designate an office for the purpose of preparing and developing the jurisdiction's application and assuring that such application complies with Federal requirements, State law, fund accounting, auditing and the evaluation of programs and projects to be funded under the application to be submitted to the council pursuant to section 403 of this title. Each eligible jurisdiction shall establish or designate a local criminal justice advisory board (hereinafter referred to in this section as the 'Board') for the purpose of--
>
> "(1) analyzing the criminal justice problems within the eligible jurisdiction and advising the council of the eligible jurisdiction on priorities;
>
> "(2) advising the chief executive of the eligible jurisdiction pursuant to this title;
>
> "(3) advising on applications or amendments by the eligible jurisdiction;
>
> "(4) assuring that there is an adequate allocation of funds for court programs based upon that proportion of the eligible jurisdiction's expenditures for court programs which contributes to the jurisdiction's eligibility for funds and which take into account the court priorities recommended by the judicial coordinating committee; and
>
> "(5) assuring that there is an adequate allocation of funds for correction programs based on that portion of the eligible jurisdiction's expenditures for correction programs which contributes to the jurisdiction's eligibility for funds.

An office and a board are created. In practice, each will jointly assume the responsibility provided by statute which are separately assigned as follows:

Staff Office	Advisory Board
o Develop Application	o Problem Analysis
o Assure Compliance	o Advise Chief Executive
	o Advise on Application
	o Assure adequate funds to courts and corrections

A statement of the functions of the advisory Board and office does not adequately explain their true role. Apart from the requirement that they assure "compliance," and assure adequate funds to courts and corrections, the functions are comparable to past functions of any large unit or combination. Assurance of compliance is duplicative of the State function, but is no more of a new requirement than the past responsibility to actually comply.

In accordance with section 402(c)(3)(A) the eligible jurisdiction (where it chooses to be an eligible jurisdiction) may file "a single application to the State for inclusion in the comprehensive State application."

The application "should conform to the overall priorities unless the eligible jurisdiction's analysis of its criminal justice system demonstrates that such recommended priorities are inconsistent with their needs."

The application must comply with State law and regulations and not be in conflict with or duplicate other programs or be identical to an evaluated ineffective program.

It must, at this point, be funded, to the extent of the allocation, unless it "is inconsistent with priorities and fails to establish, under guidelines issued by the Administration, good cause for such inconsistency." (Section 402(b)(3)(A)(ii).

This 3-line sub-section along with Section 402(b)(3)(E) which is discussed later, is the heart of the new system.

The Senate Committee noted:

> The reported bill, in section 402(b) (3) (A), sets out the respective roles of the State and the larger local governments and gives the local units a greater autonomy in determining the future direction of their justice systems. Statewide priorities are still recognized, but where the local units have a solid rationale for nonadherence to State priorities, the local priorities can be funded. S. Rept. No. 96-142, 96th Cong. 1st Sess., 96 (1979); and
>
> "The autonomy of larger jurisdictions is thus increased in a real way through the presumptive finality given to their funding decisions and the various ways in which they can organize and participate in this program. They, rather than the State criminal justice council, determine priorities and actions affecting their criminal justice systems and crime problems. Their authority to administer the funds is also increased. The increase in authority and

autonomy are supplemented by an increased share of responsibility to assure that Federal and State statutory requirements are met." (Id at 31).

Senate floor action also confirmed greater local "control over the use of LEAA funds in their communities." Cong. Rec. 6203 (daily ed. May 21, 1979), while also pointing out the extra cost and responsibilities:

> Another factor inhibiting full implementation of this bill will be the increased responsibilities placed on larger localities as a cost of their receiving an entitlement. They will have to establish their own criminal justice advisory boards to do for themselves what the State used to do. Not only will they have to perform their own analysis of problems, but they will have to exercise the administrative functions and follow the guidelines of LEAA which used to be handled for them. To function effectively new layers of bureaucracy must be established, thus diverting badly needed action funds to overhead. While it is the intent of the committee that entitlement jurisdictions will be subjected to less red tape, local governments will have to follow closely Federal and State guidelines and will be held accountable for the performances of the new duties which they may undertake.

The House Committee Report stated that:

> These jurisdictions may make a single application for a three-year grant covering all proposed activity to be financed with LEAA formula funds, and the discretion of the State criminal justice council to disapprove the application is very limited, restricted for the most part to disapproval for failure to conform to requirements of federal or state law. H. Rept. No. 96-163, 96th Cong. 1st Sess., 9, (1979).
>
> The Red-Tape reduction goals of the Act were often mentioned in conjunction with the new process. (Id at 11).

Local priority setting is confirmed under these amendments. The State must still perform its responsibilities and the eligible jurisdictions--

> "Applications or amendments should conform to uniform administrative requirements for submission of applications. Such requirements shall be consistent with guidelines issued by the Administration." Section 402(c)(3)(A).

Finally, the eligible jurisdiction is governed by the provisions of section 401 through the application requirements of section 403(a). This section provides:

> "Sec. 403. (a) No grant may be made (1) by the Administration to a State, or (2) by a State to an eligible recipient pursuant to Part D of this title unless the application sets forth criminal justice programs covering a three-year period which meet the objectives of section 401 of this title. This application must be amended annually if new programs are to be added to the application or if the programs contained in the original application are not implemented. The application must include--
>
> . . . (Same application requirements as govern the State).

No further project information need be submitted as provided in Section 402(b)(3)(E):

> Approval of the application of such eligible local jurisdiction shall result in the award of funds to such eligible jurisdiction <u>without requirement for further application or review by the council</u>. (underscoring supplied).

At this point, it can be considered that:

(i) some duplication of compliance responsibilities exists;

(ii) local entitlement jurisdictions can set different priorities than the State has adopted and the priorities have presumptive finality;

(iii) no restrictions (other than monetary) exist on the functions which an entitlement jurisdiction can perform;

(iv) red tape reduction was included in the reason for the changes and "project" type information was not intended to be included or later obtained (402(b)(3)(E);

(v) the State, because it is the contracting party with the Federal government and has the coordinating function, is primarily accountable and can still oversee the eligible jurisdictions' applications which are included as part of its own in accord with section 402(d);

(vi) State law and regulations are applicable to the eligible jurisdiction;

(vii) the State's "administrative" requirements must prevail; and

(viii) a single application without supplemental project applications is all that is required.

Disagreements can crop up. Ordinarily, they will come up following application submission to the State. If they do, section 402(e)(1) provides that the "final action by the council which results in the return of any application or amendments to an application must contain specific reasons for such action. . ." Section 402(b)(3)(D) sets up the dispute resolution process in accord with the Senate bill provisions. (The original administration and House bill proposal for arbitration was rejected. (Conference Report on S.241, Cong. Rec. H.10988, (daily ed., November 16, 1979).

> "If an applicant states in writing a disagreement with the council's written findings as specified in subsection (b)(3)(A), the findings shall be considered appealed. The appeal shall be in accordance with a procedure developed by the council and reviewed and agreed to by the eligible jurisdiction. If any eligible jurisdiction in a State fails to agree with the council appeal process prior to application submission to the council, the appeal shall be in accordance with procedures developed by the Administration. The Administration appeal procedures shall provide that if the council's action is not supported by clear and convincing evidence or if the council acted arbitrarily or capriciously, the council shall be directed to reconsider or approve the application or amendment.

Consequently, before the dispute arises, the process for its resolution should be in place and agreed to be the parties.

II. Current Practices

Current practices were in accord with Section 203(b) of the old act and gave the State primacy in its actions so long as they were taken in compliance with the Act, regulations, or an approved plan (in accord with Section 509).

With regard to State agencies and "balance of State" jurisdictions, the same State role still applies under Section 402(b)(4)(b) which authorizes the State to prescribe the manner and form of such applications and fund them unless they are inconsistent with priorities, policy, organizational or procedural arrangements, or the crime analysis.

Contrasting this clause with Section 402(b)(3)(A)(ii) shows the distinction.

It is clear that when entitlement jurisdictions opt to be included in the "balance of State", they continue under that system.

> "Allocations for units of local government that are not eligible or who fail to participate under the mini-block

entitlement go into a "balance of state" discretionary fund administered by the State council. These units of government are thus left in essentially the same position as under present law, except that they are now guaranteed, as a group, their proportionate total share." H. Rept. No. 96-163, 96th Cong. 1st Sess., 10, (1979).

III. Issues

1. Who will have the authority to find local entitlement jurisdictions to be in noncompliance with the Act?

   LEAA under Sections 404, 803, and 815 has authority to make determinations as to whether any recipient of funds is in noncompliance with the statute. The State can also find, under Section 402(b)(3)(A) that an appliction or amendment does not comply with Federal requirements or with State law. Where the State Council finds such noncompliance, it must notify the applicant and provide an opportunity for a hearing. A local jurisdiction can always ask LEAA to find that the State in making its determination of noncompliance by the local government was in noncompliance with the statute. In addition, the State has overall responsibility for monitoring and for assuring compliance with Federal requirements and State law during the performance of a grant. Consequently, the State can find the local entitlement to be in noncompliance. Such determinations can be challenged at the LEAA level.

2. Who has the authority to cease funding to local entitlements?

   LEAA has authority to terminate funding after notice and opportunity for a hearing to any recipient of funds whether it be a State, a local entitlement jurisdiction, or balance of State jurisdiction. In addition, since the State has the ultimate responsibility for assuring that the funds are properly expended, a State could also terminate funding to a local entitlement. The entitlement jurisdiction can challenge the State action at the LEAA level by asserting that the State acted in noncompliance with the Justice System Improvement Act.

3. If communities decide to establish or maintain planning units or CJCC's on a regional basis, can we count on LEAA and its contractors to treat those councils as the central authority for all LEAA funding in that jurisdiction for the purposes of project approval and grant administration?

   If combinations apply for and receive funds from the State, they have responsibility for grant administration. The relationship between the central unit and member combinations must be defined by mutual agreement.

4. Does an entitlement have to utilize 19.15% of the funds in juvenile programs if they have no responsibility for juvenile programs?

   If there is no responsibility for juvenile programs of any kind and it is unlikely that this will occur, an entitlement does not have to allocate funds for juvenile justice activities. The State, in order to meets its obligations, may require entitlement jurisdictions to expend a reasonable share of entitlement funds

for juvenile justice programs and projects. Determination of reasonable share may be based upon the proportionate juvenile justice related amount of a jurisdiction's total criminal justice expenditures or any other equitable formula agreed to by the State and the entitlement jurisdictions.

5. Does an entitlement jurisdiction with only police and juvenile activities need to provide for a comprehensive crime analysis including court, corrections, prevention, and diversion programming?

   No.

6. Can an eligible jurisdiction's board make the final decision on fund distribution or is that a function of the chief executive?

   The statute provides that decisions made by the Board may be reviewed and either accepted or rejected by the chief executive of the eligible jurisdiction or, in the case of combinations, in such manner as the chief executive of each unit in the combination shall determine by mutual agreement. Section 402(c).

7. What kinds of "planning" can an eligible jurisdiction perform?

   The eligible jurisdiction is required to undertake such planning activities as are necessary in order to meet the application requirements as specified in Section 403(a) and discussed above in the answer to Question 5. In addition, the statute specifies that coordination and systemwide planning efforts can be undertaken with action funds. Thus, an eligible jurisdiction can use a share of the action funds for the types of activities that any criminal justice coordinating council has exercised over the years.

8. What limits exist on the State's "powers" to develop "requirements" for entitlement jurisdictions based upon Federal law or guidelines?

   The State can establish such guidelines as are consistent with the Justice System Improvement Act and are necessary for the implementation of the Act.

9. What limits exist on the State's "powers" to develop "requirements" for entitlement jurisdictions based on State law or regulation?

   The State can establish rules that are consistent with State law and are necessary for implementation of the Justice System Improvement Act.

10. To what extent can a State adopt, through regulations, substantive standards which bind entitlement jurisdictions?

A State can clearly enact legislation or regulations of general applicability. These regulations or State laws will bind entitlement jurisdictions. Regulations or State laws of general applicability include all laws or regulations governing State or Federal funds whether expended through a normal budgetary process or grant application process. Where a State adopts laws or regulations which apply only to LEAA funds or only to entitlement jurisdictions, the substantive law or regulations must be consistent with the title and necessary to fulfill some purpose of the Federal legislation.

11. What are the limits on a State's "powers" to require program or project information from entitlement jurisdictions?

In the application, entitlement jurisdictions need only set forth program descriptions. In the annual performance report, units of local government must report all activities carried out under the application. Some project information will be necessary in the performance report.

12. If you are a county entitlement jurisdiction and through the formula you get $100,000 of Part D, is that $100,000 to be used strictly for county criminal justice programs or will it have to include all the municipalities in that county?

The $100,000 would most likely be used for those county criminal justice program areas. The $100,000 was based on the county's expenditures. The municipalities, if they do not participate as a combination, would have their expenditures counted in the balance of State pot and would be expected to apply to the state.

13. Will the entitlement jurisdiction's monitoring and evaluation reports have to be "reviewed" or "approved" by the State Council?

Individual monitoring and evaluation reports produced by entitlement jurisdictions will not have to be reviewed or approved by the State Council. However, entitlement jurisdictions are required in their annual performance report to conduct an assessment of the impact of the activities conducted under the three-year application. It is obvious that the result of monitoring and evaluation reports conducted by entitlement jurisdictions should be used in preparing this report to the State Council. The State Council will have to review such information when supplied as part of the annual performance report. Entitlement jurisdictions should also keep such monitoring and evaluation reports available for public review.

14. How will the entitlement process work particularly as it relates to reporting and audit? Specifically, will the responsibility for areas such as those shift from the SPA's to the entitlement jurisdictions?

The statute looks to the State for assuring compliance with the various Federal requirements and for preparing and submitting the application to LEAA. Consequently, where there are disputes between the entitlement jurisdictions and the State, these disputes can be brought to LEAA formally or informally. Where an entitlement jurisdiction has a question of interpretation, those questions can be raised with LEAA as they have been in the past directly by units of local government. All local jurisdictions can apply for national priority grants, discretionary grants, National Institute of Justice grants, and Bureau of Justice Statistics grants directly to LEAA. LEAA will directly involve the public interest groups representing cities and counties and regional planning units in guideline and policy development on an equal basis with the States.

STATE AND LOCAL ORGANIZATIONS

State Criminal Justice Councils

I. Evaluation of the Provision

Section 402(b)(1)-(2) provides for the establishment or designation and maintenance of a criminal justice council (Council) as a successor entity to the State planning agency established under the Crime Control Act.

Functions of the Council 402(b)(1) (A)-(I)

Statutory functions of the Council are detailed in the paper entitled "State and Local Relationships and Responsibilities."

The statutory functions of the Council are similar to those set forth in Section 203(b) of the Crime Control Act for State planning agencies. The major difference, of course, is the de-emphasis of the comprehensive planning function. While planning will still be a necessary part of the priority setting process, there is a shift from emphasis on a process to an emphasis on the end result obtained from data gathering and analysis. This end result is the establishment of goals, objectives, priorities and programs in the State's application.

Establishment and Organization 402(b)(2)

The Council must be

- o created or designated by State law
- o subject to the jurisdiction of the chief executive of the State

The Chief Executive shall

- o appoint the members of the Council
- o designate the Chairman
- o provide staff services to the Council

The Council is to be broadly representative of the following membership elements:

(A) entitlement jurisdictions, which must comprise at least 1/3 of the total council membership, where there is at least one eligible entitlement jurisdiction

(B) representatives of non-entitlement local governments

(C) representatives of criminal justice system agencies, police, courts, corrections, prosecution, and defense juvenile justice agencies

(D) representatives of the general public, including representation of neighborhood, community-based and business and professional organizations

(E) representatives of the judiciary (See judicial planning and funding paper)

The law expressly provides that individuals may fulfill the requirements of more than one functional or geographical area where appropriate. An individual can represent a functional area through paid employment, or recent past or present service which clearly demonstrates the individual's expertise and identity with the particular organizational element.

CRIMINAL JUSTICE ADVISORY BOARDS

I. Evaluation of the Provision

Section 402(c) provides for the creation or designation of an Office (staff) responsible for the preparation and development of an entitlement jurisdiction's application for funds. A local criminal justice advisory board (Board) must also be established or designated.

Functions of the Board 402(c)(1)-(5)

Statutory functions of the Board are detailed in the paper entitled "State and Local Relationships and Responsibilities."

Criminal Justice Advisory Boards are similar in function to regional planning units under the Crime Control Act. However, whereas regional planning units were required for "combinations of local government" that received planning funds, Boards under the JSIA are also required for single jurisdictions or units of government that qualify as entitlement jurisdictions and are not required for regional combinations that continue to participate in the program but are not representative of entitlement jurisdictions.

Section 405(g) permits eligible jurisdictions which utilize regional planning units to use the boundaries and organization of existing general purpose regional planning bodies within the State.

Establishment and Organization 402(c)

The Board is established or designated by the chief executive of the eligible jurisdiction and subject to his/her jurisdiction. The chief executive appoints the Board members and designates the chairman. Decisions made by the Board may be subject to final review by the chief executive. The Board membership is to be broadly representative of the justice system (police, courts, corrections and juvenile justice) and is to include representatives of neighborhood, community and professional organizations.

Where an entitlement is a combination of units of local govern-

ment under Section 402(a)(4), Board membership is to be jointly appointed, and Board decisions reviewed, in a manner agreed to by the respective chief executives.

Where eligible jurisdictions (municipalities or counties) choose not to function as entitlement jurisdictions or to combine with other jurisdictions to form an entitlement jurisdiction under Section 402(a)(4), then they need not establish an office or Board.

Open Meetings - Open Records

Section 402(e) continues the provision of Section 203(g) of the Crime Control Act, requiring that meetings of the Council and any local boards be open to the public and, if final action is to be taken at the meeting on the State application or any application for funds or amendment to an application, that public notice of the time and place of the meeting and the nature of the business to be transacted be provided. Further, Councils and boards must provide for public access to all records relating to their statutory functions unless confidentiality is required by local, State, or Federal law.

Transition Provision

Section 1301(j) of the Act provides a two year transition period for the establishment of State Councils and local offices and Boards as follows:

> "(j) The functions, powers, and duties specified in this title to be carried out by State criminal justice councils or by local offices may be carried out by agencies previously established or designated as State, regional, or local planning agencies, pursuant to the Omnibus Crime Control and Safe Streets Act of 1968, as amended: Provided, That they meet the representation requirement of section 402 of this Act within two years of the effective date of this Act."

Where there is no established regional or local planning agency for an entitlement jurisdiction, an office and board will have to be established prior to an application for entitlement funds in FY 1981.

III. Issues

1. What requirements, if any, will LEAA impose regarding State council and local advisory board composition?

   LEAA will require the State criminal justice council and local criminal justice advisory boards to maintain documentation indicating compliance with the representation requirements of the Act. Additional guidance for the purpose of defining adequate citizen participation will be issued in guidelines in December, 1979.

2. Under Section 402(b)(2), if State law designating the Council also designates the chairman, does the State comply with the section?

   If the Governor signs the law or approves the law, the Governor's action will be sufficient for compliance with the statute.

3. What is the time frame for complying with the membership requirements for State Councils? For local advisory boards?

   The statute provides that the functions, powers, and duties specified to be carried out by State criminal justice councils or local offices may be carried out by agencies previously established or designated as State regional or local planning agencies. The Act provides that the boards associated with such organizations must meet the representation requirements within two years of the effective date of the Act. Until the new requirements are met, such boards must continue to meet representation requirements for boards established under the Omnibus Crime Control and Safe Streets Act.

4. What is the time frame for establishing a local advisory board for an entitlement jurisdiction that has no existing board?

   If there is no existing board representing an entitlement jurisdiction, a new board will have to be appointed and approve the entitlement's FY 1981 application submission in order to qualify the entitlement jurisdiction.

5. Is a Council required to submit an annual report to the Governor and State legislature if either or both waive their right to receive the report?

   Generally, yes. However, if both the Governor and legislature, the intended beneficies of this Council function, expressly waive the right to receive the report, then it need not be submitted.

6. Under section 1301(j) of the Act, there is a transition provision for compliance of state and local planning agencies with the new Act within two years. Does this mean that an eligible jurisdiciton (a county) may continue to plan according to the old Act in cooperation with other local eligible jurisdictions and balance of state jurisdictions under a regional planning effort? This would assume that the coordination plans to meet Section 402 board requirements within two years and that all member jurisdictions agree to do so.

   RPU's may continue to function if they meet the population and dollar requirements to qualify as an entitlement jurisdiction. They may continue to meet Crime Control Act representation requirements until the new board, meeting the JSIA representation requirements, is established. All planning must, however, adhere to the new statutory provisions.

7. Please define "representation" from entitlement areas. Must "representation" be from local units of government in entitlement areas?

   Representatives of entitlement jurisdictions must be persons who exercise authority in these jurisdictions including general elected officials, and representatives of the crimnal justice agencies in the locality.

8. 1/3 of the state council issue. Could a citizen(s) representative be appointed and counted towards the 1/3 membership?

   According to the draft guidelines, citizens who reside in an entitlement jurisdiction may be appointed as a representative of the entitlement area where expressly agreed to by the Chief Executive of the entitlement or in the case of a combination, by the Chief Executives of the participating local governments.

9. Does each entitlement get at least 1 seat on state council up to 1/3?

   No. The entitlement jurisdictions within a state must have at least 1/3 of the total number of members of the board.

10. You said states have two years to get their boards representative, etc. Do locals and RPU's also have two years?

    Yes. Existing local boards have two years to meet the new representation requirements. Only entitlement jurisdicitons, at the sub-state level, are required to have representative boards. An entitlement jurisdiction that has no board in place must establish a representative board prior to submission of an application for funding as an entitlement jurisdiction.

11. Must the authorized executives of eligible jurisdictions officially designate their representatives for the state council?

    No. The Governor appoints the members of the Council.

12. Does the Governor have total discretion as to who the representatives of the entitlement or balance of state jurisdictions will be?

    Yes. Except that citizens representative of entitlement jurisdictions if included in the 1/3 representation requirement, must be approved by the Chief Executive of the entitlement jurisdiction.

13. Must the representatives of entitlements or balance of state jurisdictions be locally elected officials?

    No. See 7 above.

14. Where, by state law, a portion (less than half) of the council is appointed by the legislature, rather than the Governor, may that practice continue beyond the two year period specified in 1301(j)?

    Yes. As long as the Governor appoints a majority of the representatives of the board.

15. Why was the office for state council eliminated in the Conference Committee? What impact does that have? What is the reason for keeping an office for entitlement?

    The elimination of the use of the word office in the statute is not significant and has no impact upon the relationships. Both the State council and entitlement jurisdictions will require staff offices in order to carry out their statutory functions.

16. If it is possible for a single eligible jurisdiction to continue to participate in a regional combination as described above, is the decision to extend the transition one which is made solely by the eligible jurisdictions?

    The decision would be made jointly by the members of the regional combination.

17. If the above discussed arrangement is not permissible, then does this mean that single eligible jurisdictions must reorganize their boards immediately in order to meet the requirements of section 402(a) if they were formerly part of a reginal planning unit under the old Act?

    Yes.

18. What if Governor is satisifed with existing law, but law does not provide for 1/3 representation by entitlements?

    If the law permits the Governor to meet the 1/3 representation requirement and the Governor's appointments meet the requirement then no change would be necessary.

19. In response to a question, LEAA said that it was possible for a state with one entitlement jurisdiction to make an agreement with that jurisdiction to limit its representaiton on the council to less than 1/3.

If this true, it appears to allow a state and local government to abrogate a federal statutory mandate (sectin 402(b)(2)(A)) by private agreement.

If so, can other states with several entitlement jurisdiction also agree to limit their representation?

Established legal principles permit a party for whom a statutory benefit is intended to make a voluntary and knowing waiver of the benefit. This would permit all entitlement jurisdictions to jointly agree to less than the statutory 1/3 representation.

20. A COG presently does criminal justice planning for seven counties, but under the new legislation four of these local jurisdicitons are eligible to be separate entitlement jurisdicitons. What type of action or agreement is required on the part of the COG with these entitlements in order to develop one application to the State?

Ordinarily, a joint powers agreement would be used. This agreement would permit the COG to act on behalf of the other jurisdictions who would provide matching funds and ultimate financial accountability.

21. Do current joint powers agreements still hold or must the combination develop a new agreement?

New agreements do not need to be developed if they otherwise meet the requirements of the legislation.

22. Are intergovernmental agreements only necessary (in an RPU combination entitlement) where a jurisdiciton is included in the expenditure data base?

Yes.

FORMULA GRANT APPLICATION PROCESS

I. Evaluation of Provision

The application process for formula funds under the Justice System Improvement Act of 1979 reflects the Congressional objective of minimizing "administrative paperwork, superfluous planning and redtape" in order to allow funds "to flow in a more timely fashion with fewer statutory prerequisites and less categorization" (Senate Report 96-142 at 28). The application process also reflects the combination of the Part B planning, Part C criminal justice and Part E corrections grants programs into a single grant program, as well as the elimination of most categorical restrictions and appendages regarding the use of these funds. The increased role of local governments, through the "entitlement" provisions which assure funding to larger jurisdictions and increase their funding decisions and the various ways they can organize and participate in the program, also is incorporated in the application process. (Senate Report 96-142 at 30-31). The planning focus of the Crime Control Act was rejected and statutory requirements regarding plan content have been reduced by about two-thirds. A distinction was made between the utility of a planning process (thought to be useful) and the production of a comprehensive plan (thought not to be useful) (Senate Report 96-142 at 41-42). Planning must still be done at the state and local level in order to produce formula grant applications with program priorities based on crime analysis. (Section 403(a)(1)).

The process of application simplification and the reduction of guidelines and resulting administrative paperwork does not mean an abrogation of responsibilities either by LEAA or its grantees. In a cautionary note, the Senate Judiciary Committee Report notes: "Indiscriminate redtape reduction and simplification, which make it more difficult to establish meaningful audit trails and to evaluate programs and projects effectively, should not be included as a result of these amendments." (Senate Report 96-142 at 14).

Application Content

A single application consisting of program level (as opposed to individual detailed project level) information is required. Applications submitted by the state council to LEAA, and eligible recipients to the council, must set forth programs covering a three-year period which meet the objectives of Section 401(a).

Annual amendments are required if new programs are added or if programs originally proposed are not implemented. No award of funds can be made with respect to a program other than a program contained in an approved application. Section 403 requires that these applications include:

(1) A crime problem and criminal justice needs analysis. (However, judicial coordinating committee, state agency and nongovernmental grantee applications do not have to include a separate crime analysis; they may rely on the analysis prepared by the state council).

(2) A description of services to be provided.

(3) Performance goals and priorities.

(4) A specific statement indicating how the programs will advance the objectives of Section 401 and meet identified problems and needs of the jurisdiction.

(5) An indication of the relationship of proposed programs to similar state and local program directed at the same or similar problems.

(6) An assurance that an annual performance report will be submitted by the state to the administration, and to the state by other applicants; and that an assessment of the impact of those activities on the objectives of the statute and identified needs and problems will be conducted.

(7) A certification of non-supplantation.

(8) An assurance of an adequate share of funds for courts and corrections, police, prosecution, and defense programs.

(9) A provision for fund accounting, auditing, monitoring, and evaluation procedures.

(10) A provision for the maintenance of data and information and submission of reports.

(11) A certification of compliance with the requirements of Section 403, that all information submitted is correct,

that there has been proper coordination with affected agencies, and that the applicant will comply with all applicable provisions of the Act and all other applicable Federal laws.

(12) Satisfactory assurances regarding the usage of purchased equipment.

Guidelines for Application Development

Draft guidelines under development by LEAA with participation from affected constituencies reflect the changes embodied in the new legislation. With regard to application format and requirements, the emphasis is "product-oriented" as opposed to "process-oriented." For example, detailed requirements for the conduct of crime and criminal justice systems analyses as separate sections of the application are deleted. Rather than presenting a detailed analysis of all criminal justice problems and needs in a separate section of a comprehensive plan, what is asked for in the application's program descriptions are the results of the required analysis, i.e., a series of problem statements only for those problems identified as priorities and for which programs are proposed.

Councils and eligible recipients will develop and include in their three-year applications a description of each program designed to address priority problems. These programs must be consistent with the twenty-three eligible Section 401 purposes. These descriptions will include program objectives, activities planned and services provided, summary budget information, an indication of how the program relates to similar state or local programs, and a list of performance indicators. In addition, the program description must contain an explanation of how the program meets the criteria of proven effectiveness, proven success, or high probability of improving the functioning of the criminal justice system (Section 401(a)). LEAA will publish prior to FY 1981 a list of programs of proven effectiveness or proven success and only a reference to that list will be required in the application when like programs are proposed.

Review of Comprehensive State Applications by LEAA

The "comprehensive state application" required for submission to LEAA is defined as "an application based on a total integrated analysis of the criminal justice problems, and in which goals,

priorities and standards for methods, organization and operation performance are established." (Section 901(a)(8)). This application will include funding allocations or applications submitted by state agencies, the judicial coordinating committee, and units of local governement, or combinations thereof, and which were reviewed and approved by the council.

LEAA must approve comprehensive state applications, and amendments thereto in whole or in part, within 90 days of receipt upon determining that: a) the application or amendment is consistent with the title; b) the opportunity for prior review and comment was provided to citizens and neighborhood and community groups, and; c) an affirmative finding in writing is made that the programs or projects contained in the application are likely to contribute effectively to the achievement of the objectives of Section 401. (Section 404(a)). The Administration cannot finally disapprove any comprehensive applications or amendments without first giving the applicant reasonable notice and an opportunity for a hearing and appeal. (Section 404(d)).

Review of Entitlement Jurisdiction Applications by the State Council

Applications or amendments thereto from eligible jurisdictions as defined in Section 402(a) (2), (3) and (4) shall be approved unless the State Council, within 90 days of receipt, finds that the application or amendment:

(1) does not comply with Federal requirements or with State law or regulations;

(2) is inconsistent with priorities and fails to establish under guidelines established by the Administration, good cause for such inconsistency;

(3) conflicts with or duplicates programs or projects of another applicant or other Federal, state or local supported programs or applications, or;

(4) proposes a program or project which is substantially identical to or is a continuation of a program or project which has been evaluated and found to be ineffective. (Section 402(b)(3)(A).

Where findings such as the above are made, the Council will notify the applicant in writing and set forth its reasons for

the finding. Within no more than 30 days, the applicant can submit a revised application or state its reasons for disagreeing with the Council's findings. If a revised application is submitted, it is treated as an original application, except that a 30 day requirement for action is imposed.

If an applicant states in writing disagreement with the Council's written findings, the findings are considered appealed. The appeal shall be in accordance with a procedure developed by the council and agreed to by the eligible jurisdiction. If the procedure is not agreed upon prior to application submission to the council, the appeal will be in accordance with procedures developed by the Administration. (See issue paper on "State and Local Relationships and Responsibilities").

Approval of an eligible jurisdiction's application shall result in the awarding of funds without further application or council review. (Section 402(b)(3)(E).

Review of State Agency and "Balance of State "Applications by the State Council

State agency applications or amendments and applications or amendments from eligible jurisdictions as defined in Section 402(a) (5) may be denied by the State Council, or appropriate changes recommended, where the council finds: a) noncompliance with Federal requirements or state law or regulation; b) inconsistencies with priorities, policies, organizational or procedural arrangements, or the council's crime analysis; c) conflicts with or a duplication of other programs, or; d) proposal of a program substantially identical to, or a continuation of, a program previously evaluated and found to be ineffective. Such findings must be made in writing to the applicant and state the reasons for the findings. Appeal of the council's action will be in accord with procedures established by the council. (Section 402 (b) (4)).

Review of Judicial Coordinating Committee Applications by the State Council

State Councils will incorporate in whole or in part the three-year application or amendments of the Judicial Coordinating Committee unless the council determines that the application or amendment: a) is not in accordance with the statute; b) is not in conformance or consistent with the state council's application, or; c) does not conform with the statute's fiscal

accountability standards. Final action by the state council must occur not later than 90 days after receipt of the application. (Section 402(d) (3)).

Judicial Coordinating Committee Review of Applications

The Judicial Coordinating Committee will review for consistency with court priorities those applications or amendments from any jurisdiction which has incurred expenditures for court services from its own sources or any other jurisdiction which is applying for funds for court services. Such findings of consistency or inconsistency will be reported to the council and to the appropriate applicant. (Section 402(d) (3)). Thus, eligible jurisdiction applications may be submitted to the Judicial Coordinating Committee concurrent with submission to the state council and for A-95 review.

Suspension of Funding

Funding is to be suspended in whole or in part by LEAA for approved comprehensive state applications containing programs or projects which have failed to conform to the requirements or objectives of the statute. Such failure to conform can be evidenced by: a) annual performance reports; b) failure of the applicant to submit an annual performance report; and c) evaluations and other information provided by the National Institute of Justice. (Section 404(b)).

Relationship to Juvenile Justice

The transition provisions of the Act keep those provisions of the Crime Control Act necessary to carry out the requirements of the Juvenile Justice and Delinquency Prevention (JJDP) Act (Section 1301(i)). Although the 19.15% maintenance of effort provision is retained, the provision has been modified to require the primary emphasis in the use of the 19.15% funds be for programs for juveniles convicted of criminal offenses or adjudicated delinquent on the basis of an act which would be a criminal offense if committed by an adult. States participating in the Juvenile Justice and Delinquency Prevention Act may continue to set forth programs for the improvement of juvenile justice under both the Juvenile Justice and Delinquency Prevention Act and Justice System Improvement Act jointly in a separate juvenile justice component of the comprehensive state application. The planning process which has been required under the Juvenile Justice and Delinquency Prevention Act continues and the Juvenile Justice

plan component must be consistent with those provisions of the Crime Control Act which are referenced in Section 223(a) of the Juvenile Justice and Delinquency Prevention Act. Thus the juvenile justice and delinquency component will be more comprehensive than the Justice System Improvement Act requirements.

Legislative and A-95 Review

Section 405(b) requires State Councils to provide the state legislature an opportunity to give an advisory review to the general goals, policies, and priorities of the council prior to their implementation. If the legislature (or a designated body of the legislature if the latter is not in session) has not review the goals, policies and priorities within 45 days after receipt, they shall be considered to have been reviewed. Both the three-year application and amendments, if any, submitted by the state and other eligible recipients are subject to A-95 review. However, no additional subgrant or project review is necessary. (Senate Report 96-142 at 45).

II. Current Practice/Impact of New Legislation

Under the Crime Control Act, annual comprehensive plans are required from each state. An annual courts plan is submitted for inclusion in the overall comprehensive plan by the Judicial Committees (37 established through FY 1978). A separate application for Part B planning funds is required, and three separate awards (Part B planning, Part C Criminal Justice and Part E Corrections) are made to each state planning agency. Under a procedural mechanism established by Section 303(a)(4) of the Crime Control Act of 1976, a "mini-block" program to large cities and counties is authorized. However, only 42 of the 331 eligible mini-block jurisdictions actually use this mechanism while 33 additional jurisdictions had indicated intent to use this abbreviated application and award system.

Using the annual comprehensive plan process with subsequent subgrants for individual projects, state planning agencies awarded and administered 15,286 subgrants in FY 1976. Of these, 3,915 were awarded to 148 cities of more than 100,000 population and 1,320 were awarded to 138 counties of more than 250,000 population. These 148 cities and 138 counties now are among those eligible as entitlement jurisdictions under the Justice System Improvement Act and can submit consolidated three-year applications.

In FY 1977 LEAA administratively initiated a multi-year planning process which required only annual updates to a base year comprehensive

plan. In addition, guidelines requirements were significantly reduced. The result was a 42.6% reduction in the size of the average comprehensive plan. For the 38 states receiving full multi-year approval, plan size was reduced from an average of 1,033 pages in FY 1978 to an average of 497 in FY 1979, a decrease of about 52%. This administratively established multi-year planning process is formalized by the Justice System Improvement Act into a three-year application submission process requiring minimal updates.

LEAA estimates that state plans, which averaged nearly 1,000 pages in FY 1978, would be replaced by state applications of about 400 pages. The net reduction in paperwork could be as much as 75% over the four-year period of the reauthorization.

III. Issues

1. May the comprehensive State application be submitted without one or more of the entitlement jurisdictions' applications?

   The State may establish uniform and reasonable application content and deadline submission date requirements for applications from entitlement jurisdictions. Accordingly, a State may submit an application without all entitlement jurisdiction applications if an entitlement jurisdiction failed to comply with such reasonable deadlines established by the state. Failure to submit an application within the deadline and failure to show good cause for not submitting the application can be treated by the State as an election by the entitlement jurisdiction to be treated with balance of State jurisdictions, within a specified time frame.

2. Must the Council review and approve or disapprove applications from all eligible jurisdictions? May a Council delegate application approval to the State staff (402(b)(2))?

   The statute provides that applications or amendments from entitlement jurisdictions should be deemed approved unless the Council, within 90 days, finds that the application does not meet the requirements of Section 402(b)(3)(A)). With respect to applications from "balance of State" jurisdictions, the statute provides that the Council must determine whether or not the application is consistent with Section 402(b)(4). So long as an application from a State agency or balance of State jurisdiction would be subject to review and final disapproval by the Council membership, the statute would not appear to preclude the Council from delegating to the staff decisions to approve or disapprove "balance of State" and State agency applications.

3. Would you describe the expected movement and time sequence of applicantions among and between the Council, the entitlement jurisdictions, the Judicial Coordinating Committee, State agencies, local non-entitlements, and private non-profits?

   See Application Process chart.

4. May applications from entitlements be in the form of several applications and how should the State treat such applications?

   No. Section 402(b)(3)(A) permits an eligible jurisdiction to participate as an entitlement jurisdiction by submitting a single application to the State for inclusion in the comprehensive State application.

5. Will the State application be required to show comprehensiveness as under the previous law?

   Yes. The same definition for comprehensive that was included in the prior statute is included in the Justice System Improvement Act.

6. How will comprehensiveness be accomplished given the discretion of the entitlements plus the possible length of the appeal process?

   The statute expressly requires entitlement jurisdictions to insure adequate funds for courts and corrections. Presumably, the entitlement jurisdiction will address police programs where they have police programs. In fact, many entitlement jurisdictions have no functions other than law enforcement functions and law enforcement functions will be addressed in the comprehensive application. In addition, there is a requirement that 19.15% of all formula grant funds in each State be allocated to juvenile justice programs. Finally, Section 403(a)(4) specifies that each application must include an assurance, whether the applicant is a State a unit of local government, or a combination of units of local government, that there is an adequate share of funds for courts, corrections, police, prosecution and defense programs. Every effort should be made to complete any appeals by entitlement jurisdictions prior to the submission of the comprehensive state application to LEAA and certainly prior to LEAA approval of the application.

7. How may the Council limit continuing and wholesale revisions of the original submission by an entitlement?

   The statute clearly contemplates one annual amendment. This is sufficient authority to eliminate continuing amendments. However, it should not be read to prohibit amendments necessitated by emergencies such as floods, fires, hurricanes and the like.

   The entitlement jurisdiction's authority to amend the application is basically limited to the addition of new programs to be added to the application if the programs contained in the application will not be implemented. Basically, what that means is that the three year application can be amended on an annual basis to determine those programs which the entitlement jurisdiction was not able to implement within the first year or which the jurisdiction shows would not be effective in achieving stated purposes and to add new programs to spend the money freed upon by the elimination of these programs and to spend any additional money that may become available. If by crime analysis an assessment of needs in an entitlement jurisdiction can establish that its priorities should be changed an amendment could also be allowed on an annual basis. The whole thrust of the Justice System Improvement Act is to set in place a three year program and to spend the three years implementing, evaluating, monitoring and carrying out the three year program.

8. How many times may an applicant submit when the Council rejects the application?

   An applicant can always submit as many applications as it wants. However, the real question is what basis may the State utilize to act on resubmission applications, where the applicant is an entitlement jurisdiction and is resubmitting an application that contained a previously appealed issue which was not resolved in its favor.

   Presumbably if the entitlement modifies its denial application to take into account the reasons for its rejection it can then be funded. If the application is not modified within a reasonable period, the application remains disapproved and the entitlement reverts to "balance of state" status. Resubmission of a rejected state agency or balance of state application would be governed by the state's administrative procedures as well as substantive priorities as set out in the state application.

9. Must the State accept funds on behalf of an entitlement if the Administration upholds an appeal by such jurisdictions?

   The appeal of an entitlement jurisdiction is resolved at the State level under the procedures agreed to by the State and the entitlement jurisdiction. There is no further appeal to LEAA. If they can agree on the appeal process, the appeal is under the State level procedure established consistent with guidelines established by LEAA. If the appeal is resolved in favor of the local jurisdiction, the State must accept the funds and must include the application in its application to LEAA.

10. Are the requirements for the entitlement jurisdiction application identical to those of the State comprehensive application? If not, how do they differ?

    The requirements which apply both to state and entitlement applications are set forth in Section 403 of the statute and are essentially identical. The State may only impose such additional requirements on entitlement jurisdictions as are necessary to insure that the Juvenile Justice Maintenance of Effort requirements are carried out and that the requirements for funding, accounting, auditing and evaluating projects are met. Such additional requirements must be necessary and consistent with State law or regulations and Federal requirements.

11. Will LEAA make a grant to a State for one or three years?

    LEAA will approve an application for a three year period. Each year a separate budgetary supplemental award will be made. This supplemental award will be based on the current year appropriation. The award will be used for the supplemental year activities in the full application as amended by any earlier supplemental. At any time under Section 404(b) LEAA must suspend funding for an approved

application in whole or in part if the application contains a program or project which has failed to conform to the requirements or the statutory provisions of the Act, as evidenced by such factors as the annual performance report or the failure to submit an annual performance report.

12. Can a State approve an entitlement or Judicial Coordinating Committee application for less than three years?

    Generally no. However, to bring an entitlement jurisdiction into the three year cycle it may be possible. Draft guidlines permit eligible jurisdictions to defer for one year their election of entitlement status, if they so choose.

13. Is there a time frame for the implementation of a grant by an entitlement jurisdiction or the Judicial Coordinating Committee?

    It is contemplated that the implementation of a program will take place over the full period of the application. However, individual project level activities funded under these programs may be for a three year, two year, or one year period, depending upon the design of the particular program. The establishment of "abort" procedures to assure prompt status of projects is encouraged.

    The statute provides in Section 405(d) that if the administration determines on the basis of information available during any fiscal year that a portion of funds allocated to a State, unit of local government or combination will not be required, such funds will be available for reallocation to another State or unit of government or combination as the Administration may deem at its discretion.

14. If circumstances require that a new project not in the entilement jurisdiction application be funded toward the end of the life period of the action grant to the State, is an amendment to the entitlement jurisdiction and State application required? What form would such amendments take?

    If the project does not fit within any of the program areas in the application, an amendment to the application would be required.

15. What is precisely meant by "incorporating" the local entitlement application? Can it just be attached to the state application if the state so chooses?

    Yes. The application may be enclosed as part of State application. However, states will be asked to "crosswalk" all proposed programs in an Attachment A format. Also, a state may develop program descriptions in its application which consolidate and describe similar programs developed by entitlements.

16. Under 405(e), may a combination type entitlement pass funds directly to private nonprofit organizations for project implementation, without having a city or county acting as sponsor?

    Yes.

17. Can we get a list of acceptable/unacceptable projects before March 1980?

    A list of programs which have been found to meet the criteria of proven effectiveness or record of proven success will be published in March of 1980. This list is intended to be an aid to states and localities in preparing their three-year applications, and not an exhaustive or exclusive listing of programs meeting these criteria. Where an applicant proposes a program on the list, it need only refer to the program in its application rather than include a full program description. Publication of a list of ineffective programs in time for use in aplication preparation also is contemplated.

18. When will the amount for 1981 be known?

    FY 1981 tentative allocations will be available in February 1980, after the release of the President's budget. Final allocations will not be known until the FY 1981 appropriations bill is passed.

19. Do we use the same level for 1982 and 1983?

    It is reasonable to assume that there will be no appreciable budget increases in FY 82 and 83. Applicants should prepare their applications on the basis of a steady level of appropriations over the three-year period.

20. Will entitlements design their own applications to award grants? Award grants according to their own procedures? Set guidelines regarding administration of awarded grants?

    Project level applications to implement programs contained in entitlement applications are not required. However, it is recognized that some form of agreement or statement of project level activity, to include

objectives, milestones, budgeting, and evaluation information, will be required by the entitlements from implementing agencies. The format and procedures for the award or transfer of funds for specific activities is left to the discretion of individual entitlement jurisdictions.

Guidelines for project administration, consistent with and necessary to implement Federal and state laws and regulations, may be established by entitlement jurisdictions.

21. Do programs within the three year approved application, to be updated each year, have a one year or three year program period?

The approval period for the entire application is for a three year period, with an award and budget supplements to be made on an annual basis. Programs are designed to cover the three year life of the application. Individual projects are approved subsequently for the period during which activities or services are to be provided or implemented (3, 2, or 1 year(s)).

22. With the single much-simplified entitlement application which does not contain detailed project type information, how can the requirements of OMB A-95 be met?

As the legislative history to the new Act attests, it was the intent of Congress to reduce paperwork and simplify application procedures for recipients of LEAA funds. One way to do this was to let certification of entitlement applications by local clearinghouses and certification of the composite state application by the state clearinghouse serve as fulfillment of the A-95 review requirements for both the formula allocations to the state and the entitlement areas and for any consequent subgrants funded from the "state" and "entitlement" portions of the state allocation. Applicants for funds from the "Remainder of State" portion of a state's allocation must present their applications for local clearinghouse review.

23. May an entitlement be an entitlement and apply for funds by multiple applicantions?

No. By electing to participate as an entitlement, eligible jurisdictions have chosen to submit a single simplified program level application rather than multiple applications at different times. The simple application could contain multiple projects (at their discretion).

24. Must balance of state funds be the subject of true competition or may the state design programs or projects which are suitable for only one jurisdiction or set of jurisdictions?

States may design, consistent with the results of the crime analysis and established priorities, balance-of-state programs designed only for "targeted" jurisdicitons as opposed to programs open for

25. If there is an entitlement jurisdiction which has no responsibility in a certain area (i.e. corrections or juvenile) but has private nonprofit interest in a program in that area, must the entitlement address this and if so where would this fit in the application and funding process?

Entitlements are not prohibited from funding activities in areas where they have no direct criminal justice system responsibility. Funded activities, whether conducted by private nonprofits or line criminal justice agencies, are based upon results of the crime and criminal justice system needs analysis and established priorities.

26. Please clarify the difference between (1) the contractual arrangement between the state and entitlement which provides the assurances and (2) the three year application which provides program information.

The assurances made by an entitlement which constitute a contractual agreement with the state and three year application which provides program information are one and the same document.

27. Are there two separate documents (1) a "planning/administration contract and (2) a three year application?

There is a single three year application in which one program description will address the distribution and uses of formula funds to be used for administrative purposes.

28. Can the state mandate the structure of the local application?

The structure of all three year applications essentially is the same and is spelled out in Section 403(a) and in LEAA guidelines (draft). States may impose such additional requirements as are necessary to meet the auditing, funds accounting, monitoring and evaluation mandates of the Act, and to comply with applicable Federal and state laws and regulations, as well as standard administrative requirements. Some additional leeway is provided the state with regard to state agency and "balance-of-state" applications, which must be in the manner and form prescribed by the council (Section 402).

29. Can an entitlement jurisdiction apply for Juvenile Justice and Delinquency Prevention funds in their application? Can a state require that the locality apply for Juvenile Justice and Delinquency Prevention funds on a project-by-project basis?

Yes. Entitlements may request JJDP funds in the juvenile justice component of the three year application and the state can require project applications.

TRANSITION

I. Evaluation of the Provision

In order to ensure a smooth transition from the Omnibus Crime Control and Safe Streets Act to the Justice System Improvement Act, Part M of the bill builds in necessary transition mechanisms.

Under Section 1301(a) all orders, determinations, rules, regulations, and instructions of the Law Enforcement Assistance Administration which are in effect at the time the Justice System Improvement Act takes effect will continue in effect until modified, terminated or revoked by the President, the Attorney General, the Director of OJARS, the Director of BJS or NIJ, or the Administrator of the Law Enforcement Assistance Administration.

Part M also authorizes the heads of BJS, NIJ and LEAA to obligate unused or reverted Crime Control Act funds. The Administrator of LEAA is specifically authorized to approve FY 80 comprehensive plans in accordance with the provisions of the Crime Control Act.

Section 1301(h) provides that prior year money including FY 80 funds may be used to pay to 100 percent of project costs. Section 1301(k) allows the funding of construction already underway to continue for not more than two years.

II. Current Practice

Under the transition authority of the new Act, LEAA policy is that all existing guidelines, including M4100.1F State Planning Agency Grants, remain in effect for FY 1980 with full implementation of the JSIA to begin with the FY 81 three-year application cycle.

State planning guidelines were reissued in February 1979 for the development of FY 80 Plans. In May, LEAA announced a formal policy on transition which reaffirmed the agency's policy of retaining current guidelines in FY 80 while providing an opportunity for a waiver of Crime Control Act match requirements under certain conditions.

The reason for this policy was to assure an orderly and effective transition to the requirements of the new legislation while maintaining program continuity and minimizing paperwork. Although the new Act begins in FY 1980, by the time it becomes effective, all of the States will have already prepared and submitted their FY 80 comprehensive plans. Therefore, either the existing guidelines would have to remain in effect for FY 80, or new guidelines would have to be issued after the Act becomes effective and FY 80 plans submitted. In that event guidelines would also have to be issued for the preparation of a plan supplement document, with each State modifying its previously submitted comprehensive plan and showing compliance with the requirements contained in the new Act. This

approach would be not only burdensome, but prohibitively time-consuming for both LEAA and the States.

In addition, continuation of the current guidelines through FY 80 enables LEAA and the State and local governments to complete the three year planning cycle which began in FY 1978. This three year cycle was initiated by LEAA in order to allow States to receive multi-year approval for their comprehensive plans, thereby reducing paperwork.

At the same time, LEAA began an intensive planning effort with representatives of State and local governments to develop new guidelines for effective implementation of the Justice System Improvement Act. A Task Force of LEAA staff and public interest group representatives was formed to develop these guidelines. Meetings of this Task Force as well as numerous other sessions with State and local officials have occurred since last Spring to discuss legislative and guidelines issues. New guidelines to govern the development of three-year applications, beginning with fiscal year 1981, will be published in draft in the Federal Register for public comment by the end of December 1979.

While M4100.1F is in effect for FY 80, the LEAA transition statement of May 1979 did provide for a limited exception. States that, acting in good faith, had obtained State appropriations on the basis of the matching ratios proposed in the pending legislation as of last Spring -- that is, a 50/50 match on planning monies with action funds match free -- could request a waiver of the existing match requirement of 10 percent on planning and action. Requests for waiver were to show clear evidence of State legislative commitment to match at the new rates. The aim of the waiver policy was to avoid the confusion and difficulty involved in renegotiating appropriation bills with State Legislatures. States granted waivers were required to meet certain other conditions, including assurances that they survey potential entitlement areas and target a reasonable share of FY 80 planning funds on those opting for entitlement; and that they allow local governments to match planning funds at either the old or new rates.

Fifteen states were granted such waivers. Waivers apply only to match and buy-in for FY 80. All other provisions of M4100.1F remain in effect in FY 80 for waiver as well as non-waiver States, including the requirements for a 40 percent pass-through of planning funds and a variable pass-through of action monies.

The waiver policy allowed States to match dollar for dollar on planning/administrative funds with action monies match free. However, the Justice System Improvement Act, as passed by Congress, restored the ten percent match on action funds. In order to accommodate the waiver States, this requirement does not go into effect until FY 81. Therefore, in FY 80 non-waiver States will continue to match at Crime Control Act 90/10 ratios on planning and action; waiver States will match dollar for dollar on planning (above the $250,000 base) with no match on action.

Funding prohibitions of the JSIA do not apply in FY 80. However, LEAA policy will be to deny any requests to reprogram FY 80 or prior year funds to equipment only or new construction programs, as these purposes are inconsistent with the new Act.

III. Issues

1. May carry over funds be match free?

   The statute allows prior year funds to become match free. However, each state has an existing approved grant (contract) with LEAA under which they have agreed to provide match and buy-in at the previous statutory levels. These prior year approved comprehensive plans would require an amendment before money may become match free. LEAA's position is that the prior year approved applications will remain in effect as they now exist unless changed circumstances or some pressing need exists within the state to modify the prior year grants. These will become match free.

JUDICIAL COORDINATING COMMITTEES AND FUNDING OF COURTS

I. Evaluation of Provisions

The Justice System Improvement Act continues the concept of the Judicial Planning Committee established by the 1976 Amendments to the Crime Control Act. The functions now performed by the Judicial Planning Committees will be performed by Judicial Coordinating Committees. The mechanisms for establishing Judicial Coordinating Committees are identical in virtually all respects with those in the Crime Control Act.

Specific functions of the Judicial Coordinating Committee include establishment of priorities for the various courts of the State, definition and development and coordination of programs and projects for the improvement of the courts of the State in the development of a three-year application for funding programs and projects designed to improve the functions of the courts and judicial agencies of the State. The three-year application and any amendments to the application is submitted by the JCC to the State Criminal Justice Council.

The JCC is also given responsibility for review for consistency with the court priorities, the applications, or amendments from any jurisdiction which has incurred expenditures for court expenses or from any jurisdiction applying for funds for court services. The JCC must then report to the Council and to the applicant its findings of consistency or inconsistency. When the State Council receives the JCC application, it must approve and incorporate into its application to LEAA, in whole or in part, the application and amendments of the JCC unless the Council determines that the Council applications or amendments are not in accordance with the Act or not in conformance with or consistent with the State's own application or do not conform with fiscal standards of the State.

The State Criminal Justice Council must provide at least $50,000 in match free funds in each fiscal year for the JCC. In addition, an amount equal to at least 7-1/2 percent of the fund allocation of a JCC must be made available to the JCC. The $50,000 plus the 7-1/2 percent is to be used for operating the JCC.

The State Council must act on the JCC application within 90 days after being received by the Council. Final action by the Council resulting in the return of the application must contain specific reasons for the action. Any part of the application not acted on within 90 days is deemed approved for submission to LEAA.

Applications from entitlement jurisdictions as well as nonentitlement jurisdictions are subject to JCC review. Applications from entitlement jurisdictions must take into account court priorities recommended by the Judicial Coordinating Committee and must assure an adequate allocation of funds for court programs which is based on the eligible

jurisdiction's expenditures for court programs which contribute to the jurisdiction's eligibility for entitlement funds. If there are no court activities conducted in the entitlement jurisdiction, then, of course, court priorities do not have to be taken into account.

Applications from JCC's must meet all of the requirements for applications from entitlement jurisdictions, balance-of-State jurisdictions, and other State agencies. However, JCC's can rely under Section 403(b) on the crime analyses prepared by the Council in preparing their application. The applications from the State and from the units of local government under the provisions of Section 403(a)(5) must contain an adequate share of funds for courts, for prosecutors, and for defense services. Limitations on expenditures of funds and on program eligibility apply to the courts in the same manner as they apply to other agencies.

The JCC like other applicants must submit a performance report at the end of the fiscal year and each fiscal year thereafter covered by an application in the same manner as other recipients of funds.

There is no requirement for prosecutor or defense representation on the Judicial Coordinating Committees.

Finally, the term court is defined in Section 901(a)(16) as "a tribunal recognized as part of the judicial branch of a State or of its local government units." This definition includes "civil" and "criminal" courts.

II. Current Practice

The JCC as noted above will perform the functions now performed by the Judicial Planning Committees. Much of the requirements for the courts that are contained in the Crime Control Act and are continued under the new Act except as otherwise noted above.

III. Issues

1. Under Section 402(d), is the application of the JCC received by the State at the same time as those from the eligible jurisdictions?

   The application of the JCC's should be received by the State in advance of the submissin of the State application to LEAA. This maybe at the same time as the entitlement application since both must be part of the submission to LEAA.

2. With which State application must the JCC application be consistent? Of which State application does the JCC application become a part?

   The JCC application must be consistent with the comprehensive three year application submitted by the State to LEAA. The JCC application must be submitted as part of the three year Statewide application.

3. Must the applications from the eligible jurisdictions go first to the JCC for review before going to the Council?

   The JCC must be provided an opportunity to review and make comments to the Council before the Council's final approval of the entitlement jurisdiction's application. The application could go from the eligible entitlement jurisdiction to the Council and the Council could, in turn, provide a copy of the application to the JCC for comment prior to final action by the Council.

4. What process will be required to assure the participation of citizen, and neighborhood and community organizations in the application process?

   The Justice System Improvement Act does not require participation of citizen, neighborhood and community organizaitons in the development of the JCC application.

5. Is the JCC responsible for getting A-95 clearinghouse approval before it can submit any application to the Council or LEAA?

   Yes. Although the State Council can take responsibility for assuring appropriate A-95 clearinghouse approval.

6. Must the JCC allocate 19.15% of its administration and action funds for juvenile deliquency programming?

   No. However, the State Council can require that courts expend from action funds a share proportionate to the percentage of court expenditures allocated for juvenile matters.

7. Under Section 402(e)(1), which applcations will come from the JCC to the Council?

   Section 402(e)(1) contemplates that the application for court activities prepared by the JCC will be submitted to the Council.

8. What are the definitions of "civil disputes" and "civil justice system"?

   The term court is defined in Section 901(a)(16) to include civil as well as criminal courts. Section 825 of the Act limits expenditures for civil activities to those activities which have some direct bearing on the operation of the criminal justice system. The Conference Report indicates, however, that any general court improvement project can be considered as having an impact on the criminal justice system and thus could be eligible for funding.

9. The State must make 7 1/2% of the JCC's allocation available to the JCC for operational expenses in addition to the $50,000 base. Does this mean 7 1/2% of funds given to the JCC for planning and administration or 7 1/2% of all JCC funds including those for programs/projects? Where does this 7 1/2% come from? State Planning funds, balance of State funds, etc.?

   It means 7 1/2% of all JCC funds including those for programs and projects. The 7 1/2% of funds to be given to the JCC for administration purposes will count against the state share of action funds awarded to the J6C for its action programs. (not including the $50,000 base)

10. Explain in as much detail as possible the practical working relationship between the intent of the JCC and "one state judicial plan" and the entitlement charge to spend for "courts in the same portion of their spending in total state or local court spending.

    The JCC is responsible for statewide court program planning. If it is a unified court system then the JCC would be responsible for all court programs. Where the entitlement jurisdiction is funding court programs, then the applications must be reviewed by the JCC for consistency with statewide court priorities.

FORMULA GRANT PROGRAM ELIGIBILITY

I. Evaluation of Provisions

The Justice System Improvement Act in Section 401 states that it is the purpose of the Formula Grant Program to assist States and units of local government "in carrying out specific programs which are of proven effectiveness, have a record of proven success, or which offer a high probability of improving the functioning of the criminal justice system."

Section 401 identifies 22 specific program areas for which funds can be expended. These program areas cover the major criminal justice improvement and criminal prevention functions for State and local governments.

Section 401 adds a 23rd category which provides in effect that in addition to the 22 enumerated programs "any other innovative program can be funded if it is of proven effectiveness, has a record of proven success or which offers a high probability of improving the functioning of the criminal justice system." The effect of the amendment is to limit LEAA funding to:

1. Programs of proven effectiveness--This term is defined in Section 901(a)(20) and in legislative history developed by Senator Biden on page S. 6221 of the Congressional Record, daily edition, dated May 21, 1979. Programs of proven effectiveness are those which have been evaluated and shown to be effective in improving the criminal justice system.

2. Programs which have a record of proven success--This term is defined in Section 901(a)(19) and in the Congressional Record cited above. A program has a record of proven success if it has been demonstrated by evaluation or analysis to be successful in a number of jurisdictions or over a period of time.

3. Programs having a high probability of improving the criminal justice system--This term is defined in Section 901(a)(21) of the Act and is further explained in the legislative history cited above. A program has a high probability of success if a prudent assessment of the concept and the implementation plans, together with an assessment of the problems to which the program is addressed, provides strong evidence that the program will prove successful or develop a record of proven success. The draftor's intent was to allow experimentation and innovation.

The provisions limiting formula grant funding to these three areas did not appear in the original version of the Justice System Improvement Act. They were developed by Senator Biden in cooperation with Senator Kennedy and introduced on the floor of the Senate. They were not in the House bill but the House and Senate conferees agreed in conference to adopt the limitation.

Senator Biden explained his amendment as follows:

"Mr. President, I believe that by better articulating the program and addressing selected problems we can make LEAA easier to administer, improve its stature, and increase its chance of success. It will enable us to tell taxpayers precisely what the agency is for and in what ways they should hold it accountable. In a sobering period of fiscal conservatism and public disillusionment with the Federal Government, we have no other rational choice. With the adoption of this amendment, LEAA is out of the business of general support of States and local criminal justice. We will only fund programs that have proven to be effective. I feel proud that instead of giving up, instead of throwing the problem to someone else, we have developed legislation to combat a nationwide problem of great urgency, and maximize the effectiveness of limited amounts of Federal dollars available for this purpose."

It should be pointed out that while the 23rd category of funding would appear to authorize funding of any program provided it is one of proven effectiveness, one with a record of success, or one with a high probability of improving the system, Senator Biden stated that it was his intention that the list of the 22 areas be narrowly construed and that the list be expanded only "with extreme caution." In so stating, Senator Biden tied his amendment to the support of Congress in general and the Congressional Budget Committees in particular for adequate funding for the LEAA program.

Senator Biden stated that LEAA funds need to be focused on specific programs which meet the standards above in order to maximize the effectiveness of the limited amount of research funds available for criminal justice. Senator Kennedy echoed the concerns of Senator Biden and stated that the purpose of this amendment was to "target limited resources to those programs that can make a difference in criminal and juvenile justice in law enforcement....Rather than scattering limited resources over broad areas, the Biden amendment is very precise in targeting those areas that can make "indeed, already have made--an important difference in the area of crime."

In an effort to provide further legislative history, Senator Biden listed "specific concrete programs that might be funded under the amendment." These included career criminal programs, economic crime units, jury management, improved defender services, uniform sentencing guidelines, correctional standards and accreditation, equal employment opportunities in criminal justice agencies, and housing designed to reduce crime.

Amendments were also made to Part B, Section 201 in the Justice System Improvement Act which stated as a purpose of the NIJ the identification of programs of proven effectiveness, programs having a record of proven success, or programs which offer a high probability of improving the functioning of the criminal justice system. The role of NIJ is not exclusive in this area.

LEAA also has a major role in identifying these programs in order to provide appropriate guidance to the States and units of local government and in order to evaluate applications and amendments to applications submitted by the States and units of local government. In Section 801(e), for example, LEAA is required, after consultation with the NIJ, BJS, State and local governments, and public and private agencies, to establish rules and regulations necessary to evaluate programs or projects conducted under the Part D formula grants in order to determine whether the programs are of proven effectiveness, have a record of proven success, or offer a high probability of improving the criminal and juvenile justice system.

It is contemplated that the LEAA, in carrying out this role, will in guidelines identify the specific programs which in LEAA's view are eligible for funding under Section 401.

In addition, the statute gives States and local governments discretion to select the programs that they wish to fund, provided that the States and local governments can show the programs or projects are of proven effectiveness, have a record of proven success, or offer a high probability of improving the criminal and juvenile justice system. In meeting these standards, States and local governments can point to programs which they evaluated or sponsored.

Limitations on Fund Use

The program eligibility criteria must be read in conjunction with the limitations on the use of funds set out in Section 404(c). The Justice System Improvement Act provides in Section 401(c)(1) that grant funds may not be used for the costs of equipment or hardware and the payment of personnel cost unless such costs are incurred as an incidental and necessary part of a program of proven effectiveness, a program having a record of proven success, or a program offering a high probability of improving the functioning of the criminal justice system.

While these prohibitions may seem somewhat redundant given the Section 401 limitation, the intent of Section 404(c)(1) is to prohibit the use of funds for the purchase of hardware and the payment of salaries which would ordinarily be picked up as part of the operating expenses of the State and local governments. Section 401(c)(1) expressly provides that "in determining whether to apply this limitation, consideration must be given to the extent of prior funding of any sources in that jurisdiction for substantial similar activities."

Congressman McClory explained the limitation in the debate on the Justice System Improvement Act as follows:

"The criticism that has come to LEAA--I think it was legitimate when it was leveled at LEAA--was that excessive amounts of funds have been spent for hardware. Likewise, there has been criticism because of the payment of salaries of personnel which would otherwise have been paid with local funds. So we have really provided a prohibition against the application of funds for these purposes..."

The Senate report gives further guidance where it provides that the restrictions in Section 404(c)(1):

> "prohibit use of Part D funds for the routine purchase of equipment or hardware or the routine payment of personnel costs...
>
> * * *
>
> "While the emphasis on equipment and hardware purchases of LEAA funds has declined substantially since the initial passage in 1968 of the Omnibus Crime Control and Safe Streets Act, the Committee believes that no funds should be expended for the routine purchase of equipment or hardware [and] payment of salary expenses of regular law enforcement personnel. Rather, formula funds should be targeted to those project activities that are specifically designed to improve the functioning of the criminal and juvenile justice system...
>
> "For example, the primary purpose of equipment or hardware purchases cannot be simply to augment or replace hardware or equipment used in the normal operating activities of law enforcement and criminal justice agencies. Therefore, funds could not be used for the routine purchase of new or replacement police cars, the purchase of basic office equipment, or the purchase of routine communications equipment such as portable radios or walkie talkies. However, where, for instance, a van were to be purchased in connection with an innovative mobile crime laboratory project, office equipment purchased in connection with the establishment of a new juvenile probation, or youth service office, or walkie talkies purchased in connection with a foot patrol program to be established in high crime areas, the equipment or hardware could be considered to be integral and necessary to the implementation of system improvement activity that is of a proper program or project nature."

The limitations on hardware in Section 402(c)(1) specifically do not apply to the purchase of operational information and telecommunications equipment or hardware or for the personnel cost associated with the operation of such systems. This exception is provided expressly in Section 404(c). However, this exception does not override the program eligibility criteria of Section 401. Therefore, information systems or telecommunications hardware or equipment and related personnel costs cannot be funded unless they are spent for a program of proven effectiveness, a program with a record of proven success, or a program which has a high probability of improving the criminal justice system.

The Justice System Improvement Act also prohibits in Section 404(c)(2) general salary payments for employees or classes of employees within an eligible jurisdiction except for the compensation of personnel engaged in

conducting or undergoing training programs or the compensation of personnel engaged in research, development, demonstration, or short-term programs. This limitation continues and expands the one-third salary limitation contained in the old Crime Act and is a 100 percent salary limitation unless the personnel being paid are engaged in training, research, development, demonstration, or short-term programs. It is a further statement by the Congress that LEAA funds are not to be used for routine day-to-day expenditures of criminal justice agencies.

The bill prohibits the use of any formula funds for any new construction projects in 404(c)(3). The Act does allow, however, that any construction projects that were funded under the Crime Control Act prior to the effective date of the Justice System Improvement Act which were were budgeted in anticipation of receiving additional Federal funding may continue for two years to be funded under the new Act. This exception is found in Section 1301(k).

It should be understood, however, that renovation activities can be funded, and the definition of renovation has been expanded beyond what exists in current law. Under Section 901(a)(4), construction is defined to mean "the erection, acquisition, or expansion of new or existing buildings or other physical facilities, and the acquisition or installation of initial equipment therefor, but does not include renovation, repairs or remodeling." Under the Crime Control Act, the definition of construction encompassed all renovation but "minor remodeling or minor repairs."

Finally, in what may prove to be one of the more significant provisions of the new Act, the Federal Government is authorized to identify programs which, based on evaluations by NIJ, LEAA, BJS, State and local agencies, and public and private organizations, have been demonstrated to offer a low probability of improving the functioning of the criminal justice system. Once such a program is formally identified in the Federal Register of the notice and opportunity for comment, no State or local LEAA funds can be used for such a program.

Use of Funds for Administrative Purposes

The Act in Section 401(c) authorizes the Administration to set aside $200,000 to each of the States "for purposes of administering grants received under this title for operating criminal justice councils, judicial coordinating committees and local offices pursuant to Part D and an additional amount of at least $50,000 shall be made available by the Administration for allocation by the State to the judicial coordinating committee." The statute also specifies that an amount equal to 7-1/2 percent of the total grant of a State shall be available for similar purposes if matched on a 50/50 basis.

In the Conference Report published in the Congressional Record, November 16, 1979, the Conferees stated on page H 11007 that these funds may be used in the State "for administrative costs." The Senate Report on page 39 also states that these funds could be used for administrative purposes.

The Senate Report discusses administrative services as follows:

> "application preparation submission, monitoring and other supported services performed in the State should properly be a State responsibility."

Read together, the bill and the legislative history make clear that only those costs associated with administering the grants and assuring compliance with Federal requirements can be paid with the limited administrative costs. Other costs incurred by the State criminal justice councils, local offices, and judicial coordinating committees can be paid out of action funds as they meet the other requirements for the use of formula funds discussed above.

Section 401(a), for example, expressly authorizes grants to be made for "coordinating the various components of the criminal justice system to improve the overall operation of the system, establishing criminal justice information systems, and supporting and training of criminal justice personnel." This is not an administrative function but is one of the 22 categories specifically mentioned for funding by Section 401(c). It appears as Category 20. This is further supported by the Senate Report which states that "administration of grants does not include coordination functions." Furthermore, the Senate Report makes clear that "true systemwide planning--planning that strengthens the relationship between the components of the criminal and juvenile justice system within the State--is not an administrative cost..."

II. Current Practice

Under current law, the limitations on use of formula grant funds are minimal. Program eligibility criteria are set forth in broad terms in Section 301 of the Crime Control Act. The major limitation on the use of funds is the one-third salary limitation described above.

III. Issues

1. Do limitations apply to NPP or DF program?

   The limitations on program eligibility do not apply to the National Priority Grant Program or the Discretionary Grant Program. However, the purposes of the National Priority Grant Program are consistent with the provisions of Section 401 which limit funding to programs of proven effectiveness, programs with a record of success, or programs which offer a high probability of improving the criminal justice system. Given the clear intent to limit funding for equipment, construction and general salary expenses, it is unlikely that National Priority Grant Programs or Discretionary Grant Programs will be used in a manner inconsistent with the hardware and equipment limitations.

2. What documentation will be required to justify high probability. . . programs?

   The applications submitted by the State to LEAA must contain information which establishes that a program is one of proven effectivness, one with a record of success, or one with a high probability of improving the system. The documentation must address the standards in the definitions of these three terms as set forth in Section 901(a)(19), (20), and (21) of the statute.

3. What standards will the Administration specifically apply in determining what program can be funded?

   LEAA will apply the standards in the definitions of proven effectiveness, record of success, or high probability as defined in Section 901. In addition, there will be more detailed guidelines on the standards to be applied.

4. Since the State and local governments will not be expected to submit detailed project descriptions, how can LEAA and the State assure that program eligibility standards are met?

   LEAA will require that the States identify which of the 23 allowed usages under Section 401(a) that the program proposed meets as well as to identify which of the three standards of either "program of effectiveness, record of proven success, or high probability of improving the criminal justice system." In addition, the State as

well as entitlement jurisdictions will be required to present evidence for justification as to why they made the judgment that the proposed program meets one of the three standards. The program eligibility requirements should not be viewed as authority for the State to require detailed project applications from entitlement jurisdictions. Through monitoring, auditing, and evaluation, both LEAA and the State should be able to assure that the requirements are met. Any program or project which does not meet the eligibility requirements cannot be funded and the cost of such program or project could be disallowed.

5. What guidance will LEAA provide States and local governments in identifying programs that cannot be funded?

   States can only disapprove as ineffective and not eligible for funding entitlement jurisdiction programs or projects which have been formally identified by LEAA by notice in the Federal Register after opportunity for comment. LEAA will establish a procedure whereby State and local governments can ask LEAA to find programs to be ineffective and ineligible for funding. The State can establish its own standards for determining ineffective programs that cannot be funded by balance of State jurisdictions and by State agencies.

6. Will the States be able to disapprove applications from entitlement jurisdictions for failure to meet program eligibility standards?

   The State could disapprove that portion of an application from an entitlement jurisdiction which proposes a program which is not of proven effectiveness or which does not have a record of proven success or which does not offer a high probability of improving the criminal justice system. Such action could be taken pursuant to Section 402(b)(3)(A)(i).

7. Can you give some examples of the programs which meet program eligibility requirements and programs which do not meet eligiblity requirements?

   Senator Biden, in explaining his amendment, identified certain programs of proven effectiveness, programs with a record of success, or programs with a high probability of improving the system. They include: Sting Programs, Career Criminal Programs, PROMIS Programs, and Integrated Criminal Apprehensive Programs. Although LEAA has not formally identified programs in the Federal Register which do not meet the eligibility requirements, one example of an ineffective program would be a program which uses voice stress analyzers.

8. What type of training program can be funded?

   Basic training programs for criminal justice personnel can ordinarily not be funded. Training programs to provide basic skills which a criminal justice practitioner is normally expected to bring to a job could not ordinarily be funded. LEAA will be developing and publishing guideline standards identifying the types of training programs which can be funded.

9. Can equipment be purchased as the only or primary part of a project?

   No.

10. When can bullet proof vests be purchased?

    Bullet proof vests can be purchased where they are incidental and a necesary part of a program of proven effectiveness, a program with a record of success, or a program which offers a high probability of improving the criminal justice system.

11. When can telecommunications be purchased?

    The hardware limitations and the personnel limitations do not apply to telecommunications equipment and to support personnel for telecommunications systems. However, any project funded under the title must be one of proven effectiveness, one with a record of proven success, or one with a high probability of improving the system. Thus, the telecommunications equipment would have to meet these standards.

12. The Biden amendment purposes in Section 401 do not appear to address juvenile priorities. Which one would address this priority area?

    While Section 401 program descriptions do not specifically mention Juvenile Justice, neverthless each one of the 23 categories may be a Juvenile Justice Project Example: category (8) and (9) deal with court reforms and developing alternatives to prosecution. These two areas could certainly involve the Juvenile Justice priorities. Category (17) deals with Juvenile correctional institutions. Juvenile programs could also be funded under the last category, category (23).

13. Do any of the Biden amendments address the issue of halfway houses? Can halfway houses be a priority for a local entitlement?

    Halfway houses can be a priority for a local entitlement under categories (10) and (15).

14. Could communications equipments be purchased, as a primary part of a project, if the equipment is a part of the implementation of a statewide law enforcement communications plan, required by IEAA in 1976.

    Yes.

15. Are there any prohibitions or special policies on purchasing data processing equipment?

    The equipment must be part of a program of proven effectiveness,

record of proven success or a program which offers a high probability of improving the Criminal Justice System. In addition under OMB Circulars, LEAA must approve the purchase of any data processing equipment.

Based on the limitations on fund use, would the following projects be eligible for funding:

(1) State communications coordinator to assist local and State agencies implement a State backbone law enforcement communications system?

Yes, if part of program or proven effectiveness, record of proven success or which offers a high probability of improving the criminal justice system.

(2) Grants to local law enforcement agencies to purchase high band radio crystals to allow participation in a statewide backbone communictions sytem?

Yes

(3) Grant to a State law enforcement academy to hire a P.O.S.T. director whose functions would be evaluation of training programs, certification of peace officers, career development for law enforcement personnel?

Possibly. LEAA will have to issue guidelines which more clearly define these training and conference activities which can be funded.

(4) Grant to a city police department to hire two special purpose officers to implement a Career Criminal Program, where the personnel costs amount to 75%-85% of total grant budget?

Yes, if part of program of proven effectiveness, record of proven success or which offers a high probability of improving the criminal justice system.

16. On p.51 of the booklet there is a statement that Congress indicated that "LEAA funds are not to be used for routine day-to-day expenditures of criminal justice agencies."

If for example, a state does not have a system for public defender coverage can such a system be funded?

Yes. The system can be funded. However, where there is an existing system and funds would be used only to hire one or more attorneys, this funding would ordinarily not be allowable.

17. Could you also elaborate on the funding limitation related to general salary payments? All direct service programs will have personnel and they surely may not be for the primary purpose of training, research,

development, demonstration, or short-term unless there are broad interpretations of development, demonstration and short-term.

General salary payments refer to hiring of new positions, payment of overtime, payment of salary increases, and supplementation of the general salary costs of an agency.

18. Would the funding of juvenile prevention programs with Part D funds - like Youth Service Bureaus or programs to assist disruptive students - be fundable under category (23)? How is improvement of systems to be defined?

Yes, if part of a program of proven effectiveness, record of proven success or which offers a high probability of improving the criminal justice system.

19. You have addressed "details" of allowability i.e.; certain personnel cost would be unallowable. How could a state determine those "details" in a nonspecific general application from a jurisdiction?

A judgement will have been made first as to whether the program is one of proven effectiveness or one with a record of proven success. If it is a personnel cost, it would be allowable.

20. Suppose a state operates statewide law enforcement training programs, and provides per diem and other training cost reimbursements to local law enforcement agencies through LEAA funds. Would entitlement jurisdictions be eligible to receive such state-level reimbursements, or must they "budget" those costs as a part of their own comprehensive applications? (This question applies to all state-wide services funded with LEAA monies).

If the training program meets the new LEAA standards, entitlement jurisdictions may buy into the program. They would not be required to do this, however.

21. Under the "Adherence with effectiveness criteria" section will continuation of a project by a city or county after Federal funding expires be considered as meeting the effectiveness criteria.

That is one element for proven effectiveness.

22. If an eligible jurisdiction is found to have implemented a project which had been found to be ineffective in the past, from whom is the money recoverable?

Funds would be ultimately recoverable from the eligible jurisdiction.

23. Given that an eligible jurisdiction was due to receive funds in FY 80 for certain projects; and given that the implementation period for these projects would extend into FY 81; and, that funds designated for these projects would carry forward to FY 81; then:

(1) Does the eligible jurisdiction include FY 80 carry over funds/ projects in its application for entitlement; and,

(2) What if any of the relevant projects do not fit in the (23) categories?

The eligible jurisdiction could include FY 80 carry over funds into FY 81 but the project must fit into the section 401 categories.

24. What is the difference between proven success and proven effectiveness could you define the words?

The definition can be found in section 901(a)(19) and (2) and the guidelines.

25. What information must an application contain to establish that a proposed program is "innovative?"

Sufficient information to show its innovative nature.

26. Who determines what is innovative? Many programs are considered innovative by the locality.

The criteria for innovative will always be in reference to what is innovative for that particular locality.

27. What will be the effect of publication of the IEAA ineligible list on those programs and projects already approved and operating?

No effect on present funding but they will not be eligible for future Federal funding.

28. Under section 401(a)(15) or some other section, can one fund alternatives for offenders who would not otherwise be candidates for maximum-security confinement? Could exoffender employment programs or halfway house type programs be funded?

Yes, so long as they are programs of proven effectiveness, record of proven success or which offers a high probability of improving the criminal justice system.

29. How does one address the maintenance of efforts requirements utilizing the Biden amendments?

Throughout the 23 categories juvenile programs may be funded, thus the 19.15% maintenance of effort must be considered in the decision to provide funding.

30. Can the standard of "innovative" be applied by a state council to allow a jurisdiction to fund a particular project and at the same time to prohibit funding of the same project by an entitlement jurisdiction representing a major urban area?

Yes. Something may be innovative in a rural jurisdictions but not in a major urban jurisdiction.

31. When LEAA lists programs which it feels meets the "three tests" will it make known the "criteria" used to administer the three tests.

LEAA will not provide more specific criteria for use in administering the three tests of effectiveness when it lists programs which it believes qualify under them, but will do so when it develops guidelines for performance reports. Until then the definitions in the Act and the standards for their application from the legislative history should be used.

PERFORMANCE REPORTS, IMPACT ASSESSMENTS, AND EVALUATION

I. Evaluation of the Provisions

The new Act places even greater emphasis on evaluation than the Crime Control Act. The evaluations required of formula grants and discretionary grants could play a large role in determining how LEAA money will be spent in future years. The legislative history for Sections 401(a) and 816(b) indicates that their purpose is to "require vigorous evaluation of LEAA funded programs." Although various terms are used -- performance reports, impact assessment, determination of effectiveness -- each constitutes one form or another of evaluation and the requirements pervade the new Act.

Part D Formula Grants

Section 403(a)(3) requires each applicant to assure that:

> "following the first fiscal year covered by an application and each fiscal year thereafter, the applicant shall submit to the Administration, where the applicant is a State, and to the council where the applicant is a State agency, the judicial coordinating committee, non-governmental grantee, or a unit or combination of units of local government --
>
> "(A) a performance report concerning the activities carried out pursuant to this title; and
>
> "(B) an assessment by the applicant of the impact of those activities on the objectives of this title and the needs and objectives identified in the applicant's statement."

Section 403(a)(6) requires each formula grant application to include:

> "a provision for fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records as the Administration shall prescribe to assure fiscal control, proper management, and efficient disbursement of funds received under this title."

Section 404(b) directs LEAA to suspend funding for an application if the application contains a program or project which does not conform to the Act, as evidenced by:

> "(1) the annual performance reports submitted to the Administration by the applicants pursuant to Section 403 of this title;

> "(2) the failure of the applicant to submit annual performance reports pursuant to Section 403 of this title;
>
> "(3) evaluations conducted pursuant to Section 802(b); (or)
>
> "(4) evaluations and other information provided by the National Institute of Justice."

A program shown, by evaluation, to "be effective or innovative and to have a likely beneficial impact on criminal and juvenile justice" may be designated a national priority program under Section 503(a). In addition, an "innovative" program which is not listed among the 22 categories expressly eligible for formula funding under Section 401(a)(1-22) may become eligible for such assistance if it is "of proven effectiveness, has a record of proven success, or . . . offers a high probability of improving the functioning of the criminal and juvenile justice system." 401(a)(23) As a result, Part E national priority programs, Part F discretionary programs, and Part B National Institute of Justice programs as well as criminal justice programs funded with State, local or other Federal money could all become eligible for formula funding if they meet the criteria of Section 401(a)(23).

Each state criminal justice council must assure "fund accounting, auditing, and evaluation of programs and projects funded under (Part D) to assure compliance with Federal requirements and State law." Section 402(b)(1)(I)

Part F Discretionary Grants

No discretionary application will be funded unless the applicant (among other things):

> "describes the method to be used to evaluate the program or project in order to determine its impact and effectiveness in achieving the stated goals and agrees to conduct such evaluation according to the procedures and terms established by the Attorney General." Sec. 604(a)(3)

No discretionary award will be made for more than three years, but it may be extended or renewed by LEAA for up to an additional two years if (1) the grantee and other immediately interested parties agree to pay half the cost of the extension, and (2) "an evaluation of the program or project indicates that it has been effective in achieving the stated goals, or offers the potential for improving the functioning of the criminal justice system." Section 606(a)

A demonstrably successful discretionary program may also be designated a national priority program under Section 503(a).

Part B NIJ Grants

The National Institute of Justice is authorized to evaluate programs funded under the Act in two ways. NIJ is authorized to:

> "evaluate the effectiveness of projects or programs carried out under (the Act, and)
>
> "evaluate, where the Institute deems appropriate, the programs and projects carried out under other parts of this title to determine their impact upon the quality of criminal and civil justice systems and the extent to which they met or failed to meet the purposes and policies of this title, and disseminate such information to State agencies and, upon request, to units of general local government and other public and private organizations and individuals. Section 202(c)(3-4)

Section 201 includes as a purpose of NIJ the identification of programs of proven effectiveness, programs having a record of proven success, and programs which offer a high probability of improving the functioning of the criminal and juvenile justice system. This provision parallels the eligibility criteria introduced in Section 401(a), and is also tied to NIJ activity to identify candidates for national priority program designation under Section 503(a).

Other Aspects of Evaluation

Section 816(a) requires LEAA to submit an annual report to Congress by March 31, on progress made through activities funded under Parts D, E, F and G during the preceding fiscal year. Section 816(b) requires a special report to Congress by LEAA, not later than three years after enactment, which "sets forth comprehensive statistics which, together with the Administrator's analysis and findings, shall indicate whether grants made to states or units of local govenrments under Parts D, E and F have made a reasonably expected contribtion toward . . ." 18 of the program objectives listed in Section 401(a) and any added by the Administrator under Section 816(c).

Section 816(c) calls for LEAA to submit a plan to congressional oversight committees within 270 days after enactment, setting forth a plan for collection, analysis and evaluation of any data relevant to measure the 18 specified objectives, as well as any additional data which the Administrator believes will aid the committees in determining the contribution of Part D, E and F grants. Section 816(e) provides that "To the extent feasible, the Administrator shall minimize duplication of data collection requirements imposed on grantee agencies by Section 816."

The conference report explains "The intent ... that LEAA itself will be responsible for an independent, data oriented analysis and evaluation of the effects...." and that this report "should not be merely a summation of ... other reports." "In order for this report to be a meaningful comparison and evaluation of LEAA funded programs throughout the country, the plan submitted 270 days after enactment ... should set forth the types of data to be submitted by grant recipients in support of this report requirement and should provide uniform definitions for these types" (of data).

Although an independent consultant is expected to conduct the national level analysis, synthesizing compilations of evaluations, statistics and performance reports, we do not anticipate that this consultant will conduct extensive field studies, evaluations of individual programs or projects, or assessment of the statewide program in individual States.

Under Section 802(b) LEAA is required to establish such regulations as are necessary to "assure the continuing evaluation of selected programs" under Parts D, E, and F in order to determine:

> "(1) whether such programs or projects have achieved the performance goals stated in the original application, are of proven effectiveness, have a record of proven success, or offer a high probability of improving the criminal and juvenile justice system;
>
> "(2) whether such programs or projects have contributed or are likely to contribute to the improvement of the criminal justice system and the reduction and prevention of crime;
>
> "(3) their cost in relation to their effectiveness in achieving stated goals;
>
> "(4) their impact on communities and participants; and
>
> "(5) their implication for related programs."

These evaluations are to be in addition to the evaluations required by Sections 403 and 404.

LEAA must also require Part D applicants to submit an annual performance report on its Part D activities "together with an assessment by the applicant of the effectiveness of those activities in achieving the objectives of section 401 of this title and the relationships of those activities to the needs and objectives specified by the applicant in the application submitted pursuant to section 403 of this title. The administration shall suspend funding for an approved application under Part D of this title if an applicant fails to submit such an annual performance report." These requirements appear only to require the performance reports already required under Sections 403(a)(3)(A) and B).

Guidelines for Performance Reports and Impact Assessments

LEAA guidelines for formula grants must require applications to include assurances that provision has been made for maintaining records, data and information, and for submission of required annual performance reports and impact assessments. Specific performance reporting guidelines will be issued soon after those for applications as a separate guidelines publication. It will identify performance data and information required for each program category listed in Section 401(a), and will describe the form in which such data and information, as well as impact assessments, are to be reported. Because these reports constitute the state and entitlement input to LEAA's annual and three year reports to Congress, no special guidelines for these reports are anticipated.

The guidelines will also explain how the Act's definition of evaluation will be applied. Evaluation is defined by the Act to mean "the administration and conduct of studies and analyses to determine the impact and value of a project or program in accomplishing the statutory objectives of this title." Section 901(a)(10)

II. Current Practices

Formula Grants

Under the Crime Control Act, the SPA decided which programs or projects to evaluate, but was required to conduct some intensive evaluations. The comprehensive plan was required to describe the SPA's evaluation program for the planning year: (1) indicating the programs or projects to be intensively evaluated, the criteria by which they were chosen, and the resources allocated to intensive evaluation; and (2) describing the process in which the intensive evaluations were planned and carried out.

The SPA was required to develop and describe in its application a strategy for monitoring the implementation, operation and results of all the projects it supported, and was actively encouraged to delegate monitoring and evaluation responsibilities to regional planning units, CJCC's or local units of government.

SPA's have been required to submit annual progress reports, and have submitted annual reports required by LEAA in order for the agency to prepare its annual report to Congress pursuant to Section 519.

Discretionary Grants

Discretionary grants have been subject to four types of performance measurement:

Self-assessment, required of all grants;

Monitoring by LEAA grant monitors, required for all grants;

Program evaluation by LEAA (usually NILECJ), for only a limited number of programs selected each year, requiring cooperation of sites selected for these national level evaluations; and

Intensive project evaluation, for selected programs, under which selected projects are intensively evaluated by an independent evaluator approved by LEAA but supported by grant funds.

NILECJ Evaluations

The National Institute has conducted four types of evaluations and has verified the results of completed evaluations for projects nominated for Exemplary Project status:

The National Evaluation Program (NEP) Phase I studies assessed criminal and juvenile justice system projects in topical areas to assess the state-of-the-art and the need for more intensive evaluations. A limited number of Phase II intensive evaluations were conducted in areas warranted by the need and opportunity.

DF Program evaluations have been initiated each year for selected discretionary programs.

Evaluations of program tests conducted to develop model programs.

Evaluations of state and local initiatives of national interest or importance.

III. Issues

1. Under Section 503(a), how do the standards of "effective or innovative and to have a likely beneficial impact on criminal and juvenile justice" for National Priority programs differ from the standards of "proven effectiveness,. . .proven success, or. . .high probability of improving the functioning of the crimial and juvenile justice system" for forumla grants? Which is the more rigorous standard?

   The standard of "effective" in Section 503(a) is the same as "proven effectiveness" in Section 401(a). This is the most rigorous standard. In practice, it will probably be more stringently applied under Section 503(a) for national priority programs.

   "Innovative" in Section 503(a) refers to new approaches showing a "high probability of improving the criminal and juvenile justice system." That does not mean a program or project of "proven effectiveness" cannot also be innovative. The term "innovative" is included in Section 503(a), however, to allow important innovations that show strong promise of being effective, even though their effectiveness has not yet been established. If such programs are included in the national priority programs, however, they will be the rare exceptions.

2. Will the States be required to review and approve annual performance reports required by LEAA, or will the States only be required to receive and forward these reports to LEAA?

   States should be required to review all performance reports for compliance with Federal requirements just as they are authorized to review applications and amendments (Section 402(b)(1)(C-D)), and to assure that Federal funds are not being used to support programs and projects when the performance reports show that they are ineffective or have a low probability of improving the criminal justice system in any way.

3. What process will be used by LEAA to design guidelines to implement the performance reporting requirements?

   The usual formal process of consultation during guideline development and solicitation of comments during the public comment period will be followed. Because of the program experience and knowledge of valid and feasible measures that are needed to develop appropriate guidelines to meet these provisions of the Act, special effort will be made to involve State and local practitioners, planners, evaluators and managers to assure that program definitions and data requirements are geared toward actual programs and projects and what can reasonably be expected of them.

4. How involved can State and local jurisdictions expect to be in the implementation of the three year report, especially in the area of monitoring?

   State and local jurisdictions can expect to be heavily involved in the development of guidelines under which these requirements will be implemented, as noted. They can also expect to be the principal source of the information and assessments used in both the annual and three year reports to Congress. The performance reports, which ought to be an integral part of State and local monitoring systems and what they produce, will be the largest part of the information going into those reports. It will also include State and local evaluation results. Although the National Institute does have a responsibility for evaluations that will assist in meeting these reporting requirements, Federal evaluations are national in scope and will not be able to assess program contributions in each State.

5. Will all States and entitlements be required to conduct some intensive evaluations under the new regualtions?

   The JSIA strongly emphasizes the need for evaluation. All recipients will be required to submit performance reports which include an assessment of the impact of their activities. In addition, it is expected that all States and entitlement jurisdictions will be required to conduct more vigorous, intensive evaluations of any program that is proposed to meet the standard of "high probability" of significant improvement in order to determine if the program is likely to be effective. States and entitlements are encouraged to conduct other intensive evaluations to meet their policy and or program development needs. Generally, an intensive evaluation will be a prerequisite to nominating a program for National Priority Grant Status.

6. Of the 22 eligible programs, the Congress will require performance reports on 18 of them.

   What are the 4 eligible programs for which Congress is not requiring reports?

   Reports will be provided on all programs. LEAA is not limited to the 18 categories. The PROFILE system will be used intensively.

7. Will the program descriptors now used in PROFILE and the 519 Report continue to be used or will we now have to use the "Biden Amendment" categories in reporting to LEAA?

   Both. LEAA is currently developing a method for using the descriptors now used in PROFILE to classify programs and projects under the program categories listed in the Biden Amendment (Section 401(a)). The result will probably be the addition of a code to the present coding system that will identify project applciations with the appropriate program categories, without chanling current program descriptors. The annual report language in the new Section 816(a) is essentially unchanged from the old Section 519 in the information required. However, the new requirement in Section 403(a) for annual grantee performance reports, and the special three-year report required of LEAA in Section 816(b), along with the legislative history in which it is clear that Congress expects annual information for the program categories under the Biden Amendment, can most efficiently be met with the addition of a code that can be used to identify in which of the Biden Amendment categoraies projects fall.

8. Section 403(a)(3) ties the annual performance report to the "fiscal year" cycle. Assume the applicant is a city or county whose FY 1981 ends February 30, 1981. Its application covers programs and projects which are planned to become operational on various dates between October 1, 1980, and July 1, 1981. When may the State require the submittal of the first performance report? May the state require separate performance reports for each program or project, with submittal dates keyed to the operational cycles of the activities?

   States may set dates for the submission of subgrantee performance reports. State comprehensive performance reports are due at LEAA by December 31 for activities of the preceding Federal fiscal year.

9. Does LEAA plan to provide any capacity building or training to states, perhaps through the training center on TARCS, to assist in meeting evalution requirments?

   Yes. The training centers will continue to provide evaluation and monitoring courses, and these will be updated in the near future to include appropriate references to the new legislation and guidelines pertaining to performance reporting and evaluations. The TARCS's will have a larger budget in FY 1980 to provide evaluation TA and to assist through TA state activities designed to meet the new performance report and impact assessment requirements.

10. What role will states and locals have in working with LEAA to develop the plan due to Congress in 270 days after the Act passes?

    The plan will be developed in consultation with the states and local jurisdictions. In particular, states and locals will be consulted and are actively encouraged to contribute to the development of definitions of information to be required in performance reports, and of plans for collection, analysis and reporting of data and their interpretation. In addition, states and locals will be involved in a process of information exchange, coordinated by LEAA, concerned how best to use the resources and capabilities of planning and evaluation units, statistical analysis centers and management information systems in meeting the reporting requirements in their respective states.

11. What guidelines will we use for the next progress report since it will cover activities under the old legislation?

    M 4100.1F should be used for progress reports (paragraph 63) on FY 1980. Current Section 519 reporting should also be used for FY 1980 programs. LEAA may request but will not require Section 519 reporting for FY 1980 to include Section 401(a) program category information if that will facilitate cooperative efforts with the states in shifting to meet reporting requirements for fY 1981 programs under the new Act.

12. When will the new report be required? It would seem logical to require it one year after the first 1981 project was funded?

    The new report will be required at the end of FY 1981 and annually thereafter.

13. Is LEAA making it clear to Congress that the measure of effectiveness should not be the UCR Report?

    LEAA will make clear the limitations on the use of UCR reports, in both the development of the 270 day plan and in the annual and three year reports on program accomplishments. In any event there will be no single measure of effectiveness, neither overall nor for individual Biden Amendment categories. The legislation itself specifies a number of measures for the most pertinent program category, and while these measures are largely included in UCR data, the UCR reports are neither the only nor necessarily the best source of statistics. However, in the absence of more complete and accurate statistics for UCR data, it is neither feasible nor sensible to eliminate them altoghether from the data, analyses or reports on the contributions of programs and projects.

Formula Fund Distribution Among the States

I. Evaluation of the Provisions

Section 405(a)(1) and (2) of the bill provides the formula for the distribution of funds under Part D of the bill. Each State is first allocated $300,000 and then two formulas are used.

The first is based on population, index crimes, total criminal justice expenditures, and tax effort. The second is a straight population formula. Except for the following provisos, each State will receive funds under the formula that results in the higher amount. The provisos are:

1. No State will receive less than its population share.

2. If the amount appropriated for the formula program in any fiscal year is less than the Parts C and E block grant appropriation in fiscal year 1979 then only the population formula will be used for that year.

3. No State will receive more than 110 percent of the population formula amount. (This was included to prevent windfall increases in funding).

4. The five territories (Virgin Islands, Guam, American Samoa, Trust Territory, and Northern Marianas) will use the population formula only.

Any shortfall in funds caused by the application of the formulas will be made up by the LEAA with national priority or discretionary funds.

II. Current Practice

Block grant funds under Parts C and E are distributed on population only.

Formula Fund Distribution Within the State

I. Evaluation of the Provisions

Section 405(a)(3), (4), and (5) provide for distribution of the formula funds allocated in Section 405(a)(1) and (2) within the State. LEAA will make allocations to the State and to eligible jurisdictions according to the following formula.

1. Seventy percent (70%) of the total State allocation is distributed to the State and eligible units of local government according to the particular jurisdiction's share of total State and local criminal justice expenditures.

2. The remaining 30 percent (30%) is roken into four equal shares and is distributed to the State and eligible local units of government according to the respective jurisdiction's expenditures in the following areas: (1) police; (2) courts; (3) corrections; and (4) total criminal justice system expenditures.

   As the House Report states (p.9):

   "These four allocations for police, courts, corrections, and alternatives retain this earmarking for the purpose of expenditaures for these functions after they are distributed to the units of local government."

The data used to distribute these funds will be based on the most accurate and complete data available in the most recent year for which data is available.

This section envisions the establishment of a pot of money for the State, for each eligible large city and county, each eligible combination of jurisdictions, and for the "balance of State" jurisdictions. The "balance of State" jurisdictions will include any otherwise eligible large jurisdiction which chooses not to become an entitlement. This balance of State fund is reserved for those jurisdictions as a gorup. The State will allocate those funds at its discretion to those jurisdicitons upon application. If there are no large eligible jurisdictions, then the entire amount set aside for local units of government will be placed in this discretionary fund.

Combinations of jurisdicitons may not count the expenditures of eligible cities and counties unless those cities and counties are in fact participating in activities under the Act as a part of the combination.

II. Current Practice

Currently under Section 304(a) and 303(a)(4), local jurisdictions with a population of at least two hundred and fifty thousand can submit comprehensive plans or applications to the State planning agencies for mini-block awards. These plans must be consistent with the State plan and must be approved by the SPA.

III. Issues

1. Will all formula awards be made to the State for further distribution to all other State agencies, entitlement, other local units and nonprofit agencies?

   Yes.

2. Can the Administration award formula grants directly to entitlement jurisdictions? If so, under what circumstances?

   Generally, no. However, under the provisions of Section 405(d) the administration could allocate funds directly to an entitlement jurisdiction where a State was unable to qualify or receive funds under the requirements of Part D.

3. Are lists of entitlement jurisdictions available?

   Yes. A list of those cities, counties and townships which would be eligible to receive grants on an entitlement basis under Section 402(a)(2) & (3) is available. There is no list at this time of those combinations which would be eligible to receive grants under an entitlement. The available lists contain tentative allocations based on 1977 population data only and will change in January, 1980, when expenditure data for FY 1978 becomes available.

4. Will the last Bureau of Census figures or the latest estimate of the Bureau of Census be used to determine State and local populations?

   Latest revised estimates available on a national basis will be used. This means that in the development of FY 81 allocations the Bureau of Census estimate for 1977 will be used for local governments. Federal regulations require use of these population data figures.

5. Must a county have more than 100,000 persons exclusive of the population of the included entitlement jurisdictions?

   No. The population of the county inclusive of anyother entitlement jurisdiction is used in determining the entitlement status.

6. Can the Council hold one jurisdiction of the combination accountable for the administration of the entitlement funds?

   The State Council does not make this determination. Through an agreement a combination may decide to hold one jurisdiction accountable.

7. Is a county entitlement jurisdiction required to include the municipalities within the county in its programs or can the money be used strictly for county programs?

   The county need not fund programs of municipalities within the counties if the municipalities have criminal justice expenditures and are included in the "balance of State." However, the municipalities may join in combination with the county. In this case the county would be responsible for all programming.

8. Under Section 405(a)(3), is an entitlement jurisdiction limited in funding to its formula allocation? If not, from which pots of money is it eligible to receive money?

   If an entitlement jurisdiction chooses to use its entitlement status, it may only receive that amount of money. At the State's discretion additional funds may be awarded out the State share. If an entitlement jurisdiction chooses to participate as a "balance of State" jurisdiction it is statutorily entitled to no fixed amount and must compete with the rest of the State.

9. Must there be a specific agreement between the State and entitlement jurisdiction concerning the pass through of additional funds?

   Yes. The additional funds would require regular State Council approval and award.

10. If a formal agreement is drawn up, does the entitlement jurisdiction then have a vested right to the additional State funds?

    Yes. To the extent the right is enforceable under State law as a contract.

11. If a county uses its entitlement for "its own" purposes, exclusive of the needs of jurisdictions within the county, may these jurisdictions combine and qualify for a separate entitlement? If so, could this produce a double subscription of funds?

    Yes. However, this would not produce a double subscription of funds because expenditures are mutually exclusive and expenditures provide the basis for the fund allocation.

12. Will an entitlement jurisdiction which loses its entitlement status because of a population drop in the second or third year no longer be an eligible jurisdiction?

    Yes. The vested right to entitlement status is based solely upon meeting the population criteria.

13. If a fixed percent of funds for State, entitlement or balance of State jurisdictions is based on police, courts or corrections expenditures, must at least this percent of funds be used for police, courts or corrections services respectively?

    No. However, for entitlement jurisdictions, this figure is important in determining whether "adequate share" requirements for courts and corrections have been met.

14. Must combination entitlement share criminal justice services? If so what does sharing mean in this case?

See the guideline set out in the Federal Register of January 15, 1980. Part 31 of 28 CFR Section 31.102 defines the requirements which a combination must meet. It "must evidence a commitment to coordinated efforts to identify problems, set priorities and develop improvement programs; and must have the legal authority to prepare applications and accept and administer formula grant awards under the JSIA on behalf of its member units of local government."

15. If a county qualifies as an entitlement jurisdiction and is currently a part of an RPU and opts to go entitlement, could the remainder of the counties which are a part of the RPU still be considered a combination and become an entitlement?

Yes. If they meet the population and funding level requirements after the county drops out.

16. If a city (or cities) within an entitlement county goes entitlement, will the population of the city (or counties) be deducted from the county population in terms of the grant formuls?

No. Expenditures are the only factor impacting upon the formula. Population is irrelevant.

17. The Community Development program has an "opt out" provision. A county sponsoring a program does not need to procure individual agreements from all municipalities in the county. If a County and City form an entitlement, how can the police expenditures of adjacent municipalities affect its entitlement allocations?

The expenditures of all municipalities within an entitlement jurisdiction may be added to increase the entitlement award. Where this is done the municipality must be a signatory to the agreement and data must be available. Where expenditure data is not available, the State and the entitlement area can agree upon an estimated amount.

18. Given that no "formula" for distribution of balance of state funds exists, how can one use a comparison of dollars available as an entitlement versus balance of state for the entitlement decision?

To some extent this data is now available. However, two other factors are important: First, past experience with the SPA's allocation of funds and secondly, the policy or formula in use at the state level.

19. If an entitlement waives to the state which distributes its action funds by a crime-weighted formula to regional planning units, must the allocation to the region which contains the entitlement earmark a minimum level of funding for the entitlement?

No.

20. If an eligible jurisdiction elects nonentitlement status, can the state retract any part of the FY 1980 "planning" award not yet obligated as of the date nonentitlement status is elected?

No, not on this basis.

21. If a state does not have sufficient planning funds in FY 1980 to establish planning/administrative offices for those jurisdictions who have chosen to become "entitlement jurisdictions" are or would they be eligible for FY 1980 action funds for this purpose?

No.

22. When will final determination be made by LEAA as to those jurisdictions who will qualify as "entitlement?"

Final decisions have already been made on those jurisdictions which "qualify." The jurisdictions must give notice that they intend to exercise these rights by March 1.

23. A county qualifies and opts for entitlement status. Can nonentitlement municipalities within that county compete for balance of state funds?

Yes.

24. Must "combinations" have a total of at least .15% of criminal justice expenditures to qualify as an entitlement?

No.

25. Is there some definition of county for entitlement purposes? For example, if a state has geographical counties which have no governmental functions or responsibilities, could they qualify if some sort of administrative unit was established to receive funds?

No. A county or other governmental body which has no functions would have no expenditures. Without expenditures they cannot be an entitlement jurisdiction, in that the $50,000 minimum could not be met.

26. How can a potentially entitled combination which includes a few entitled cities and/or counties plus several other counties and numerous municipalities determine the amount of dollars to which they are entitled?

The Bureau of Justice Statistics has published a list which provides the basis to make this determination. This will be updated and published periodically.

27. We are getting a number of questions as to what combinations will produce enough to reach the $50,000 minimum. We could use a print out of all the counties in each state plus all the cities within each county showing their share (perhaps a percentage) of the total local government share of the formula funds. We could then give a ballpark estimate to the numerous questions.

BJS has provided this data.

28. Will 1979 Expenditure Data be used in determining entitlement allocations; if not, will there be an appeal procedure for rapid growth areas?

    Yes. In addition, these matters are always appealable.

29. If the county becomes an entitlement area, who funds the sheriff - the entitlement county or "balance of state" funds? or both?

    If the sheriff's expenditures are included in the county's expenditure data, the county must fund the sheriff.

30. If an entitlement jurisdiction has a juvenile justice capability but doesn't make juvenile justice a priority in its application can the state reject the application for failure to meet and maintain adequate effort requirements?

    If an entitlement has juvenile justice responsibility but does not reflect a commensurate investment in juvenile justice activities in the three year application, the application can be rejected by the state for failure to meet and maintain an appropriate share of the maintenance of effort (MOE) requirement. Such action, of course, is subject to appeal.

31. Is it possible for "balance of state" and/or eligible jurisdictions who do not seek entitlement status to use a three year application? Or must they use annual applications? Is this a state option?

    Use of three year applications by state agencies and balance of state jurisdictions is encouraged. It is a state option.

32. Will the comprehensiveness requirement for the application cover the three year period? If so, can entitlement jurisdictions rotate "fair share" dollar amounts throughout the three year cycle? In other words, does the plan have to balance on an annual basis or on a three year basis?

    The comprehensiveness requirement covers the entire three year plan. With regard to funding, however, MOE and "adequate share" requirements must be met on an annual basis.

33. What will the application requirements be for planning and administrative funds as compared with present "Part B" application requirements? Will there simply be a program area written consistent with the format for action funds?

    A single, simplified program description for administrative funds will be incorporated into the program descriptions submitted in the three year application.

34. In view of the ultimate liaiblity of the states for funds not expended in accordance with Section 401, may the state council require the applicants to submit the required project level programmatic and fiscal information after approval but before the start of actual fund flow?

No. The state cannot require applicants to provide additional programmatic and fiscal information on a project level basis after approval, but before the start of funds flow, to assure the eligibility of activities according to Section 401 requirements. Information to fulfill monitoring responsibilities can be obtained in a reasonable and timely manner.

35. In the case of a project contained within a program in an application from a combination type entitlement, may the state council require that actual fund delivery be directly from the state to the city or county implementing the project?

No. An entitlement (including a combination entitlement) submits a three year program level application to the state. The award to implement activites contained in the application is made to the entitlement. Through procedures developed by the entitlement, project level applications and awards of funds transfers are made.

Allocation of Administrative Funds

I. Evaluation of the Provisions

Section 401(c) provides for the earmarking of administrative funds from the formula grant monies to be used by the State and local governments for administering grants received under the bill. The section provides that $200,000 will be allocated by LEAA to the State for operating the Criminal Justice Council. An additional $50,000 will be made available to the Judicial Coordinating Committee. This $250,000 is match free. In regard to the source of these funds, the Conference Report provides:

> "It is the intent of the Conferees that funds used for administrative costs be made available from allocations that are made to State agencies and local governments under the distribution formula set forth in section 405(a)(3) of the legislation. Expenditures of the State criminal justice council, the judicial coordinating committee, and any regional planning units should be made available on a proportionate basis from the allocations to the State agencies and the nonentitled local jurisdictions. Funds for administrative costs expended by entitled jurisdictions should be made available from their own entitlements. The Conferees expect that the state will provide administrative services or support to non-entitlement local jurisdictions.

In addition, LEAA will allocate 7-1/2 percent of the total formula grant of the State for use as administrative funds. The State may earmark 7-1/2 percent of its own formula allocation and 7-1/2 percent of the "balance of State" allocation for use by the State as administrative funds.

The State must pass through to each entitlement jurisdiction an amount equal to at least 7-1/2 percent of the jurisdiction's formula allocation. Thus the State will earmark 7-1/2 percent of the entitlement's allocation for use as administrative funds. The entitlement jurisdictions may use any unexpended administrative funds as action funds. The State may pass through administrative funds to any "balance of State" jurisdiction.

These additional administrative funds must be matched by the entitlement jurisdiction (this includes the State) on a dollar-for-dollar basis except that the first $25,000 expended by an entitlement jurisdiction is match free.

The entitlement jurisdiction may join a combination and aggregate the match free funds with the $25,000 of the other entitlement jurisdictions.

II. Current Practice

Currently, planning funds are allocated by LEAA under Part B of the Act. The sum of $250,000 is allocated to each State with the remainder allocated based on population. These funds must be matched on a 90-10 basis except

amounts expended by judicial planning committees or regional planning units are match free. The State is required to provide buy-in equal to one half of the required match.

III. Issues

1. This section provides that "at least 7-1/2 percent" of the allocation of an entitlement jurisdiction must be available to the entitlement. Does this mean that an entitlement may use more than 7-1/2 percent of its funds for administrative purposes as long as the State ceiling is not exceeded?

   No.

2. Will administrative funds have the same obligation and expenditure time limits as Part D action funds?

   Yes. The funds are awarded as part of a single award and the State and eligible jurisdictions have the option of using administrative funds as action funds. Consequently, the action fund obligation and expenditure time limits will apply.

3. May two or more entitlement jurisdictions which combine to form a combination entitlement jurisdiction also combine their $25,000 match free administrative funds bases?

   Yes. Two entitlement cities or counties can combine their $25,000 match free bases. However, an entitlement combining with non-entitlements does not receive two match free bases.

4. What if one entitlement jurisdiction's administrative dollars exceed $25,000 and the other jurisdiction's dollars do not, can the combination utilize the excess match free base not utilized by the second jurisdiction?

   Yes. However, because any entitlement may only spend up to 7-1/2 percent of the total allocation on administrative purposes, use of this authority may be limited.

5. Is the State required to match the $25,000 base (match free to the entitlement) amount that goes to entitlement? If so, may that that matched amount be retained at the State level?

   No. The State is not required to match the $25,000 match free amount that goes to entitlements.

6. Are the State Councils required to give any of the $200,000 match free base to entitlements or other local jurisdictions?

   No. The States may, at their discretion, award some of these funds to entitlements and other jurisdictions. In addition, the legislative history (the Conference Report) makes clear that the States are required to provide administrative services or support to the balance of State jurisdictions and that the proportion of action funds used at the local jurisdictions is to be the basis for determining the portion of the $200,000 administrative base and 7-1/2 percent balance which is allocable

to local pass through requirements.

7. Must the State Council make available an amount in excess of $50,000 to the JCC? If so, to what allocation does the 7-1/2 percent administrative funds figure apply?

   The State Council must make available to the JCC an adequate share of funds for the courts at the State level. To the extent that the JCC application covers local courts, an adequate share of funds determination would also apply to the local level. Section 401(c)(1) permits an allocation of $50,000 to the JCC for administrative purposes. Then an amount equivalent to 7-1/2 percent of the entire award to the JCC, including the $50,000, may be used for administrative purposes. It is clear from Section 401(c) that the additional 7 1/2% comes from the states administrative pot and must be matched at a 50/50 ratio.

8. Must the JCC carry out administrative functions like grants administration, fund accounting, auditing and monitoring in order to receive the $50,000 or the additional 7-1/2 percent of the allocation?

   The $50,000 is made available to the JCC for the purpose of administering grants. The 7-1/2 percent is also made available for administering grants. However, the statute expressly provides that administrative funds may be used for action purposes.

9. Are Councils without JCC's eligible for the $50,000 in judicial planning funds?

   We expect that this point will be clarified in the Conferene Report or later action. This [legislative] history should confirm that State Council's without JCC's, will be eligible to retain the $50,000 for use in administering grants to the courts under arrangements agreed to with the courts.

10. Are Councils with JCC's which do not use their $50,000 eligible to receive the remaining money?

    The Councils are free to work out any agreements with the JCC's that they and the JCC's feel appropriate for control and accountability of these funds. Such agreements could include the division of the $50,000 funding between the JCC and the State Council. However, if the JCC chooses not to spend the entire $50,000 for the purpose of administering grants, the JCC would be authorized by the statute to apply the funds to action programs under Section 501(a).

11. Will funds unexpended by entitlement jurisdictions first revert to the State for administrative purposes or to the entitlement jurisdiction for action purposes?

    The funds remain with the entitlement jurisdiction for action purposes. The clear intent of the statute was to encourage States and entitlement

jurisdictions to minimize administrative expenses. By allowing the eligible jurisdictions to apply administrative funds to action purposes the jurisdiction would be rewarded for minimizing administrative costs.

12. May the State Council of a State with no entitlement jurisdictions retain 100 percent of the administrative funds?

    Yes. Legislative history in the Conference Report requires that the State provide administrative support or funds to balance of State jurisdictions in proportion to the relative State/local expenditures.

13. How can entitlement jurisdiction which will receive, as an example, $100,000 or less meet all of the administrative and programmatic requirements of the new legislation since the jurisdiction will only receive $7,500 in administrative funds?

    Unless additional local resources are provided, or certain evaluation, TA and coordination activities can be funded as is permissable with action funds, it is unlikely that an entitlement receiving a total grant of this size could meet all administrative and programmatic requirements.

USE OF FORMULA AND ADMINISTRATIVE FUNDS FOR COORDINATION, EVALUATION, AND TECHNICAL ASSISTANCE

I. Explanation of the Provisions

A. Coordination

Section 401(a)(20) provides for use of formula funds under Part D of the Act for coordinating programs and projects. It states:

> The Administration is authorized to make grants under this part to States and units of local government for the purpose of--
>
> (20) Coordinating the various components of the criminal justice system to improve the overall operation of the system. . .

The Senate report provides in regard to this coordination authority:

> Section 401(a) of the bill specifically provides that it is the purpose of part D to assist States and units of local government to carry out programs to coordinate, as well as to strengthen and improve the functioning of, criminal and juvenile justice systems. Section 401(a)(9) of the bill establishes program authority to use action funds for the purpose of coordinating the various components of the criminal and juvenile justice system in order to improve the overall operation of the system. This authority is intended to cover a full range of coordination activities including the establishment and continuation of criminal justice coordinating councils authorized under the block grant program of the current LEAA legislation. Coordination among all parts of the criminal and juvenile justice systems is vital to the effort to strengthen the system.
>
> Therefore, activities that are intended to increase the efficiency and effectiveness of the interrelated functions of criminal and juvenile systems, to develop better ongoing functional relationships between and among the criminal justice subsystems, and between system components and public and private agencies outside the criminal and juvenile system are broad coordination endeavors that fall within the scope of section 401(a)(9).
> (Note: Section 401(a)(9) of the bill under consideration by the Senate Judiciary Committee is identical, as regards to the coordination authority, to Section 401(a)(20) of the final bill.)

In addition, Section 402(b)(1)(D) provides that the criminal justice councils are responsible for:

(D) Receiving, coordinating, reviewing, and monitoring all applications or amendments submitted by State agencies, the Judicial Coordinating Committee, units of local government, and combinations of such units pursuant to Section 403 of this title, recommending ways to improve the effectiveness of the programs or projects referred to in said applications, assuring compliance of state applications with Federal requirements and State law and integrating said applications into the comprehensive state application.

Thus, coordination programs and projects can be carried out with Part D formula action funds and the CJC can coordinate applications with administrative funds.

B. Evaluation

Section 401(a)(21) provides that formula funds can be used to:

(21) Develop statistical and evaluative systems in States and units of local governments which assist the measurement of indicators in each of the areas described in paragraphs (1) through (20). (Emphasis added.)

Under this subsection, Part D formula funds may be used by States and local governments to fund programs to set up evaluative systems to evaluate any program funded under Section 401(a)(1) through (a)(20).

State Criminal Justice Councils are responsible under Section 402(b)(1)(I) for:

(I) Assuring fund accounting, auditing, and evaluation of programs and projects funded under this part to assure compliance with federal requirements and state law.

Under this section, CJC's may use administrative funds to evaluate programs and projects under Part D of the Act.

Local offices of entitlement jurisdictions also have the responsibility under Section 402(c) of the bill to "evaluate" programs and projects funded under the application submitted to the CJC. Thus, the local office may use administrative funds to evaluate programs. And in accord with Section 401(a)(21), the local offices may use formula funds for evaluation.

C. Technical Assistance

Technical assistance may be provided using Part D formula action funds if the technical assistance is to a program or project within the authorized subjects of funding contained in Section 401(a). The Senate Report provides that technical assistance activities "are considered to be of a program or project nature where they relate to the authorized

program areas set forth in Section 401(a) of the bill. As such, they are eligible to be funded with action program funds on the same basis that they were under the Omnibus Crime Control and Safe Streets Act of 1968, as amended." In effect, they are part of the actual implementation of a Section 401(a) program.

Technical assistance may also be provided by a Criminal Justice Council under Section 402(b)(1)(H) which states that Criminal Justice Council's have the responsibility for:

(H) Providing technical assistance upon request to state agencies, community-based crime prevention programs, the judicial coordinating committee, and units of local government in matters relating to improving criminal justice in the state; (Emphasis added.)

Thus, Criminal Justice Council's may use administrative funds to provide technical assistance.

II. Current Practice

See prior legal opinions.

III. Issues

1. What kind of deliverables will LEAA be looking for if a unit uses formula D money for coordination? Meetings of the different components? Policy development? Other? Or is this something that LEAA will leave in the hands of the local unit and its advisory board?

   Coordination activities funded from Part D action fund sources are expected to conform to the same type of activities spelled out in Legal Opinon No. 75-54, Criminal Justice Coordinating Councils. This Opinion referenced the coordination activities cited in the Final Report of the National Commission on the Causes and Prevention of Violence, December 1969, pp.159-163.

2. Can a jurisdiction spend money on evaluation of programs regardless of whether or not the program was funded with formula D monies; i.e., can money be spent on evaluating the police department or some similar type evaluation?

   Section 401(a)(21) only permits evaluation from action fund sources of Section 401(a)(1)-(20) programs. However, Section 401(a)(2) permits the funding of projects designed to improve and strengthening law enforcement agencies "as measured by" various indicators. This section would permit evaluation of the police agency or other non-action funded activity, including those activities in Section 401(a)(22) or innovative programs mentioned in Section 401(a)(23).

3. Can both the State and local unit provide TA?

   Yes. As an integral part of a Section 401(a) program, technical assistance can be funded.

4. What kind of deliverables or degree of specificity will LEAA be looking for when an application shows a TA component?

   LEAA will not see the actual projects or project applications (where used). The State and eligible jurisdiction must determine that the action fund portion for TA serves a Section 401(a) purpose.

5. Can the cost of evaluating be charged to action funds or must it be charged to administrative costs?

   See the answer to No. 2. In addition to this action fund use, State administrative funds can be used for evaluation consistent with Section 402(b)(1)(I) and eligible jurisdiction administrative funds can be used consistent with Section 402(c).

6. Can the state use the "coordination" category of Section 401 to supplement its administrative funds?

   No.

Matching Requirements and Assumption of Cost Requirements for Action Grants Under Parts D, E, and F

I. Evaluation of the Provisions

A. Section 401(b)(1) and (2) provides as follows:

> "(b)(1) Except with respect to allocations under subsection (c) of this section--
> "(A) for the fiscal year ending September 30, 1980, the Federal portion of any grant made under this part may be up to 100 per centum of the cost of this program or project specified in the application for such grant; and
> "(B) for any later fiscal period, that portion of a Federal grant made under this section may be up to 90 per centum of the cost of the program or project specified in the application for such grant unless the Administrator determines that State or local budgetary restraints prevent the recipient from providing the remaining portion.
> "(2)(A) The non-Federal portion of the cost of such program or project shall be in cash."

Formula Funds (Part D) must be matched at least on a 90-10 basis. This match requirement can be waived for Indian Tribes and in "hardship" cases. However, because this amendment originated in the House and in the Conference Committee after some States had relied upon the Senate bill, for fiscal year 1980 only, formula action funds may be used up to 100 percent of the cost of a program or project in those States. Recipients must assume the cost of improvements after a reasonable period of assistance unless the Administrator determines that the recipient is unable to assume because of budgetary restraints. (Section 401(b)(3)).

The Senate Report provides that a reasonable period is three years or, in appropriate circumstances, four years. States will continue to set their own assumption of costs policies within LEAA guidelines. With regard to the budgetary restraint exception, the Senate Report provides:

> "The committee anticipates that before the administrator determines that the recipient is unable to assume the cost, it must be demonstrated that the normal State or local budget process was followed and that the budget request for the particular program was denied by the legislature or council because of the lack of funds. This demonstration should be made for each fiscal year in which the recipient claims that it is unable to assume the cost.
>
> "The committee also recognizes that cost assumption in every individual program is not to be expected. For example, in section 401(b), the committee expressly recognizes that the incremental cost of administering grants under this title is not governed by the assumption of cost requirement. In addition, in section 401(a)(9), various activities are funded to improve the overall operation of the criminal and juvenile justice systems.

> "Where a State has assisted in legislative development, trained criminal justice personnel, conducted evaluations, or rendered technical assistance, the specific activity is not repeated and costs cannot be assumed. The State or local government may at a later date provide technical assistance or assist in development of a definite piece of legislation, yet there is no intent for that function to be governed by this provision since the supportive activity under that function is itself not being repeated with Federal funds."

Grants made under the National Priority Program (Part E) are 50 percent Part E funds with the remaining 50 percent provided from formula funds or any other source of funds, including other Federal grants. Recipients must assume the cost of programs after the period of Federal assistance unless the Administrator determines that the recipient cannot assume because of budgetary restraints.

The bill provides that discretionary (under Part F) funds may be provided for up to 100 percent of the cost of a program or project. There is no assumption of cost requirement.

Section 1301(h) provides that funds provided under Parts B, C, and E of the Omnibus Crime Control and Safe Streets Act in fiscal year 1979 and earlier may be used for up to 100 percent of the cost of programs and projects. In regard to this provision, the Senate Report provides:

> "Section 1301(h) of S. 241 provides that funds made available under title I of the Crime Control Act but not obligated prior to the effective date of the Law Enforcement Assistance Reform Act would not be bound by the title I matching requirements of the current Crime Control Act.
>
> "It should be emphasized that funds 'not obligated' include those not yet awarded or committed by State or local governments. In the event that a State or local government recipient has contracted for a project or has effectively awarded the funds to a subrecipient, the funds are, for purposes of 1301(h), considered obligated.
>
> "If a program or project is in operation but not completed, it is not intended that the new matching requirements be applied to the remainder, even though under generally accepted accounting practices the governmental unit may not as yet be obligated to pay. It should be clear that if a State has awarded funds to a unit of local government and the unit has not, in turn, further obligated the funds by award or contract, the funds are not obligated, and the new matching rules would apply. The mere fact that the funds in the hands of the local unit came through the State does not in itself constitute an obligation."

II. Current Practice

Part C and Part E action funds must be matched 90-10 except for Part C construction programs which must be matched 50-50.

III. Issues

1. Under Part D who will set match and assumption of cost requirements for entitlements, the State or the entitlement jurisdiction itself?

   The entitlement jurisdiction.

2. Will the determination of a reasonable period of time for assumption of cost still be left to State discretion, but presumed to be about three years?

   The Senate Report mentions that three years is reasonable or, in appropriate circumstances, four years. The statute places discretion in LEAA to make assumption of cost determinations and issue guidelines.

3. What documentation will have to be shown and what burden of proof will have to be met to prove budgetary restraints?

   Our initial thinking is that documentation would be needed to reflect a good faith proposal to the legislative body and a denial of funding solely on the basis of a lack of funds.

4. Does the State Council have final authority to impose match requirements?

   No. As to entitlement jurisdicitons. Yes. As to "balance of State" and State agencies.

5. Do the entitlement jurisdictions have the authority to override State policy on match and assumption of cost?

   Yes.

6. May all prior year (FY 77, 78 or 79) block Part B, C, or E unobligated funds automatically be used on a match free basis?

   The statute allows prior year unobligated funds to become match free. However, each State has an existing approved grant (contract) with LEAA under which they have agreed to provide match and buy-in at the previous statutory levels. These prior year approved comprehensive plans would require an amendment before any unobligated money may become match free. LEAA's position is that the prior year approved applications will generally remain in effect as they now exist unless changed circumstances or some need exists to modify the prior year grants. These will be handled on a case-by-case basis by LEAA.

7. May a State establish assumption of cost rules, based on declining Federal fund shares, for entitlement jurisdictions?

   No.

8. Where a combination exercises an entitlement and redistributes Part D action funds among participating cities and counties, who is the "recipient" for purposes of assumption-of-cost, Section 803 compliance proceedings, and Section 815(c) civil rights compliance?

Both parties must make the required assurances. The entitlement combination must make them to the State and to LEAA. The individual city or county recipient would be governed by "flow down" conditions and would make the assurances to the entitlement combination and to the State. Enforcement would ordinarily proceed in a like manner. However, LEAA retains either option on civil rights compliance proceedings.

. Please clarify -- must entitlement assume the costs of funds used for administration, evaluation, audit, monitoring?

Evaluation and technical assistance funding would not ordinarily go to the same jurisdiction for the very same pruposes beyond the cost assumption requirements of the Act. Cost assumption does apply to those action-type activities, but would not ordinarily create a problem. Strictly administrative activities are matched at a 50/50 ratio (above the base) and at this matching ratio state and lcoal governments are, in fact, sharing the cost with the Federal government. The congressional concern is thus satisfied through this mechanism.

10. Can states or local governments continue to aggregate match? If so, how can you justify this interpretation in light of the legislation which specifies that the Federal formula grant may be up to 90 per centum of the cost of the program or project specified in the application?

Yes. The previously used methods of aggregating match are permitted. This interpretation is consistent with the definition of program as well as the concept embodied in a single application covering multiple projects whether such application is submitted by a state or entitlement jurisdiciton, or a balance of state jurisdiciton.

11. Where a combination type entitlement is unable to assess or raise contributions of match for the multi-jurisdictional action projects it wishes to fund, will LEAA recognize a "local budgetary restraint" for the purpose of allowing 100% grants under 401(b)(1)(B)?

No. This is not a "hardship" as envisioned by the statute or the guidelines.

12. Can a nonprofit organization be treated as the "recipient" for the purpose of the hardship match waiver under 401(b)(1)(B)?

No.

13. Section 401(b)(1)(B) requires cost assumption unless the Administrator determines that "State or local budgetary restraints" prevent the recipients from assuming costs:

(1) Define budgetary restraints?
(2) How long can the hardship apply to action funds of entitlement jurisdictions?
(3) Can this status be applied to existing LEAA block or DF grants from DF 80 and prior year's such as FY 78 and 79?

The evidence to show hardship will be set out in Section 31.203 of the new guidelines. Ordinarily the hardship exception would apply on an annual basis. However, the guidelines would permit it to apply on a multiple-year basis where it can be shown that the conditions apply in the present and in all probability will apply in the future. As for prior years' funds, hardship could be one factor LEAA could apply to grant waivers of match on prior year grants. However, prior year funds are not limited to the hardship status alone as a reason for waiver.

Juvenile Delinquency Maintenance of Effort

I. Evaluation of Provision

Section 1002 of the bill provides for a continuation of the requirement that 19.15 percent of the appropriations for each fiscal year under the bill shall be used for juvenile delinquency programs. There is new language providing that primary emphasis be provided on programs for juveniles convicted of criminal offenses or adjudicated delinquent on the basis of an act which would be a criminal offense if committed by an adult.

The House Report provides:

> "An amendment was adopted at full Committee markup to the 'maintenance of effort' provision (Section 1002) requiring that the 19.15 percent of LEAA appropriations earmarked for juvenile delinquency programs must be used primarily for programs for juveniles who commit criminal offenses. The purpose of this amendment is to focus these funds on serious juvenile offenders, rather than on so-called 'status offenders', such as runaways and curfew violators."

II. Current Practice

Section 520(b) of the Crime Control Act provides that 19.15 percent of the total appropriations for the administration shall be used for juvenile delinquency programs.

III. Issues

1. How will the 19.15% juvenile justice maintenance of effort be implemented?

   LEAA will continue to require each state to allocate and expend a minimum of 19.15% of the total Part D formula grant for Juvenile programs in accord with the statute.

2. Will each entitlement have to spend 19.15% of its money on juvenile justice or will LEAA look to see which level of government incurs juvenile justice expenditures and make those that have the responsibility pay more? And those that don't pay less?

   Not necessarily. The state will determine an equitable allocation system.

Reallocation of Funds

I. Evaluation of Provision

Section 405(d) of the bill provides that if the Administration determines that funds allocated to a State government, local government or combination of governments for a particular fiscal year will not be required or that a particular jurisdiction will not qualify for funds under the Act, then the funds may be reallocated to other jurisdictions in LEAA's discretion. All States must be considered equally for such reallocable funds.

II. Current Practice

Section 306(b) of the Crime Control Act provides for a similar reallocation except that funds must be reallocated to all other States on a population basis.

III. Issues

1. May LEAA use these funds as another discretionary fund?

   Yes. However, other options within the particular state may be used depending on the circumstances.

2. Does the proviso that all states must be considered equally mean that all states must receive a share or just that all states must be given equal chance to apply for these funds?

   All states must be given an equal chance to apply for funds reallocated under Section 405(d) if the funds are not reallocated within the state.

PUBLIC PARTICIPATION

I. Evaluation of the Provision

Section 402(f) provides that to be eligible for formula funds, all eligible jurisdictions must assure participation of citizens and neighborhood and community organizatins in the application process. The application must provide satisfactory assurances to LEAA that citizen and neighborhood and community organizations were provided adequate information concerning (1) the amount of funds available (2) the range of activities that may be undertaken (3) other important program requirements.

The jurisdiction is also required to provide such groups an opportunity to consider and comment on priorities in the application or amendments.

The Administrator of LEAA, in cooperation with the Office of Community Anti-Crime Programs, is authorized to establish rules and procedures to assure that citizens and neighborhood and community organizations have an opportunity to participate in the application process.

Under Section 103(a)(1)(B) of the Act, the Office of Community Anti-Crime participates in the formula application process pursuant to Section 402(f).

The Senate Report states that:

> "In addition to continuing its established program functions, OCACP would be given a formal role in the formula grant application process. Under section 402(f) of the Law Enforcement Assistance Reform Act, no jurisdiction would be eligible for a formula grant unless it assures that neighborhood and community organizations, as well as individual citizens, have participated in the application process. The bill also gives OCACP the authority to review formula grant applications to determine that the community participation requirements have actually been met." S. Report 96-142 at 27.

Section 103(a)(4) provides authority to OCACP to review formula grant applications in order to assure that the requirements for citizen, neighborhood, and community participation in the application process have been met.

Clearly, more is required than placing citizens on the planning boards. Such representation is mandated by 402(b)(2)(D) and section 402(c) . . . "Such board shall be broadly representative. . .and shall include among its membership representatives of neighborhood and community-based organizations."

Specifically, Section 404(a)(2) requires a determination by the Administration that the application or amendment was made public prior to submission to the Administratin and an opportunity to comment was provided to citizen and neighborhood and community groups.

Other Federal agencies with public participation in the planning process have detailed requirements. For example, the CETA regulations, 20 C.F.R. 676.12 require publication at a minimum in one issue of a newspaper or newspapers of general circulation a statement indicating (1) source of funds, (2) amount requested (3) a brief summary of the purpose of the proposed program and activities (4) the location and hours where the plan can be reviewed and the address, and phone number where questions and comments may be directed. A copy of the newspaper article must be transmitted to the Federal agency.

There have been a number of cases dealing with citizen participation and Federal funding. These cases have held that where legislation provides for citizen participation in the grant process, citizens adversely affected by approval or continued funding may sue for injunctive and declaratory relief where there has not been compliance with the requirement for community participation.

In North City Area-Wide Council vs. Romney, 456 F.2d 811 (1972), a citizen group challenged the model cities program in Philadelphia because the model cities plan was modified without citizen group participation in the decision process.

The Demonstration Cities and Metropolitan Development Act of 1966 requires ". . .to be eligible for Federal aid, a comprehensive city demonstration program must provide. . .widespread citizen participation in the program and the Secretary of Housing and Urban Development must emphasize local initiative in the planning. . .[of it]"

The Court held that the HUD violated the Act in accepting a proposal for major modification of the model cities program from Philadelphia which made clear on its face that there had been no citizen participation in its formulation. The Court stated:

> ". . .[The issue is not citizen veto or even approval but citizen participation negotiation, and consultation in the major decisions which are made for a particular Model Cities Program. While not every decision regarding a Program may require full citizen participation certainly decisions which change the basic strategy of the Program do require such participation."

While the Justice System Improvement Act does not have the same broad language as the Demonstration Cities and Metropolitan Development Act (widespread citizen participation), nevertheless it will be important to assure that citizens have been given the opportunity to participate and that this is documented in the application submitted to LEAA.

II. Current Practice

Under the Crime Control Act of 1976, State planning agencies had to assure the participation of citizen and community organizations at all levels of the planning process. In analyzing this amendment in 1976, LEAA Reauthorization Papers stated:

> "One method of assuring such citizen participation in the planning process is to include representatives of citizen and community organizations on these other planning boards. Another method that could be used by the planning bodies is to provide for public hearings on the local plans, the judicial plan and the final State plan. A third method could be a process for providing public review and written comments on the plan."

The Guidelines at M 4100.1F, Section 1, paragraph 10.b(2) required that the State planning agency describe the proposed role in planning of various agencies and organizations including citizens.

A review of the range of activities undertaken by the States to comply with the 1976 provision showed that there is citizen membership on State and local planning boards and advisory groups with meetings open and publicized. In addition, sixteen states reported special public meetings and hearings, eight engage in special outreach programs to public interest groups. Five states conduct special mail surveys for citizen opinions and three utilize special citizen's task forces for public input. Other activities reported were appearance by SPA staff, a special citizen's appeals committee for a supervisory board, a special program of collaboration with a university and a system of satellite planners charged with obtaining citizen input.

III. Issues

1. What rules if any will be promulgated regarding citizen participation?

   These rules have now been drafted and are in the guidelines for comment.

2. Won't citizen participation on boards and open meetings be sufficient to provide an opportunity for participation?

   No. The new Act at Section 402(b)(2)(D) and (C) requires representation on the State Councils and local boards of the general public and requires open meetings at Section 402(e)(2). In addition, there is the new requirement at Section 402(f) that citizen, neighborhood and community organizations have an opportunity to review and comment on programs. Open meetings will therefore not be sufficient. Something more is required.

3. Will JCC plans require citizen participation?

   The Section 402(f) requirement does not apply to JCC's. It applies to eligible jurisdictions. The JCC's will be required to hold open meetings and provide access to records. (Section 402(e)(2)).

4. What kind of TA will OCACP provide to enable citizens to participate?

   OCACP will provide informational packages and will put on seminars to assist community groups.

ORGANIZATION

I. Evaluation of the Provision

The Justice System Improvement Act of 1979 establishes an Office of Justice Assistance, Research, and Statistics (OJARS) under the general authority and policy control of the Attorney General. OJARS will provide coordination and staff support for the Law Enforcement Assistance Administration (LEAA), the National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS).

Part A provides for the establishment of LEAA. Within LEAA it provides for an Office of Community Anti-Crime Programs. (The Office of Juvenile Justice and Delinquency Prevention also remains as part of LEAA under the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.) LEAA is authorized to operate a State and local assistance program under Part D Formula Grants; a 50/50 match program of National Priorities under Part E; discretionary and training and personnel development programs under Parts F and G; and community anti-crime programs and juvenile justice and delinquency prevention programs and Public Safety Officer Benefits. LEAA will be headed by an Administrator appointed by the President. The Administrator will have the final sign off authority in the award of grants and contracts for LEAA and OJJDP.

Part B provides for the establishement of NIJ. NIJ will insure a balance in basic and applied research; evaluate criminal justice programs, test and demonstrate civil and criminal justice programs; disseminate information and give primary emphasis to State and local justice systems. NIJ will be headed by a Director appointed by the President. The Director will have the final sign off authority for the award of grants and contracts for NIJ.

Part C provides for the establishment of BJS. BJS will provide a variety of statistical services for the criminal justice community; recommend standards for the generation of statistical data; analyze and disseminate statistics; and, provide for the security and privacy of criminal justice statistics. BJS will be headed by a Director appointed by the President. The Director will have the final sign off authority in the award of grants and contracts for BJS.

Part H provides for the establishment of OJARS. It will provide staff support in the areas of congressional liaison, public information, accounting, audit, equal employment opportunity, civil rights compliance, administrative services, general counsel, comptroller functions, and personnel management. It will coordinate the program planning and budgeting activities of LEAA, NIJ, and BJS through the facilitation of interoffice communications and intergovernmental liaison. Where there are disputes between LEAA, NIJ and BJS, OJARS will resolve disagreements. OJARS will be headed by a Director appointed by the President.

II. Current Practice

Under the Crime Control Act of 1976, which expired September 30, 1979, LEAA was composed of six program offices - Office of Criminal Justice Programs, Office of Community Anti-Crime Programs, Office of Criminal Justice Education and Training, the National Institute of Law Enforcement and Criminal Justice, the National Criminal Justice Information and Statistics Service, and the Office of Juvenile Justice and Delinquency Prevention - and nine staff support offices. The program offices operate State and local assistance programs through formula grants and various discretionary and categorical grant programs, including statistics, research and development, education and training, community anti-crime, and juvenile justice and delinquency prevention.

III. Issues

1. What type of relationship will exist between OJARS, LEAA, NIJ, and BJS programmatically?

   OJARS facilitates the program development process through coordination and communications between all units.

   OJARS and LEAA jointly designate National Priority and Discretionary Grant Programs.

   OJARS sets policy standards for intelligence systems funded through Part D of the JSIA.

   OJARS coordinates the development of interoffice policies, e.g., financial management, grants administration, and data collection.

2. Will there be a single point of contact for SPA's or will SPA's have to deal separately with OJARS, LEAA, NIJ and BJS?

   While there will be no single point of contact as such, program analysts in the State/local assistance divisions will to some extent be able to provide information as to whom to contact regarding various problems. However, questions dealing with specific programs (NPP, DF, R&D, Stats., etc.) should be directed to the particular unit concerned.

   LEAA, NIJ, BJS and OJARS will establish more specific information on points of contact in the coming months.

NATIONAL PRIORITY GRANTS

I. Evaluation of the Provision

Part E establishes a new National Priority Grant program. This program provides grants to State and local governments to carry out programs that, on the basis of research, demonstration or evaluation, have been shown to be effective or innovative and to have a likely beneficial impact on criminal justice. Priorities may include programs to improve planning and coordination activities.

Ten percent of the total Parts D, E, and F appropriation is reserved for this program. Grants require a 50 percent match. However, the match may come from any source of funds, including Part D formula grant monies.

The National Priority Grant program implements a recommendation of the Department of Justice Study Group in its June 1977 Report to the Attorney General that there should be a "national demonstration program designed to emphasize the maximum utilization of research findings in program design, systematic program development, testing and evaluation and eventual replication on a broad national basis." (Department of Justice Study Group, Report to the Attorney General, June 23, 1977, p.13) The Study Group concluded that this program would be the most effective way of rapidly bringing the findings of research to bear on the operational problems of the criminal justice system. It also implements the Study Group's recommendation that the national research and development program be linked with the formula grant program through financial incentives that would serve to encourage the replication of effective programs while preserving State and local discretion.

The Senate Committee on the Judiciary concluded that the National Priority Grant program is an innovative response to a 10-year debate over the proper scope and meaning of the LEAA program. The Committee characterized the program as a balance between the view that the Federal Government should determine State and local spending priorities, based on its research efforts, and the opposite view that States and localities should have maximum discretion. As the Senate Committee Report notes: "Under this approach the Federal Government suggests--but does not mandate--certain LEAA priorities. The State and local governments are encouraged but not forced to participate in the program." (Senate Report No. 96-142, 96th Congress, 2nd Session, p.46)

In floor debate in the House, Representative McClory (R-Ill.) reinforced this position. He stated:

> "So what the national priority program undertakes to do. . .is to provide some monitoring, some evaluating and some direction from the Federal Government to try to see that the funds are utilized in a way which has been found to be efficient and effective at the local level. . . We are not trying to run the police departments, but what we are trying to do is give some guidance, some direction, some coordinating influence with respect to law enforcement, which is a national responsibility." (Congressional Record H 9098, October 12, 1979)

National Priority Grant programs are identified jointly by OJARS and LEAA based on nominations from NIJ, BJS, State and local governments, and other public and private organizations. Proposed programs will be published in the Federal Register and the public given at least 60 days to comment. Priorities for each fiscal year must be published in the Register prior to the start of each fiscal year, beginning in FY 1981.

The nomination process is clearly intended to be an open and participatory one. The Senate Committee states: ". . .it is a program where the joint participation of Federal, State and local governments and public and private agencies in the determination of priorities is crucial." (p.47)

All Part E applications are to be submitted for review to the State Criminal Justice Council. Councils will have 30 days to review the applications and submit comments to LEAA.

The National Priority Grant program is to be administered by the Law Enforcement Assistance Administration. Section 505(a) directs the Administrator of LEAA to establish reasonable requirements for the award of Part E grants and to publish award procedures in the Federal Register. No grant is to be made in a manner inconsistent with these procedures. Section 505(a) further directs the Administration to take into account in awarding grants the criminal justice needs and efforts of eligible jurisdictions; the need for continuing programs which would not otherwise be continued due to inadequate Part D funds; and the degree to which an eligible jurisdiction has expended or proposes to expend Part D or other funds for priority programs.

The Act assures that the problems and needs of all States be considered in the distribution of Part E monies. It further provides that no jurisdiction be excluded from participation solely due to its population. It is clear that the intent is to assure that programs are developed which are responsive to the needs of less populous as well as urban areas.

National priority grants may be for up to three years, and may be extended for an additional two years if the program or project has been evaluated and found to be effective. Recipients are expected to assume the costs of effective programs unless State or local budget constraints preclude cost assumption.

Consistent with the transition provision of the statute, as well as the specific language that national priority programs need not be identified until prior to FY 81, FY 80 is a transition year for the national priority

grant program. In FY 80, programs to be supported with Part E National Priority funds shall be proposed by LEAA, published in the Federal Register for review and comment, and published in the Register in final form after comments have been received and considered. Proposed programs will appear in the Register by mid-December, 1979.

FY 80 proposed programs shall be those which most nearly meet the Part E criteria of demonstrated effectiveness and will include those programs previously established as "incentive programs." Matching rates will vary according to individual programs. The 50/50 match requirement will not apply across-the-board until FY 81.

II. Current Practice

In 1978 LEAA initiated an experimental "incentive" grants program which in some respects serves as a forerunner of the national priority grant program. Under the incentive grants program LEAA has supported the replication of programs that have been found to be effective through research and evaluation. Incentive grants have required a 50 percent match and have been for programs of statewide impact.

There are critical differences between the national priority grant program and the current "incentive" grants program. There is no requirement that programs be of statewide impact. Additionally, there is a formal and participatory nomination process, with emphasis on the recommendations of State and local agencies.

III. Issues

1. Who are eligible applicants for National Priority Programs?

   State and local governments.

2. What are the criteria and procedures for State and local nominations of National Priority Grant Programs?

   Programs nominated for National Priority Grant program status must meet the standards set forth in Section 503(a) - that is, they must have been shown, through research, demonstration, or evaluation, to be effective or innovative and to have a likely beneficial impact on criminal justice. It is expected that programs nominated by State and local governments will have to have had a formal evaluation that provides convincing evidence of the effectiveness of the program. Detailed criteria designating priority programs as well as procedures for obtaining State and local nominations will be developed, in consultation with State and local representatives, by January 1980.

3. How does the National Priority Grant program relate to the Formula Grant program?

   Formula grant monies may be used to provide the required 50 percent match on National Priority grants. In preparing FY 81-83 applications, States and localities should use as their guide the list of programs selected in FY 80 for Part E funding and published in the Federal Register. LEAA will give further consideration to the five problems raised at the Kansas City meeting on February 27 and see that Part E and Part F dollar allocations are specified; joint or separate accountability is decided; matching ratios clarified; relationships to the Section 401 categories described; and separation of National Priority competitive programs accomplished.

4. Since National Priority Grants may be a key element in application development when will LEAA designate such priority programs for FY 1981?

   States and local governments should use as their guide in the development of their three-year applications the list of FY 1980 National Priority programs appearing in the Federal Register February 15, 1980, as the statute allows priorities to remain in effect for up to three years. Beginning in the Spring of 1980, LEAA and OJARS will initate a formal process for obtaining recommendations for FY 1981 priorities. This process will solicit nominations from BJS and NIJ, state and local government, and other public and private agencies. LEAA and OJARS shall jointly publish proposed national priority programs in the Register, based on these nominations, and invite public comment for a 60 day period. After considering the comments received, LEAA and OJARS shall publish a final list of priority programs in the Register prior to the beginning of the fiscal year. States and entitlements may amend their applications, if necessary, to reflect new priority programs to be supported in part with formula monies.

5. Can a council, through its priority-setting process, require entitlement applicants to direct some minimum portion of their Part D funds to Part E National Priority Programs?

   No.

6. How will Part E funds serve as an incentive for allocation of Part D funds, since combinations are not eligible for Part E awards?

   Combinations are eligible under Section 502.

DISCRETIONARY GRANT PROGRAMS

I. Evaluation of the Provision

Part F continues the discretionary grant program of LEAA. As reauthorized by the Justice System Improvement Act, the discretionary grant program provides assistance to States, local government, and private non-profit organizations for the following purposes: (1) programs to improve and strengthen the criminal justice system; (2) programs to improve planning and coordination; (3) programs to assure the equitable distribution of funds among criminal justice components; (4) programs to prevent and combat white collar crime and public corruption; (5) court and corrections system improvements; (6) organized crime programs, and activites to disrupt illicit commerce in stolen goods and property; and (7) community and neighborhood anti-crime efforts.

Section 602(a) emphasizes assistance to private non-profit organizations for programs which otherwise might not be undertaken, including national court improvement, education and training programs; community and neighborhood anti-crime programs; victim-witness assistance programs; and efforts to develop, implement, evaluate and revise criminal justice standards. Innovative programs are encouraged.

Ten percent of the total Parts D, E, and F appropriation is earmarked for discretionary grants. Grants may be for up to 100 percent of program or project costs.

OJARS and LEAA shall establish jointly priorities for discretionary grant funding based on recommendations from BJS and NIJ, State and local governments and other appropriate public and private agencies. Proposed priorities shall be published in the Federal Register for 60 days review and public comment. Final priorities shall be identified in the Register prior to the beginning of FY 1981 and each subsequent fiscal year. Priorities shall remain in effect for no longer than three years.

The discretionary grant program is administered by LEAA, which shall establish requirements and criteria for grant awards. Under Section 605, LEAA is directed to consider in awarding grants whether certain segments of the criminal justice system have received a disproportionate share of financial aid. LEAA is also directed to assure that the problems and needs of all States, including less populous ones, are taken into account.

Grants may be made for up to three years and extended for up to two additional years if the program or project has been evaluated and found to be effective and if the recipient agrees to pay one-half the project cost. However, these provisions do not apply to funding for the management and administration of national non-profit organizations carrying out programs specified

in Section 602(a).

Consistent with the transition provisions of the statute, as well as the specific language that discretionary grant priorities need not be identified until prior to FY 81, FY 80 is a transition year for the discretionary grant program. In FY 80 priorities shall be proposed by LEAA, published in the Federal Register for review and comment, and published in the Register in final form after comments have been received and considered. Proposed DF priorities will appear in the Register by mid-December, 1979. Matching rates for FY 80 will vary according to individual programs.

II. Current Practice

Part F replaces the current LEAA Discretionary Grant program and is substantially similar to that program. Major differences include the provision for no-match, the formalized process for establishing and making known priorities, and the emphasis on certain high priority program areas.

III. Issues

1. What provisions exist for consultation with States and localities prior to the award of discretionary grants?

   The statute provides that private nonprofit organizations consult with officials of State and local governments to be affected prior to the award of any discretionary grant. Further, it is LEAA policy to require all applicants for DF funds to forward a copy of their application to the cognizant State Criminal Justice Council for comment.

2. Will LEAA establish a match requirement for certain classes of DF programs?

   The bill allows discretionary grants to pay for up to 100 percent of the costs of a project. LEAA may, however, require a matching contribution for certain programs. Any proposed match requirement would be included in the draft program announcement published in the Federal Register for review and comment.

3. Will LEAA implement a program to improve planning and coordination?

   Yes. A small scale effort initiated in FY 79 will be continued in FY 80 with both States and local governments eligible to apply for grants to upgrade their planning and coordination capabilities.

4. How will LEAA assure that the needs of less populous States and localities are met?

   By assuring that DF programs do not exclude less populous areas arbitrarily and that programs are designed to be responsive to rural needs. Substantial participation in the designation of DF priorities by all States and local goverments should assure balanced programming.

5. How will LEAA provide for the equitable distribution of funds among all components of the criminal justice system?

   Adequate share provisions under Part D should assure equitable funding for all criminal justice components. However, in the event of any apparent imbalances, Part F funds can be used to alleviate inequities. LEAA management system provide reasonably accurate data on the distribution of funds by component which can be used to empirically assess the fairness of fund distribution patterns and to guide any necessary adjustments.

JUSTICE SYSTEM IMPROVEMENT ACT OF 1979
CHRONOLOGY OF SIGNIFICANT EVENTS

April, 1977 - Department of Justice Study Group created to review LEAA program

June 23, 1977 - Study Group Issues Report on "Restructuring the Justice Department's Program of Assistance to State and Local Governments for Crime Control and Criminal Justice System Improvement"

November 21, 1977 - Attorney General Bell submits a proposal for the Reorganization of LEAA to the President

May 12, 1978 - Attorney General Bell formally requests enactment of legislation to extend activities of LEAA beyond FY 1979

July 10, 1978 - President Carter sends Message to Congress and proposes the "Justice System Improvement Act of 1978" S.3270 and H.R.13397 introduced in 95th Congress, Second Session (Also introduced: S.3280 and H.R. 13445-ABA/NIJ Act)

January 29, 1979 - S.241 and H.R. 2061, "Justice System Improvement Act of 1979," and S.260, "National Institute of Justice Act," introduced in the 96th Congress, First Session

Senate Hearings: August 16 and 23, (Criminal Laws Subcommittee) February 9, 15, and 28 and March 7 and 13, 1979 (Judiciary Committee)

House Hearings: August 1, October 3, 4, and 20, 1977, and March 1, 1978 November 20 and 21, 1978 February 7, 13, and 27, March 8 and March 22, and April 3, 1979 (Judiciary Subcommittee on Crime)

May 14, 1979 - S.241, amended, reported favorably from Senate Judiciary Committee (Senate Report No. 96-142)

May 15, 1979 - H.R.2061, amended, reported favorably from House Judiciary Committee (House Report 96-163)

May 21, 1979 - S.241, considered and passed Senate, amended

October 10 and 12, 1979 - S.241, amended to contain language of H.R.2061, considered and passed House

November 8, 1979 - Conferees met and resolved differences in S.241

December 10, 1979 - Conference Report on S.241 filed (House Report 96-655)

December 11, 1979 - Conference Report approved by Senate, S.241

December 13, 1979 - Conference Report approved by House of Representatives cleared for President

December 27, 1979 - "Justice System Improvement Act of 1979" (Public Law 96-157) Signed into law by President Carter

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