Department of Justice
Office of Juvenile Justice and Delinquency Prevention

OJJDP MONITORING POLICIES & PROCEDURES MANUAL

PREFACE

The manual is intended to aid in the consistent and methodical development and implementation of an accurate, complete system of monitoring compliance to Section 223(a)(12), (13), and (14) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

The manual is a collection of information which will assist states in their monitoring efforts. It is intended to be a 'working' manual which should grow and change to the degree that conditions change and to the degree that its contents are found useful. It is organized in the order of the JJDP Act; regulations; policy established regarding monitoring issues; legal opinions impacting the monitoring effort; and technical assistance tools in monitoring, collecting of information, inspection, and reporting. As it appears desirable, and as time allows, additions, revisions and deletions will be prepared and forwarded for insertion in the manual. However, if used as intended by OJJDP the recipient will continue to update and change the manual according to his/her situation and need.

The manual to some degree may serve to record the common experiences and alternative strategies experienced in the monitoring effort. Those who have discovered or prepared useful information, methods and approaches to issues are encouraged to nominate them for inclusion in the manual.

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DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Implementation of Formula Grants Program for Juvenile Justice

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

ACTION: Notice of final regulations.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing final regulations for the implementation of the formula grant program authorized by Part B, Subpart I, of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended. Formula grants are authorized to States which in turn make subgrants for use by State and local public and private agencies in carrying out juvenile justice and delinquency, improvement programs.

DATE: These regulations are effective December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Frank M. Porpotage, II, Formula Grants and Technical Assistance Division, 633 Indiana Avenue, NW., Room 742, Washington, D.C. 20531. Telephone: (202) 724–5911.

SUPPLEMENTARY INFORMATION: Draft regulations were originally published in the **Federal Register** on June 1, 1981 for public comment. Substantive changes were recommended and the draft regulations were again published for public comment on September 3, 1981. Written comments from some 66 national, regional, and local organizations were received. All comments have been considered by the OJJDP in this publication. These regulations, with the exception of § 31.303(i)(3), Valid Court Order, are final.

Discussion of Comments

Several respondents commented favorably upon the streamlining of the formula grant application requirements, an effort to simplify program administration.

The following is a summary of substantive comments and the response of the OJJDP:

1. *Comment:* The serious and violent juvenile offender emphasis of § 31.303(e) indicates that States should allocate a minimum of 30% of their formula grant funds to programs designed for these populations. Is this allocation mandatory?

Response: No. This provision in the regulations was designed to *encourage* States to address the problem of serious and violent crimes committed by juveniles. This is a major concern to the Congress, as reflected in the 1980 Amendments to the JJDP Act, and to the American public. The wording of this section attempts to focus State attention on a careful consideration of the need to allocate additional resources to this area of programming.

2. *Comment:* The serious and violent juvenile offender emphasis of § 31.303(e) should be redrafted to clarify that serious crime includes property crime. States have varying problems with juvenile violence and property crime and should be free to determine which to emphasize in programming.

Response: Agreed. A modification has been made in § 31.303(e) which serves to clarify this point.

3. *Comment:* The emphasis on serious and violent crime is inconsistent with the 66⅔% pass through to local government requirement of Section 223(a)(5) of the Act because programs for this segment of the juvenile offender population are generally organized at the State level.

Response: OJJDP will consider a waiver request from States where rehabilitation or other services for juveniles who commit serious and violent crimes are organized at the State level and to the extent justified by an increased State emphasis on this priority problem.

4. *Comment:* Specific reference to additional program areas, i.e., Project New Pride or Restitution, should be added to the serious and violent juvenile crime emphasis of the regulations.

Response: In drafting this section, OJJDP simply used the language of the legislation. Additional language specifying program options would be superfluous because States are free to select those program options which they determine have the best likelihood of success.

5. *Comment:* The jail removal requirement, Section 223(a)(14) of the JJDP Act, specifies two separate and distinct "exceptional circumstances" which are not reflected in the draft regulations.

Response: The regulations reflect the intent of the law. As Congressman Ike Andrews, Chairman of the House Subcommittee on Human Resources, stated in a letter to OJJDP on February 17, 1981, "You are completely correct that the exception language is intended to establish a single exception applying only to low population density areas. Only in such areas would the temporary detention in adult facilities of juveniles accused of serious crimes against persons be permitted should no acceptable alternative be available."

6. *Comment:* Will States be permitted, for the purpose of monitoring the Section 223(a)(14) jail removal requirement, a "grace period" in which a juvenile temporarily detained in an adult jail or lockup need not be reported as a monotoring violation? This would be similar to the 24-hour "grace period" currently permitted with respect to the Section 223(a)(12)(A) deinstitutionalization mandate.

Response: It is Congress' finding that juvenile offenders and nonoffenders should not be placed in an adult jail or lockup for any period of time. However, for the purpose of monitoring and reporting compliance with the jail removal requirement, the House Committee on Education and Labor stated, in its Committee Report on the 1980 Amendments, that it would be permissible for OJJDP to permit States to exclude, for monitoring purposes, those juveniles alleged to have committed an act which would be a crime if committed by an adult (criminal-type offenders) and who are held in an adult jail or lockup for *up to six hours.* This six-hour period would be limited to the temporary holding in an adult jail or lockup by police for the purpose of identification, processing, and transfer to juvenile court officials or to juvenile shelter or detention facilities. Any such holding of a juvenile criminal-type offender should be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, but in no case overnight. Even where such a temporary holding is permitted, the Section 223(a)(13) separation requirement would operate to prohibit the accused juvenile criminal-type offender from being in sight or sound contact with an adult offender during this brief holding period. Under no circumstances does the allowance of a six hour "grace period" applicable to juvenile criminal-type offenders permit a juvenile status offender or nonoffender be detained, even temporarily, in an adult jail or lockup under Section 223(a)(14). In monitoring for compliance with Section 223(a)(14), the regulations require States to report the number of juvenile criminal-type offenders held in adult jails and lockups *in excess of six hours* (see § 31.303(i)(5)(iv)(G) and (H)).

7. *Comment:* The 48-hour limit on holding juveniles in adult jails or lockups under the Section 223(a)(14) "removal exception" is not sufficient to cover periods when court is not in session, such as weekends.

Response: Because this exception permits temporary incarceration in jails and lockups of juveniles *accused* of a serious crime against persons, a maximum 48-hour period is considered by OJJDP to be the outside limit and is intended to take into account weekends and other circumstances that would preclude the immediate transfer to an appropriate juvenile facility.

8. *Comment:* The guideline governing the "removal exception" to Section 223(a)(14), as promulgated in the draft regulations, § 31.303(i)(4), allows each

State to set specific criteria for determining "areas characterized by low population density" and to determine that "no alternative placement is available." These criteria should be established by OJJDP so that the criteria and standards are uniform for all States and can be reviewed by the public through the review and comment process of the Federal Register.

Response: The narrow "removal exception" of the law was designed to reflect "the special needs of areas characterized by low population density." OJJDP, in its rulemaking role, reviewed a number of possible criteria that could be imposed on States in defining the exception. However, we concluded that it was not feasible to establish uniform criteria applicable to all States that would be both fair and rational. OJJDP believes that the individual States are in a better position to determine the unique circumstances that warrant, subject to OJJDP's review and approval, the specific criteria to be applied in the States to implement the "removal exception" to the Section 223(a)(14) jail removal provision.

9. *Comment:* The regulations should define the term "not served by a local or regional juvenile detention facility" as used in the Section 223(a)(14) "removal exception."

Response: Agreed. A general definition of the term has now been added to regulations at § 31.303(i)(4)(iv). The definition provides that a county is not served by a local or regional juvenile detention facility when "there is no public or private juvenile detention facility operated within the county or there is no public or private juvenile facility which is in operation to provide secure detention for accused juvenile offenders from that county."

10 *Comment:* The 1980 Amendments to the JJDP Act allow an alternative State agency, other than the State Criminal Justice Council, to be designated by the Governor as the responsible agency to supervise the administration of the State's formula grant program. Any such designation is subject to approval by the OJJDP Administrator. One commentator recommended that operating agencies be specifically excluded from consideration as an acceptable alternative State agency.

Response: OJJDP is aware of the potential problems with having an operating agency serving as the administering agency for the formula grant program. The Fiscal Year 1982 Application Kit addresses this issue, requiring that in any instance where the Governor requests approval for the designation of an operating agency as the alternative State agency, it must be clearly demonstrated that the agency's supervisory board will have full policymaking authority *and* will be independent of the administrative structure of the operating agency.

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

Response: The change noted in the draft regulations (§ 31.304(b)) reflects the revised definitions of "secure detention facility" and "secure correctional facility" in Section 103(12) and (13) of the Act, as amended.

12. *Comment:* One third of the required 66⅔% pass through of funds to local government, § 31.301(b), should be required to be allocated to private nonprofit agencies.

Response: Such a requirement is beyond the authority of OJJDP as there is no statutory basis to support such a rule.

13. *Comment:* Because recent research has shown that there exists differential handling of minority youth in the juvenile justice system, it is recommended that a percentage of funds be set aside to further research this phenomenon and to generate specific proposals that may reduce the flow of minorities into the system.

Response: While OJJDP is aware of these research findings, the formula grant program is not the appropriate place for OJJDP to address funding for this purpose. Within the past six months, the National Institute for Juvenile Justice and Delinquency Prevention, the research arm of OJJDP, has awarded three research grants which address different aspects of this issue. It is expected that this research will provide the kinds of basic information needed to reduce the differential penetration of minority youth into the system.

Valid Court Order

There was substantial comment on and criticism of the revised valid court order guideline (§ 31.303(i)(3)). Fifteen of the commentators voiced the opinion that the revised provision failed to correctly reflect the Congressional intent underlying the valid court order amendment to Section 223(a)(12)(A) of the Juvenile Justice Act. These commentators generally favored retention of the initial implementing guideline published for comment in the Federal Register on June 1, 1981 (46 FR 29438, § 31.703(h)(3), at 29443). Specifically, they called for reinstatement of the following features of that guideline:

(1) *No secure detention under any circumstance* of a juvenile status offender or nonoffender *alleged* to have violated a valid court order;

(2) Reinstate the requirement that the judge presiding over the violation hearing, in entering a dispositional order directing or authorizing placement in a secure facility, *certify on the record* (rather than determine) *that all the elements of a valid court order have been met;* and

(3) Reinstate the requirement that the judge in (2) above also certify on the record (rather than make no certification or determination) that *there is no rational alternative to incarceration of the juvenile.*

In addition, a variety of suggestions were offered by commentators seeking to increase or clarify the protections afforded to juvenile status offenders and nonoffenders who may be subject to incarceration as a result of a court order violation. These suggestions are as follows:

(1) For a court order to be deemed valid the juvenile status offender or nonoffender should have had the *right to counsel* at the initial adjudication or other court proceeding in which the court order regulating future conduct was entered;

(2) For a court order to be deemed valid, the juvenile status offender or nonoffender should have received the *full range of due process rights* listed in § 31.303(i)(3)(v)(A)–(H) at the initial adjudication or other court proceeding in which the court order regulating future conduct was entered;

(3) The warning to the juvenile of the consequences of violating the court order (§ 31.303(i)(3)(iii)) should be provided to the juvenile *and to his attorney and/or to his parents or guardian;*

(4) The warning referenced in (3) above should be in writing *and* (rather than "or") be reflected in the court record and proceedings;

(5) The term "court of competent jurisdiction" (§ 31.303(i)(3)(iv)) should be defined so that a juvenile would only be subject to valid court order violation proceedings before the *same judge* in the *same court* in which the order was entered;

(6) The "24-hour grace period" referenced in § 31.303(i)(3)(iv) should clearly specify that this means 24 hours *exclusive of nonjudicial days* (i.e.,

holidays and weekends) consistent with OJJDP monitoring policy;

(7) The guideline should require that any judicial *determination of probable cause*, used as a basis for detaining a juvenile pending a violation hearing, must be held *within the 24-hour grace period;*

(8) There should be no *provision for a probable cause hearing.* Rather, the guideline should require that the violation hearing be held within the 24-hour grace period or the juvenile released to an appropriate nonsecure placement pending the violation hearing;

(9) A juvenile held in a secure detention facility, after a probable cause hearing pending a violation hearing, should be held for the minimum time necessary to schedule and hold a violation hearing, but in no event longer than:

(a) *3 calendar days;* or

(b) *72 hours;* or

(c) *72 hours exclusive of nonjudicial days;* or

(d) *5 calendar days;* or

(e) *10 calendar days or the number of days that an alleged delinquent offender* may be held under State law in secure detention prior to an adjudicatory hearing, whichever is less;

(10) Where a judicial determination is made that there is probable cause to believe that a status offender or nonoffender violated a valid court order, placement in a secure detention facility pending a violation hearing should require, at a minimum, a judicial finding that:

(a) There is a *probability that the juvenile will not appear for further proceedings;* or

(b) The *juvenile poses a danger to self or to community safety;*

(11) The authority to hold a juvenile status offender or nonoffender in a "secure detention facility" or a "secure correctional facility" should specify that such facilities include only those which are *exclusively for juvenile offenders;*

(12) The full due process rights enumerated in § 31.303(i)(3)(v) should include a *standard of proof beyond a reasonable doubt;* and

(13) OJJDP should establish *maximum numbers of juvenile status offenders and nonoffenders* who can be held for valid court order violations and establish a *maximum length of secure incarceration* for juveniles who violate valid court orders.

A lesser number of respondents believed that the guideline, rather than failing to provide adequate due process protection to juveniles, failed to provide sufficient judicial flexibility, offering the following suggestions to increase judicial discretion:

(1) The determination of probable cause to believe a juvenile status offender or nonoffender violated a valid court order should be made by a judge *or any duly authorized officer of the court acting on behalf of the judge;* and

(2) OJJDP should *defer to State law* in determining the maximum length of time a status offender or nonoffender alleged to have violated a valid court order may be held in secure detention pending a violation hearing.

As can be seen, there is a wide divergence of views on valid court order amendment implementation. This stems in part from a legislative history that is inconclusive on certain points, differences in various State laws, policies and practices, and the complex legal issues that underlie the treatment of juvenile status offenders and nonoffenders who violate valid court orders. It is OJJDP's conclusion that publication of a final regulation governing implementation of the valid court order amendment at this time, given the expressed concerns and information available, would not further the proper implementation of the amendment.

Consequently, OJJDP believes that further exploration and consideration of the issues raised above (and other relevant valid court order considerations) are desirable before a final rule is promulgated. Therefore, OJJDP plans to schedule at least two hearings to receive oral testimony and to give interested parties the opportunity to submit further written input on valid court order implementation. A notice will be placed in the Federal Register regarding the date and time for such hearings and providing for the receipt of written submissions. OJJDP anticipates that this notice will be published within 30 days. The notice will explain the rationale of the various positions and options presented in response to the Federal Register drafts. OJJDP's primary objective is to fully implement the congressional intent, considering the input and experience of practitioners, and to provide for a workable regulation that does not create unrealistic policies, and does not, by implication, undermine State procedural law.

OJJDP will reserve § 31.303(i)(3) of the final regulations. Pending the publication of a final regulation, States should continue to follow applicable State law and Constitutional principles of due process in their implementation and monitoring of the valid court order amendment. OJJDP urges States not to consider modification of existing State law or policy regarding the secure incarceration of juvenile status and nonoffenders who violate the lawful orders of the court until a final regulation is published.

This annoucement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs of prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Finally, because this regulation will not have significant economic impact on a substantial number of small entities, no analyses of the impact of these rules on such entities is required by the Regulatory Flexibility Act, U.S.C. 601, et seq., 28 CFR part 31 is accordingly revised to read as follows:

PART 31—FORMULA GRANTS

Subpart A—General Provisions

Sec.

Subpart B—Eligible Applicants

Subpart C—General

Subpart D—Juvenile Justice Act Requirements

Subpart E—General Conditions and Assurances

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 et seq.)

Subpart A—General Provisions

§ 31.1 General.

This Part defines eligibility and sets forth requirements for application for and administration of formula grants to State governments authorized by Part B, Subpart I, of the Juvenile Justice and Delinquency Prevention Act.

§ 31.2 Statutory authority.

The statute establishing the Office of Juvenile Justice and Delinquency Prevention and giving authority to make grants for juvenile justice and delinquency prevention improvement programs is the *Junvenile Justice and Delinquency Prevention Act of 1974*, as amended (42 U.S.C. 5601 et seq.).

§ 31.3 Submission date.

Juvenile Justice Plans for Fiscal Year 1982 shall be submitted to the OJJDP within 60 days after States are notified of fiscal year 1982 Formula Grant allocations.

Subpart B—Eligible Applicants

§ 31.100 Eligibility.

All States as defined by Section 103(7) of the JJDP Act.

§ 31.101 Establishment of State Criminal Justice Council.

Each state which chooses to apply for a formula grant shall establish or designate by law a State Criminal Justice Council unless an alternative State agency is designated by the Chief Executive and approved by the OJJDP Administrator pursuant to Section 261(c) of the JJDP Act. States must assure they have available for review a copy of the State law establishing the Council, and a current list of Council membership.

§ 31.102 Membership of Council.

Pursuant to Section 1301(i) of the Justice System Improvement Act (JSIA) of 1979, States participating in the formula grant program of the Juvenile Justice and Delinquency Prevention Act, in addition to statutory membership requirements, must include on the State Criminal Justice Council the chairperson and at least two additional citizen members of that Act. For purposes of this requirement a citizen member is defined as any person who is not a full-time government employee or elected official. Any executive committee of the Council must include the same proportion of juvenile justice advisory group members as are included in the total Council membership.

Subpart C—General Requirements

§ 31.200 General.

This subpart sets forth general requirements applicable to formula grant recipients under the JJDP Act of 1974, as amended. Applicants must assure compliance or submit necessary information on these requirements.

§ 31.201 Audit.

The State must assure that it adheres to the audit requirements enumerated in the "Financial and Administrative Guide for Grants" OJARS Guideline Manual 7100.1B, October 20, 1980. Chapter 8 of the Manual contains a comprehensive statement of audit policies and requirements relative to grantees and subgrantees.

§ 31.202 Civil rights.

(a) To carry out the State's Federal civil rights responsibilities the plan must:

(1) Designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as liaison in all civil rights matters with OJJDP and the OJARS' Office of Civil Rights Compliance (OCRC).

(2) Contain the Council's Equal Employment Opportunity Program (EEOP), if required to maintain one under 28 CFR 42.301, et seq., where the application is for $500,000 or more.

(b) The application must provide assurance that the State will:

(1) Require that every applicant required to formulate an EEOP in accordance with 28 CFR 42.301 et seq., submit a certification to the State that it has a current EEOP on file, which meets the requirement therein.

(2) Require that every criminal or juvenile justice agency applying for a grant of $500,000 or more submit a copy of its EEOP (if required to maintain one under 28 CFR 42.301, et seq.) to OCRC at the time it submits its application to the State;

(3) Inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with OCRC for investigation;

(4) Cooperate with OCRC during compliance reviews of recipients located within the State; and

(5) Comply, and that its subgrantees and contractors will comply with the requirement that, in the event that a Federal or State court or administration agency makes a finding of discrimination on the basis of race, color, religion, national origin, or sex (after a due process hearing) against a State or a subgrantee or contractor, the affected recipient or contractor will forward a copy of the finding to OCRC.

§ 31.203 Open meetings and public access to records.

The State must assure that it will comply with the requirements of Section 402(c)(2) of the Justice System Improvement Act.

Subpart D—Juvenile Justice Act Requirements

§ 31.300 General.

This subpart set forth specific JJDP Act requirements for application and receipt of formula grants.

§ 31.301 Funding.

(a) *Allocation to States.* Each State receives a base allotment of $225,000 except for the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands where the base amount is $56,250. Funds are allocated among the States on the basis of relative population under 18 years of age.

(b) *Funds for Local Use.* At least two-thirds of the formula grant allocation to the State must be used for programs by local government, or local private agencies unless the State applies for and is granted a waiver by the Office of Juvenile Justice and Delinquency Prevention.

(c) *Match.* Formula grants under the JJDP Act shall be 100% of approved costs, with the exception of planning and administration funds, which require a 100% cash match (dollar for dollar), and construction projects funded under Section 227(a)(2) which require a 50% cash match.

(d) *Funds for Administration.* Not more than 7.5% of the total annual formula grant award may be utilized to develop the annual juvenile justice plan and pay for administrative expenses, including project monitoring evaluation. These funds are to be matched on a dollar for dollar basis. The State shall make available needed funds for planning and administration to units of local government or combinations on an equitable basis. Each annual application must identify uses of such funds.

§ 31.302 Applicant State Agency.

(a) Pursuant to Section 223(a)(2) and Section 261(c) of the JJDP Act, the State assures that a State Criminal Justice Council or other State agency approved under Section 261(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.

(b) The Chief Executive shall establish a Juvenile Advisory Group pursuant to Section 223(a)(3) of the JJDP Act. The State shall provide a list of all current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in this Section of the Act.

(c) The State shall assure that it complies with the Advisory Group Financial support requirement of Section 222(d) and the composition and function requirements of Section 223(a)(3) of the JJDP Act.

§ 31.303 Substantive requirements.

(a) *Consultation with and Participation of Units of General Local Government.* The State shall assure that it has complied with Sections 223(a) (4) and (6) of the Act.

(b) *Participation of Private Agencies.* The State shall assure that it has complied with Section 223(a)(9) of the Act.

(c) *Pass-Through Requirement.* The State shall assure that it complies with Section 223(a)(5) of the Act. For purposes of the pass-through requirement, a *local private agency* is defined as a private non-profit agency or organization that provides program services within an identifiable unit or a combination of units of general local government.

(d) *Rights of Privacy of Recipients of Services.* Pursuant to Sections 223(a)(17) and 229 of the JJDP Act, the State shall assure that it has established procedures to meet this requirement.

(e) *Serious Juvenile Offender Emphasis.* Pursuant to Sections 101(a)(8), 223(a)(10) and 224(a)(12) of the JJDP Act, the Office encourages States that have identified serious and violent juvenile offenders as a priority problem, to allocate a minimum of 30% of the formula grant award to programs designed for serious and violent juvenile offenders. Particular attention should be given to the areas of sentencing, providing resources necessary for informed dispositions, and rehabilitation. In accord with Administration policy direction, the Office will attempt to assist States to reach this goal.

(f) *Deinstitutionalization of Status Offenders and Non-Offenders.* Pursuant to Section 223(a)(12)(A) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable covering the three-year planning cycle, for assuring that the requirements of this section are met. Refer to § 31.303(i)(3) for the rules related to the valid court order exception to this Act requirement.

(2) Describe the barriers the State faces in achieving full compliance with the provisions of this requirement.

(3) For those States that have achieved "substantial compliance" as outlined in Section 223(c) of the Act, indicate the unequivocal commitment to achieving full compliance. Attach documentation.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with Section 223(a)(12)(A) may, in lieu of addressing paragraphs (f)(1), (2), and (3) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(5) Submit the report required under Section 223(a)(12)(B) of the Act as part of the annual monitoring report required by Section 223(a)(15) of the Act.

(g) *Contact with Incarcerated Adults.* (1) Pursuant to Section 223(a)(13) of the JJDP Act the State shall:

(i) Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term *regular contact* is defined as sight and sound contact with incarcerated adults, including inmate trustees. This prohibition seeks as complete a separation as possible and permits no more than haphazard or accidental contact between juveniles and incarcerated adults. In addition, include a timetable for compliance and justify any deviation from a previously approved timetable.

(ii) In those isolated instances where juvenile criminal-type offenders remain confined in adult facilities or facilities in which adults are confined, the State must set forth the procedures for assuring no regular sight and sound contact between such juveniles and adults.

(iii) Describe the barriers which may hinder the separation of alleged or adjudicated criminal-type offenders, status offenders and non-offenders from incarcerated adults in any particular jail, lockup, detention or correctional facility.

(iv) Those States which, based upon the most recently submitted monitoring report, have been found to be in compliance with Section 223(a)(13) may, in lieu of addressing paragraphs (g)(1)(i), (ii), and (iii) of this section, provide an assurance that adequate plans and resources are available to maintain compliance.

(v) Assure that adjudicated offenders are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of segregating adults and juveniles in correctional facilities. This does not prohibit or restrict waiver of juveniles to criminal court for prosecution, according to State law. It does, however, preclude a State from administratively transferring a juvenile offender to an adult correctional authority or a transfer within a mixed juvenile and adult facility for placement with adult criminals either before or after a juvenile reaches the statutory age of majority. It also precludes a State from transferring adult offenders to a juvenile correctional authority for placement.

(2) *Implementation.* The requirement of this provision is to be planned and implemented immediately by each state in light of identified constraints on immediate implementation. Immediate compliance is required where no constraints exist. Where constraints exist, the designated date of compliance in the latest approved plan is the compliance deadline. Those states not in compliance must show annual progress toward achieving compliance until compliance is reached.

(h) *Removal of Juveniles from Adult Jails and Lock-ups.* Pursuant to Section 223(a)(14) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable for assuring that requirements of this section will be met by December 8, 1985. Refer to § 31.303(i)(4) to determine the "exceptional circumstances" which have to exist to permit, in areas characterized by low population density with respect to the detention of juveniles and where no existing acceptable alternative placement is available, the temporary detention of juveniles accused of serious crimes against persons.

(2) Describe the barriers which the State faces in removing all juveniles from adult jails and lock-ups. This requirement excepts only those juveniles formally waived or transferred to criminal court and criminal charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been involved through the filing of criminal charges.

(3) For those States that have achieved "substantial compliance" with Section 223(a)(14) as specified in Section 223(c) of the Act, indicate the unequivocal commitment to achieving full compliance. Attach documentation.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with Section 223(a)(14) may, in lieu of addressing paragraphs (b)(1), (2), and (3) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(i) *Monitoring of Jails, Detention Facilities and Correctional Facilities.* (1) Pursuant to Section 223(a)(15) of the JJDP Act, and except as provided by paragraph (i)(7) of this section, the State shall:

(i) Indicate how it will annually identify and survey all secure detention or correctional facilities, jails, lock-ups, and other facilities usable for the detention and confinement of juveniles.

(ii) Provide a plan for an annual on-site inspection of all such facilities identified in paragraph (i)(1)(i) of this section. Such plan shall include a procedure for reporting and investigating compliance complaints in accordance with Section 223(a)(12)(A), (13), and (14).

(iii) Include a description of the barriers which the State faces in developing a monitoring system to establish and report the level of compliance with Sections 223(a)(12), (13), and (14).

(2) For the purpose of monitoring for compliance with Section 223(a)(12)(A) of the Act a secure detention or correctional facility is:

(i) Any secure public or private facility used for the lawful custody of *accused* or adjudicated juvenile offenders or non-offenders; or

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

(3) *Valid Court Order* [Reserved].

(4) *Removal Exception (Section 223(a)(14)).* The following conditions must be met in order for an accused juvenile criminal-type offender to be temporarily detained (for up to 48 hours) in an adult jail or lock-up:

(i) The geographic area which has jurisdiction over the juvenile has been certified as having a low population density, based upon specific criteria developed by the State and approved by OJJDP. The criteria developed must take into account total county population per square mile. The State must provide rationale for the criteria proposed.

(ii) The juvenile must be accused of a serious crime against persons to include: Criminal homicide, forcible rape, mayhem, kidnapping, aggravated assault, robbery, and extortion accompanied by threats of violence.

(iii) A determination must be made that there is no existing acceptable alternative placement available for the juvenile pursuant to criteria developed by the State and approved by OJJDP.

(iv) The county is not served by a local or regional juvenile detention facility. Generally, this phrase means that there is no public or private juvenile detention facility operated within the county or there is no public or private juvenile facility which is in operation to provide secure detention for accused juvenile offenders from that county.

(5) *Reporting Requirement.* The State shall report annually to the Administrator of *OJJDP* on the results of monitoring for Sections 223(a)(12), (13), and (14) of the JJDP Act. Three copies of the report shall be submitted to the Administrator of OJJDP no later than December 31 of each year.

(i) To demonstrate the extent of compliance with Section 223(a)(12)(A) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Dates of baseline and current reporting period.

(B) Total number of public and private juvenile detention and correctional facilities AND the number inspected on-site.

(C) Total number of accused status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(i)(2) for longer than 24 hours exclusive of non-judicial days, excluding those held pursuant to a judicial determination that the juvenile violated a valid court order.

(D) Total number of adjudicated status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(i)(2), excluding those held pursuant to a judicial determination that the juvenile violated a valid court order.

(E) Total number of status offenders held in any secure detention or correctional facilities pursuant to a judicial determination that the juvenile violated a valid court order.

(ii) To demonstrate the extent to which the provisions of Section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and non-offenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the progress toward and extent of compliance with Section 223(a)(13) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Designated date for achieving full compliance.

(B) The total number of facilities that can be used for the secure detention and confinement of both juvenile offenders and adult criminal offenders.

(C) The total number of facilities used for the secure detention and confinement of both juvenile offenders and adult criminal offenders during the past 12 months AND the number inspected on-site.

(D) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide adequate separation.

(E) The total number of juvenile offenders and non-offenders NOT adequately separated in facilities used for the secure detention and confinement of both juveniles and adults.

(iv) To demonstrate the progress toward and extent of compliance with Section 223(a)(14) of the JJDP Act the report must at least include the following information for the baseline and current reporting periods:

(A) Dates of baseline and current reporting period.

(B) Total number of adult jails in the State AND the number inspected on-site.

(C) Total number of adult lock-ups in the State AND the number inspected on-site.

(D) Total number of adult jails holding juveniles during the past twelve months.

(E) Total number of adult lock-ups holding juveniles during the past twelve months.

(F) Total number of adult jails and lock-ups in areas meeting the "removal exceptions" as noted in subparagraph 4 above, including a list of such counties.

(G) Total number of juvenile-criminal-type offenders held in adult jails in excess of six hours.

(H) Total number of juvenile-criminal-type offenders held in adult lock-ups in excess of six hours.

(I) Total number of accused and adjudicated status offenders and non-offenders held in any adult jail or lock-up as defined in Section 31.304.

(J) Total number of juveniles accused of a serious crime against persons held less than 48 hours in adult jails and lock-ups in areas meeting the "removal exception" as noted in subparagraph 4 above.

(6) *Compliance.* The State must demonstrate the extent to which the requirements of Section 223(a)(12)(A), (13), and (14) of the Act are met. Should the State fail to demonstrate compliance with the requirements of these Sections within designated time frames, eligibility for formula grant funding shall terminate. The compliance levels are:

(i) *Substantial compliance* with Section 223(a)(12)(A) requires within three years of initial plan submission achievement of a 75% reduction in the aggregrate number of status offenders and non-offenders held in secure detention or correctional facilities or removal of 100% of such offenders from secure correctional facilities only. In

addition, the State must make an unequivocal commitment, through appropriate executive and legislative action, to achieving full compliance within two additional years. *Full compliance* is achieved when a State has removed 100% of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with *de minimis* exceptions pursuant to the policy criteria contained in the **Federal Register** of January 9, 1981 (46 FR 2566–2569).

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

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of Section 223(a)(13); or

(B)(*1*) State law, regulation, court rule, or other established executive or judicial policy clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of Section 223(a)(13);

(*2*) All instances of noncompliance reported in the last submitted monitoring report were in violation of, or departures from, the State law, rule, or policy referred to in paragraph (i)(6)(ii)(B)(*1*) of this section;

(*3*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances; and

(*4*) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (i)(6)(ii)(B)(*1*) of this section are such that the instances of noncompliance are unlikely to recur in the future.

(iii) *Substantial compliance* with Section 223(a)(14) requires the achievement of a 75% reduction in the number of juveniles held in adult jails and lock-ups by December 8, 1985 and that the State has made an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within two additional years.

(7) *Monitoring Report Exceptions.* States which have been determined by the OJJDP Administrator to have achieved full compliance with Section 223(a)(12)(A) and compliance with Section 223(a)(13) of the Juvenile Justice Act and which wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

(i) The State provides for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to enable an annual determination of State compliance with Sections 223(a)(12)(A), (13), and (14) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of Sections 223(a)(12)(A) and (13) of the Juvenile Justice Act; and

(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

(A) Authority for enforcement of the statute is assigned;

(B) Timeframes for monitoring compliance with the statute are specified; and

(C) Adequate sanctions and penalties that will result in enforcement of the statute and procedures for remedying violations are set forth.

(j) *Juvenile Crime Analysis.* Pursuant to Section 223(a)(8)(A) and (B) the State shall conduct an analysis of juvenile crime problems and juvenile justice and delinquency prevention needs.

(1) *Analysis.* The analysis must be provided in the multi-year application. A suggested format for the analysis is provided in the Formula Grant Application Kit.

(2) *Product.* The product of the analysis is a series of brief written problem statements set forth in the application that define and describe the priority problems.

(3) *Programs.* Applications are to include descriptions of programs to be supported with Juvenile Justice Act formula grant funds. A suggested format for these programs is included in the application kit.

(4) *Performance Indicators.* A list of performance indicators must be developed and set forth for each program. These indicators show what data will be collected at the program level to measure whether objectives and performance goals have been achieved and should relate to the measures used in the problem statement and statement of program objectives.

(k) *Concentration of State Effort.* Pursuant to Section 223(a)(8)(C) the State shall assure that it has on file a plan for the concentration of State efforts as they relate to the coordination of all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities.

(l) *Annual Performance Report.* Pursuant to Section 223(a) and Section 223(a)(21) the State Plan shall provide for submission of an annual performance report. The State shall report on its progress in the implementation of the approved programs, described in the three-year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals.

(m) *Equitable Distribution of Juvenile Justice Funds and Assistance to Disadvantaged Youth.* The State shall assure that it complies with Sections 223(a)(7) and (16) of the JJDP Act.

(n) *Advanced Techniques.* The State shall assure that it complies with Section 223(a)(10) of the JJDP Act.

(o) *Analytical and Training Capacity.* The State shall assure that it complies with Sections 223(a)(11) and (12) of the JJDP Act.

(p) *Equitable Arrangements for Employees Affected by Assistance Under the Act.* Pursuant to Section 223(a)(18) the State shall assure that fair and equitable arrangements are made to protect the interests of employees affected by assistance under the Act.

(q) *Non-Supplantation.* The State shall assure that it complies with Section 223(a)(20) of the JJDP Act.

(r) *Technical Assistance.* States shall include, within their plan, a description of technical assistance needs. Specific direction regarding the development and inclusion of all Technical Assistance needs and priorities will be provided in the "Application Kit for Formula Grants under the JJDPA."

(s) *Other Terms and Conditions.* Pursuant to Section 223(a)(22) of the JJDP Act, States shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the formula grant.

§ 31.304 Definitions.

(a) *Private agency.* A private non-profit agency, organization or institution is:

(1) Any corporation, foundation, trust, association, cooperative, or accredited institution of higher education not under public supervision or control; and

(2) Any other agency, organization or institution which operates primarily for scientific, educational, service, charitable, or similar public purposes, but which is not under public supervision or control, and not part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax-exempt under the provisions of Section 501(c)(3) of the 1954 Internal Revenue Code.

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

and buildings, fences, or other physical structures.

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

(d) *Juvenile who is accused of having committed an offense.* A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

(e) *Juvenile who has been adjudicated as having committed an offense.* A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.

(f) *Juvenile offender.* An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law, i.e., a criminal-type offender or a status offender.

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

(h) *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

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

(j) *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

(k) *Other individual accused of having committed a criminal offense.* An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction.

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

(m) *Adult jail.* A locked facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

(n) *Adult Lockup.* Similar to an adult jail except that an adult lock-up is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

Subpart E—General Conditions and Assurances

§ 31.400 Compliance with statute.

The applicant State must assure and certify that the State and its subgrantees and contractors will comply with applicable provisions of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, as amended, and with the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93–415, as amended, and the provisions of the OJARS Financial and Administrative Guide for Grants, M 7100.1B.

§ 31.401 Compliance with other Federal laws, orders, circulars.

The applicant State must further assure and certify that the State and its subgrantees and contractors will adhere to regulations of the Department and other applicable Federal laws, orders and circulars. These general Federal laws and regulations are described in greater detail in the "Fiscal Year 1982 Application Kit for Formula Grants under the JJDP Act."

§ 31.402 Application on file.

Any Federal funds awarded pursuant to an application must be distributed and expended pursuant to and in accordance with the programs contained in the applicant State's current approved application and any advance funds will not be awarded for any program not specifically approved and clearly set forth in the current comprehensive application. Any departures therefrom, other than to the extent permitted by current program and fiscal regulations and guidelines, must be submitted for advance approval by the Administration or of OJJDP.

§ 31.403 Non-discrimination.

The State assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal nondiscrimination requirements, including:

(a) Section 815(c)(1) of the Justice System Improvement Act of 1979, as made applicable by Section 262(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended;

(b) Title VI of the Civil Rights Act of 1964;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975; and

(f) The Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G.

Charles A. Lauer,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 81-37250 Filed 12-30-81; 8:45 am]

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federal register

Monday
August 16, 1982

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Formula Grants for Juvenile Justice; Final Rule

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants for Juvenile Justice

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

ACTION: Notice of final rule and effective date.

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

EFFECTIVE DATE: August 16, 1982.

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

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

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

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

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

Discussion of Comments

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

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

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

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

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

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

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

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

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

Charles A. Lauer,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

List of Subjects in 28 CFR Part 31

Grant programs, Law, Juvenile delinquency.

PART 31—FORMULA GRANTS

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

§ 31.303 Substantive requirements.

* * * * *

(i) * * *

(3) *Valid Court Order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to his attorney and/or to his legal guardian in writing and be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juvenile may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

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

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceeding;

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

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (i)(3), (i), (ii), (iii) of this section) and the applicable due process rights (paragraph (i)(3), (v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.

(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

John J. Wilson,

Acting General Counsel.

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

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January 9, 1981

Federal Register

Part VII

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

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

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

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

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

ACTION: Issuance of final policy.

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

SUPPLEMENTARY INFORMATION: Section 223(a)(12)(A) of the JJDP Act requires that states participating in the Formula Grant Program (Part B, Subpart I), of the JJDP Act "provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such non-offenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities." Section 223(c) of the Act further provides that failure to achieve compliance with the Section 223(a)(12)(A) requirement within the three-year limitation shall terminate a State's eligibility for formula grant funding unless a determination is made that the State is in substantial compliance, through achievement of deinstitutionalization of not less than 75 percent of such juveniles or through removal of 100 percent of such juveniles from secure correctional facilities and has made an unequivocal commitment to achieving full compliance within two additional years. The Agency's Office of General Counsel, in Legal Opinion 76–7, October 7, 1975, indicated that a State's failure to meet the full compliance requirement within the statutorily designated time-frame would result in future ineligibility for Formula Grants unless such failure was de minimis. The opinion further stated that such determinations would be made on a case-by-case basis.

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

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

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

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

Background

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

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

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

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

Parameters

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

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

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

Criteria and Required Information

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

Criterion A

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

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

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

The following will be recognized for consideration as exceptional circumstances:

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

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

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

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

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

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

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

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

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

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

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

Criterion B

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

violation of State law or established executive or judicial policy.

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

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

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

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

Criterion C

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

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

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

1. If the instances of non-compliance are sanctioned by or consistent with State law or executive or judicial policy, then the plan must detail a strategy to modify the law or policy to prohibit non-compliant placement so that it is consistent with the Federal deinstitutionalization requirement.

2. If the instances of non-compliance were in apparent violation of State law or executive or judicial policy, but amount to or constitute a pattern or practice rather than isolated instances of non-compliance, the plan must detail a strategy which will be employed to rapidly identify violations and ensure the prompt enforcment of applicable State law or executive or judicial policy.

3. In addition, the plan must be targeted specifically to the agencies, courts, or facilities responsible for the placement of status offenders and non-offenders in non-compliance with Section 223(a)(12)(A). It must include a specific strategy to eliminate instances of non-compliance through statutory reform, changes in facility policy and procedure, modification of court policy and practice, or other appropriate means.

Implementation of Plan and Maintenance of Full Compliance

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

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

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Ira M. Schwartz,

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

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

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

Criterion (a)

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

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

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

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

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

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

Criterion (b)

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

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

Criterion (c)

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

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

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POLICY

What latitude is given to juvenile detention and correctional facilities to hold accused status offenders while contacting parents or arranging an appropriate placement?

It is OJJDP's posture not to hold status offenders or nonoffenders in juvenile detention or correctional facilities. However, there may be rare situations where short-term secure custody of accused status offenders and nonoffenders is necessary. For example, detention for a brief period of time prior to formal juvenile court action for investigative purposes, for identification purposes, to allow return or proper custody to juvenile's parents or guardian, or detention for a brief period of time under juvenile court authority in order to arrange for appropriate shelter care placement may be necessary.

Thus, for the purpose of monitoring compliance with 223(a)(12)(A) the number of accused status offenders and nonoffenders held in juvenile detention or correctional facilities should not include (1) those held less than 24 hours following initial police contact, and (2) those held less than 24 hours following initial court contact. The 24-hour period should not include non-judicial days. This provision is meant to accommodate weekends and holidays only.

At what point does the clock begin on each of the two 24-hour "grace" periods pursuant to Section 223(a)(12)(A)?

The first 24-hour period begins at the time of apprehension by law enforcement officials. At the time the juvenile is released to or is under the custody of the court or court intake the second 24-hour period begins.

Does the 24-hour "grace" period for Section 223(a)(12)(A) apply to adjudicated youth as well as accused youth?

No. There is no "grace" period for securely holding adjudicated status offenders. Thus, adjudicated status offenders should not be held in secure detention or correctional facilities unless all the conditions of the valid court order provision have been met. Adjudicated youth found to be in the class of nonoffenders should not be held in secure detention or correctional facilities under any circumstances.

Are adjudicated juvenile offenders who are committed to a Department of Public Welfare and/or Department of Youth Services, and subsequently placed by such departments in a residential facility, considered to be in lawful custody as defined for monitoring purposes?

Yes. When a juvenile offender or nonoffender is placed in lawful custody to a State Department of Youth Services, Department of Welfare, etc., and subsequently placed in a facility, they are considered to be under lawful custody as defined.

When there is interstate placement of children and state "A" places a status or nonoffender in a secure detention or correctional facility of state "B", which state has the responsibility of removing the child from the facility, which state reflects the child in their base-line data, which state counts the juvenile in their current monitoring report and which state is not in compliance with 223(a)(12)?

State "A", the sending state, has primary responsibility to remove the child from the juvenile detention or correctional facility. However, for monitoring purposes state "B", the receiving state, must count the youth in their base-line data and annual monitoring report. Also, it is OJJDP's opinion that neither state is meeting the intent of the deinstitutionalization requirement because state "A" is not meeting its compliance assurance and are circumventing the system and because "B" is housing a status offender or nonoffender in a secure detention or correctional facility. It is the sending state's responsibility to ensure interstate placement of children does not place the receiving state in non-compliance to 223(a)(12). The mechanism for solving particular problems rests with each state mutually agreeing and establishing a procedure for assisting one another.

Can a juvenile before the court because of a petition for mental health commitment, who is ordered committed for treatment of mental disorder, be placed in a secure mental health facility for treatment purposes? Is the juvenile described above within the prohibition of Section 223(a)(12)(A)?

It is OJJDP's position that all juvenile nonoffenders in any category should not be placed in any secure facility. However, for the purposes of monitoring, Section 223(a)(12)(A) may be interpreted to include within its scope only juveniles who are before a juvenile, family, or other civil court for reasons which are unique to the individual's status as a juvenile. In other words, for the purposes of monitoring, a juvenile committed to a mental health facility under State law governing civil commitment of all individuals for mental health treatment would be considered as outside the class of juvenile nonoffenders defined by Section 223(a)(12)(A) of the Act.

It should be perfectly clear that these distinctions for monitoring purposes would not permit placement of status offenders or nonoffenders in a secure mental health facility following an adjudication for a status offense or a court finding that the juvenile is a nonoffender. The placement of status offenders or nonoffenders in such facility for diagnostic purposes is not allowable. A separate civil mental health commitment proceeding would be required before a status offender or nonoffender could be placed in a secure facility and, for monitoring purposes, be outside the scope of Section 223(a)(12)(A). Any placement of such status offender or nonoffender must occur only after a full due process hearing is undertaken to protect the rights of the child.

The State must ensure that juveniles alleged to be or found to be status offenders or nonoffenders are not committed under state mental laws to circumvent the intent of Section 223(a)(12)(A).

If a state does not have information concerning the number of accused status offenders and nonoffenders held 24 hours or more in public and private secure detention and correction facilities what must a state provide in determining compliance with Section 223(a)(12)?

It is OJJDP's position that status offenders and nonoffenders should never be held in secure detention or correctional facilities. The 24 hour latitude was allowed under the monitoring effort but should be used as a limited exception. If a state does not have information on the number of accused status offenders and nonoffenders held 24 hours or more, then they must report on the total number held or the total number held in excess of a period less than 24 hours. For example the number of accused status offenders and non-offenders held, in excess of 4, 6, 8, or 12 hours could be used just as long as the period does not exceed 24 hours. If a state only has information on the number held for 36 hours, 72 hours etc., or more than they can not report on this figure but must provide the total number of accused status offenders and nonoffenders held.

Where a juvenile has been accused of multiple offenses, which offense should be utilized?

For the purposes of monitoring compliance to 223(a)(12), the most serious offense should be utilized as the official offense.

Does a status offender who is adjudicated by the juvenile court for the violation of a valid court order remain a status offender? Does he/she become a delinquent?

A status offender who violates a valid court order remains a status offender and for the purposes of monitoring is not reclassified as a delinquent or criminal-type offender.

See Legal Opinion No. 77-25.

If State legislation currently prohibits the secure confinement of status and nonoffenders who violate a valid court order, would legislative change be required if a State wanted to have the authority to confine status offenders who violate such orders?

Yes, States which have legislation prohibiting the secure placement of status offenders who violate valid court orders are not authorized by the JJDP Act to place such youth in secure confinement. The more restrictive State legislation would take precedence over the latitude allowed by the amendment to Section 223(a)(12)(A) of the JJDP Act.

How long can a juvenile accused of violating a valid court order be held in secure detention?

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

Can a first time status offender be incarcerated under the valid court order provision?

No, first time status offender can be securely detained or incarcerated under this provision. A juvenile must first have been brought into a court of competent jurisdiction and made subject to a "valid order".

If a juvenile is placed in a "nonsecure shelter facility" as a result of a finding that the juvenile violated a valid court order, must that juvenile go through the process again, if he runs away from the nonsecure facility, prior to his placement in a secure facility?

No, at the time that a judicial determination is made that a juvenile violated a valid court order: (1) a new order could be entered or the old order revised to direct a new or continuing nonsecure placement with the express condition that any new violation of the new or revised order will result in placement in a secure facility; or (2) the juvenile could be committed to the cognizant social service or correctional agency for appropriate placement.

If a status offender is adjudicated and placed on probation and, under State law may be placed in secure detention for a limited period of time for violating his probation order twice, would this constitute a violation of a valid court order?

Yes, if the other conditions for valid court orders are met.

Can a referee commit under a valid court order?

It depends. If a referee in a particular jurisdiction has the authority to assert the court's jurisdiction over a status offender, hold a hearing on the facts, determine the legal rights of the parties in a judiciable controversy, and enter a judgment and/or remedy in accordance with established legal principles, then a referee could, like a judge, be empowered to commit a juvenile under the valid court order amendment.

May a status offender who is confined as a consequence of violation of a valid court order be confined with juveniles alleged to be or adjudicated delinquent? Accused or convicted adult criminal offenders?

There is no prohibition in the JJDP Act against the commingling of status offenders and juvenile criminal-type offenders, although State legislation may restrict such confinement. However, a status offender who is confined as a consequence of a violation of a valid court order may not be held in regular contact with incarcerated adult person. Thus, the "separation" requirement of Section 223(a)(13) continues to be applicable to all status offenders, even if they are found to have violated a valid court order.

Will OJJDP require that the valid court order exception be used sparingly?

No, limitations are set by the constraints established in the implementing regulations. If monitoring reports indicate a pattern or practice of abuse, the guidelines could be modified or the situation reported to the Congress for possible legislative action.

What kind of statistical information must be supplied in conjunction with a request for full compliance with de minimis exceptions to Section 223(a)(12)(A)?

Pursuant to the policy and criteria published in the January 9, 1981 Federal Register, the following information must be provided and must cover the most recent and available 12 months of data or available data for less than 12 months projected to 12 months in a statistically valid manner. (If data projection is used the state must provide the statistical method used, the actual reporting period by dates, and the specific data used.)

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

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

3. Total number of status offenders and nonoffenders held in secure detention facilities or secure correctional facilities.

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

What criteria will OJJDP consider in determining whether the number of status and nonoffenders held in non-compliance with Section 223(a)(12)(A) can be characterized as de minimis?

OJJDP will apply the following, pursuant to the policy and criteria for determining full compliance with de minimis exceptions as published in the January 9, 1981 Federal Register, in determining whether a state has demonstrated full compliance with Section 223(a)(12)(A).

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

1. States which have an institutionalization rate less than 5.8 per 100,000 population under 18 will be considered in full compliance and will not have to address Criteria B and C.

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

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

4. Those states which have a placement rate in excess of 29.4 per 100,000 population are presumptively ineligible for a finding of full compliance with de minimis exceptions.

OJJDP will consider requests from states where they demonstrate exceptional circumstances. Exceptional circumstances are limited to situations where, but for the exceptional circumstance, the state's institutionalization rate would be within the 29.4 rate.

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

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

What will OJJDP recognize as "exceptional circumstances" in determining whether a state is in full compliance with de minimis exceptions with Section 223(a)(12) of the Act?

OJJDP will consider requests from states where the state demonstrates exceptional circumstances which account for the excessive rates. Exceptional circumstances are limited to situations where, but for the exceptional circumstance, the state's institutionalization rate would be within the 29.4 rate established in the policy and criteria for de minimis exceptions to full compliance with Section (a)(12)(A). The following are recognized for consideration as exceptional circumstances:

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

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

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

What constitutes "regular contact" between juveniles and adults within the context of Section 223(a)(13)?

Regular contact is defined as sight and sound contact with incarcerated adults, including adult trustees. This prohibition seeks as complete a separation as possible and permits no more than haphazard or accidental contact between juveniles and incarcerated adults.

What degree of separation is necessary in secure confinement facilities to assure that there will be no regular contact between juvenile offenders and adult criminal offenders?

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

Does a juvenile who has been transferred or waived to the jurisdiction of a criminal court have to be separated from adult criminal offenders pursuant to the requirements of Section 223(a)(13)? Can such juvenile be incarcerated with other juveniles who are under the jurisdiction of a juvenile court?

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

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

How does the use of trustees apply in determining compliance with Section 223 (a)(13)?

When monitoring for Section 223(a)(13) any violation of the "sight and sound" separation should be reported. This includes both supervision and contact with trustees.

Does Section 223(a)(13) require separation of juvenile offenders and adult criminal offenders in nonsecure facilities?

For purposes of compliance with Section 223(a)(13) separation is not required in nonsecure community-based residential program facilities. However, Section 223(a)(12) would preclude the placement of status offenders and non-offenders in any secure public or private facility which is used for the lawful custody of accused or convicted adult criminal offenders. Refer to Legal Opinion No. 77-9.

What is the compliance period for Section 223(a)(13) of the Act?

The requirement of this provision is to be planned and implemented immediately by each state in light of the constraints on immediate implementation. Immediate compliance is required where no constraints exist. Where constraints exist, the state's designated date of compliance as provided within the latest approved plan is the compliance period deadline. Those states not in full compliance must show annual progress toward achieving compliance until the date of full compliance is reached.

What is the standard for determining "compliance" with Section 223(a)(13)?

Section 223(a)(13) does not have attached to it a statutory substantial or full compliance standard as do Sections 223(a)(12) and (14) through Section 223(c).

As a result OJJDP defines "compliance" and "full compliance" as these terms are used in relation to Section 223(a)(13) in Sections 223(a)(15) and 223(d). OJJDP does not believe that Congress intended to distinguish between "compliance" and "full compliance" as these terms are used in the two sections. Rather, it is clear that in both cases Congress intended that OJJDP determine that, for the State, the separation mandate was complied with to the extent compliance could be achieved through law and policy change, plan implementation, and State and local enforcement efforts.

Therefore, OJJDP uses the following compliance standard:

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

(1) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of Section 223(a)(13); or

(2)(a) State law, regulation, court rule, or other established executive and judicial policy clearly prohibit the incarceration of all juvenile offenders in circumstances that would be in violation of Section 223(a)(13);

(b) All instances of noncompliance reported in the last submitted monitoring report were in violation of, or departures from, the State law, rule, or policy referred to in (a) above;

(c) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;

(d) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in (a) above are such that the instances of noncompliance are unlikely to recur in the future.

What is the definition of a jail or lock-up for the purpose of Section 223(a)(14)?

An adult jail is a locked facility, administered by state, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

An adult lock-up is similar to a jail except that it is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

Are there any exceptions to the requirement that juveniles not be held in adult jails or lock-ups?

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

Exception 1:

OJJDP regulations implement a statutory exception allowing the temporary detention in adult jails/lock-ups of juveniles accused of serious crimes against persons in low population density areas. Thus, an accused criminal-type offender can be detained up to 48 hours in an adult jail or lock-up if:

a. the geographical area is certified by OJJDP as a low population density;
b. and the juvenile is accused of a serious crime against person;
c. and a determination is made that there is no existing acceptable alternative placement available;
d. and the county is not served by a local or regional juvenile detention facility.

Exception 2:

If criminal charges have been filed against the juvenile in a court having criminal jurisdiction, then the juvenile can be detained in an adult jail or lock-up.

Exception 3:

For the purpose of monitoring compliance with Section 223(a)(14), OJJDP has adopted a "6-hour" grace period which would permit, up to 6 hours, the

temporary holding in an adult jail or lock-up those juveniles accused of committing criminal-type offenses (i.e., offenses which would be a crime if committed by an adult.)

Will States be permitted, for monitoring purposes, a "grace period" in which they may temporarily detain a juvenile in an adult jail or lockup without penalty similar to the 24-hour "grace period" currently permitted with respect to the Section 223(a)(12)(A) deinstitutionalization mandate?

It is OJJDP's position that juveniles should not be placed in an adult jail or lockup for any period of time. However, for the purpose of monitoring and reporting compliance with the removal requirement, OJJDP permits States to report only those juveniles held in adult jails or lockups in excess of six hours. This six hours would permit the temporary holding in an adult jail or lockup by police of juveniles arrested for committing an act which would be a crime if committed by an adult for purposes of identification, processing, and transfer to juvenile court officials or juvenile shelter or detention facilities. Any such holding of juveniles should be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, but in no case overnight. Section 223(a)(13) would prohibit such accused juvenile offenders from having regular contact with adult offenders during this brief holding period. A status offender or nonoffender cannot be detained, even temporarily, in an adult jail or lockup.

Can a status offender be held in an adult jail or lockup pursuant to the 6-hour "grace period" currently permitted with respect to the Section 223(a)(14) jail removal mandate.

A status offender or nonoffender cannot be detained, even temporarily, in an adult jail or lockup. Thus, the 6-hour grace period only extends to accused criminal-type offenders (i.e., juveniles arrested for committing an act which would be a crime if committed by an adult).

What is the scope of the exception(s) to the jail removal amendment provided under Section 223(a)(14)? Does Section 223(a)(14) create exceptions to: (1) recognize the special needs of areas characterized by low population density with respect to the detention of juveniles; and (2) permit the temporary detention in adult facilities of juveniles accused of serious crimes against persons--or does it permit a single exception to the jail removal amendment which will allow only areas characterized by low population density to temporarily place juveniles charged with serious crimes against persons, in adult facilities?

There are three conditions, all of which must be present to qualify as an exception to the requirement that no juvenile be placed in an adult jail or lockup. First, it must be an area characterized by low population density with respect to the detention of juveniles; second, the juvenile must be accused of a serious crime against person; and third, there must be no existing acceptable, alternative placement available. When all three of these conditions are met, the accused juvenile may then be temporarily detained in an adult jail or lockup. Refer to the regulations contained in the December 31, 1981 Federal Register, 31.303(i)(4).

On February 3, 1981, OJJDP sent a letter requesting that Congressman Ike Andrews, Chairman of the House Subcommittee on Human Resources, clarify the exception language of Section 223(a)(14) that resulted from Representative Coleman's floor amendment. Representative Andrews responded on February 17, 1981, as follow:

"You are completely correct that the 'exception language' is intended to establish a single exception applying only to low population density areas. Only in such areas would the temporary detention in adult facilities of juveniles accused of serious crimes against persons be permitted should no acceptable alternative be available."

and

"...there is no question that the intent of the law, based on my compromise with Mr. Coleman after consultation with the Administration, is to establish only a single exception. I believe you will find concurrence on this from Mr. Coleman and from all concerned with the drafting of the provision. Efforts to have the section interpreted differently can only come from those who were in no way involved with the drafting of the amendment."

What are the criteria to determine "areas characterized by low population density" and to determine that "no alternative placement is available" pursuant to the removal exception in Section 223(a)(14)?

Since the narrow "removal exception" of the law was designed to reflect the "special needs" of areas characterized by low population density, OJJDP has decided that the individual states are in a better position to determine the unique circumstances which warrant (subject to OJJDP review and approval) application of the exception, however, the state's criteria must take into account total county population per square mile and the state must provide a rationale for criteria proposed. Basically the state must provide evidence and sufficient justification that the county(s) eligible under the exception are in fact "low population." To assist in this effort states should consider the national average population per square mile and take into account that near "average" is not "low". The state may use other supporting documentation to demonstrate that the county is a low population density area.

For what period of time may juveniles accused of serious crimes against persons be "temporarily" detained in adult jails and lockups pursuant to the exceptions provided under Section 223(a)(14)?

Because the exception only deals with accused juveniles, a maximum 48 hour period is provided for States to temporarily detain such juveniles in adult jails or lockups.

Does the 48-hour limit on holding juveniles in jails qualifying for the removal exception include weekends?

Yes. A juvenile accused of committing a serious crime against persons can be held a maximum of 48 hours, including weekends or holidays.

Does the exception language of Section 223(a)(14) permit the temporary confinement of adjudicated delinquent offenders in jails and lockups for adults?

No. Only juveniles accused of serious crimes against persons in low population density areas may be temporarily detained in an adult jail or lockup.

In order for the 48 hour exception to apply to a juvenile being held in an adult jail or lock-up must he be accused of committing a serious crime against a person? What is the definition of a serious crime against a person?

Yes, the 48-hour exception only applies to juveniles accused of committing serious crimes against persons. OJJDP defines a serious crime against a person as including: criminal homicide, forcible rape, mayhem, kidnapping, aggravated assault, robbery and extortion accompanied by threats of violence. If a state has additional serious crime against persons specified in the state statute, they can submit these to OJJDP for review and approval to have them included as eligible serious crimes against persons for that state.

For purposes of Section 223(a)(14), who determines whether "an acceptable alternative" exists to the temporary confinement of juveniles accused of serious crimes against persons in adult jails and lockups? What is the basis for that determination?

Each individual State will be responsible for developing specific and objective criteria which will be used in making determinations as to whether an acceptable alternative exists.

What is the deadline for a state's application for eligibility under the "low population density" removal exception?

There is no deadline for submitting the State's proposed criteria under the "low population density" removal exception. However, until a State develops the criteria, submits it to OJJDP, and receives OJJDP approval, the state does not qualify for the removal exception. Thus, until the removal exception criteria is approved, the state does not meet the required conditions for accused juvenile criminal-type offender to be temporarily detained (for up to 48 hours) in an adult jail or lock-up.

Does the five-year time frame which began the date of enactment of the 1980 Amendments apply to States which elect not to participate in the formula program until after enactment of the Amendments or to States which do not participate for one or more years after the enactment of the removal amendment?

Yes, any State not participating in the Act as of December 8, 1980 or which elects not to participate for an interim of one or more years must still comply with the statutory requirement for (substantial) compliance by December 8, 1985 if such State is participating at the end of the 5 year statutory time frame.

For purposes of determining whether a State has made an "unequivocal commitment" to full compliance with the jail removal amendment, what constitutes an "appropriate executive or legislative action"?

An appropriate executive or legislation action is an action which demonstrates an unequivocal commitment on the part of the governor, the executive branch of the State, or the legislative body of the State. This action can be in the form of an executive order, acceptance of the formula award with the express understanding that such acceptance is tantamount to an unequivocal commitment on behalf of the governor, or specific legislative action which constitutes an unequivocal commitment.

What period of time should states use in establishing a base reporting period for Section 223(a)(14)?

The base reporting period should be during the calendar year or fiscal year of the jail removal amendment (i.e., 1980 or FY 80-81). If data is not available during this period of time a state may use a later period for which data is available to establish baseline information. However, states can not use a period of time before 1980 in establishing baseline information for Section 223(a)(14).

When must states demonstrate compliance with Section 223(a)(14)? Which calendar year monitoring report will be used by OJJDP to determine whether a State is in compliance with Section 223(a)(14)?

Section 223(a)(14) requires that no juvenile be detained or confined in any adult jail or lock-up after December, 1985. Thus the statutory date for full compliance is December, 1985. However, if a State fails to achieve full compliance by December, 1985, Section 223(c) allows two additional years if substantial compliance was achieved by December, 1985.

OJJDP will use the monitoring report covering the period December, 1985 and beyond to determine whether the state achieved full or substantial compliance. The monitoring report covering the period December, 1987 and beyond will be used to determine whether full compliance was achieved within the two (2) additional year provision contained in Section 223(c).

Who is responsible for the submission and content of the monitoring reports?

This responsibility rests with whoever has legal authority to act on behalf of the State Criminal Justice Council. The State Supervisory Board or Juvenile Justice Advisory Group's by-laws or policy should determine whether or not the monitoring report has to be submitted for their review and approval prior to the CJC forwarding the report as an official document.

What is the deadline date for submitting the monitoring report and how was such a date determined?

Legislation requires a report to be submitted annually. Thus, December 31 of each year was established as the due date to allow states sufficient time to collect data and prepare the monitoring report.

How many copies of the monitoring reports must be submitted to OJJDP?

Three copies should be forwarded to the attention of the Administrator of OJJDP.

Who can a CJC authorize to inspect and monitor facilities for compliance purposes?

Legal Opinions 76-6 and 76-7 address this issue by stating that a CJC (formerly SPA) may be granted direct authority to perform the monitoring function or may contract with a public or private agency, under appropriate authority, for the performance of the monitoring function. OJJDP holds the CJC responsible for the monitoring effort and the validity of the monitoring report, however, the state does have some latitude in how individual state monitoring efforts are undertaken. The monitoring plan must address specifically who the CJC has authorized and/or contracted to assist in the monitoring function.

Is the passage of state legislation mandating Sections 223(a)(12), (13) and (14) sufficient for the justification of compliance?

No. Simply because legislation is existent mandating compliance to the Act does not necessarily mean the state is automatically compliant to Section 223 (a)(12), (13) and (14). The passage of legislation can be considered an indication of progress towards compliance.

What facilities must be monitored?

Jails, lock-ups, detention facilities, correctional facilities, non-secure facilities and all other facilities which may be used for the lawful custody and treatment of juveniles or the lawful custody of adult criminal offenders must be monitored to the extent that they are tested against the criteria/definition to determine if they are classified as a secure detention or correctional facility and/or an adult jail or lock-up. This includes those facilities owned and/or operated by public and private agencies.

What facilities must be inspected on-site on an annual basis?

All facilities classified as secure detention or correctional facilities, jails, lock-ups, and other facilities used for the detention and confinement of juveniles and adult offenders must have an on-site inspection to determine compliance with Sections 223(a)(12)(A), (13) and (14).

What does the term "survey" mean as compared to "on-site" inspection?

The monitoring survey is the effort a state undertakes when applying the criteria/definition against the universe of facilities to determine whether each facility is classified as a secure detention, secure correctional facility, adult jail or an adult lock-up. The monitoring effort also includes the procedure utilized in determining the degree to which each facility is compliant with the requirements of 223(a)(12), (13), and (14). An on-site inspection should be utilized in a follow-up effort to ensure the information provided on the survey is accurate both in classification and the degree of compliance for each facility. The initial identification of all juvenile detention and correctional facilities can be determined by a method other than an actual on-site visit if the procedure has been approved by OJJDP. The same is true in determining individual facility compliance; however, OJJDP recommends and prefers an on-site inspection for this effort. On-site is considered as being a visit to the facility by a member(s) of the monitoring team which is consistent with the monitoring plan approved by OJJDP.

Is the utilization of a mail-out survey to determine compliance sufficient for the monitoring effort?

Will a 100 percent mail-out questionnaire suffice for monitoring purposes, if the returned questionnaires are followed by an on-site "clean" sample and determined to be accurate?

It is OJJDP's policy that every facility be monitored and inspected by an on-site visit. However, if circumstances exist which prohibit such, then the state may utilize a mail-out survey. Any mechanism other than an annual on-site visit to each facility must be submitted to OJJDP for approval with justification for the exception. Any sampling or mail-out survey must be statistically valid and sufficiently detailed in writing for OJJDP's approval. Basically, if other mechanisms are used, the procedure must be adequate to reflect an accurate portrayal of compliance to 223(a)(12)(A), (13), and (14). The CJC must also utilize some type of on-site sampling inspection to statistically verify the mail-out survey as being reliable information.

What are OJJDP's expectations regarding on-site inspection (i.e., collect information, generally look around, look in every closet, etc.)?

It is OJJDP's expectations that the on-site inspection, as well as all functions involved in the monitoring effort, be of sufficient detail to ensure an accurate assessment of each facility's classification and compliance. If close scruntiny of both the physical accommodations and records are required, then such should be undertaken. The intensity of any inspection depends upon the integrity of both inspector and the inspected. At a minimum, the on-site visit should include an inspection of records for the reporting period and a check of the current residential population to verify the statistical accuracy of the facility report for the current year.

Will States have to monitor all jails and lockups for the entire year, or may those States select a shorter time period and/or a sample number of facilities to be monitored?

States should select a monitoring period which will adequately reflect the actual level of compliance. This period of time should be a minimum three to six month period which can be projected for a full year in a statistically valid manner. States not having complete data may request OJJDP approval to use a statistically valid and randomly selected sample of facilities.

Under what circumstances will a change in baseline data be permitted?

Where a state determines that a change in their baseline data is necessary, this change must be justified. A written request reflecting the justification, with both the prior and new numerical baseline data, must be forwarded and approved by OJJDP.

If no records are kept by certain facilities, what does the CJC then do?

Section 223(a)(1) and (2) of the Act requires the CJC as the sole agency for supervising the preparation and administration of the plan and to have authority to implement the JJDP Act plan. The monitoring function, including the collection of data and retention of records, is a function of the CJC under these sections. If no records are kept, the CJC should exercise their authority to require such and assist the facility in establishing an adequate record-keeping system. To get information on a certain facility prior to completing this process, the CJC should make several (five-ten) unannounced on-site visits and actually inspect the facility for compliance. This will allow the CJC to have data. Although not the most sufficient method, it does provide a sampling of compliance information.

Do the criteria for determining whether a facility is a secure detention or correctional facility only apply to residential facilities?

Yes. For the purposes of monitoring, the requirements of Section 223(a)(12)(A) only apply to residential facilities. Nonresidential programs and services such as day care, alternative school, etc., do not require monitoring for Section 223(a)(12)(A) compliance.

Does a state have the latitude to impose more restrictive criteria in determining whether a facility is classified as a secure detention or correctional facility pursuant to Section 223(a)(12) and only report on compliance to their criteria?

If a state is interested in more than minimal accountability it may utilize criteria which are more discriminating or restrictive as long as the criteria are detailed within the plan for monitoring and the annual monitoring report. Under no circumstances can the monitoring effort use criteria which are lesser restrictive than those provided in the guidelines. Imposing of more restrictive criteria should be forwarded to and approved by OJJDP.

What is the initial "universe" when identifying those facilities which require a determination as to whether they are a secure detention or correctional facility pursuant to Section 223(a)(12)(A)? (Are mental health hospitals and facilities, adult prisons, orphanages--the entire gamut--applicable?) Does this "universe" include all those facilities which can legally hold juveniles in lawful custody or all those facilities which could potentially hold juveniles in lawful custody?

The initial "universe" includes all facilities which could potentially hold or has held juvenile offenders or nonoffenders in lawful custody. Every facility which has this potential or has held under lawful custody a juvenile offender or nonoffender, regardless of the purpose for housing the offender, comes under the purview of the monitoring requirements.

When the "universe" of facilities is weighed against the criteria for classification as a secure detention or secure correctional facility by a mail questionnaire or telephone contact, what then constitutes a defensible sample for purposes of verifying the validity of the responses?

A defensible sample would be a statistically valid sample. The validity of the sample must be presented and defended by the CJC for OJJDP's consideration.

Must a State have achieved compliance with Sections 223(a)(12)(A), (13) and (14) and have enacted state legislation which conforms to these requirements and which contains sufficient enforcement mechanisms to insure that the legislation will be administered effectively to be exempt from the monitoring report requirements? With regard to Section 223(a)(12)(A) must a state have achieved full or substantial compliance with the deinstitutionalization requirement? Full compliance with de minimis failure?

States must be found to have achieved full compliance with Sections 223(a)(12)(A) and (13) and have enacted State legislation which conforms to these requirements and which contains sufficient enforcement and monitoring mechanisms to insure that the legislation will be administered effectively to be excepted from the monitoring report requirement. States are not required to have achieved complaince with Section 223(a)(14) under this provision, but are required to have an adequate system of monitoring to insure that the requirements of Section 223(a)(14) are met.

In reviewing a state's request for monitoring report exemption, what criteria will the OJJDP use to assess the adequacy of State enforcement mechanisms to insure that the requirements of Sections 223(a)(12)(A) and 223(a)(13) will be administered effectively?

The OJJDP will assess the adequacy of enforcement mechnaisms on the basis of whether the State statute assigns authority for enforcement of the statute, specifies time frames for monitoring compliance with the statute, sets forth adequate sanctions and penalties, and prescribes procedures that will result in the enforcement of compliance. If, once a finding of adequacy is made, violations of the State statute are brought to the attention of the OJJDP, the OJJDP Administrator shall have the authority to investigate to determine whether the system is operating adequately. However, the State would have an opportunity to be heard before a finding of adequacy is withdrawn.

For states to receive exemption from submitting an annual monitoring report, must the State legislation conforming to the requirements of Sections 223(a)(12)(A) and (13) contain specific language setting forth the mechanisms which insure the subject mandates of the legislation will be administered effectively? May these enforcement mechanisms be administratively prescribed?

States must demonstrate that the enforcement of the legislation is statutorily or administratively prescribed, specifically assigning authority for enforcement of the statute; specifying time frames for monitoring compliance with the statute; and setting forth adequate sanctions and penalties that will result in enforcement of compliance and procedures for remedying violations.

If a State is not required to submit a Monitoring Report on 223(a)(14), how would OJJDP determine satisfactory progress? Compliance?

If a State is exempt from submission of annual monitoring reports pursuant to Section 223(a)(15), it is no longer required to submit annual monitoring reports on the status of compliance with Section 223(a)(14). With regard to the annual progress of the State in implementing its plan to achieve compliance with Section 223(a)(14), OJJDP will be provided general programmatic information in the annual performance report required by Section 223(a). Concerning compliance, OJJDP must make compliance findings at year 5 and year 7 of the time frame permitted under Section 223(a)(14) and 223(c) for compliance with the jail removal amendment. Therefore, it will be necessary for the State to submit data which shows the status of compliance with the jail removal requirement at the conclusion of years 5 and 7 in order for OJJDP to make the required compliance findings. If the State does not provide OJJDP with adequate information on which to make such findings, the State's participation in the Act could be terminated.

For what period of time is a state exempt from submitting an annual monitoring report, pursuant to a finding by OJJDP that the State qualifies for exemption?

An exemption request and a determination by OJJDP that a State is exempt from submitting a monitoring report must be made annually. Once a State has been granted exemption it must annually request and secure exemption by either providing an assurance that the State's monitoring system, legislation and enforcement mechanism of the legislation is unchanged from the documentation previously submitted or notify OJJDP of any changes and request exemption consideration based upon such changes in the State law and/or procedures.

THE

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

As Amended Through December 8, 1980

*

Public Law 93-415

As Amended By

The Fiscal Year Adjustment Act
(Public Law 94-273)

The Crime Control Act of 1976
(Public Law 94-503)

The Juvenile Justice Amendments of 1977
(Public Law 95-115)

and

The Juvenile Justice Amendments of 1980
(Public Law 96-509)

*

An Act

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

*

This Compilation Has Been Prepared, in Part, By

THE SUBCOMMITTEE ON HUMAN RESOURCES

COMMITTEE ON EDUCATION AND LABOR

U. S. HOUSE OF REPRESENTATIVES

*

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OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

OFFICE OF JUSTICE ASSISTANCE, RESEARCH, AND STATISTICS

U. S. DEPARTMENT OF JUSTICE

*

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974 [1]

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Juvenile Justice and Delinquency Prevention Act of 1974". *(42 U.S.C. 5601 note)*

TITLE I—FINDINGS AND DECLARATION OF PURPOSE

FINDINGS

SEC. 101. (a) The Congress hereby finds that—

(1) juveniles account for almost half the arrests for serious crimes in the United States today;

(2) understaffed, overcrowded juvenile courts, probation services, and correctional facilities are not able to provide individualized justice or effective help;

(3) present juvenile courts, foster and protective care programs, and shelter facilities are inadequate to meet the needs of the countless, abandoned, and dependent children, who, because of this failure to provide effective services, may become delinquents;

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

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

(6) States and local communities which experience directly the devastating failures of the juvenile justice system do not presently have sufficient technical expertise or adequate resources to deal comprehensively with the problems of juvenile delinquency;

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

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

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

(b) Congress finds further that the high incidence of delinquency in the United States today results in enormous annual cost and immeasurable loss of human life, personal security, and wasted human resources and that juvenile delinquency constitutes a growing threat to the national welfare requiring immediate and comprehensive action by the Federal Government to reduce and prevent delinquency. *(42 U.S.C. 5601)*

PURPOSE

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

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

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

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

(4) to establish a centralized research effort on the problems of juvenile delinquency, including an information clearinghouse to disseminate the findings of such research and all data related to juvenile delinquency;

(5) to develop and encourage the implementation of national standards for the administration of juvenile justice, including recommendations for administrative, budgetary, and legislative action at the Federal, State, and local level to facilitate the adoption of such standards;

(6) to assist State and local communities with resources to develop and implement programs to keep students in elementary and secondary schools and to prevent unwarranted and arbitrary suspensions and expulsions;

(7) to establish a Federal assistance program to deal with the problems of runaway youth; and

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

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

training services in the field of juvenile delinquency prevention. (*42 U.S.C. 5602*)

DEFINITIONS

SEC. 103. For purposes of this Act—

(1) the term "community based" facility, program, or service means a small, open group home or other suitable place located near the juvenile's home or family and programs of community supervision and service which maintain community and consumer participation in the planning operation, and evaluation of their programs which may include, but are not limited to, medical, educational, vocational, social, and psychological guidance, training, special education, counseling, alcoholism treatment, drug treatment, and other rehabilitative services;

(2) the term "Federal juvenile delinquency program" means any juvenile delinquency program which is conducted, directly, or indirectly, or is assisted by any Federal department or agency, including any program funded under this Act;

(3) the term "juvenile delinquency program" means any program or activity related to juvenile delinquency prevention, control, diversion, treatment, rehabilitation, planning, education, training, and research, including drug and alcohol abuse programs; the improvement of the juvenile justice system; and any program or activity for neglected, abandoned, or dependent youth and other youth to help prevent delinquency;

(4)(A) the term "Office of Justice Assistance, Research, and Statistics" means the office established by section 801(a) of the Omnibus Crime Control and Safe Streets Act of 1968;

(B) the term "Law Enforcement Assistance Administration" means the administration established by section 101 of the Omnibus Crime Control and Safe Streets Act of 1968;

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

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

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

(6) the term "law enforcement and criminal justice" means any activity pertaining to crime prevention, control, or reduction or the enforcement of the criminal law, including, but not limited to police efforts to prevent, control, or reduce crime or to apprehend criminals, activities of courts having criminal jurisdiction and related agencies (including prosecutorial and defender services, activities of corrections, probation, or parole authorities, and programs relating to the prevention, control, or reduction of juvenile delinquency or narcotic addiction; [1]

(7) the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, the Virgin Islands,

[1] So in original. Apparently should include a closing parenthesis.

Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(8) the term "unit of general local government" means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligibility, any agency of the District of Columbia government performing law enforcement functions in and for the District of Columbia and funds appropriated by the Congress for the activities of such agency may be used to provide the non-Federal share of the cost of programs or projects funded under this title;

(9) the term "combination" as applied to States or units of general local government means any grouping or joining together of such States or units for the purpose of preparing, developing, or implementing a juvenile justice and delinquency prevention plan;

(10) the term "construction" means acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees but not the cost of acquisition of land for buildings);

(11) the term "public agency" means any State, unit of local government, combination of such States or units, or any department, agency, or instrumentality of any of the foregoing;

(12) the term "secure detention facility" means any public or private residential facility which—

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and

(B) is used for the temporary placement of any juvenile who is accused of having committed an offense, of any nonoffender, or of any other individual accused of having committed a criminal offense;

(13) the term "secure correctional facility" means any public or private residential facility which—

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and

(B) is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense, any nonoffender, or any other individual convicted of a criminal offense;

(14) the term "serious crime" means criminal homicide, forcible rape, mayhem, kidnapping, aggravated assault, robbery, larceny or theft punishable as a felony, motor vehicle theft, burglary or breaking and entering, extortion accompanied by threats of violence, and arson punishable as a felony; and

(15) the term "treatment" includes but is not limited to medical, educational, special education, social, psychological, and vocational services, corrective and preventive guidance and training, and other rehabilitative services designed to protect the public, including services designed to benefit addicts and other users by eliminating their dependence on alcohol or

other addictive or nonaddictive drugs or by controlling their dependence and susceptibility to addiction or use. *(42 U.S.C. 5603)*

TITLE II—JUVENILE JUSTICE AND DELINQUENCY PREVENTION

PART A—JUVENILE JUSTICE AND DELINQUENCY PREVENTION OFFICE

ESTABLISHMENT OF OFFICE

SEC. 201. (a) There is hereby created within the Department of Justice, under the general authority of the Attorney General, the Office of Juvenile Justice and Delinquency Prevention (referred to in this Act as the "Office"). The Administrator shall administer the provisions of this Act through the Office.

(b) The programs authorized pursuant to this Act unless otherwise specified in this Act shall be administered by the Office established under this section.

(c) There shall be at the head of the Office an Administrator who shall be nominated by the President by and with the advice and consent of the Senate.

(d) The Administrator shall exercise all necessary powers, subject to the general authority of the Attorney General. The Administrator is authorized to prescribe regulations for, award, administer, modify, extend, terminate, monitor, evaluate, reject, or deny all grants and contracts from, and applications for, funds made available under part B and part C of this title. The Administrator of the Law Enforcement Assistance Administration and the Director of the National Institute of Justice may delegate such authority to the Administrator of the Office of Juvenile Justice and Delinquency Prevention for all grants and contracts from, and applications for, funds made available under this part and funds made available for juvenile justice and delinquency prevention programs under the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

(e) There shall be in the Office a Deputy Administrator who shall be appointed by the Attorney General. The Deputy Administrator shall perform such functions as the Administrator from time to time assigns or delegates, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

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

(g) Section 5108(c)(10) of title 5, United States Code first occurrence, is amended by deleting the word "twenty-two" and inserting in lieu thereof the word "twenty-five". *(42 U.S.C. 5611)*

PERSONNEL, SPECIAL PERSONNEL, EXPERTS, AND CONSULTANTS

SEC. 202. (a) The Administrator is authorized to select, employ, and fix the compensation of such officers and employees, including

attorneys, as are necessary to perform the functions vested in him and to prescribe their functions.

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

(c) Upon the request of the Administrator, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of its personnel to the Administrator to assist him in carrying out his functions under this Act.

(d) The Administrator may obtain services as authorized by section 3109 of title 5 of the United States Code, at rates not to exceed the rate now or hereafter prescribed for GS–18 of the General Schedule by section 5332 of title 5 of the United States Code. (*42 U.S.C. 5612*)

VOLUNTARY SERVICE

SEC. 203. The Administrator is authorized to accept and employ, in carrying out the provisions of this Act, voluntary and uncompensated services notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)). (*42 U.S.C. 5613*)

CONCENTRATION OF FEDERAL EFFORTS

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

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

(1) advise the President through the Attorney General as to all matters relating to federally assisted juvenile delinquency programs and Federal policies regarding juvenile delinquency;

(2) assist operating agencies which have direct responsibilities for the prevention and treatment of juvenile delinquency in the development and promulgation of regulations, guidelines, requirements, criteria, standards, procedures, and budget requests in accordance with the policies, priorities, and objectives he establishes;

(3) conduct and support evaluations and studies of the performance and results achieved by Federal juvenile delinquency programs and activities and of the prospective performance and results that might be achieved by alternative programs and activities supplementary to or in lieu of those currently being administered;

(4) implement Federal juvenile delinquency programs and activities among Federal departments and agencies and between Federal juvenile delinquency programs and activities and other Federal programs and activities which he determines may

have an important bearing on the success of the entire Federal juvenile delinquency effort;

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

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

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

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

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

(e) The third such annual report submitted to the President and the Congress by the Administrator under subsection (b)(5) shall contain, in addition to the comprehensive plan required by subsection (b)(5), a detailed statement of procedures to be used with respect to the submission of juvenile delinquency development statements to the Administrator by Federal agencies under subsection ("1"). Such statement submitted by the Administrator shall include a description of information, data, and analyses which shall be contained in each such development statement.

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(f) The Administrator may require, through appropriate authority, Federal departments and agencies engaged in any activity involving any Federal juvenile delinquency program to provide him with such information and reports, and to conduct such studies and surveys, as he may deem to be necessary to carry out the purposes of this part.

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

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

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

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

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

(l)(1) The Administrator shall require through appropriate authority each Federal agency which administers a Federal juvenile delinquency program which meets any criterion developed by the Administrator under section 204(d)(1) to submit annually to the Council a juvenile delinquency development statement. Such statement shall be in addition to any information, report, study, or survey which the Administrator may require under section 204(f).

(2) Each juvenile delinquency development statement submitted to the Administrator under subsection ("l") shall be submitted in accordance with procedures established by the Administrator under section 204(e) and shall contain such information, data, and analyses as the Administrator may require under section 204(e). Such analyses shall include an analysis of the extent to which the juvenile delinquency program of the Federal agency submitting such development statement conforms with and furthers Federal juvenile delinquency prevention and treatment goals and policies.

(3) The Administrator shall review and comment upon each juvenile delinquency development statement transmitted to him under subsection ("l"). Such development statement, together with the comments of the Administrator, shall be included by the Federal agency involved in every recommendation or request made by such agency for Federal legislation which significantly affects juvenile delinquency prevention and treatment.

(m) To carry out the purposes of this section, there is authorized to be appropriated for each fiscal year an amount which does not exceed 7.5 percent of the total amount appropriated to carry out this title. (*42 U.S.C. 5614*)

JOINT FUNDING

SEC. 205. Notwithstanding any other provision of law, where funds are made available by more than one Federal agency to be used by any agency, organization, institution, or individual to carry out a Federal juvenile delinquency program or activity, any one of the Federal agencies providing funds may be requested by the Administrator to act for all in administering the funds advanced whenever the Administrator finds the program or activity to be exceptionally effective or for which the Administrator finds exceptional need. In such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each Federal agency, and the Administrator may order any such agency to waive any technical grant or contract requirement (as defined in such regulations) which is inconsistent with the similar requirement of the administering agency or which the administering agency does not impose. (*42 U.S.C. 5615*)

COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

SEC. 206. (a)(1) There is hereby established, as an independent organization in the executive branch of the Federal Government a Coordinating Council on Juvenile Justice and Delinquency Prevention (hereinafter referred to as the "Council") composed of the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Director of the Community Services Administration, the Director of the Office of Drug Abuse Policy, the Director of the ACTION Agency, the Director of the Bureau of Prisons, the Commissioner of the Bureau of Indian Affairs, the Director for the Office of Special Education and Rehabilitation Services, the Commissioner for the Administration for Children, Youth, and Families, and the Director of the Youth Development Bureau, or their respective designees, the Director of the Office of Justice Assistance, Research and Statistics, the Administrator of the Law Enforcement Assistance Administration, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Deputy Administrator of the Institute for Juvenile Justice and Delinquency Prevention, the Director of the National Institute of Justice, and representatives of such other agencies as the President shall designate.

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

(b) The Attorney General shall serve as Chairman of the Council. The Administrator of the Office of Juvenile Justice and Delinquency Prevention shall serve as Vice Chairman of the Council. The Vice Chairman shall act as Chairman in the absence of the Chairman.

(c) The function of the Council shall be to coordinate all Federal juvenile deliquency programs. The Council shall make recommendations to the President, and to the Congress, at least annually with respect to the coordination of overall policy and development of objectives and priorities for all Federal juvenile delinquency pro-

grams and activities. The Council is authorized to review the programs and practices of Federal agencies and report on the degree to which Federal agency funds are used for purposes which are consistent or inconsistent with the mandates of section 223(a)(12)(A) and (13) of this title. The Council shall review, and make recommendations with respect to, any joint funding proposal undertaken by the Office of Juvenile Justice and Delinquency Prevention and any agency represented on the Council.

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

(e) The Administrator shall, with the approval of the Council, appoint such personnel or staff support as he considers necessary to carry out the purposes of this title.

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

(g) To carry out the purposes of this section there is authorized to be appropriated such sums as may be necessary, not to exceed $500,000 for each fiscal year. *(42 U.S.C. 5616)*

NATIONAL ADVISORY COMMITTEE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION

SEC. 207. (a)(1) There is hereby established a National Advisory Committee for Juvenile Justice and Delinquency Prevention (hereinafter in this Act referred to as the "Advisory Committee") which shall consist of 15 members appointed by the President.

(2) Members shall be appointed who have special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice, such as juvenile or family court judges; probation, correctional, or law enforcement personnel; representatives of private, voluntary organizations and community-based programs, including youth workers involved with alternative youth programs; and persons with special training or experience in addressing the problems of youth unemployment, school violence and vandalism, and learning disabilities.

(3) At least 5 of the individuals appointed as members of the Advisory Committee shall not have attained 24 years of age on or before the date of their appointment. At least 2 of the individuals so appointed shall have been or shall be (at the time of appointment) under the jurisdiction of the juvenile justice system. The Advisory Committee shall contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system.

(4) The President shall designate the Chairman from members appointed to the Advisory Committee. No full-time officer or employee of the Federal Government may be appointed as a member of the Advisory Committee, nor may the Chairman be a full-time officer or employee of any State or local government.

(b)(1) Members appointed by the President shall serve for terms of 3 years. Of the members first appointed, 5 shall be appointed for terms of 1 year, 5 shall be appointed for terms of 2 years, and 5 shall be appointed for terms of 3 years, as designated by the President at the time of appointment. Thereafter, the term of each

member shall be 3 years. The initial appointment of members shall be made not later than 90 days after the effective date of this section.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term. The President shall fill a vacancy not later than 90 days after such vacancy occurs. Members shall be eligible for reappointment and may serve after the expiration of their terms until their successors have taken office.

(c) The Advisory Committee shall meet at the call of the Chairman, but not less than quarterly. Ten members of the Advisory Committee shall constitute a quorum.

(d) The Advisory Committee shall—

(1) review and evaluate, on a continuing basis, Federal policies regarding juvenile justice and delinquency prevention and activities affecting juvenile justice and delinquency prevention conducted or assisted by all Federal agencies;

(2) advise the Administrator with respect to particular functions or aspects of the work of the Office;

(3) advise, consult with, and make recommendations to the National Institute of Justice and the National Institute for Juvenile Justice and Delinquency Prevention concerning the overall policy and operations of each such Institute regarding juvenile justice and delinquency prevention research, evaluations, and training provided by each such Institute; and

(4) make refinements in recommended standards for the administration of juvenile justice at the Federal, State, and local levels which have been reviewed under section 247, and recommend Federal, State, and local action to facilitate the adoption of such standards throughout the United States.

(e) Beginning in 1981, the Advisory Committee shall submit such interim reports as it considers advisable to the President and to the Congress, and shall submit an annual report to the President and to the Congress not later than March 31 of each year. Each such report shall describe the activities of the Advisory Committee and shall contain such findings and recommendations as the Advisory Committee considers necessary or appropriate.

(f) The Advisory Committee shall have staff personnel, appointed by the Chairman with the approval of the Advisory Committee, to assist it in carrying out its activities. The head of each Federal agency shall make available to the Advisory Committee such information and other assistance as it may require to carry out its activities. The Advisory Committee shall not have any authority to procure any temporary or intermittent services of any personnel under section 3109 of title 5, United States Code, or under any other provision of law.

(g)(1) Members of the Advisory Committee shall, while serving on business of the Advisory Committee, be entitled to receive compensation at a rate not to exceed the daily rate specified for Grade GS-18 of the General Schedule in section 5332 of title 5, United States Code, including traveltime.

(2) Members of the Advisory Committee, while serving away from their places of residence or regular places of business, shall be entitled to reimbursement for travel expenses, including per diem

in lieu of subsistence, in the same manner as the expenses authorized by section 5703 of title 5, United States Code, for persons in the Federal Government service employed intermittently.

(h) To carry out the purposes of this section, there is authorized to be appropriated such sums as may be necessary, not to exceed $500,000 for each fiscal year. (*42 U.S.C. 5617*)

PART B—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

Subpart I—Formula Grants

SEC. 221. The Administrator is authorized to make grants to States and units of general local government or combinations thereof to assist them in planning, establishing, operating, coordinating, and evaluating projects directly or through grants and contracts with public and private agencies for the development of more effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency and programs to improve the juvenile justice system. (*42 U.S.C. 5631*)

ALLOCATION

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

(b) Except for funds appropriated for fiscal year 1975, if any amount so allotted remains unobligated at the end of the fiscal year, such funds shall be reallocated in a manner equitable and consistent with the purpose of this part. Funds appropriated for fiscal year 1975 may be obligated in accordance with subsection (a) until June 30, 1976, after which time they may be reallocated. Any amount so reallocated shall be in addition to the amounts already allotted and available to the State, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands for the same period.

(c) In accordance with regulations promulgated under this part, a portion of any allotment to any State under this part shall be available to develop a State plan or for other pre-award activities associated with such State plan, and to pay that portion of the expenditures which are necessary for efficient administration, including monitoring and evaluation. Not more than 7½ per centum of the total annual allotment of such State shall be available for such purposes, except that any amount expended or obligated by such State, or by units of general local government or any combination thereof, from amounts made available under this subsection shall be matched (in an amount equal to any such amount so expended or obligated) by such State, or by such units or combinations, from State or local funds, as the case may be. The State shall make available needed funds for planning and administration to units of

general local government or combinations thereof within the State on an equitable basis.

(d) In accordance with regulations promulgated under this part, 5 per centum of the minimum annual allotment to any State under this part shall be available to assist the advisory group established under section 223(a)(3) of this Act. (*42 U.S.C. 5632*)

STATE PLANS

SEC. 223. (a) In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs, and the State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall—

(1) designate the State criminal justice council established by the State under section 402(b)(1) of the Omnibus Crime Control and Safe Streets Act of 1968 as the sole agency for supervising the preparation and administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) (hereafter referred to in this part as the "State criminal justice council") has or will have authority, by legislation if necessary, to implement such plan in conformity with this part;

(3) provide for an advisory group appointed by the chief executive of the State to carry out the functions specified in subparagraph (F), and to participate in the development and review of the State's juvenile justice plan prior to submission to the supervisory board for final action and (A) which shall consist of not less than 15 and not more than 33 persons who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice, (B) which shall include locally elected officials, representation of units of local government, law enforcement and juvenile justice agencies such as law enforcement, correction or probation personnel, and juvenile or family court judges, and public agencies concerned with delinquency prevention or treatment such as welfare, social services, mental health, education, special education, or youth services departments, (C) which shall include representatives of private organizations concerned with delinquency prevention or treatment; concerned with neglected or dependent children; concerned with the quality of juvenile justice, education, or social services for children; which utilize volunteers to work with delinquents or potential delinquents; community-based delinquency prevention or treatment programs; business groups and businesses employing youth, youth workers involved with alternative youth programs, and persons with special experience and competence in addressing the problem of school violence and vandalism and the problem of learning disabilities; and organizations which represent employees affected by this Act, (D) a majority of whose members (including the chairman)

shall not be full-time employees of the Federal, State, or local government, (E) at least one-fifth of whose members shall be under the age of 24 at the time of appointment, and at least 3 of whose members shall have been or shall currently be under the jurisdiction of the juvenile justice system; and (F) which (i) shall, consistent with this title, advise the State criminal justice council and its supervisory board; (ii) shall submit to the Governor and the legislature at least annually recommendations with respect to matters related to its functions, including State compliance with the requirements of paragraph (12)(A) and paragraph (13); (iii) shall have an opportunity for review and comment on all juvenile justice and delinquency prevention grant applications submitted to the State criminal justice council, except that any such review and comment shall be made no later than 30 days after the submission of any such application to the advisory group; (iv) may be given a role in monitoring State compliance with the requirements of paragraph (12)(A) and paragraph (13), in advising on State criminal justice council and local criminal justice advisory board composition, in advising on the State's maintenance of effort under section 1002 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and in review of the progress and accomplishments of juvenile justice and delinquency prevention projects funded under the comprehensive State plan; and (v) shall contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system;

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

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

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

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

(6) provide that the chief executive officer of the unit of general local government shall assign responsibility for the preparation and administration of the local government's part of a State plan, or for the supervision of the preparation and ad-

ministration of the local government's part of the State plan, to that agency within the local government's structure or to a regional planning agency (hereinafter in this part referred to as the "local agency") which can most effectively carry out the purposes of this part and shall provide for supervision of the programs funded under this part by that local agency;

(7) provide for an equitable distribution of the assistance received under section 222 within the State;

(8) provide for (A) an analysis of juvenile crime problems and juvenile justice and delinquency prevention needs within the relevant jurisdiction, a description of the services to be provided, and a description of performance goals and priorities, including a specific statement of the manner in which programs are expected to meet the identified juvenile crime problems and juvenile justice and delinquency prevention needs of the jurisdiction; (B) an indication of the manner in which the programs relate to other similar State or local programs which are intended to address the same or similar problems; and (C) a plan for the concentration of State efforts which shall coordinate all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities, including provision for regular meetings of State officials with responsibility in the area of juvenile justice and delinquency prevention;

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

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

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

treatment, and home probation, and any other designated community-based diagnostic, treatment, or rehabilitative service;

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

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

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

(E) educational programs or supportive services designed to encourage delinquent youth and other youth to remain in elementary and secondary schools or in alternative learning situations;

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

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

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

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

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

(iii) establish and adopt, based upon the recommendations of the Advisory Committee, standards for the improvement of juvenile justice within the State; or

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

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

(J) projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of juvenile gangs and their members;

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

(12)(A) provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid

court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities; and

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

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

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

(15) provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraph (12)(A), paragraph (13), and paragraph (14) are met, and for annual reporting of the results of such monitoring to the Administrator, except that such reporting requirements shall not apply in the case of a State which is in compliance with the other requirements of this paragraph, which is in compliance with the requirements in paragraph (12)(A) and paragraph (13), and which has enacted legislation which conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively;

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

(17) provide for procedures to be established for protecting the rights of recipients of services and for assuring appropriate privacy with regard to records relating to such services provided to any individual under the State plan;

(18) provide that fair and equitable arrangements are made to protect the interests of employees affected by assistance under this Act. Such protective arrangements shall, to the

maximum extent feasible, include, without being limited to, such provisions as may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements or otherwise;

(B) the continuation of collective-bargaining rights;

(C) the protection of individual employees against a worsening of their positions with respect to their employment;

(D) assurances of employment to employees of any State or political subdivision thereof who will be affected by any program funded in whole or in part under provisions of this Act;

(E) training or retraining programs.

The State plan shall provide for the terms and conditions of the protection arrangements established pursuant to this section;

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

(20) provide reasonable assurances that Federal funds made available under this part for any period will be so used as to supplement and increase (but not supplant) the level of the State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs described in this part, and will in no event replace such State, local, and other non-Federal funds;

(21) provide that the State criminal justice council will from time to time, but not less often than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, which it considers necessary; and

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

Such plan may at the discretion of the Administrator be incorporated into the plan specified in section 403 of the Omnibus Crime Control and Safe Streets Act. Such plan shall be modified by the State, as soon as practicable after the date of the enactment of the Juvenile Justice Amendments of 1980, in order to comply with the requirements of paragraph (14).

(b) The State criminal justice council designated pursuant to section 223(a), after receiving and considering the advice and recommendations of the advisory group referred to in section 223(a), shall approve the State plan and any modification thereof prior to submission to the Administrator.

(c) The Administrator shall approve any State plan and any modification thereof that meets the requirements of this section. Failure to achieve compliance with the subsection (a)(12)(A) requirement within the three-year time limitation shall terminate any State's eligibility for funding under this subpart unless the Administrator determines that the State is in substantial compliance

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

(d) In the event that any State chooses not to submit a plan, fails to submit a plan, or submits a plan or any modification thereof, which the Administrator, after reasonable notice and opportunity for hearing, in accordance with sections 803, 804, and 805 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, determines does not meet the requirements of this section, the Administrator shall endeavor to make that State's allotment under the provisions of section 222(a) available to local public and private nonprofit agencies within such State for use in carrying out the purposes of subsection (a)(12)(A), subsection (a)(13), or subsection (a)(14). The Administrator shall make funds which remain available after disbursements are made by the Administrator under the preceding sentence, and any other unobligated funds, available on an equitable basis to those States that have achieved full compliance with the requirements under subsection (a)(12)(A) and subsection (a)(13) within the initial three years of participation or have achieved full compliance within a reasonable time thereafter as provided by subsection (c). (*42 U.S.C. 5633*)

Subpart II—Special Emphasis Prevention and Treatment Programs

SEC. 224. (a) The Administrator is authorized to make grants to and enter into contracts with public and private agencies, organizations, institutions, or individuals to—

(1) develop and implement new approaches, techniques, and methods with respect to juvenile delinquency programs;

(2) develop and maintain community-based alternatives to traditional forms of institutionalization;

(3) develop and implement effective means of diverting juveniles from the traditional juvenile justice and correctional system, including restitution projects which test and validate selected arbitration models, such as neighborhood courts or panels, and increase victim satisfaction while providing alternatives to incarceration for detained or adjudicated delinquents;

(4) improve the capability of public and private agencies and organizations to provide services for delinquents and other youth to help prevent delinquency;

(5) develop statewide programs through the use of subsidies or other financial incentives designed to—

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

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

(C) establish and adopt, based upon recommendations of the Advisory Committee, standards for the improvement of juvenile justice within the State;

(6) develop and implement, in coordination with the Secretary of Education, model programs and methods to keep students in elementary and secondary schools and to prevent unwarranted and arbitrary suspensions and expulsions and to encourage new approaches and techniques with respect to the prevention of school violence and vandalism;

(7) develop and support programs stressing advocacy activities aimed at improving services to youth impacted by the juvenile justice system;

(8) develop, implement, and support, in conjunction with the Secretary of Labor, other public and private agencies and organizations and business and industry programs for youth employment;

(9) improve the juvenile justice system to conform to standards of due process;

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

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

(12) develop and implement special emphasis prevention and treatment programs relating to juveniles who commit serious crimes.

(b) Twenty-five per centum of the funds appropriated for each fiscal year pursuant to this part shall be available only for special emphasis prevention and treatment grants and contracts made pursuant to this section.

(c) At least 30 per centum of the funds available for grants and contracts made pursuant to this section shall be available for grants and contracts to private nonprofit agencies, organizations, or institutions who have had experience in dealing with youth.

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

(e) At least 5 percent of the funds available for grants and contracts made pursuant to this section shall be available for grants and contracts designed to address the special needs and problems of juvenile delinquency in the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. *(42 U.S.C. 5634)*

CONSIDERATIONS FOR APPROVAL OF APPLICATIONS

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

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

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

(2) set forth a program for carrying out one or more of the purposes set forth in section 224;

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

(4) provide for regular evaluation of the program;

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

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

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

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

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

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

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

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

(4) the increase in capacity of the public and private agency, institution, or individual to provide services to delinquents and other youth to help prevent delinquency;

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

(6) the extent to which the proposed program facilitates the implementation of the recommendations of the Advisory Committee as set forth pursuant to section 247; and

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

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

(d) No city should be denied an application solely on the basis of its population. (*42 U.S.C. 5635*)

GENERAL PROVISIONS

Withholding

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

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

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

the Administrator shall initiate such proceedings as are appropriate. (*42 U.S.C. 5636*)

USE OF FUNDS

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

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

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

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

(c) Funds paid pursuant to section 223(a)(10)(D) and section 224(a)(7) to any public or private agency, organization, or institution or to any individual (whether directly or through a State criminal justice council) shall not be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence a Member of the Congress or any other Federal, State, or local elected official to favor or oppose any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure by the Congress, any State legislature, any local council, or any similar governing body, except that this subsection shall not preclude such funds from being used in connection with communications to Federal, State, or local elected officials, upon the request of such officials through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved. The Administrator shall take such action as may be necessary to ensure that no funds paid under section 223(a)(10)(D) or section 224(a)(7) are used either directly or indirectly in any manner prohibited in this subsection. (*42 U.S.C. 5637*)

PAYMENTS

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

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

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

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

(e) If the Administrator determines, on the basis of information available to him during any fiscal year, that a portion of the funds granted to an applicant under subpart II of this part for that fiscal year will not be required by the applicant or will become available by virtue of the application of the provisions of section 803 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, that portion shall be available for reallocation in an equitable manner to States which have complied with the requirements in section 223(a)(12)(A) and section 223(a)(13), under section 224(a)(5) of this title. (*42 U.S.C. 5638*)

CONFIDENTIALITY OF PROGRAM RECORDS

SEC. 229. Except as authorized by law, program records containing the identity of individual juveniles gathered for purposes pursuant to this title may not be disclosed except with the consent of the service recipient or legally authorized representative, or as may be necessary to perform the functions required by this title. Under no circumstances may project reports or findings available for public dissemination contain the actual names of individual service recipients. (*42 U.S.C. 5639*)

PART C—NATIONAL INSTITUTE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION

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

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

(c) The activities of the National Institute for Juvenile Justice and Delinquency Prevention shall be coordinated with the activities of the National Institute of Justice in accordance with the requirements of section 201(b).

(d) It shall be the purpose of the Institute to provide a coordinating center for the collection, preparation, and dissemination of useful data regarding the treatment and control of juvenile offenders, and it shall also be the purpose of the Institute to provide training for representatives of Federal, State, and local law enforcement officers, teachers, and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation personnel, correctional personnel and other persons, including lay personnel, including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations, connected with the treatment and control of juvenile offenders.

(e) In addition to the other powers, express and implied, the Institute may—

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

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

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

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

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

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

(f) Any Federal agency which receives a request from the Institute under subsection (e)(1) may cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information and advice to the Institute. *(42 U.S.C. 5651)*

INFORMATION FUNCTION

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

(1) serve as an information bank by collecting systematically and synthesizing the data and knowledge obtained from studies and research by public and private agencies, institutions, or

individuals concerning all aspects of juvenile delinquency, including the prevention and treatment of juvenile delinquency;

(2) serve as a clearinghouse and information center for the preparation, publication, and dissemination of all information regarding juvenile delinquency, including State and local juvenile delinquency prevention and treatment programs and plans, availability of resources, training and educational programs, statistics, and other pertinent data and information. (*42 U.S.C. 5652*)

RESEARCH, DEMONSTRATION, AND EVALUATION FUNCTIONS

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

(1) conduct, encourage, and coordinate research and evaluation into any aspect of juvenile delinquency, particularly with regard to new programs and methods which show promise of making a contribution toward the prevention and treatment of juvenile delinquency;

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

(3) provide for the evaluation of all juvenile delinquency programs assisted under this title in order to determine the results and the effectiveness of such programs;

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

(5) prepare, in cooperation with educational institutions, Federal, State, and local agencies, and appropriate individuals and private agencies, such studies as it considers to be necessary with respect to the prevention and treatment of juvenile delinquency and related matters, including recommendations designed to promote effective prevention and treatment, such as assessments regarding the role of family violence, sexual abuse or exploitation and media violence in delinquency, the improper handling of youth placed in one State by another State, the possible ameliorating roles of recreation and the arts, and the extent to which youth in the juvenile system are treated differently on the basis of sex and the ramifications of such practices;

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

(7) disseminate pertinent data and studies (including a periodic journal) to individuals, agencies, and organizations concerned with the prevention and treatment of juvenile delinquency. (*42 U.S.C. 5653*)

TRAINING FUNCTIONS

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

(1) develop, conduct, and provide for training programs for the training of professional, paraprofessional, and volunteer

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

personnel, and other persons who are or who are preparing to work with juveniles and juvenile offenders;

(2) develop, conduct, and provide for seminars, workshop,[1] and training programs in the latest proven effective techniques and methods of preventing and treating juvenile delinquency for law enforcement officers, juvenile judges, and other court personnel, probation officers, correctional personnel, and other Federal, State, and local government personnel who are engaged in work relating to juvenile delinquency;

(3) devise and conduct a training program, in accordance with the provisions of sections 248, 249, and 250, of short-term instruction in the latest proven-effective methods of prevention, control, and treatment of juvenile delinquency for correctional and law enforcement personnel, teachers and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation officers, and other persons (including lay personnel, including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations) connected with the prevention and treatment of juvenile delinquency; and

(4) develop technical training teams to aid in the development of training programs in the States and to assist State and local agencies which work directly with juveniles and juvenile offenders. (*42 U.S.C. 5654*)

INSTITUTE ADVISORY COMMITTEE

SEC. 245. The Advisory Committee shall advise, consult with, and make recommendations to the Administrator concerning the overall policy and operations of the Institute. (*42 U.S.C. 5655*)

ANNUAL REPORT

SEC. 246. The Deputy Administrator for the National Institute for Juvenile Justice and Delinquency Prevention shall develop annually and submit to the Administrator after the first year the legislation is enacted, prior to September 30, a report on research, demonstration, training, and evaluation programs funded under this title, including a review of the results of such programs, an assessment of the application of such results to existing and to new juvenile delinquency programs, and detailed recommendations for future research, demonstration, training, and evaluation programs. The Administrator shall include a summary of these results and recommendations in his report to the President and Congress required by section 204(b)(5). (*42 U.S.C. 5656*)

DEVELOPMENT OF STANDARDS FOR JUVENILE JUSTICE

SEC. 247. (a) The National Institute for Juvenile Justice and Delinquency Prevention, under the supervision of the Advisory Committee, shall review existing reports, data, and standards, relating to the juvenile justice system in the United States.

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

(b) Not later than one year after the passage of this section, the Advisory Committee shall submit to the President and the Congress a report which, based on recommended standards for the administration of juvenile justice at the Federal, State, and local level—

(1) recommends Federal action, including but not limited to administrative and legislative action, required to facilitate the adoption of these standards throughout the United States; and

(2) recommends State and local action to facilitate the adoption of these standards for juvenile justice at the State and local level.

(c) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Advisory Committee such information as the Committee deems necessary to carry out its functions under this section.

(d) Following the submission of its report under subsection (b) the Advisory Committee shall direct its efforts toward refinement of the recommended standards and may assist State and local governments and private agencies and organizations in the adoption of appropriate standards at State and local levels. The National Institute for Juvenile Justice and Delinquency Prevention is authorized to develop and support model State legislation consistent with the mandates of this Act and the standards developed by Advisory Committee. *(42 U.S.C. 5657)*

ESTABLISHMENT OF TRAINING PROGRAM

SEC. 248. (a) The Administrator shall establish within the Institute a training program designed to train enrollees with respect to methods and techniques for the prevention and treatment of juvenile delinquency. In carrying out this program the Administrator is authorized to make use of available State and local services, equipment, personnel, facilities, and the like.

(b) Enrollees in the training program established under this section shall be drawn from correctional and law enforcement personnel, teachers and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation officers, and other persons (including lay personnel, including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations) connected with the prevention and treatment of juvenile delinquency. *(42 U.S.C. 5659)*

CURRICULUM FOR TRAINING PROGRAM

SEC. 249. The Administrator shall design and supervise a curriculum for the training program established by section 248 which shall utilize an interdisciplinary approach with respect to the prevention of juvenile delinquency, the treatment of juvenile delinquents, and the diversion of youths from the juvenile justice system. Such curriculum shall be appropriate to the needs of the enrollees of the training program. *(42 U.S.C. 5660)*

ENROLLMENT FOR TRAINING PROGRAM

SEC. 250. (a) Any person seeking to enroll in the training program established under section 248 shall transmit an application to the Administrator, in such form and according to such procedures as the Administrator may prescribe.

(b) The Administrator shall make the final determination with respect to the admittance of any person to the training program. The Administrator, in making such determination, shall seek to assure that persons admitted to the training program are broadly representative of the categories described in section 248(b).

(c) While studying at the Institute and while traveling in connection with his study (including authorized field trips), each person enrolled in the Institute shall be allowed travel expenses and a per diem allowance in the same manner as prescribed for persons employed intermittently in the Government service under section 5703 of title 5, United States Code. *(42 U.S.C. 5661)*

PART D—ADMINISTRATIVE PROVISIONS

SEC. 261. (a) To carry out the purposes of this title there is authorized to be appropriated $200,000,000 for each of the fiscal years ending September 30, 1981, September 30, 1982, September 30, 1983, and September 30, 1984. Funds appropriated for any fiscal year may remain available for obligation until expended.

(b) In addition to the funds appropriated under section 261(a) of the Juvenile Justice and Delinquency Prevention Act of 1974,[1] the Administration shall maintain from the appropriation for the Law Enforcement Assistance Administration, each fiscal year, at least 19.15 percent of the total appropriations for the Administration, for juvenile delinquency programs.

(c) Notwithstanding any other provision of law, if the Administrator determines, in his discretion, that sufficient funds have not been appropriated for any fiscal year for the activities authorized in part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968, then the Administrator is authorized to—

(1) approve any appropriate State agency designated by the Governor of the State involved as the sole agency responsible for supervising the preparation and administration of the State plan submitted under section 223; and

(2) establish appropriate administrative and supervisory board membership requirements for any agency designated in accordance with paragraph (1), and permit the State advisory group appointed under section 223(a)(3) to operate as the supervisory board for such agency, at the discretion of the Governor. *(42 U.S.C. 5671)*

APPLICABILITY OF OTHER ADMINISTRATIVE PROVISIONS

SEC. 262. (a) The administrative provisions of sections 802(a), 802(c), 803, 804, 805, 806, 807, 810, 812, 813, 814(a), 815(c), 817(a), 817(b), 817(c), 818(a), 818(b), and 818(d) of the Omnibus Crime Control and Safe Streets Act of 1968 are incorporated in this Act as administrative provisions applicable to this Act. References in the

[1] So in original. Apparently should be "under subsection (a)"

cited sections authorizing action by the Director of the Office of Justice Assistance, Research and Statistics, the Administrator of the Law Enforcement Assistance Administration, the Director of the National Institute of Justice, and the Director of the Bureau of Justice Statistics also shall be construed as authorizing the Administrator of the Office of Juvenile Justice and Delinquency Prevention to perform the same action.

(b) The Office of Justice Assistance, Research and Statistics shall directly provide staff support to, and coordinate the activities of, the Office of Juvenile Justice and Delinquency Prevention in the same manner as it is authorized to provide staff support and coordinate the activities of the Law Enforcement Assistance Administration, National Institute of Justice, and Bureau of Justice Statistics pursuant to section 801(b) of the Omnibus Crime Control and Safe Streets Act of 1968. (*42 U.S.C. 5672*)

EFFECTIVE CLAUSE

SEC. 263. (a) Except as provided by subsections (b) and (c), the foregoing provisions of this Act shall take effect on the date of enactment of this Act.

(b) Section 204(b)(5) and 204(b)(6) shall become effective at the close of the thirty-first day of the twelfth calendar month of 1974. Section 204(l) shall become effective at the close of the thirtieth day of the eleventh calendar month of 1976.

(c) Except as otherwise provided by the Juvenile Justice Amendments of 1977, the amendments made by the Juvenile Justice Amendments of 1977 shall take effect on October 1, 1977. (*42 U.S.C. 5601 note*)

TITLE III—RUNAWAY AND HOMELESS YOUTH

SHORT TITLE

SEC. 301. This title may be cited as the "Runaway and Homeless Youth Act". (*42 U.S.C. 5701 note*)

FINDINGS

SEC. 302. The Congress hereby finds that—

(1) the number of juveniles who leave and remain away from home without parental permission has increased to alarming proportions, creating a substantial law enforcement problem for the communities inundated, and significantly endangering the young people who are without resources and live on the street;

(2) the exact nature of the problem is not well defined because national statistics on the size and profile of the runaway youth population are not tabulated;

(3) many such young people, because of their age and situation, are urgently in need of temporary shelter and counseling services;

(4) the problem of locating, detaining, and returning runaway children should not be the responsibility of already

overburdened police departments and juvenile justice authorities; and

(5) in view of the interstate nature of the problem, it is the responsibility of the Federal Government to develop accurate reporting of the problem nationally and to develop an effective system of temporary care outside the law enforcement structure. (*42 U.S.C. 5701*)

RULES

SEC. 303. The Secretary of Health, Education, and Welfare (hereinafter referred to as the "Secretary") may prescribe such rules as he considers necessary or appropriate to carry out the purposes of this title. (*42 U.S.C. 5702*)

PART A—GRANTS PROGRAM

PURPOSES OF GRANT PROGRAM

SEC. 311. (a) The Secretary is authorized to make grants and to provide technical assistance and short-term training to States, localities and nonprofit private agencies and coordinated networks of such agencies in accordance with the provisions of this part. Grants under this part shall be made equitably among the States based upon their respective populations of youth under 18 years of age for the purpose of developing local facilities to deal primarily with the immediate needs of runaway youth or otherwise homeless youth, and their families, in a manner which is outside the law enforcement structure and juvenile justice system. The size of such grant shall be determined by the number of such youth in the community and the existing availability of services. Grants also may be made for the provision of a national communications system for the purpose of assisting runaway and homeless youth in communicating with their families and with service providers. Among applicants priority shall be given to private organizations or institutions which have had past experience in dealing with such youth.

(b) The Secretary is authorized to provide supplemental grants to runaway centers which are developing, in cooperation with local juvenile court and social service agency personnel, model programs designed to provide assistance to juveniles who have repeatedly left and remained away from their homes or from any facilities in which they have been placed as the result of an adjudication.

(c) The Secretary is authorized to provide on-the-job training to local runaway and homeless youth center personnel and coordinated networks of local law enforcement, social service, and welfare personnel to assist such personnel in recognizing and providing for learning disabled and other handicapped juveniles. (*42 U.S.C. 5711*)

ELIGIBILITY

SEC. 312. (a) To be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund an existing or proposed runaway center, a locally controlled facility providing temporary shelter, and counseling services to juveniles who have left home without permission of their parents or guardians or to other homeless juveniles.

(b) In order to qualify for assistance under this part, an applicant shall submit a plan to the Secretary meeting the following requirements and including the following information. Each center—

(1) shall be located in an area which is demonstrably frequented by or easily reachable by runaway youth;

(2) shall have a maximum capacity of no more than twenty children, with a ratio of staff to children of sufficient portion [1] to assure adequate supervision and treatment;

(3) shall develop adequate plans for contacting the child's parents or relatives (if such action is required by State law) and assuring the safe return of the child according to the best interests of the child, for contacting local government officials pursuant to informal arrangements established with such officials by the runaway center, and for providing for other appropriate alternative living arrangements;

(4) shall develop an adequate plan for assuring proper relations with law enforcement personnel, social service personnel, and welfare personnel, and the return of runaway youths from correctional institutions;

(5) shall develop an adequate plan for aftercare counseling involving runaway youth and their parents within the State in which the runaway center is located and for assuring, as possible, that aftercare services will be provided to those children who are returned beyond the State in which the runaway center is located;

(6) shall keep adequate statistical records profiling the children and parents which it serves, except that records maintained on individual runaway youths shall not be disclosed without the consent of the individual youth and parent or legal guardian to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual runaway youth, and reports or other documents based on such statistical records shall not disclose the identity of individual runaway youths;

(7) shall submit annual reports to the Secretary detailing how the center has been able to meet the goals of its plans and reporting the statistical summaries required by paragraph (6);

(8) shall demonstrate its ability to operate under accounting procedures and fiscal control devices as required by the Secretary;

(9) shall submit a budget estimate with respect to the plan submitted by such center under this subsection; and

(10) shall supply such other information as the Secretary reasonably deems necessary. *(42 U.S.C. 5712)*

APPROVAL BY SECRETARY

SEC. 313. An application by a State, locality, or nonprofit private agency for a grant under this part may be approved by the Secretary only if it is consistent with the applicable provisions of this part and meets the requirements set forth in section 312. Priority shall be given to grants smaller than $150,000. In considering grant

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

applications under this part, priority shall be given to organizations which have a demonstrated experience in the provision of service to runaway and homeless youth and their families. (*42 U.S.C. 5713*)

GRANTS TO PRIVATE AGENCIES, STAFFING

SEC. 314. Nothing in this part shall be construed to deny grants to nonprofit private agencies which are fully controlled by private boards or persons but which in other respects meet the requirements of this part and agree to be legally responsible for the operation of the runaway house. Nothing in this part shall give the Federal Government control over the staffing and personnel decisions of facilities receiving Federal funds. (*42 U.S.C. 5714*)

REPORTS

SEC. 315. The Secretary shall annually report to the Congress on the status and accomplishments of the runaway centers which are funded under this part, with particular attention to—

(1) their effectiveness in alleviating the problems of runaway youth;

(2) their ability to reunite children with their families and to encourage the resolution of intrafamily problems through counseling and other services;

(3) their effectiveness in strengthening family relationships and encouraging stable living conditions for children; and

(4) their effectiveness in helping youth decide upon a future course of action. (*42 U.S.C. 5715*)

FEDERAL SHARE

SEC. 316. (a) The Federal share for the acquisition and renovation of existing structures, the provision of counseling services, staff training, and the general costs of operations of such facility's budget for any fiscal year shall be 90 per centum. The non-Federal share may be in cash or in kind, fairly evaluated by the Secretary, including plant, equipment, or services.

(b) Payments under this section may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments. (*42 U.S.C. 5716*)

PART B—RECORDS

RECORDS

SEC. 321. Records containing the identity of individual youths pursuant to this Act may under no circumstances be disclosed or transferred to any individual or to any public or private agency. (*42 U.S.C. 5731*)

PART C—REORGANIZATION

REORGANIZATION PLAN

SEC. 331. (a) After April 30, 1978, the President may submit to the Congress a reorganization plan which, subject to the provisions of subsection (b) of this section, shall take effect, if such reorganization plan is not disapproved by a resolution of either House of the Congress, in accordance with the provisions of, and the procedures established by chapter 9 of title 5, United States Code, except to the extent provided in this part.

(b) A reorganization plan submitted in accordance with the provisions of subsection (a) shall provide—

(1) for the establishment of an Office of Youth Assistance which shall be the principal agency for purposes of carrying out this title and which shall be established—

(A) within the Office of Juvenile Justice and Delinquency Prevention in the Department of Justice; or

(B) within the ACTION Agency;

(2) that the transfer authorized by paragraph (1) shall be effective 30 days after the last date on which such transfer could be disapproved under chapter 9 of title 5, United States Code;

(3) that property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions of the Office of Youth Development within the Department of Health, Education, and Welfare in the operation of functions pursuant to this title, shall be transferred to the Office of Youth Assistance within the Office of Juvenile Justice and Delinquency Prevention or within the ACTION Agency, as the case may be, and that all grants, applications for grants, contracts, and other agreements awarded or entered into by the Office of Youth Development shall continue in effect until modified, superseded, or revoked;

(4) that all official actions taken by the Secretary of Health, Education, and Welfare, his designee, or any other person under the authority of this title which are in force on the effective date of such plan, and for which there is continuing authority under the provisions of this title, shall continue in full force and effect until modified, superseded, or revoked by the Associate Administrator for the Office of Juvenile Justice and Delinquency Prevention or by the Director of the ACTION Agency, as the case may be, as appropriate; and

(5) that references to the Office of Youth Development within the Department of Health, Education, and Welfare in any statute, reorganization plan, Executive order, regulation, or other official document or proceeding shall, on and after such date, be deemed to refer to the Office of Youth Assistance within the Office of Juvenile Justice and Delinquency Prevention or within the ACTION Agency, as the case may be, as appropriate. *(42 U.S.C. 5741)*

PART D—AUTHORIZATION OF APPROPRIATIONS

SEC. 341. (a) To carry out the purposes of part A of this title there is authorized to be appropriated for each of the fiscal years ending September 30, 1981, September 30, 1982, September 30, 1983, and September 30, 1984, the sum of $25,000,000.

(b) The Secretary (through the Office of Youth Development which shall administer this title) shall consult with the Attorney General (through the Associate Administrator [1] of the Office of Juvenile Justice and Delinquency Prevention) for the purpose of coordinating the development and implementation of programs and activities funded under this title with those related programs and activities funded under title II of this Act and under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. *(42 U.S.C. 5751)**

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

* NOTE.—Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974 was repealed by section 10 of the Juvenile Justice Amendments of 1977 (Public Law 95-115; 91 Stat. 1061). Title V of such Act, which made various amendments to title 18, United States Code, is not included in this Compilation.

RELATED PROVISIONS OF LAW

A. Juvenile Justice Amendments of 1980

REPORT REGARDING CONFINEMENT OF JUVENILES IN JAILS FOR ADULTS

SEC. 17. (a) The Administrator of the Office of Juvenile Justice and Delinquency Prevention, not later than 18 months after the date of the enactment of this Act, shall submit a report to the Congress relating to the cost and implications of any requirement added to the Juvenile Justice and Delinquency Prevention Act of 1974 which would mandate the removal of juveniles from adults in all jails and lockups.

(b) The report required in subsection (a) shall include—

(1) an estimate of the costs likely to be incurred by the States in implementing the requirement specified in subsection (a);

(2) an analysis of the experience of States which currently require the removal of juveniles from adults in all jails and lockups;

(3) an analysis of possible adverse ramifications which may result from such requirement of removal, including an analysis of whether such requirement would lead to an expansion of the residential capacity of secure detention facilities and secure correctional facilities for juveniles, thus resulting in a net increase in the total number of juveniles detained or confined in such facilities; and

(4) recommendations for such legislative or administrative action as the Administrator considers appropriate.

B. Chapters 319 and 403 of Title 18, United States Code

Chapter 319.—NATIONAL INSTITUTE OF CORRECTIONS

SEC. 4351. (a) There is hereby established within the Bureau of Prisons a National Institute of Corrections.

(b) The overall policy and operations of the National Institute of Corrections shall be under the supervision of an Advisory Board. The Board shall consist of sixteen members. The following six individuals shall serve as members of the Commission ex officio: the Director of the Federal Bureau of Prisons or his designee, the Administrator of the Law Enforcement Assistance Administration or his designee, Director of the Federal Judicial Center or his designee, the Associate Administrator [1] for the Office of Juvenile Justice and Delinquency Prevention or his designee, and the Assistant Secretary for Human Development of the Department of Health, Education, and Welfare or his designee.

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

(c) The remaining ten members of the Board shall be selected as follows:

(1) Five shall be appointed initially by the Attorney General of the United States for staggered terms; one member shall serve for one year, one member for two years, and three members for three years. Upon the expiration of each member's term, the Attorney General shall appoint successors who will each serve for a term of three years. Each member selected shall be qualified as a practitioner (Federal, State, or local) in the field of corrections, probation, or parole.

(2) Five shall be appointed initially by the Attorney General of the United States for staggered terms, one member shall serve for one year, three members for two years, and one member for three years. Upon the expiration of each member's term the Attorney General shall appoint successors who will each serve for a term of three years. Each member selected shall be from the private sector, such as business, labor, and education, having demonstrated an active interest in corrections, probation, or parole.

(d) The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States. Members of the Commission who are full-time officers or employees of the United States shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Board. Other members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Commission pursuant to this title, be entitled to receive compensation at the rate not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5, United States Code, including travel-time, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(e) The Board shall elect a chairman from among its members who shall serve for a term of one year. The members of the Board shall also elect one or more members as a vice-chairman.

(f) The Board is authorized to appoint, without regard to the civil service laws, technical, or other advisory committees to advise the institute [1] with respect to the administration of this title as it deems appropriate. Members of these committees not otherwise employed by the United States, while engaged in advising the Institute or attending meetings of the committees, shall be entitled to receive compensation at the rate fixed by the Board but not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5, United States Code, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(g) The Board is authorized to delegate its powers under this title to such persons as it deems appropriate.

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

(h) The Institute shall be under the supervision of an officer to be known as the Director, who shall be appointed by the Attorney General after consultation with the Board. The Director shall have authority to supervise the organization, employees, enrollees, financial affairs, and all other operations of the Institute and may employ such staff, faculty, and administrative personnel, subject to the civil service and classification laws, as are necessary to the functioning of the Institute. The Director shall have the power to acquire and hold real and personal property for the Institute and may receive gifts, donations, and trusts on behalf of the Institute. The Director shall also have the power to appoint such technical or other advisory councils comprised of consultants to guide and advise the Board. The Director is authorized to delegate his powers under this title to such persons as he deems appropriate.

SEC. 4352. (a) In addition to the other powers, express and implied, the National Institute of Corrections shall have authority—

(1) to receive from or make grants to and enter into contracts with Federal, State, and general units of local government, public and private agencies, educational institutions, organizations, and individuals to carry out the purposes of this chapter;

(2) to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on corrections, including, but not limited to, programs for prevention of crime and recidivism, training of corrections personnel, and rehabilitation and treatment of criminal and juvenile offenders;

(3) to assist and serve in a consulting capacity to Federal, State, and local courts, departments, and agencies in the development, maintenance, and coordination of programs, facilities, and services, training, treatment, and rehabilitation with respect to criminal and juvenile offenders;

(4) to encourage and assist Federal, State, and local government programs and services, and programs and services of other public and private agencies, institutions, and organizations in their efforts to develop and implement improved corrections programs;

(5) to devise and conduct, in various geographical locations, seminars, workshops, and training programs for law enforcement officers, judges, and judicial personnel, probation and parole personnel, correctional personnel, welfare workers, and other persons, including lay ex-offenders, and paraprofessional personnel, connected with the treatment and rehabilitation of criminal and juvenile offenders;

(6) to develop technical training teams to aid in the development of seminars, workshops, and training programs within the several States and with the State and local agencies which work with prisoners, parolees, probationers, and other offenders;

(7) to conduct, encourage, and coordinate research relating to corrections, including the causes, prevention, diagnosis, and treatment of criminal offenders;

(8) to formulate and disseminate correctional policy, goals, standards, and recommendations for Federal, State, and local

correctional agencies, organizations, institutions, and personnel;

(9) to conduct evaluation programs which study the effectiveness of new approaches, techniques, systems, programs, and devices employed to improve the corrections system;

(10) to receive from any Federal department or agency such statistics, data, program reports, and other material as the Institute deems necessary to carry out its functions. Each such department or agency is authorized to cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information to the Institute;

(11) to arrange with and reimburse the heads of Federal departments and agencies for the use of personnel, facilities, or equipment of such departments and agencies;

(12) to confer with and avail itself of the assistance, services, records, and facilities of State and local governments or other public or private agencies, organizations, or individuals;

(13) to enter into contracts with public or private agencies, organizations, or individuals, for the performance of any of the functions of the Institute; and

(14) to procure the services of experts and consultants in accordance with section 3109 of title 5 of the United States Code, at rates of compensation not to exceed the daily equivalent of the rate authorized for GS–18 by section 5332 of title 5 of the United States Code.

(b) The Institute shall on or before the 31st day of December of each year submit an annual report for the preceding fiscal year to the President and to the Congress. The report shall include a comprehensive and detailed report of the Institute's operations, activities, financial condition, and accomplishments under this title and may include such recommendations related to corrections as the Institute deems appropriate.

(c) Each recipient of assistance under this shall [1] keep such records as the Institute shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(d) The Institute, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for purposes of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(e) The provision [2] of this section shall apply to all recipients of assistance under this title, whether by direct grant or contract from the Institute or by subgrant or subcontract from primary grantees or contractors of the Institute.

SEC. 4353. There is hereby authorized to be appropriated such funds as may be required to carry out the purposes of this chapter.

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[1] So in original.
[2] So in original. Apparently should be "provisions".

Chapter 403.—JUVENILE DELINQUENCY

§ 5031. Definitions

For the purposes of this chapter, a "juvenile" is a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday, and "juvenile delinquency" is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult.

§ 5032. Delinquency proceedings in district courts; transfer for criminal prosecution

A juvenile alleged to have committed an act of juvenile delinquency shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to an appropriate district court of the United States that the juvenile court or other appropriate court of a State (1) does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, or (2) does not have available programs and services adequate for the needs of juveniles.

If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State.

If an alleged juvenile delinquent is not surrendered to the authorities of a State or the District of Columbia pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless he has requested in writing upon advice of counsel to be proceeded against as an adult, except that, with respect to a juvenile sixteen years and older alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony punishable by a maximum penalty of ten years imprisonment or more, life imprisonment, or death, criminal prosecution on the basis of the alleged act

may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice.

Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer would be in the interest of justice: the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems.

Reasonable notice of the transfer hearing shall be given to the juvenile, his parents, guardian, or custodian and to his counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions.

§ 5033. Custody prior to appearance before magistrate

Whenever a juvenile is taken into custody for an alleged act of juvenile delinquency, the arresting officer shall immediately advise such juvenile of his legal rights, in language comprehensive to a juvenile, and shall immediately notify the Attorney General and the juvenile's parents, guardian, or custodian of such custody. The arresting officer shall also notify the parents, guardian, or custodian of the rights of the juvenile and of the nature of the alleged offense.

The juvenile shall be taken before a magistrate forthwith. In no event shall the juvenile be detained for longer than a reasonable period of time before being brought before a magistrate.

§ 5034. Duties of magistrate

The magistrate shall insure that the juvenile is represented by counsel before proceeding with critical stages of the proceedings. Counsel shall be assigned to represent a juvenile when the juvenile and his parents, guardian, or custodian are financially unable to obtain adequate representation. In cases where the juvenile and his parents, guardian, or custodian are financially able to obtain adequate representation but have not retained counsel, the magistrate may assign counsel and order the payment of reasonable attorney's fees or may direct the juvenile, his parents, guardian, or custodian to retain private counsel within a specified period of time.

The magistrate may appoint a guardian ad litem if a parent or guardian of the juvenile is not present, or if the magistrate has reason to believe that the parents or guardian will not cooperate with the juvenile in preparing for trial, or that the interests of the parents or guardian and those of the juvenile are adverse.

If the juvenile has not been discharged before his initial appearance before the magistrate, the magistrate shall release the juvenile to his parents, guardian, custodian, or other responsible party (including, but not limited to, the director of a shelter-care facility [1] upon their promise to bring such juvenile before the appropriate court when requested by such court unless the magistrate determines, after hearing, at which the juvenile is represented by counsel, that the detention of such juvenile is required to secure his timely appearance before the appropriate court or to insure his safety or that of others.

§ 5035. Detention prior to disposition

A juvenile alleged to be delinquent may be detained only in a juvenile facility or such other suitable place as the Attorney General may designate. Whenever possible, detention shall be in a foster home or community based facility located in or near his home community. The Attorney General shall not cause any juvenile alleged to be delinquent to be detained or confined in any institution in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges. Insofar as possible, alleged delinquents shall be kept separate from adjudicated delinquents. Every juvenile in custody shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment.

§ 5036. Speedy trial

If an alleged delinquent who is in detention pending trial is not brought to trial within thirty days from the date upon which such detention was begun, the information shall be dismissed on motion of the alleged delinquent or at the direction of the court, unless the Attorney General shows that additional delay was caused by the juvenile or his counsel, or consented to by the juvenile and his counsel, or would be in the interest of justice in the particular case. Delays attributable solely to court calendar congestion may not be considered in the interest of justice. Except in extraordinary circumstances, an information dismissed under this section may not be reinstituted.

§ 5037. Dispositional hearing

(a) If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than twenty court days after trial unless the court has ordered further study in accordance with subsection (c). Copies of the presentence report shall be provided to the attorneys for both the juvenile and the Government a reasonable time in advance of the hearing.

(b) The court may suspend the adjudication of delinquency or the disposition of the delinquent on such conditions as it deems proper, place him on probation, or commit him to the custody of the Attorney General. Probation, commitment, or commitment in accordance with subsection (c) shall not extend beyond the juvenile's twenty-first birthday or the maximum term which could have been imposed on an adult convicted of the same offense, whichever is

[1] So in original. Apparently should include a closing parenthesis.

sooner, unless the juvenile has attained his nineteenth birthday at the time of disposition, in which case probation, commitment, or commitment in accordance with subsection (c) shall not exceed the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense.

(c) If the court desires more detailed information concerning an alleged or adjudicated delinquent, it may commit him, after notice and hearing at which the juvenile is represented by counsel, to the custody of the Attorney General for observation and study by an appropriate agency. Such observation and study shall be conducted on an outpatient basis, unless the court determines that inpatient observation and study are necessary to obtain the desired information. In the case of an alleged juvenile delinquent, inpatient study may be ordered only with the consent of the juvenile and his attorney. The agency shall make a complete study of the alleged or adjudicated delinquent to ascertain his personal traits, his capabilities, his background, any previous delinquency or criminal experience, any mental or physical defect, and any other relevant factors. The Attorney General shall submit to the court and the attorneys for the juvenile and the Government the results of the study within thirty days after the commitment of the juvenile, unless the court grants additional time.

§ 5038. Use of juvenile records

(a) Throughout the juvenile delinquency proceeding the court shall safeguard the records from disclosure. Upon the completion of any juvenile delinquency proceeding whether or not there is an adjudication the district court shall order the entire file and record of such proceeding sealed. After such sealing, the court shall not release these records except to the extent necessary to meet the following circumstances:

(1) inquiries received from another court of law;

(2) inquiries from an agency preparing a presentence report for another court;

(3) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency;

(4) inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the court;

(5) inquiries from an agency considering the person for a position immediately and directly affecting the national security; and

(6) inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such juvenile by the court in accordance with section 5037.

Unless otherwise authorized by this section, information about the sealed record may not be released when the request for information is related to an application for employment, license, bonding, or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have never been involved in a delinquency proceeding.

(b) District courts exercising jurisdiction over any juvenile shall inform the juvenile, and his parent or guardian, in writing in clear

and nontechnical language, of rights relating to the sealing of his juvenile record.

(c) During the course of any juvenile delinquency proceeding, all information and records relating to the proceeding, which are obtained or prepared in the discharge of an official duty by an employee of the court or an employee of any other governmental agency, shall not be disclosed directly or indirectly to anyone other than the judge, counsel for the juvenile and the government, or others entitled under this section to receive sealed records.

(d) Unless a juvenile who is taken into custody is prosecuted as an adult—

(1) neither the fingerprints nor a photograph shall be taken without the written consent of the judge; and

(2) neither the name nor picture of any juvenile shall be made public by any medium of public information in connection with a juvenile delinquency proceeding.

§ 5039. Commitment

No juvenile committed to the custody of the Attorney General may be placed or retained in an adult jail or correctional institution in which he has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.

Every juvenile who has been committed shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care and treatment.

Whenever possible, the Attorney General shall commit a juvenile to a foster home or community-based facility located in or near his home community.

§ 5040. Support

The Attorney General may contract with any public or private agency or individual and such community-based facilities as halfway houses and foster homes for the observation and study and the custody and care of juveniles in his custody. For these purposes, the Attorney General may promulgate such regulations as are necessary and may use the appropriation for "support of United States prisoners" or such other appropriations as he may designate.

§ 5041. Parole

A juvenile delinquent who has been committed may be released on parole at any time under such conditions and regulations as the United States Parole Commission deems proper in accordance with the provisions in section 4206 of this title.

§ 5042. Revocation of parole or probation

Any juvenile parolee or probationer shall be accorded notice and a hearing with counsel before his parole or probation can be revoked.

C. Provisions of Omnibus Crime Control and Safe Streets Act of 1968, as Amended by the Justice System Improvement Act of 1979, Incorporated by Reference in the "Juvenile Justice Amendments of 1980"

"CONSULTATION; ESTABLISHMENT OF RULES AND REGULATIONS

"SEC. 802. (a) The Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, and the National Institute of Justice are authorized, after appropriate consultation with representatives of States and units of local government, to establish such rules, regulations, and procedures as are necessary to the exercise of their functions, and as are consistent with the stated purpose of this title.

"(c) The procedures established to implement the provisions of this title shall minimize paperwork and prevent needless duplication and unnecessary delays in award and expenditure of funds at all levels of government.

"NOTICE AND HEARING ON DENIAL OR TERMINATION OF GRANT

"SEC. 803. (a) Whenever, after reasonable notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code, the National Institute of Justice, the Bureau of Justice Statistics, or the Law Enforcement Assistance Administration finds that a recipient of their respective assistance under this title has failed to comply substantially with—

"(1) any provision of this title;

"(2) any regulations or guidelines promulgated under this title; or

"(3) any application submitted in accordance with the provisions of this title, or the provisions of any other applicable Federal Act;

they, until satisfied that there is no longer any such failure to comply, shall—

"(A) terminate payments to the recipient under this title;

"(B) reduce payments to the recipient under this title by an amount equal to the amount of such payments which were not expended in accordance with this title; or

"(C) limit the availability of payments under this title to programs, projects, or activities not affected by such failure to comply.

"(b) If a State grant application filed under part D or any grant application filed under any other part of this title has been rejected or a State applicant under part D or an applicant under any other part of this title has been denied a grant or has had a grant, or any portion of a grant, discontinued, terminated or has been given a grant in a lesser amount that such applicant believes appropriate under the provisions of this title, the National Institute of Justice, the Bureau of Justice Statistics, or the Law Enforcement Assistance Administration, as appropriate, shall notify the applicant or grantee

of its action and set forth the reason for the action taken. Whenever such an applicant or grantee requests a hearing, the National Institute of Justice, the Bureau of Justice Statistics, the Law Enforcement Assistance Administration, or any authorized officer thereof, is authorized and directed to hold such hearings or investigations, including hearings on the record in accordance with section 554 of title 5, United States Code, at such times and places as necessary, following appropriate and adequate notice to such applicant; and the findings of fact and determinations made with respect thereto shall be final and conclusive, except as otherwise provided herein.

"(c) If such recipient is dissatisfied with the findings and determinations of the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, following notice and hearing provided for in subsection (a), a request may be made for rehearing, under such regulations and procedures as such Administration, Bureau, or Institute, as the case may be, may establish, and such recipient shall be afforded an opportunity to present such additional information as may be deemed appropriate and pertinent to the matter involved.

"FINALITY OF DETERMINATIONS

"SEC. 804. In carrying out the functions vested by this title in the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, their determinations, findings, and conclusions shall, after reasonable notice and opportunity for a hearing, be final and conclusive upon all applications, except as otherwise provided herein.

"APPELLATE COURT REVIEW

"SEC. 805. (a) If any applicant or recipient is dissatisfied with a final action with respect to section 803, 804, or 815(c)(2)(G) of this part, such applicant or recipient may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such applicant or recipient is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action. A copy of the petition shall forthwith be transmitted by the petitioner to the Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, as appropriate, and the Attorney General of the United States, who shall represent the Federal Government in the litigation. The Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, as appropriate, shall thereupon file in the court the record of the proceeding on which the action was based, as provided in section 2112 of title 28, United States Code. No objection to the action shall be considered by the court unless such objection has been urged before the Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, as appropriate.

"(b) The court shall have jurisdiction to affirm or modify a final action or to set it aside in whole or in part. The findings of fact by the Office of Justice Assistance, Research, and Statistics, the Law

Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, if supported by substantial evidence on the record considered as a whole, shall be conclusive, but the court, for good cause shown, may remand the case to the Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the National Institute of Justice, or the Bureau of Justice Statistics, to take additional evidence to be made part of the record. The Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, may thereupon make new or modified findings of fact by reason of the new evidence so taken and filed with the court and shall file such modified or new findings along with any recommendations such entity may have for the modification or setting aside of such entity's original action. All new or modified findings shall be conclusive with respect to questions of fact if supported by substantial evidence when the record as a whole is considered.

"(c) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certifications as provided in section 1254 of title 28, United States Code.

"DELEGATION OF FUNCTIONS

"SEC. 806. The Attorney General, the Office of Justice Assistance, Research, and Statistics, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration may delegate to any of their respective officers or employees such functions as they deem appropriate.

"SUBPENA POWER; AUTHORITY TO HOLD HEARINGS

"SEC. 807. In carrying out their functions, the Office of Justice Assistance, Research, and Statistics, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration, and upon authorization, any member thereof or any hearing examiner or administrative law judge assigned to or employed thereby shall have the power to hold hearings and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States they may designate.

"EMPLOYMENT OF HEARING OFFICERS

"SEC. 810. The Office of Justice Assistance, Research, and Statistics, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration may appoint such officers and employees as shall be necessary to carry out their powers and duties under this title and may appoint such hearing examiners or administrative law judges or request the use of such administrative law judges selected by the Office of Personnel Management pursuant to section 3344 of title 5, United States Code, as shall be necessary to carry out their powers and duties under this title.

"CONSULTATION WITH OTHER FEDERAL, STATE, AND LOCAL OFFICIALS

"SEC. 812. In carrying out the provisions of this title, including the issuance of regulations, the Attorney General, the Director of the Office of Justice Assistance, Research, and Statistics, the Administrator of the Law Enforcement Assistance Administration, and the Directors of the National Institute of Justice and the Bureau of Justice Statistics shall consult with other Federal departments and agencies and State and local officials.

"REIMBURSEMENT AUTHORITY

"SEC. 813. (a) The Office of Justice Assistance, Research, and Statistics, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration may arrange with and reimburse the heads of other Federal departments and agencies for the performance of any of their functions under this title.

"(b) The National Institute of Justice, the Bureau of Justice Statistics, the Law Enforcement Assistance Administration, and the Office of Justice Assistance, Research, and Statistics in carrying out their respective functions may use grants, contracts, or cooperative agreements in accordance with the standards established in the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.).

"SERVICES OF EXPERTS AND CONSULTANTS; ADVISORY COMMITTEES

"SEC. 814. (a) The Office of Justice Assistance, Research, and Statistics, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates of compensation for individuals not to exceed the daily equivalent of the rate then payable for GS-18 by section 5332 of title 5, United States Code.

Discrimination prohibition.

"SEC. 815. (c)(1) No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this title.

"(2)(A) Whenever there has been—

"(i) receipt of notice of a finding, after notice and opportunity for a hearing, by a Federal court (other than in an action brought by the Attorney General) or State court, or by a Federal or State administrative agency, to the effect that there has been a pattern or practice of discrimination in violation of paragraph (1); or

"(ii) a determination after an investigation by the Office of Justice Assistance, Research, and Statistics (prior to a hearing under subparagraph (F) but including an opportunity for the State government or unit of local government to make a documentary submission regarding the allegation of discrimination

with respect to such program or activity, with funds made available under this title) that a State government or unit of local government is not in compliance with paragraph (1);

the Office of Justice Assistance, Research, and Statistics shall, within ten days after such occurrence, notify the chief executive of the affected State, or the State in which the affected unit of local government is located, and the chief executive of such unit of local government, that such program or activity has been so found or determined not to be in compliance with paragraph (1), and shall request each chief executive, notified under this subparagraph with respect to such violation, to secure compliance. For purposes of clause (i) a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of chapter 5 of title 5, United States Code.

"(B) In the event the chief executive secures compliance after notice pursuant to subparagraph (A), the terms and conditions with which the affected State government or unit of local government agrees to comply shall be set forth in writing and signed by the chief executive of the State, by the chief executive of such unit (in the event of a violation by a unit of local government), and by the Office of Justice Assistance, Research, and Statistics. On or prior to the effective date of the agreement, the Office of Justice Assistance, Research, and Statistics shall send a copy of the agreement to each complainant, if any, with respect to such violation. The chief executive of the State, or the chief executive of the unit (in the event of a violation by a unit of local government) shall file semiannual reports with the Office of Justice Assistance, Research, and Statistics detailing the steps taken to comply with the agreement. These reports shall cease to be filed upon the determination of the Office of Justice Assistance, Research, and Statistics that compliance has been secured, or upon the determination by a Federal or State court that such State government or local governmental unit is in compliance with this section. Within fifteen days of receipt of such reports, the Office of Justice Assistance, Research, and Statistics shall send a copy thereof to each such complainant.

"(C) If, at the conclusion of ninety days after notification under subparagraph (A)—

"(i) compliance has not been secured by the chief executive of that State or the chief executive of that unit of local government; and

"(ii) an administrative law judge has not made a determination under subparagraph (F) that it is likely the State government or unit of local government will prevail on the merits; the Office of Justice Assistance, Research, and Statistics shall notify the Attorney General that compliance has not been secured and caused to have suspended further payment of any funds under this title to that program or activity. Such suspension shall be limited to the specific program or activity cited by the Office of Justice Assistance, Research, and Statistics in the notice under subparagraph (A). Such suspension shall be effective for a period of not more than one hundred and twenty days, or, if there is a hearing under subparagraph (G), not more than thirty days after the conclusion of such hearing, unless there has been an express

finding by the Office of Justice Assistance, Research, and Statistics, after notice and opportunity for such a hearing, that the recipient is not in compliance with paragraph (1).

"(D) Payment of the suspended funds shall resume only if—

"(i) such State government or unit of local government enters into a compliance agreement approved by the Office of Justice Assistance, Research, and Statistics and the Attorney General in accordance with subparagraph (B);

"(ii) such State government or unit of local government complies fully with the final order or judgment of a Federal or State court, or by a Federal or State administrative agency if that order or judgment covers all the matters raised by the Office of Justice Assistance, Research, and Statistics in the notice pursuant to subparagraph (A), or is found to be in compliance with paragraph (1) by such court; or

"(iii) after a hearing the Office of Justice Assistance, Research, and Statistics pursuant to subparagraph (F) finds that noncompliance has not been demonstrated.

"(E) Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, national origin, or sex in any program or activity of a State government or unit of local government which State government or unit of local government receives funds made available under this title, and the conduct allegedly violates the provisions of this section and neither party within forty-five days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may be otherwise available by law, the Office of Justice Assistance, Research, and Statistics shall cause to have suspended further payment of any funds under this title to that specific program or activity alleged by the Attorney General to be in violation of the provisions of this subsection until such time as the court orders resumption of payment.

"(F) Prior to the suspension of funds under subparagraph (C), but within the ninety-day period after notification under subparagraph (C), the State government or unit of local government may request an expedited preliminary hearing on the record in accordance with section 554 of title 5, United States Code, in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under subparagraph (G), prevail on the merits on the issue of the alleged noncompliance. A finding under this subparagraph by the administrative law judge in favor of the State government or unit of local government shall defer the suspension of funds under subparagraph (C) pending a finding of noncompliance at the conclusion of the hearing on the merits under subparagraph (G).

"(G)(i) At any time after notification under subparagraph (A), but before the conclusion of the one-hundred-and-twenty-day period referred to in subparagraph (C), a State government or unit of local government may request a hearing on the record in accordance with section 554 of title 5, United States Code, which the Office of Justice Assistance, Research, and Statistics shall initiate within sixty days of such request.

"(ii) Within thirty days after the conclusion of the hearing, or, in the absence of a hearing, at the conclusion of the one-hundred-and-twenty-day period referred to in subparagraph (C), the Office of Justice Assistance, Research, and Statistics shall make a finding of

compliance or noncompliance. If the Office of Justice Assistance, Research, and Statistics makes a finding of noncompliance, the Office of Justice Assistance, Research, and Statistics shall notify the Attorney General in order that the Attorney General may institute a civil action under paragraph (3), cause to have terminated the payment of funds under this title, and, if appropriate, seek repayment of such funds.

"(iii) If the Office of Justice Assistance, Research, and Statistics makes a finding of compliance, payment of the suspended funds shall resume as provided in subparagraph (D).

"(H) Any State government or unit of local government aggrieved by a final determination of the Office of Justice Assistance, Research, and Statistics under subparagraph (G) may appeal such determination as provided in section 805 of this title.

"(3) Whenever the Attorney General has reason to believe that a State government or unit of local government has engaged in or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court. Such court may grant as relief any temporary restraining order, preliminary or permanent injunction, or other order, as necessary or appropriate to insure the full enjoyment of the rights described in this section, including the suspension, termination, or repayment of such funds made available under this title as the court may deem appropriate, or placing any further such funds in escrow pending the outcome of the litigation.

"(4)(A) Whenever a State government or unit of local government, or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by this subsection, a civil action may be instituted after exhaustion of administrative remedies by the person aggrieved in an appropriate United States district court or in a State court of general jurisdiction. Administrative remedies shall be deemed to be exhausted upon the expiration of sixty days after the date the administrative complaint was filed with the Office of Justice Assistance, Research, and Statistics or any other administrative enforcement agency, unless within such period there has been a determination by the Office of Justice Assistance, Research, and Statistics or the agency on the merits of the complaint, in which case such remedies shall be deemed exhausted at the time the determination becomes final.

"(B) In any civil action brought by a private person to enforce compliance with any provision of this subsection, the court may grant to a prevailing plaintiff reasonable attorney fees, unless the court determines that the lawsuit is frivolous, vexatious, brought for harassment purposes, or brought principally for the purpose of gaining attorney fees.

"(C) In any action instituted under this section to enforce compliance with paragraph (1), the Attorney General, or a specially designated assistant for or in the name of the United States, may intervene upon timely application if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

"RECORDKEEPING REQUIREMENT

"SEC. 817. (a) Each recipient of funds under this title shall keep such records as the Office of Justice Assistance, Research, and Statistics shall prescribe, including records which fully disclose the

amount and disposition by such recipient of the funds, the total cost of the project or undertaking for which such funds are used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(b) The Office of Justice Assistance, Research, and Statistics or any of its duly authorized representatives, shall have access for purpose of audit and examination of any books, documents, papers, and records of the recipients of funds under this title which in the opinion of the Office of Justice Assistance, Research, and Statistics may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to under this title.

"(c) The Comptroller General of the United States or any of his duly authorized representatives, shall, until the expiration of three years after the completion of the program or project with which the assistance is used, have access for the purpose of audit and examination to any books, documents, papers, and records of recipients of Federal funds under this title which in the opinion of the Comptroller General may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to under this title.

"CONFIDENTIALITY OF INFORMATION

"SEC. 818. (a) Except as provided by Federal law other than this title, no officer or employee of the Federal Government, and no recipient of assistance under the provisions of this title shall use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this title. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

"(b) All criminal history information collected, stored, or disseminated through support under this title shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein; the Office of Justice Assistance, Research, and Statistics shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, or maintained in violation of this title, shall, upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction.

"(d) Any person violating the provisions of this section, or of any rule, regulation, or order issued thereunder, shall be fined not to exceed $10,000, in addition to any other penalty imposed by law.

* * *

LEGISLATIVE HISTORY

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Public Law 93-415 Approved: September 7, 1974

HOUSE REPORTS: No. 93-1135 accompanying H.R. 15276 (Comm. on Ed. & Labor) and No. 93-1298 (Comm. of Conference).

SENATE REPORTS: No. 93-1011 (Comm. on Judiciary) and No. 1103 (Comm. of Conference)

CONGRESSIONAL RECORD, Vol. 120 (1974):

July 1, H.R. 15276 considered and passed House.

July 25, considered and passed Senate as S. 821.

July 31, S. 821 considered and passed House, amended, in lieu of H.R. 15276.

Aug. 19, Senate agreed to conference report.

Aug. 21, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 10, No. 37: Sept. 8, Presidential statement.

*

Public Law 94-503 Approved: October 15, 1976

HOUSE REPORTS: No. 94-1155 accompanying H.R. 13636 (Comm. on Judiciary) and No. 94-1723 (Comm. of Conference).

SENATE REPORT: No. 94-847 (Comm. on Judiciary).

CONGRESSIONAL RECORD, Vol. 122 (1976):

July 22,23,26, S. 2212 considered and passed Senate.

Sept. 2, considered and passed House, amended, in lieu of H.R. 13636.

Sept. 30, House and Senate agreed to conference report.

*

Public Law 95-115 Approved: October 3, 1977

HOUSE REPORTS: No. 95-313 (Comm. on Ed. & Labor) and No. 95-542 (Comm. of Conference).

SENATE REPORTS: No. 95-165 accompanying S. 1021 (Comm. on Judiciary) and No. 95-368 (Conference).

CONGRESSIONAL RECORD, Vol. 123 (1977):

May 19, H.R. 6111 considered and passed House.

June 21, considered and passed Senate, amended, in lieu of S. 1021.

July 28, Senate agreed to conference report.

Sept. 23, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 41: October 3, Presidential statement.

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Public Law 96-509 Approved: December 8, 1980

HOUSE REPORT: No. 96-946 accompanying H.R. 6704 (Comm. on Ed. & Labor)

SENATE REPORT: No. 96-705 on S. 2441 (Comm. on Judiciary)

CONGRESSIONAL RECORD, Vol. 126 (1980):

May 20, S. 2441 considered and passed Senate.

Nov. 19, H.R. 6704 considered and passed House.

Nov. 20, Senate adoption of House amendments to S. 2441.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol 16, No. 50: December 15, Presidential statement.

* * *

☆U. S. GOVERNMENT PRINTING OFFICE: 1982 - 381-233

Legal Opinion Letter
(Retyped from Copy)

July 20, 1983

To: David W. P. O'Brien
Program Administrator
State Department of Social and
Rehabilitation Services
2700 West 6th Street
Topeka, Kansas 66606

This is in response to your letter of June 10, 1983, in which you raise a number of concerns/issues with regard to the Section 223(a)(14) jail removal requirement of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (Juvenile Justice Act).

I can appreciate that the jail removal amendment poses special problems for Kansas, as it does for other States. Congress anticipated these problems, particularly for low population density areas, by providing three exceptions to the jail removal mandate: low population density; juveniles under criminal court jurisdiction; and temporary 6-hour hold. The scope of these exceptions is the subject of a May 20, 1983 Office of General Counsel opinion, a copy of which is appended as Attachment A.* As a reading of the opinion indicates, jurisdictions will continue to have the ability to place juvenile offenders who must be placed, or for whom there is no immediate alternative available, in a secure setting under appropriate conditions. With regard to those medium-sized counties in Kansas which have constructed or renovated their jails to meet sight and sound separation requirements (Section 223(a)(13)), and now must remove most juveniles from their jails under Section 223(a)(14), I would point out that:

(1) The State, or county officials, may wish to continue to separate juveniles waived or transferred to criminal court jurisdiction (see Exception 1, Attachment A*) from adult inmates.

(2) If State law permits the temporary (up to 48 hours) detention of juveniles accused of serious crimes against persons in adult jails and lockups in low population density areas (see Exception 2, Attachment A*) or the temporary holding (up to six hours) of any juvenile arrested in any jurisdiction for the alledged commission of a delinquent act for purposes of identification, processing, and transfer (see Exception 3,

*Attachment A is the May 20, 1983 legal opinion memorandum on the subject "Scope of Section 223(a)(14) Jail Removal Requirement" contained in this manual.

Attachment A*), sight and sound separation from adult inmates would still be required in order to avoid a violation of the Section 223(a)(13) separation requirement.

(3) There may be mentally deficient or physically weak adult offenders who would benefit from the availability of a facility which separates them from the general jail population.

Turning now to your specific questions, the prohibition in OJARS Financial Guideline M 7100.1B, December 20, 1980, against the use of Juvenile Justice Act funds for the erection or building of new community-based facilities for less than 20 persons is based on the statutory definition of the term "construction" in Section 103(10) of the Juvenile Justice Act and its accompanying legislative history. Consequently, Juvenile Justice Act grant funds have never been authorized to be used for any type of new construction under the construction limitation.

Paragraph 82(a)(2) of M 7100.1B, supra, does, however, permit the acquisition, expansion, remodeling, and alteration of existing buildings and the purchase of initial equipment for such buildings under the authority of Section 227(a)(2). Again, however, the facility which emerges must qualify as a community-based facility for less than 20 persons. You ask whether formula grant funds can be used to pay for the renovation of existing facilities to make them a detention facility or a combination detention facility/nonsecure shelter. A November 8, 1979 Office of General Counsel opinion addresses a proposed use of formula grant funds for construction of a small, secure "hold-over" facility. The opinion analyzes the statutory language of Section 227(a)(2) and concludes that the construction of a "community-based" facility as that term is defined by Section 103(1) of the Juvenile Justice Act, is limited to facilities that are nonsecure. A copy of this opinion is appended as Attachment B.* Based on the Financial Guideline and the 1979 opinion, it is the opinion of this office that formula grant funds cannot be used to renovate any facility into a youth detention facility, for the detention facility portion of a regional youth center, or to renovate an existing jail to serve juveniles in a secure setting even if separation of juveniles and adults would be furthered. Whether the nonsecure portion of a regional youth center would be eligible for construction funds would depend on whether it qualifies as a separate facility from the secure portion and, if so, whether it is a "community-based" facility for less than 20 persons.

In closing, let me emphasize that the "narrow" agency interpretation of Section 227(a)(2) is based on Congress' intent to permit a very limited use of formula grant funds for construction. This limitation is underscored by the requirement that the OJJDP Administrator review and approve all construction proposed under the authority of Section 227(a)(2) as being necessary for the State to carry out the formula grant program, i.e., to meet

*Attachment B is the November 8, 1979 legal opinion memorandum on the subject "Uses of Juvenile Justice Act Funds for Renovation/Construction of Secure Detention Facilities" contained in this manual.

the Juvenile Justice Act's mandates. Consequently, it is likely that the OJJDP Administrator would not approve the purchase of a facility that was erected by one governmental unit for the purpose of being acquired under the construction clause by another governmental unit or units. The limited construction authority of the Act has been used primarily for the purchase or modification of private residences which are to be used as halfway houses, group homes, and residential crisis centers.

Such facilities are important components of State and local government programs designed to provide nonsecure alternatives to all types of secure placements of both delinquent and noncriminal juveniles.

Charles A. Lauer
General Counsel
Office of General Counsel

Legal Opinion Memorandum
(Retyped from Copy)

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

May 20, 1983

TO: Doyle Wood
Juvenile Justice Specialist
OJJDP

FROM: John J. Wilson
Attorney-Advisor
OGC

This is in response to your request for an opinion as to the scope of Section 223(a)(14) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. Section 5601, et seq., as amended (Pub. L. 93-415, as amended by Pub. L. 94-503, Pub. L. 95-115, and Pub. L. 96-506), hereinafter Juvenile Justice Act. Section 223(a)(14), added to the Juvenile Justice Act by the Juvenile Justice Amendments of 1980 (Pub. L. 96-509), requires that each State participating under the formula grant program (Part B, Subpart I) submit a plan which shall —

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

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

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

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

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

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

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

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

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

Discussion

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

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

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

> "Generally, juvenile court jurisdiction is determined in each State through the establishment of a maximum age below which, for statutorily determined conduct or circumstances, individuals are deemed subject to the adjudicative and rehabilitative processes of the juvenile court. Such an individual, subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment for any conduct or circumstances defined by State law, is a 'juvenile' as this term is used in the Juvenile Justice Act. This definition of 'juvenile' includes individuals who may be, for particular conduct:

- ° Subject to the exclusive jurisdiction of the juvenile court;
- ° Subject to the concurrent jurisdiction of the juvenile court and a criminal court;
- ° Subject to the original jurisdiction of a criminal court which has authority to transfer to a juvenile court for purposes of adjudication and treatment (a form of concurrent jurisdiction); or
- ° Subject to the exclusive jurisdiction of a criminal court for the particular conduct but subject to juvenile court jurisdiction for other statutorily defined conduct or circumstances.

"The basis for this definition of 'juvenile' is the proposition that if State law subjects an individual to juvenile court jurisdiction for purposes of adjudication related to particular conduct or circumstances, it has thereby determined that the individual is considered a 'juvenile' in the eyes of the law even though he may be treated as if he were an adult for other statutorily defined conduct or circumstances. The assumption or retention of jurisdiction over a juvenile by a criminal court does not, ipso facto, transform the juvenile into an adult. Rather, it reflects a judgment by the State legislature or court authorities that the interests of society and the juvenile are best served by treating the juvenile as if he were an adult in certain circumstances."

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

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

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

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

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

Exception 1 - Low Population Density--OJJDP regulations implement a statutory exception allowing, within narrowly defined limits, the temporary detention in adult jails and lockups of juveniles accused of serious crimes against persons in low population density areas. (See 28 C.F.R. §31.303(i)(4)).

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

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

However, the Committee Report continued:

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

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

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

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

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

Conclusion

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

Applicability to Specific Circumstances

In answer to your questions:

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

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

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

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

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

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

Legal Opinion Letter
(Retyped from Copy)

April 25, 1983

To: Mr. Joe Higgins
Arizona State Justice
Planning Agency
Professional Plaza, Suite 400
4820 North Black Canyon Freeway
Phoenix, Arizona 85017

This is in reponse to your request for clarification of the applicability of Section 223(a)(13) of the Juvenile Justice Act to juveniles who have been transferred or waived to the jurisdiction of a criminal court.

LEAA State Planning Agency Grants Guideline M 4100.1F, CHG 3, Appendix 1, page 3 defines a "juvenile offender" as "an individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law." The Guideline also defines an individual, adult or juvenile, to be a "criminal offender" upon being "charged with or convicted of a criminal offense in a court exercising criminal jurisdiction." Under these definitions, a juvenile "criminal offender" would not become an adult upon being waived or transferred to criminal court jurisdiction unless: (1) State law so specifies or (2) the individual attains the age (generally the age of majority) where the juvenile court can no longer exercise jurisdiction.1/

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

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

In sum, and to answer your specific questions:

1/ The legal basis for these definitions and a discussion of the scope of Section 223(a)(13) are set forth in OGC Legal Opinion 77-13, December 31, 1976.

(1) a juvenile (under age 18 under Arizona law) who has been transferred by the juvenile court to the adult (criminal) system can be held, before trial, in an adult institution without sight and sound separation; and

(2) a juvenile (under age 18 under Arizona law) who has been transferred by the juvenile court to the adult (criminal) system can be held in the county juvenile detention center with juveniles who are criminal-type (delinquent) offenders.2/

It should be noted that OJJDP policy clearly prohibits the administrative reclassification and transfer of criminal-type (delinquent) offenders from juveniles to adult correctional institutions and facilities upon the juvenile reaching the statutory age of majority. (See M 4100.1F, CHG 3, Chap. 3, Par. 52 M.(d)).

Finally, you should be aware that the House bill (H.R. 6704) to reauthorize the Juvenile Justice Act, reported to the floor on April 22, would establish a statutory requirement for States participating in the formula grant program that no juvenile be detained or confined in any jail or lockup for adults. If this amendment becomes law, it may change our response to the questions you have raised above.

John J. Wilson
Attorney-Advisor
Office of General Counsel

2/ The placement of status offenders and non-offenders in the county juvenile detention facility is inconsistent with Section 223(a)(12)(A) of the Act.

Legal Opinion Memorandum
(Retyped from Copy)

SUBJECT: Impact of Ralston v. Robinson (No. 80-2049, December 2, 1981, 50 L.W. 4045) on Juvenile Justice Act Separation Requirement

January 5, 1982

TO: Charles A. Lauer
Acting Administrator, OJJDP

FROM: John J. Wilson
Acting General Counsel, OJARS

Several states, including New Jersey, have inquired about the impact of the above-cited United States Supreme Court case on the Section 223(a)(13) separation requirement.

In Ralston, a 17 year old, Robinson, was originally sentenced in the District of Columbia (D.C.) under the Federal Youth Corrections Act (YCA), 18 U.S.C. Section 5010(c), to 10 years' imprisonment after being convicted of second-degree murder. Under the YCA, he was to be separated from adult (i.e., non-YCA) offenders and to receive special treatment and rehabilitation services. Subsequently, Robinson was twice convicted of assaulting a Federal officer and sentenced to consecutive adult terms. His YCA sentence was revoked by the Bureau of Prisons (BOP) in accordance with BOP policy.

The issue before the court was whether a YCA sentence could be modified before its expiration and, if so, whether this could be done by the BOP under its policy or only by the sentencing court. The Supreme Court held that the YCA does not require YCA treatment for the remainder of a youth sentence where the judge imposing a subsequent adult sentence determines that such treatment will not benefit the offender further. The BOP is not vested with the authority to revoke a YCA sentence but, the Court held, the judicial determination that Robinson would not benefit from further YCA treatment amounted to a judicial revocation of the YCA sentence. The Supreme Court's decision rested on the Court's construction of the YCA and did not consider constitutional arguments raised by the petitioner below.

Because Robinson was 17 years old when sentenced and placed with other "youth offenders" up to age 22 under the YCA (18 U.S.C. Section 5006(e)), the issue has been raised as to the consistency of the YCA with the Section 223(a)(13) separation requirement. In California, for example, OJJDP has determined that the co-mingling of adjudicated delinquents with convicted adult criminal offenders (under age 26) by the California Youth Authority is in violation of Section 223(a)(13). In New Jersey, OJJDP has determined that the transfer of incorrigible delinquent offenders, even those age 18 or over, by the Department of Corrections similarly is in violation of Section 223(a)(13).

The difference between these situations and that presented in Ralston is that California and New Jersey correctional authorities were permitting regular contact to occur between adjudicated "delinquent" offenders, i.e., youth who are not convicted of a crime in a court exercising criminal jurisdiction, and adult criminal offenders, i.e., individuals convicted of a crime who are not subject to juvenile court jurisdictions based on age and offense limitations established by State law.1/ This situation is clearly within the scope of the statutory prohibition on regular contact between adjudicated delinquents and convicted adult offenders established by Section 223(a)(13).

1/See Office of General Counsel Legal Opinion No. 77-13, December 31, 1976.

In Ralston, on the other hand, the 17 year old Robinson was not an adjudicated delinquent. The D.C. Code, Section 16-2301(3)(A) (1973), provides for concurrent juvenile and criminal court jurisdiction over persons 16 or older charged with murder or other enumerated serious offenses. Under this law, the prosecutor exercised his authority to "charge" Robinson with murder, thereby treating the offense as criminal rather than delinquent. For purposes of Section 223(a)(13), this is similar to a waiver of juvenile court jurisdiction and transfer of a juvenile to criminal court jurisdiction.2/ Once a juvenile has been charged in criminal court under a concurrent jurisdiction statute (or waived and charges filed in criminal court under a waiver statute), the separation requirement of Section 223(a)(13) no longer applies. Although the charged or convicted 17 year old would, under the D.C. Code applicable in the Ralston case, continue to be a "juvenile," he would lose his status as a delinquent (or lesser) offender and could consequently be co-mingled with adult criminal offenders.3/ Unlike the California Code, the YCA does not apply to alleged or adjudicated delinquents nor can such juveniles be administratively transferred to adult correctional facilities under the Federal Code as New Jersey correctional policy currently permits.

In sum, it is my conclusion that the YCA is not in conflict with the Section 223(a)(13) separation requirement. Also, the application of the YCA in the Ralston case is fully consistent with OJJDP's application of Section 223(a)(13) in California, New Jersey, and all other States.

2/ The waiver option would also be available under the D.C. Code for any juvenile age 15 or over charged with a felony (D.C. Code Section 16-2307(a) (1973).

3/ Conversely, he could be co-mingled with delinquent juveniles even though charged with or convicted of a criminal offense because he has not lost his status as a "juvenile" as a result of the assertion of jurisdiction by a court exercising criminal jurisdiction. He is a part of the so-called "swing group" of juveniles who may be placed either with delinquent or adult criminal offenders.

Legal Opinion Letter
(Retyped from copy)

December 28, 1981

TO: The Honorable Adam Benjamin, Jr.
House of Representatives
Washington, D.C. 20515

This is in response to your letter of November 5, 1981, and supplemental letter of December 1, 1981, requesting that this office review a proposed amendment to the Indiana Juvenile Code. The proposed Code amendment has been reviewed by the Office of General Counsel, OJARS, and by appropriate staff from OJJDP's Formula Grants and Technical Assistance Division.

The proposed Indiana Juvenile Code revision would amend IC 31-6-4-16 by adding a new subsection (m) as follows:

> (m) If:
> (1) a child is a delinquent child under section 1(b)(2) of this chapter;
>
> (2) the child has previously been found to be a delinquent child under section 1(b)(2) of this chapter; and
>
> (3) a juvenile court has previously ordered a disposition concerning the child under subsection (e)(3) of this section;
>
> the juvenile court may place him in a secure private facility for children licensed under the laws of any state (placement under this alternative includes authorization to control and discipline the child) or award wardship to the department of correction for housing in any correctional facility for children (such wardship does not include the right to consent to the child's adoption).

As we understand subsection (m), it would provide the juvenile court with authority to place a juvenile in a secure public or private correctional facility for children if the juvenile:

> (1) has previously been adjudicated a status offender and removed from his or her home and placed in another home or shelter care facility; and
>
> (2) is subsequently adjudicated a status offender for a second time.

A "delinquent child" under IC 31-6-4-1(b)(2) is defined as a child who leaves home, violates school attendance laws, disobeys his parents, guardian or custodian, violates curfew, or gives a false statement of age. Although called a "delinquent" under Indiana law, such a child is the equivalent of a status offender--a juvenile who has committed an offense that would not be criminal if committed by an adult--under the deinstitutionalization mandate Section 223(a)(12)(A)) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (JJDP Act). Section 223(a)(12)(A) requires, in pertinent part, that:

> "...juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities, or secure correctional facilities;"

Therefore, it is apparent that the proposed amendment to the Indiana Juvenile Code would authorize status offender dispositions that are inconsistent with the deinstitutionalization mandate of Section 223(a)(12)(A). States participating in the JJDP Act formula grant program agree to achieve full compliance with Section 223(a)(12)(A) within five years of their initial participation in the program and to then maintain the full compliance status.

Under compliance criteria established by OJJDP regulation (46 F.R. 2566-2569, January 9, 1981), Indiana was determined to have met a standard of "full compliance with de minimis exceptions." This was accomplished by the State reducing the number of status offenders held in secure detention and correctional facilities by 76.5% over five years to a level of 22.7 annual incidences of noncompliance per 100,000 of juvenile population. However, in order for OJJDP to be able to continue to find Indiana compliant, the regulation requires that the State continue to show annual progress toward achieving 100 percent compliance. In addition, the regulation provides that if a significant number of the reported incidences of noncompliance are sanctioned by State law, the acceptable level of noncompliant incidences is reduced and a plan must be submitted to modify the State law. If this revision were enacted and implemented, it would be extremely difficult for the State to continue to decrease the overall rate of status offender institutionalization or, even if that effort were successful, to achieve a rate that is acceptable under the de minimis criteria.

Consequently, it is OJJDP's conclusion that enactment of the proposed Indiana Juvenile Code revision, permitting the placement of status offender juveniles who are "two time losers" in secure correctional facilities, would virtually preclude the State from maintaining its current status of full compliance with the JJDP Act deinstitutionalization requirement.

Charles A. Lauer
Acting Administrator,
Office of Juvenile Justice
and Delinquency Prevention

Legal Opinion Letter
(Retyped from copy)

February 24, 1981

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

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

Section 18, Amending 32-1-27

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

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

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

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

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

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

> A valid court order is an order entered by a court of competent jurisdiction which involves or results from a judiciable controversy. The court must have the statutory power to act by entering a judgment or providing a remedy in accordance with due process requirements. To be a "valid" court order, the status offender must have received adequate and fair warning of the consequences of violating the order. Further, at a judicial hearing on the alleged court order violation, the juvenile must receive full due process rights (as set forth in In re Gault and, following the court's determination that there has been a violation, the court must further find that there is no rational alternative to incarceration of the juvenile.

John J. Wilson
Acting General Counsel

Legal Opinion Memorandum
(Retyped from Copy)

SUBJECT: Use of Juvenile Justice Act Funds for Renovation/Construction of Secure Detention Facilities

November 8, 1979

TO: James E. Gould
Acting Director, FGTAD
Office of Juvenile Justice and Delinquency Prevention

FROM: John J. Wilson
Attorney-Advisory
Office of General Counsel

THRU: David D. West
Acting Associate Administrator
Office of Juvenile Justice and Delinquency Prevention

At your request, I have reviewed an issue raised by Utah as to whether funds appropriated under the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. Section 5601, et. seq., as amended (Pub. L. 93-415, as amended by Pub. L. 94-503 and Pub. L. 95-115--Juvenile Justice Act) can be used for the renovation or construction of secure facilities for alleged delinquent offenders. Utah proposes, as a possible solution to the problem of lack of alternatives to detention of juveniles in county jails in rural areas, that up to $390,000 be set aside for the renovation or construction of secure temporary holdover facilities in two areas of the State. These facilities would have a bed capacity of three. Development of these facilities was one recommendation resulting from a technical assistance assessment conducted to consider viable alternatives to incarceration of delinquents in county jails.

Utah requested the approval of the OJJDP Administrator for this proposed use of funds. Section 227(a)(2) of the Juvenile Justice Act provides the following limitation on the use of funds for construction.

> Sec. 227. (a) Funds paid pursuant to this title to any public or private agency, organization, institution, or individual (whether directly or through a State planning agency) may be used for--
> . . .
> (2) not more than 50 per centum of the cost of the construction of innovative community-based facilities for less than twenty persons which, in the judgment of the Administrator, are necessary for carrying out the purposes of this part.1/

1/ LEAA Financial Guideline, M7100.1A CHG 3, Chap. 7, Par. 10, October 29, 1975, establishes rules for construction programs funded under the Juvenile Justice Act. The Guideline clarifies that construction does not include the erection of new buildings. Rather, it includes the acquisition, expansion, remodeling and alteration of existing buildings, including initial equipment. Minor remodeling or repairs, defined as the modificaton of existing space and utilities within an existing structure, in an amount less than $5,000 or as approved by LEAA in response to a written justification, is excluded from the 50 percent construction minimum.

Assuming, for purposes of this response, that Utah's proposed fund use falls within the scope of the term "construction," the statute requires that any construction activity be limited to "innovative community-based facilities for less than twenty persons" and be approved by the Administrator as "necessary for carrying out the purposes of this part."2/

OJJDP, in a negative response to Utah's request for approval, dated July 18, 1979, stated that the Section 227(a)(2) limitation precludes approval of the request. OJJDP advised that the definition of "community-based facility" in Section 103(1) of the Act as "a small, open group home or other suitable place . . ." limits the use of construction to facilities of a non-secure character. Utah has requested that this determination be reviewed by OGC.

Utah's position is that the statutory definition of a "community-based facility" can be read to encompass both "open group homes" and any "other suitable place," including a secure hold-over facility. In support of this interpretation, the State points out that Section 223(a)(10)(H)(ii) refers to "non-secure community-based facilities," thereby implying the possibility of secure community-based facilities. Otherwise, the State argues, use of the modifier "non-secure" would be redundant and superfluous.

While Utah makes a strong case for the programmatic value and need for small secure hold-over facilities in rural areas, it is the opinion of this office that the construction limitation must be interpreted to prohibit the use of Juvenile Justice Act funds for the construction of secure facilities for juvenile offenders.

First, in determining whether the word "open" modifies only "group home" or also modifies "other suitable place," it is instructive to read the full definition of community-based in Section 103(1):

> "(1) the term "community based" facility, program, or service means a small, open group home or other suitable place located near the juvenile's home or family and programs of community supervision and service which maintain community and consumer participation in the planning operation, and evaluation of their programs which may include, but are not limited to, medical, educational, vocational, social, and psychological guidance, training, counseling, alcoholism treatment, drug treatment, and other rehabilitative services."

Thus, such a facility would have these features:

(1) located near programs of community supervision and service; and

(2) maintains community and consumer participation in the planning, operation, and evaluation of the facility's rehabilitative service programs.

2/ The LEAA Administrator's authority to review and approve the necessity for construction under Section 227(a)(2) has been delegated to the Administrator of OJJDP by LEAA Instruction I1310.40B, January 4, 1978.

These features would not be characteristic of secure short-term hold-over facilities or of secure facilities in general. The focus on rehabilitation is absent from hold-over facilities.

Also, in statutory interpretation it is permissible to look at the "whole Act" in order to give consideration to the overall policies and priorities of the legislative body.3/ A major purpose of the Juvenile Justice Act is "to provide critically needed alternatives to institutionalization" (Section 102(b)(2)). The formula grant program establishes "community-based alternatives to juvenile detention and correctional facilities" as an advanced technique funding area (Section 223(a)(10)). This section specifies in sub-paragraph (4) that programs are to be geared toward means designed to reduce overall commitments of juveniles to any facility, increase the relative use of non-secure community-based facilities, and discourage the use of secure incarceration and detention. The Special Emphasis grant program establishes a programmatic purpose to "develop and maintain community-based alternatives to traditional forms of institutionaliztion" (Section 224(a)(2)). These provisions indicate that the Act's focus on alternatives to incarceration is inconsistent with an interpretation of "community-based facility" that would permit limited Juvenile Justice Act resources to fund the establishment of secure facilities for the incarceration of juvenile offenders.

Second, the only direct legislative history on the Section 227(a)(2) limitation is a statement by Senator Roman Hruska, a co-sponsor of the 1974 Act, who noted during floor debate on the Conference bill that the strict limitation placed on construction in the Sentate bill had been retained:

> "While the construction limitation is restrictive, it illustrates the importance attached by the conferees to alternatives to incarceration of juveniles." (120 Cong. Rec., S.15265, Daily Ed., August 19, 1974.)

Clearly, a secure hold-over facility fails to qualify as an alternative to incarceration.

Given these considerations as a guide to interpretation, we would consider the use of the modifier "non-secure" before "community-based facilities" in Section 223(a)(10)(H) to be no more than a work of emphasis placed by the drafters to clearly indicate and stress the intent to develop non-secure alternatives to secure institutions.

Based on these considerations, it is the opinion of this Office that Utah's proposed use of Juvenile Justice Act funds for the construction of secure hold-over facilities is not permitted under Section 227(a)(2) of the Act.

3/ See Sands, Statutes and Statutory Construction, Section 47.02, p. 71.

August 30, 1979

Legal Opinion Letter
(Retyped from copy)

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

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

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

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

Discussion

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

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

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

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

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

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

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

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

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

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

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

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

John J. Wilson
Attorney Advisor
Office of General Counsel

Legal Opinion 79-3—Impact of Proposed Minnesota Statutory Revision on Compliance with Juvenile Justice Act Deinstitutionalization Requirement—May 11, 1979

TO: Chairman, Criminal Justice Committee
St. Paul, Minnesota

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has referred your letter of March 27, 1979, to this Office for review and comment on H.F. 695 and its implications for continued LEAA funding support in the State of Minnesota under the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §5601, *et seq.*, as amended (Public Law 93-415, as amended by Public Law 94-503 and Public Law 95-115) (hereinafter Juvenile Justice Act).

H.F. 695 would amend Section 260.173 of the Minnesota Juvenile Code to permit the placement of certain types of juvenile status offenders in secure detention beyond the 24-hour period currently provided by State law. This authority would be limited to status offenders who have "escaped" from a shelter care facility or who reside in a State other than Minnesota and have been absent from their home for more than 24 hours without permission. In addition, amendments are proposed to Section 260.185 that would permit adjudicated status offenders to be transferrred to a county home school or to the custody of the Commissioner of Corrections. These additional dispositional alternatives would be available only in limited circumstances.

Section 223(a)(12)(A) of the Juvenile Justice Act requires that each State participating in the act's formula grant program submit a plan to:

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

While the statute requires full compliance within a 3-year time frame, Section 223(c) provides for continued eligibility to participate if a State meets specified requirements:

> (c) The Administrator shall approve any State plan and any modification thereof that meets the requirements of this section. Failure to achieve compliance with the subsection (a)(12)(A) requirement within the three-year time limitation shall terminate any State's eligibility for funding under this subpart unless the Administrator, with the concurrence of the Associate Administrator, determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 per centum of such juveniles, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding two additional years.

In commenting on H.F. 695, it is important to note that Minnesota has been a participant in the act's formula grant program for 3 years. Thus the State, to be eligible for a fiscal year 1980 formula grant award, must demonstrate both substantial compliance and and unequivocal commitment to achieving full compliance within the next 2 years. Viewed in this context, it appears that the amendment proposed to Section 260.173, if enacted, would preclude the LEAA Administrator from the requisite determination of an unequivocal commitment.

An alleged or adjudicated status offender who is placed in and ordered to remain at a shelter facility, and who departs from the facility without authorization, would still be a status offender if administratively placed in a detention or correctional facility under the authority of the proposed Section 260.173 amendment. A status offender's unauthorized departure from a shelter facility could be the basis for placement in a detention or correctional facility and be consistent with Section 223(a)(12)(A) requirement only if three conditions are satisfied: (1) "escape" is a crime in Minnesota if committed by an adult; (2) "escape" under the Minnesota law includes unauthorized departure from a nonsecure facility; and (3) the juvenile is charged with being a delinquent or is adjudicated a delinquent for committing the crime of escape.

Neither the Juvenile Justice Act nor Office of Juvenile Justice and Delinquency Prevention policy provides for treating out-of-State runaways differently from runaways who reside in the State where they are taken into custody. A juvenile detained as an out-of-State runaway may not be placed in a Minnesota detention or correctional facility pending return to the State of residence, whether under the terms of the Instate Compact on Juveniles or otherwise.

In sum, the proposed amendment to Section 260.173 to permit the placement of status offenders who escape from a shelter facility placement ordered by the court or out-of-State runaways in detention or correctional facilities beyond 24 hours would, except in narrowly defined circumstances, be inconsistent with the Section 223(a)(12)(A) deinstitutionalization requirement. It appears that the proposed amendment to Section 260.173 is intended to provide broad authority beyond these narrow circumstances. This analysis forms the basis for the conclusion that enactment of the amendment would virtually preclude a finding of an unequivocal commitment to full compliance with the deinstitutionalization requirement, as required by Section 223(c), in the State of Minnesota. As a practical matter, it would almost certainly result in a future finding of actual noncompliance by the State of Minnesota with the Section 223(a)(12)(A) requirement.

The proposed amendment to Section 260.185 raises a somewhat different concern. It is our understanding that there are both county home schools and facilities operated by the Department of Corrections that would not be classified as juvenile detention or correctional facilities under OJJDP guidelines. To the extent that this would be the case and juvenile court judges would exercise this new dispositional authority for adjudicated status offenders in a manner that would not conflict with Section 223(a)(12)(A), the proposal is not objectionable.

However, the amendment does appear to open the way for court placements of adjudicated status offenders in facilities that are classified as juvenile detention or correctional facilities. This could conceivably lead to a situation of noncompliance at the end of the maximum 5-year period for full compliance with the deinstitutionalization requirement, resulting in a loss of formula grant eligibility for the State.

Minnesota's existing Juvenile Code provisions, as amended and effective in August 1978, are a model for other States to follow in meeting both the letter and spirit of the Juvenile Justice Act's thrust toward removing noncriminal juveniles from inappropriate placements in detention or correctional facilities. Given a reasonable length of time and sufficient resources to develop viable alternatives to traditional institutional treatment modes, problems in implementing the Juvenile Justice Act's deinstitutionalization requirement can be solved.

Legal Opinion No. 77-25—Classification of Juveniles as Status Offenders—March 15, 1977

TO: Maryland Juvenile Law Clinic

This is in response to your letter of March 7, 1977, regarding a legislative proposal currently pending in the Maryland General Assembly. House Bill 1075 proposes to amend Section 3-801(k) of the Maryland Juvenile Causes Statute, to read as follows:

> (k) "Delinquent Act" means [an]:
> (1) AN act which would be a crime if committed by an adult; OR
> (2) AN ACT COMMITTED BY A CHILD IN NEED OF SUPERVISION WHICH VIOLATES A COURT ORDER.[1]

You ask whether the legislative proposal, if enacted and applied to an actual case, would be in conformity with Section 223(a)(12) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §5601, *et seq.*, as amended (Public Law 93-415, as amended by Public Law 94-503) (hereinafter Juvenile Justice Act).

Section 223(a)(12) of the Juvenile Justice Act requires as a condition for the receipt of formula grant funds that the State's plan submitted in accordance with the act:

> (12) provide within two years after submission of the plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities; . . .

LEAA State Planning Agency Grants Guideline M 4100.1F, Chapter 3, Paragraph 52i, January 18, 1977, defines "juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult" as "status offenders." To assist States in distinguishing status offenders, criminal-type offenders, and nonoffenders, the guideline incorporates by reference the classification system developed in "Status Offenders: A Working Definition," a document published under an LEAA grant by the Council of State Governments (COSG).

The COSG document defines a "status offense" as "...any violation of law, passed by the State or local legislative body...which would not be criminal if committed by an adult, and which is specifically applicable to youth because of their minority." (Status Offenders: A Working Definition, Council of State Governments, 1975, at p. 3.) This definition of status offense encompasses the Maryland Juvenile Causes Statute's definition of "Child in need of supervision" (§3-801(f)):

> (f) "Child in need of supervision" is a child who requires guidance, treatment, or rehabilitation because
> (1) he is required by law to attend school and is habitually truant; or
> (2) he is habitually disobedient, ungovernable, and beyond the control of the person having custody of him without substantial fault on the part of that person; or
> (3) he deports himself so as to injure or endanger himself or others; or
> (4) he has committed an offense applicable only to children.

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[1] Capitals indicate matter added to existing law. Brackets indicate matter deleted from existing law.

In addition, §3-823(b) of the Maryland Juvenile Causes Statute provides that "A child who is not delinquent may not be committed or transferred to a facility used for the confinement of delinquent children."

Thus, the effect of the proposed amendment to the Maryland statute would be to permit a juvenile court to adjudicate a status offender a delinquent for violation of the terms of probation or other court order and commit or transfer the juvenile to a detention or correctional facility used for the confinement of delinquent children.

The issue is whether a juvenile adjudicated a status offender who commits an act in violation of a court order can be said to be charged with or have committed an offense that would be criminal if committed by an adult. It is the opinion of this Office that such a juvenile would remain a status offender under the classification system unless the act committed in violation of the court order was itself an offense that would be criminal if committed by an adult and until the juvenile was charged with (or adjudicated for) committing the particular offense.

The COSG document's classification system (Appendix A) describes legal circumstances that might exist at the time a juvenile is confined. Thirty-eight classifications are established, including both detention and commitment categories ("Status Offenders," *supra,* at p. 24). Classification 02, under detention classifications, describes the following situation:

> A juvenile is placed in detention for violation of probation or parole, after being adjudicated a Status Offender.

Such a juvenile is classified as a status offender. Classification 25, under Commitment Classification, describes the following situation:

> A juvenile has been adjudicated a Status Offender and is placed on probation. While on probation, the youth is either believed to have perpetrated a Status Offense or is readjudicated a Status Offender, as a result of either the subsequent offense or the technical violation of probation and is institutionalized.

Such a juvenile is classified as a status offender.

The basis for these classifications rests upon the legal nature of the court's right to revoke probation and order institutionalization where an individual violates the court's order of probation. Such action is limited to dispositions that would have been appropriate for the offense for which probation was initially granted. Any resulting institutionalization is not a penalty for failure to keep the terms of probation but is, instead, the invocation of the previously suspended institutional sanction. It is not an independent criminal act that would be criminal if committed by an adult.[2] This conclusion is consistent with the proposed Maryland Code amendment in that the amendment itself distinguishes acts that would be criminal if committed by an adult from acts that violate a court order.

The Maryland statute would make the violation of probation or other violation of a court order grounds for adjudicating a child in need of supervision (status offender) as a delinquent. However, the juvenile would remain a status offender under the LEAA classification system and the detention (or commitment) of such a juvenile in a detention (or correctional) facility would constitute noncompliance with the mandate of Section 223(a)(12) of the Juvenile Justice Act.[3] It is irrelevant whether a State Juvenile Code defines a particular act as a "delinquent" act or as a nondelinquent act. The test to distinguish a status offender and a criminal-type offender is always the nature of the prohibited conduct, i.e., would the conduct, under State law, be criminal if committed by an adult.

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[2]For Maryland law on this point see *Knight* v. *State,* 7 Md. App. 313, 255 A.2d 441 (1969). Even if the State's criminal code defined violation of probation by a criminal offender as an independent criminal act, we would question the applicability of such a provision to a probation violation by a status offender. A status offense is in the nature of a civil, rather than a criminal, proceeding (see §3-824, Maryland Juvenile Causes Statute).

[3]While our conclusion rests on the terms of the Juvenile Justice Act and LEAA Guideline provisions, it should be pointed out that it is consistent with existing standards for the administration of juvenile justice. See, for example, "Report of the Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice," September 30, 1976, Standard 3.1811–Enforcement of Dispositional Orders–Non-criminal Misbehavior.

Legal Opinion No. 77-13—Applicability of Section 223(a)(13) of the Juvenile Justice Act to Children Not Under Juvenile Court Jurisdiction—December 31, 1976

TO: LEAA Regional Administrator
Region VIII - Denver

This is in response to your request of September 8, 1976, for an opinion as to whether State action in treating children who violate municipal traffic ordinances, State traffic laws, and fish and game regulations in the same manner as adults (i.e., they may be jailed with adult offenders before or after conviction) would be in violation of Section 223(a)(13) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §5601, *et seq.*, as amended (Public Law 93-415, as amended by Public Law 94-503) (Juvenile Justice Act).

The Colorado Children's Code specifically excludes from the definition of "delinquent child" any child who has violated a State traffic law, municipal traffic ordinance, or State game and fish law or regulation (C.R.S. 19-1-103(9)). Further, Colorado's district courts, which have exclusive original jurisdiction in delinquency cases, have no jurisdiction over game and fish violations and jurisdiction over State or municipal traffic violations only if the violator is a child under the age of 16 and jurisdiction is transferred to the district court from county or municipal court (C.R.S. 19-1-103(9)(c)). The letter from the Colorado Division of Criminal Justice (the State Criminal Justice Planning Agency or SPA) raising the issue states that "[a] significant number of children under the age of 18 years are detained in city and county jails, processed through municipal and county courts, and occasionally sentenced to county jails under this statutory exclusion."

Issue

Does Section 223(a)(13) of the Juvenile Justice Act include within the scope of "juveniles alleged to be or found to be delinquent" children who are charged with or convicted of violations of laws or ordinances in proceedings before nonjuvenile courts having exclusive jurisdiction or concurrent jurisdiction with juvenile courts?

Statutory Considerations

Section 223(a)(13) of the Juvenile Justice Act requires that the State plan submitted under Section 223(a) must:

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

Discussion

Section 223(a)(13) does not require the separation in institutions of all juvenile offenders from incarcerated adult criminals. Rather, it applies only to *"juveniles alleged to be or found to be delinquent."* Neither the word "juvenile" nor the word "delinquent" is defined in the Juvenile Justice Act. However, LEAA has adopted the view, in administering the statute, that juvenile court jurisdiction involves three categories of juveniles who are generally made subject to juvenile court jurisdiction by State law:

- Criminal-type offender—A juvenile who has been charged with or adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.
- Status offender—A juvenile who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.
- Non-offender—A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct of the juvenile.

The first category of offender, whether delineated as a "delinquent," an "offender," a "ward of the court," or simply as a "child" under State law, is a delinquent as this term is used in the Juvenile Justice Act. It is the alleged or adjudicated criminal conduct of the juvenile together with the noncriminal classification of the offense under State law for jurisdictional purposes that makes an offense a delinquent offense and the offender an alleged or adjudicated delinquent. The Juvenile Justice Act does not purport to establish jurisdictional age-of-offense limitations for juvenile court jurisdiction nor does it prohibit States from establishing exclusive or concurrent criminal court jurisdiction over juveniles who violate criminal laws.

Generally, juvenile court jurisdiction is determined in each State through the establishment of a maximum age below which, for statutorily determined conduct or circumstances, individuals are deemed subject to the adjudicative and rehabilitative processes of the juvenile court. Such an individual, subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment for any conduct or circumstances defined by State law, is a "juvenile" as this term is used in the Juvenile Justice Act. This definition of "juvenile" includes individuals who may be, for particular conduct:

- Subject to the exclusive jurisdiction of the juvenile court;
- Subject to the concurrent jurisdiction of the juvenile court and a criminal court;
- Subject to the original jurisdiction of a criminal court which has authority to transfer to a juvenile court for purposes of adjudication and treatment (a form of concurrent jurisdiction); or
- Subject to the exclusive jurisdiction of a criminal court for the particular conduct but subject to juvenile court jurisdiction for other statutorily defined conduct or circumstances.

The basis for this definition of "juvenile" is the proposition that if State law subjects an individual to juvenile court jurisdiction for purposes of adjudication related to particular conduct or circumstances, it has thereby determined that the individual is considered a "juvenile" in the eyes of the law even though he may be treated as if he were an adult for other statutorily defined conduct or circumstances. The assumption or retention of jurisdiction over a juvenile by a criminal court does not, *ipso facto*, transform the juvenile into an adult. Rather, it reflects a judgment by the State legislatures or court authorities that the interests of society and the juvenile are best served by treating the juvenile as if he were an adult in certain circumstances.

The Colorado Children's Code defines a "child" as a person under 18 years of age (C.R.S. 19-1-103(3)) and an "adult" as a person 18 years of age or older except that any minor 18 years of age or older under continuing juvenile court jurisdiction, or who is before the court for an alleged delinquent act committed prior to his 18th birthday, is a child (C.R.S. 19-1-103(2)). These provisions define the general limits on juvenile court jurisdiction and can be used to distinguish a "juvenile" from an "adult" as these terms are used in the Juvenile Justice Act.

However, by excluding juveniles who violate State game and fish laws or regulations and State traffic laws or municipal traffic ordinances (except for those under age 16) from the jurisdiction of the juvenile court, the Colorado statute has removed such juveniles from the class of juvenile offenders "alleged to be or found to be delinquent" to whom Section 223(a)(13) is applicable. Only a juvenile under the age of 16 who is actually transferred to the juvenile court for violation of a State traffic law or municipal traffic ordinance would be within the parameters of Section 223(a)(13). In sum, where the court exercising jurisdiction over a juvenile offender does not derive its jurisdiction from the special status of the juvenile as a criminal-type offender subject to the special jurisdiction of a juvenile court, Section 223(a)(13) is inapplicable.

Conclusion

Individuals who are subject to juvenile court jurisdiction for adjudication and treatment based on statutorily determined conduct or circumstances are "juveniles" as this word is used in Section 223(a)(13). However, where the "juvenile" is under the jurisdiction of a court whose jurisdiction is not based on the special status of the individual as a criminal-type offender under State law, the juvenile is not within the class of juvenile offenders to which the prohibition of Section 223(a)(13) applies.

Applying these principles to the Colorado statutory provisions, it is the opinion of this office that children not subject to juvenile court jurisdiction for violation of State and municipal fish and game laws, regulations, and ordinances, and children under 16 who are subject to transfer (but not transferred) to juvenile court for violation of State or municipal traffic laws or ordinances are "juveniles" under Section 223(a)(13). However, they are not within the class of juvenile offenders (alleged to be or found to be delinquent) to which Section 223(a)(13) applies. Therefore, these juveniles could be detained or confined in institutions with either juveniles alleged to be or found to be delinquent or incarcerated adults without violating Section 223(a)(13) of the Juvenile Justice Act.

This opinion is intended neither to condone the Colorado statutory scheme nor to imply that it is sound public policy to commingle children detained or confined for violation of State game and fish laws and ordinances or State and municipal traffic laws and ordinances in institutions with adult criminal offenders. However, the fact remains that compliance with Section 223(a)(13) is the issue in your request. Section 223(a)(13) does not apply to juveniles under the jurisdiction of courts that adjudicate criminal (or civil) offenses without regard to the status of the defendant as a child or as a juvenile.

Section 223(a)(13) requires separation in institutions of two specific groups–juveniles alleged to be or found to be delinquent and adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges. While this office believes it would be sound public policy to separate in any State institution juveniles alleged to be or found to be delinquent from adults incarcerated for noncriminal reasons (e.g., civil commitment or penalty), juveniles charged with or convicted of crimes in criminal proceedings from adults charged with or convicted of crimes or incarcerated for noncriminal reasons, and juveniles incarcerated for noncriminal reasons under the authority of a nonjuvenile court from any incarcerated adult, it would be beyond the terms of Section 223(a)(13), and hence LEAA's rulemaking authority, to require such separation as a condition for the receipt of Juvenile Justice Act funds.

Legal Opinion No. 77-12—Application of the Requirements of the Juvenile Justice Act to Crime Control Act Part C Funds Utilized for Juvenile Detention or Shelter Programs—December 1, 1976

TO: LEAA Regional Administrator
Region VII - Kansas City

This is in response to your request for an opinion concerning whether the requirement of Section 223(a)(12) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §5601, *et seq.*, as amended (Public Law 93-415, as amended by Public Law 94-503) (Juvenile Justice Act), carries over to funding from Part C of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §3701, *et seq.*, as amended (Public Law 90-351, as amended by Public Laws 93-83, 93-415, 94-430, and 94-503) (Crime Control Act).

Statutory Provision

Section 223(a)(12) of the Juvenile Justice Act provides as follows:

> In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes consistent with the provisions of Section 303(a), (1), (3), (5), (6), (8), (10), (11), (12), and (15) of title I of the Omnibus Crime Control and Safe Streets Act of 1968. In accordance with regulations established under this title, such plan must—
>
> * * * * *
>
> **(12) provide within two years after submission of the plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities . . . .**

Issue

The Iowa Crime Commission (the State Criminal Justice Planning Agency or SPA) has raised the question of whether this requirement is applicable to Part C funds which are used for juvenile detention or shelter-related programs.

Discussion

The Crime Control Act and the Juvenile Justice Act are separate acts, so that the provisions of one do not automatically apply to the other. The Crime Control Act contains no requirement similar to that established in Section 223(a)(12) of the Juvenile Justice Act. It has been said that:

> [W]here a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed. (C. Sands, 2A *Statutes and Statutory Construction* §51.02, at 291 (1973), quoting *Western States Newspaper, Inc.* v. *Gehringer,* 203 Cal. App. 2d 793, 22 Cal. Rptr. 144 (1962).)

In the Crime Control Act, Congress omitted any condition requiring States to provide for deinstitutionalization of status offenders in order to receive grant funds. Of course, an SPA can add appropriate conditions to subgrants of Part C Crime Control Act funds in order to further compliance with Section 223(a)(12) of the Juvenile Justice Act. This is what Iowa has done through a special condition attached to a Part C Crime Control Act subgrant to staff a newly established detention center. The condition prohibits placement of status offenders in the detention center. If the center were to violate the condition, the Iowa Crime Commission could pursue appropriate remedies under State law or the subgrant agreement. However, LEAA would have no contractual or statutory basis to pursue such an action.

It should be noted that the Section 223(a)(12) requirement extends beyond individual entities receiving Juvenile Justice Act funds. The State's commitment to deinstitutionalization is statewide. As stated in Office of General Counsel Legal Opinion No. 76-6, August 7, 1975:

> A State accepting Juvenile Justice Act funds is expressing its intent to provide for statewide accomplishment of the goal of deinstitutionalization of status offenders and the separation of adult and juvenile offenders through the accomplishment of the State plan objectives established by the State planning agency. . . .

Thus, the conditioning of subgrants to provide a contractual basis for enforcing and implementing the Section 223(a)(12) requirement is one of a number of methods available to the SPA to further compliance with this statutory requirement and thus retain eligibility for Juvenile Justice Act formula grants beyond the initial two years of funding. While such conditions are not required, even for Juvenile Justice Act subgrants, they are advisable since they further statewide compliance with the Section 223(a)(12) requirement.

Conclusion

The Section 223(a)(12) requirement of the Juvenile Justice Act (deinstitutionalization of status offenders) is neither applicable to nor does it affect Part C funding under the Crime Control Act. Therefore, the States are not required to condition Part C funding for juvenile detention and shelter programs on compliance with this requirement.

However, the State planning agency may attach appropriate special conditions to subgrants made with both Crime Control Act and Juvenile Justice Act funds in order to further statewide compliance with the State plan requirements of the Juvenile Justice Act.

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

TO: LEAA Regional Administrator
Region I - Boston

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

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

Issue

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

Statutory and Guideline Provisions

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

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

Section 103(12) of the Juvenile Justice Act (definitions section) defines the term "correctional institution or facility" as follows:

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

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

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

Discussion

The key words of Section 223(a)(13) that must be considered in resolving the issue raised by Rhode Island are "institution" and "incarcerated." By the terms of the section, commingling is prohibited only in "institutions" where adults are "incarcerated" in either pretrial or postconviction status.

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

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

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

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

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

This definition, although not binding, is indicative of a common understanding, reflected in Senator Bayh's statement, that an individual may be "incarcerated" in a jail, penitentiary, or closed institutional environment, but not in a residential community treatment program.[1]

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

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

Conclusion

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

Legal Opinion No. 77-8—State Eligibility to Renew Participation in Juvenile Justice Act Formula Grant Program Following Prior Withdrawal from Participation—October 22, 1976

TO: LEAA Regional Administrator
Region IV - Atlanta

This is in response to your request for an opinion with regard to State eligibility to renew participation under the formula grant program of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §5601, *et seq.*, as amended (Public Law 93-415, as amended by Public Law 94-503) following a prior withdrawal from participation in the act.

In the instant case, North Carolina submitted a fiscal year 1975 Juvenile Justice Act Plan Supplement Document, which was approved by LEAA, and was awarded a formula grant. Subsequently, North Carolina withdrew its participation and refunded the balance of unobligated fiscal year 1975 grant funds to LEAA. In fiscal year 1976 no formula grant application was submitted by North Carolina. However, the State is contemplating renewing its participation by submitting a formula grant application for fiscal year 1977.

Issue

If a State originally participated in the formula grant program in fiscal year 1975 but withdrew from participation prior to accepting fiscal year 1976 formula grant funds, may the State renew its participation in fiscal year 1977 with an additional period of up to two years to meet the deinstitutionalization of status offenders requirement of Section 223(a)(12) of the Juvenile Justice Act?

Discussion

Section 223(a)(12) of the Juvenile Justice Act states that the plan submitted by a State to receive its formula grant entitlement under the act must:

> **(12) provide within two years after submission of the plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities . . . .**

This office has interpreted the Section 223(a)(12) plan provision strictly because of the explicit two-year time limitation and the conference report characterization of the provision as a requirement for participation in the formula grant program.[1]

In Office of General Counsel Legal Opinion No. 76-6, October 7, 1975, analysis of the Section 223(a)(12) provision led to the conclusion that:

> **It is implicit in the Juvenile Justice Act that failure to achieve the goals of Section 223(a)(12) . . . within applicable time constraints will terminate a State's eligibility for future Juvenile Justice Act funding.**

Further analysis of this provision in Office of General Counsel Legal Opinion No. 76-7, October 7, 1975, established that a State could fail to comply with the requirement of Section 223(a)(12) either in the planning stage or in the execution of its approved plan. This opinion established a qualitative "good faith" standard to judge a State's ongoing efforts to implement its plan and meet the two-year deinstitutionalization requirement. Given such a "good faith" effort, the consequence of a failure to carry out the plan and thus meet the requirement within two years was described as follows:

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[1] **Senate Report No. 93-1103, August 16, 1974, p. 29.**

> . . . an approved plan with appropriate assurances and a "good faith" effort to meet the requirements coupled with a later determination by the State that the requirements could not be met would only result in future fund ineligibility and not require repayment of funds previously expended in accord with the Act and in pursuance of its objectives. Thus, if a State receiving Juvenile Justice Act formula funds were to later ascertain that it could not meet the Act's requirements due to unforeseeable circumstances or no longer wished to participate, no sanction would attach unless a finding of lack of "good faith" was made. A State's failure to meet the 223(a)(12) requirement within a maximum of two years from the date of submission of the initial plan would result in future fund cut off unless such failure was de minimus.[2]

Applied literally, the statutory provision and the above-quoted passage from Legal Opinion No. 76-7 would appear to require compliance within two years from the date of initial plan submission irrespective of a State's continuing participation under the Juvenile Justice Act. However, there are limitations on the rule of "literal interpretation" in construing statutes. As stated by Sands in *Statutes and Statutory Construction* (4th Ed., 1973), ". . . if the literal import of the text of an act is not consistent with the legislative meaning or intent, or such interpretation leads to absurd results, the words of the statute will be modified by the intention of the legislature."

It would be an absurd result to conclude that the mere submission of an application would bind a State to deinstitutionalize status offenders within two years irrespective of whether the plan was subsequently approved, an award of funds was made and accepted by the State, or whether identified barriers to achieving compliance could not be overcome within a reasonable period of time.

It is more consonant with the overall objectives of the act to interpret congressional intent to be that compliance is required following two consecutive years or two full fiscal years of participation in the formula grant program. This interpretation assumes that, if a State's participation is interrupted prior to completion of the first year or the second consecutive year of full participation, the interruption resulted from an inability to overcome barriers identified in the approved plan for compliance with the deinstitutionalization requirement. It assumes further that a good faith effort was made to overcome those barriers and that participation was terminated immediately upon the determination that the State could not achieve compliance within the statutory time limitation. Failure to meet these conditions would evidence a lack of good faith on the part of the State and constitute a substantial failure on the part of the State to meet the statutory deinstitutionalization requirement.

[2]Subsequent congressional clarification of the quantitative standard to be applied to the deinstitutionalization requirement has established 75 percent deinstitutionalization as the minimum compliance level which a State must attain in order to maintain its eligibility for formula grant funding beyond the initial two-year funding period.

Conclusion

Where a State initially participated in the formula grant program of the Juvenile Justice Act in fiscal year 1975, but withdrew from participation prior to accepting fiscal year 1976 funds, the State may be permitted to subsequently renew its participation with up to two additional years for compliance with Section 223(a)(12) if LEAA determines that: (1) The withdrawal from participation resulted from an inability to overcome barriers identified in its initial approved plan for compliance with the deinstitutionalization requirement; and (2) a good faith effort was made to overcome identified barriers to compliance and withdrawal followed immediately upon the State's determination that compliance could not be achieved within the statutory time limitation.

Since the application of these criteria to North Carolina is a programmatic rather than a legal matter, this office defers to the LEAA Regional Office in making the determination of North Carolina's eligibility for renewed formula grant funding in FY 1977. If the Regional Office denies North Carolina's application based on a determination that the State is ineligible for formula grant funding because of a substantial failure to comply with Section 223(a)(12), appropriate notice and opportunity for hearing must be provided pursuant to Section 226(2) of the act and LEAA hearing and appeal procedures.

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

TO: LEAA Regional Administrator
Region VIII - Denver

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

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

Issue

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

Discussion

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

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

These jurisdictional variations result from provisions of Federal law specifying permissible Federal, State, and tribal jurisdiction; State laws and State interpretation of Federal and State laws regarding State and tribal jurisdictional authority; and local practices which have evolved over time. Where a tribe exercises jurisdiction over juvenile offenders through an established tribal court and operates correctional institutions for juvenile (and adult) offenders, and these activities are not subject to State law (i.e., the functions are performed under the sovereign authority of the tribal entity), the State cannot mandate tribal compliance with the statutory provisions of the Juvenile Justice Act. This office views the authority requirement of Section 223(a)(2) implicitly to limit the extent to which the State, through its designated State planning agency, can be held accountable for compliance with the requirements of the act. Therefore, where the State has no authority to regulate or control the law enforcement activities of a sovereign Indian tribal entity, it cannot be held accountable for the failure of that tribal entity to meet requirements of the Juvenile Justice Act.

In South Dakota, all of the eight tribal entities recognized by the Secretary of the Interior as performing law enforcement functions exercise a full range of law enforcement functions (see LEAA Financial Guideline M 7100.1A, April 30, 1973, Appendix 7). South Dakota did not act under Section 7 of Public Law 280 (Public Law 83-280. 67 Stat. 588) to assume civil and criminal jurisdiction over Indian country within the State. Therefore, insofar as the South Dakota tribes exercise sovereign jurisdiction over juvenile (and adult) offenders and, following adjudication, control institutional placement, the State of South Dakota is not accountable for tribal compliance with Sections 223(a)(12) and (13) of the act. It follows that the State's compliance monitoring responsibility (Section 223(a)(14)) would not include tribal compliance with these act requirements.

This opinion does not mean that South Dakota should fail to provide financial assistance to tribes which are desirous of meeting these important objectives of the act, nor does it preclude the State from attaching appropriate special conditions to Crime Control Act and Juvenile Justice Act grants to Indian tribes in order to further these objectives.[1]

Summary

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

Legal Opinion No. 76-7—State Plan Requirements of Section 223(a)(12)-(14) of the Juvenile Justice Act—October 7, 1975

TO: LEAA Regional Administrator
Region III - Philadelphia

This opinion is in response to a number of recent inquiries, including a request from the Virginia State Criminal Justice Planning Agency (SPA) dated August 11, 1975, regarding Section 223(a)(12)-(14) of the Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law 93-415, 42 U.S.C. §5601 *et seq.*—hereinafter Juvenile Justice Act).

Issues

The basic issues which have been raised are broken down, for discussion purposes, into the following questions:

1. Does Section 223(a)(12) require that States which submit a Juvenile Justice Act plan must deinstitutionalize status offenders within 2 years of that date?
2. Does Section 223(a)(13) require the immediate separation of alleged or adjudicated delinquents and incarcerated adults?
3. What impact does Section 223(a)(2) have on a State planning agency's authority to implement these provisions of the State plan?
4. Without legislative authority, what measures can the SPA take with regard to achieving compliance with the Section 223(a)(12) and (13) requirements?
5. What are the consequences of a State's failure to conform with the requirements of Section 223(a)(12) and (13)?
6. How does an SPA develop the authority and/or responsibility for monitoring jails and detention and correctional facilities pursuant to Section 223(a)(14) in order to insure that the requirements of Section 223(a)(12) and (13) are met?

Discussion

Section 223(a)(12)-(14) sets forth the State plan requirements related to deinstitutionalization of status offenders, separation of adult and juvenile offenders, and monitoring as follows:

> SEC. 223.(a) In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes consistent with the provisions of section 303(a)(1), (3), (5), (6), (8), (10), (11), (12), and (15) of title I of the Omnibus Crime Control and Safe Streets Act of 1968. In accordance with regulations established under this title, such plan must—
>
> (12) provide within two years after submission of the plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities;
>
> (13) provide that juveniles alleged to be or found to be delinquent shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges;
>
> (14) provide for an adequate system of monitoring jails, detention facilities, and correctional facilities to insure that the requirements of section 223(12) and (13) are met, and for annual reporting of the results of such monitoring to the Administrator. . . .

Guidance on implementing these requirements is provided in LEAA Guideline Manual M 4100.1D, CHG 1, State Planning Agency Grants, Chapter 3, Par. 82 h-j.

When the Senate and House went to conference on S. 821 (the Juvenile Justice Act), the House bill provided only that the State plan "encourage" deinstitutionalization of status offenders and separation of adult and juvenile offenders. The Senate bill language was adopted by the conferees as quoted above with the following comment in the conference report:

> The Senate bill "requires" that within two years of enactment, juvenile status offenders be placed in shelter facilities; that delinquents not be detained or incarcerated with adults; and that a monitoring system be developed to ensure compliance with these provisions. The House amendment "encourages" such activities. The Conference substitute adopts the Senate provision. (Senate Report No. 93-1103, August 16, 1974, p. 42.)

This comment supports the clear meaning of the statutory language. Since the State plan must provide for the accomplishment of the objectives of Section 223(a)(12) and (13), it follows that Congress intended these provisions to be requirements that a State must plan for and implement as a condition for the receipt of funds.

The Section 223(a)(12) requirement must be met within 2 years after the submission date of the initial plan. At a minimum, a State submitting its initial plan is committing itself, through its State planning agency, to a good faith effort to meet the statutory 2-year mandate.

The Section 223(a)(13) requirement does not have a specific time limitation for its accomplishment. Therefore, as stated in LEAA Guidelines, this requirement must ". . . be planned and implemented immediately by each State in light of the constraints on immediate implementation described below." (State Planning Agency Grants, Guideline, *Supra*, par. 82i(3).) This means that it is the constraints on implementation which determine the length of time permitted. Each State must identify the constraints and establish a specific plan, procedure, and timetable to achieve statutory compliance. The State is, in effect, establishing its own deadline (with LEAA approval). Only if a State identifies no legitimate constraints would immediate separation of juvenile and adult offenders be required. It is possible that more than 2 years could be required in a State where the constraints are substantial.

Section 223(a)(2) does not require that the State planning agency be given any more authority to implement the Juvenile Justice Act plan than it has to implement the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644, Public Law 93-83 and by Public Law 93-415—hereinafter Crime Control Act). The Section 223(a)(2) provision must be read together with Section 223(a)(1). They provide that the State plan must:

> (1) designate the State planning agency established by the State under section 203 of such title I as the sole agency for supervising the preparation and administration of the plan;
>
> (2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) (hereinafter referred to in this part as the "State planning agency") has or will have authority, by legislation if necessary, to implement such plan in conformity with this part . . . .

These sections define the authority which a State planning agency must have in order to qualify for Juvenile Justice Act funds. This Office addressed the meaning of the "authority" requirement in Legal Opinion No. 76-6, October 7, 1975. In that opinion, the office concluded:

> All existing State planning agencies have a supervisory board, existing under State authority, which is responsible for reviewing, approving, and maintaining general oversight of the State plan and its administration . . . . While the Juvenile Justice Act requires that the existant State planning agency be designated in the State plan as the sole agency for supervising the preparation and administration of the State plan (223(a)(1)), this in and of itself does not give the requisite authority to implement the Juvenile Justice Act plan. Therefore, the Section 223(a)(2) requirement, quoted above, simply requires that the plan indicate the source of the State planning agency supervisory board's authority to implement the Juvenile Justice Act component of the State plan. This requirement may be satisfied through the attachment of documentary evidence such as an executive order of the governor or State legislation granting such authority.

While a State planning agency may be granted direct authority over operational agencies insofar as plan compliance is concerned, this is likely to be the exception. Therefore, compliance statewide will require careful planning, coordination, and execution. As to the means, this is a matter for the State planning agency to determine. However, as stated in Legal Opinion No. 76-6, *supra:*

> The State planning agency, although not an operational agency, has a variety of options, means and methods with which to effectuate these provisions. They include agreements with operating agencies, legislative reform efforts, public education and

information, funding to establish alternative facilities, and other methods planned to achieve those goals.

A State may fail to comply with the requirements of Section 223(a)(12) and (13) either in the planning stage or in executing its plan. Failure at any point in the planning stage to meet the statute and guideline requirements will result in rejection of the State plan. Failure to execute the plan may result in fund cut-off under Section 509 of the Crime Control Act. A State's implementation of Section 223(a)(12) and (13) requires specific plans, procedures, and timetables. The latter establishes milestones which should be carefully monitored. If these milestones are not met, fund cut-off would be appropriate, at any point in time, since failure to adhere to the timetable would indicate the lack of a "good faith" effort. In such a case, funds expended under the grant could be reclaimed by LEAA.

The fiscal year 1976 Juvenile Justice Act plan, due December 31, 1975, should not be approved unless specific plans, procedures, and timetables for implementation of Section 223(a)(12) and (13) are set forth therein; adequate resources are allocated to meet these objectives of the plan; and the implementation thereof would result in fully meeting the requirements. For example, if Section 223(a)(12) and (13) requirements could not be met without enabling legislation, appropriation of State funds, or agreements with State, county, and local government units, then the plan would have to set forth exactly what the State planning agency has done to date to achieve these basic needs and what future efforts it will make to obtain them.

However, an approved plan with appropriate assurances and a "good faith" effort to meet the requirements coupled with a later determination by the State that the requirements could not be met would only result in future fund ineligibility and not require repayment of funds previously expended in accordance with the act and in pursuance of its objectives. Thus, if a State receiving Juvenile Justice Act formula funds were to ascertain later that it could not meet the act's requirements because of unforeseeable circumstances or because it no longer wished to participate, no sanction would attach unless a finding of lack of "good faith" was made. A State's failure to meet the 223(a)(12) requirement within a maximum of 2 years from the date of submission of the initial plan would result in future fund cut-off unless such failure was *de minimus*. These determinations would be made on a case-by-case basis.

Each SPA has responsibility for monitoring "jails, detention facilities, and correctional facilities" under Section 223(a)(14). A State planning agency may attempt to obtain direct authority to monitor from the Governor or State legislature, may contract with a public or private agency to carry out the monitoring under its authority, or may contract with a State agency that has such authority to perform the monitoring function. Formula grant "action" program funds would be available to the SPA for this purpose since monitoring services (or funds for those services) are of a "program" or "project" nature related to functions contemplated by the State plan.

Conclusions

1. Section 223(a)(12) requires that States deinstitutionalize status offenders within 2 years after submission of their initial plan under the Juvenile Justice Act.

2. Section 223(a)(13) requires immediate separation of alleged or adjudicated delinquents and incarcerated adults only if no constraints to implementation are identified. Otherwise, identified constraints and the State's approved plan, procedure, and timetable for implementation will determine the time limitation.

3. Section 223(a)(2) requires that the State planning agency have the same authority to implement the Juvenile Justice Act plan that it must have to implement the Crime Control Act plan. While this does require that the State planning agency have authority to cause coordination of services to juveniles statewide, it does not require that the State planning agency have direct operational authority over State agencies providing services to juveniles.

4. Compliance with Section 223(a)(12) and (13) can be achieved through a grant of direct authority to the SPA from State government or through a wide variety of programmatic efforts.

5. A failure to conform with the Section 223(a)(12) and (13) requirements may result in plan rejection or fund cut-off at any point in the planning process or implementation of the plan. Only if there is a definite showing of a lack of "good faith" on the part of the State planning agency in the application process or in meeting the milestones established in the State's timetable would LEAA consider action to recover Juvenile Justice Act funds granted to a State. Failure to meet the 223(a)(12) requirement within 2 years will result in fund cut-off, irrespective of "good faith" planning and implementation, unless the failure is *de minimus*.

6. An SPA may be granted direct authority to perform the Section 223(a)(14) monitoring function or may contract with a public or private agency, under appropriate authority, for the performance of the monitoring function.

Legal Opinion No. 76-6—Implementation of Juvenile Justice and Delinquency Prevention Act of 1974—October 7, 1975

TO: California Department of Youth Authority

This is in response to your letter of July 21, 1975, to Mr. Fred Nader, Acting Assistant Administrator, Office of Juvenile Justice and Delinquency Prevention, requesting legal interpretation of questions related to California's planning efforts under the Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law 93-415). Because of the significance of these questions, both on the State and national level, Mr. Nader has requested that this office respond formally to the issues raised.

1. Can the State Criminal Justice Planning Agency (SPA) contract with a private or public agency to do the necessary staff work in developing a "State Plan"; to execute the plan; to provide technical assistance and consultation?

Sections 223(a)(1) and (2) of the Juvenile Justice Act provide that the State plan must:

> (1) designate the State planning agency established by the State under Section 203 of such title I as the sole agency for supervising the preparation and administration of the plan;
>
> (2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) (hereinafter referred to in this part as the 'State planning agency') has or will have authority, by legislation if necessary, to implement such plan in conformity with this part . . . .

These sections define the basic authority which the State planning agency must possess in order to receive a formula grant under the Juvenile Justice Act.

Several of the components of the first question have been addressed by this office in Legal Opinion No. 75-40, "Administration of Juvenile Related Programs within the State of Nevada," May 20, 1975. That opinion expressly considered the issue of the State planning agency's contracting with other public agencies to develop the State juvenile justice plan and the permissible role of such agencies in the administration of the plan. This Office concluded that, while the State planning agency must retain primary responsibility for planning and program development, it is permissible for it to contract with a public agency for staff work necessary to develop the State plan, where such contracting is provided for in an approved planning grant or State plan. Similarly, the State planning agency must retain control over the funds it administers. This does not, however, preclude delegation of limited administrative and management responsibilities to other agencies of State government.

The role of private agencies in the development and administration of the State plan has been statutorily mandated in Section 223(a)(9) of the Juvenile Justice Act:

> (9) provide for the active consultation with and participation of private agencies in the development and execution of the State plan . . . .

This role is described in State Planning Agency Guideline M 4100.1D, Chg. 1, July 10, 1975. The guideline defines the private agency role in terms of "consultation" and limits the scope of the term "private agency" by definition. The guideline does not reach the issue of contracted services. Therefore, the general provision of State Planning Agency Guideline M 4100.1D, March 21, 1975, Chapter 1, par. 17c(3), is determinative on the issue of contractual services provided by private agencies:

> (3) *Contracted Services Ceiling.* To assure that adequate funds are available to finance the level of planning agency staff capability necessary for the proper discharge of statutory responsibilities, not more than 20 percent of a State's total Federal planning grant should be used for contracting with non-governmental agencies or organizations to provide planning services or assistance. In exceptional cases, States may request prior written approval of the cognizant LEAA Regional Office for a higher "contracted services" ceiling.

While this subsection applies explicitly to a State's Crime Control Act (Public Law 93-83) planning grant, this Office finds the provision to be equally applicable to funds received by a State planning agency for planning and administration under the Juvenile Justice Act.

A State has authority under Sections 221 and 223(a) of the Juvenile Justice Act to provide technical assistance or services for programs and projects contemplated by the Juvenile Justice Act component of the State plan. Due to the interrelated nature of the Crime Control Act juvenile justice program component and the Juvenile Justice Act plan, it would be appropriate for a State to provide technical assistance and consultation for juvenile programing entirely under the authority of Section 303(a)(10) of the Crime Control Act. Alternatively, a State could utilize juvenile justice formula grant funds to augment technical assistance activity in the area of juvenile programing. Such a program could utilize "action" funds rather than funds for planning and administration. The limitations on use of planning and administration funds for developing and implementing the State plan would not be applicable. In addition, such use of action funds could not be counted toward the pass-through requirement of Section 223(a)(5) in the absence of local government waiver.

In sum, the State planning agency may contract with public agencies to do staff work in developing the State plan, may contract with private agencies to the extent permitted by applicable LEAA Guidelines, may delegate limited responsibility for plan execution consistent with the statute and guidelines, and may contract with public and private agencies for the provision of technical assistance in carrying out the Juvenile Justice Act plan. However, the Juvenile Justice Act clearly requires that final authority and responsibility for plan formulation and implementation, including the methods to be utilized, must rest with the State planning agency and its supervisory board.

2. In accordance with Section 223(a)(2) of the Juvenile Justice and Delinquency Prevention Act, what power or control does the State planning agency have to possess to carry out the "implementing of the plan"? There are several references in the guidelines to the term "authority." What is the legal interpretation of the word "authority" as it relates to the control that the State planning agency must possess over the operating agencies of State government to be in conformity with the act?

3. The guidelines (M 4100.1D, July 10, 1975, Chap. 1, para. 21c(3)) state under the paragraph on "Coordination of Services" that there is a mandate that "the State Planning Agency be able to cause coordination of human services to youth and their families in order to insure effective delinquency prevention and treatment programs. This would include all offices within the state responsible for the delivery of human services, etc." What does the phrase "cause coordination" require in the way of control or authority over the operations of other departments of State government? Is this function subject to contract if another State agency already has this responsibility?

All existing State planning agencies have a supervisory board, existing under State authority, which is responsible for reviewing, approving, and maintaining general oversight of the State plan and its administration (see State Planning Agency Guideline M 4100.1D, March 21, 1975). While the Juvenile Justice Act requires that the existing State planning agency be designated in the State plan as the sole agency for supervising the preparation and administration of the State plan (Section 223(a)(1)), this in itself does not give the requisite authority to implement the Juvenile Justice Act plan. Therefore, the Section 223(a)(2) requirement, quoted above, simply requires that the plan indicate the source of the State planning agency supervisory board's authority to implement the Juvenile Justice Act component of the State plan. This requirement may be satisfied through the attachment of documentary evidence such as an executive order of the Governor or State legislation granting such authority. This requirement is fully set forth in Guideline M 4100.1D, Chg. 1, par. 21c, July 10, 1975.

The authority of the State planning agency to implement the plan does not require that the State planning agency be given direct power or control over the operating functions of other agencies of State government. As pointed out in the State Planning Agency Guideline, *supra,* par. 21c(3), "Coordination of Services," the authority to cause coordination of services, statewide, is the basic requirement. This does not mean, for example, that the State planning agency is required to step in and coordinate programs for which the Department of Youth Services (DYS) has direct operational responsibility. However, it would require that DYS operations be coordinated with other State youth-related human services agencies by the State planning agency. To the extent that DYS has legal authority and responsibility for coordination of youth services beyond its operational responsibility, its role would necessarily be subservient to the State planning agency role in order for the State planning agency to qualify for Juvenile Justice Act funding. This principle is firmly established in Legal Opinion No. 75-40, *supra.* This would not, of course, prevent the State planning agency from entering into cooperative arrangements which utilize the experience and expertise of other State agencies in the coordination of youth services within the State.

4. Will the requirements for the State plan pursuant to Section 223 extend throughout the State or do they only apply to those individual entities which actually receive Federal funds? For instance, if a particular county does not wish to utilize Federal funds, will its decision to continue to place juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult (a decision contrary to Section 223(a)(12)) jeopardize Federal funds for the rest of the State?

5. Will the State be eligible to receive formula grants under Section 223 of the act if not every county or agency within a State chooses or is able to comply with Section 223(a)(12) or (13)?

The requirements of Section 223 extend throughout the State. In submitting its application for funds under the Juvenile Justice Act, a State is committing itself to meet the statutory provisions of Section 223(a)(12) and (13) statewide. This conclusion is based upon the statutory language and the explicit requirements of the State Planning Agency Guideline, *supra,* par. 82 h-j. A State accepting Juvenile Justice Act funds is expressing its intent to provide for statewide accomplishment of the goal of deinstitutionalization of status offenders and the separation of adult and juvenile offenders through the accomplishment of the State plan objectives established by the State planning agency, the State agency that, as mentioned earlier, must have the authority to implement the State plan. The State planning agency, although not an operational agency, has a variety of options, means, and methods by which to effectuate these provisions. These options, means, and methods include agreements with operating agencies, legislative reform efforts, public education and information, funding to establish alternative facilities, and other plans to achieve those goals. It is implicit in the Juvenile Justice Act that failure to achieve the goals of Section 223(a)(12) and (13) within applicable time constraints will terminate a State's eligibility for future Juvenile Justice Act funding. Certainly, this would be the case if any county or agency "chose" not to comply.

Legal Opinion No. 75-40—Administration of Juvenile-Related Programs Within the State of Nevada—May 20, 1975

TO: LEAA Regional Administrator
Region IX - San Francisco

This is in response to a request from the Nevada Commission on Crimes, Delinquency, and Corrections (the Nevada State Criminal Justice Planning Agency (SPA)) and the San Francisco Regional Office dated January 27, 1975, for a clarification of responsibility for administration of juvenile-related programs utilizing LEAA funds within the State of Nevada.

The need for clarification results from a disagreement between the Nevada Commission on Crimes, Delinquency, and Corrections and the Nevada Department of Human Resources (DHR), a State agency.

The DHR has submitted a position paper in support of the concept of separate planning and administration functions for programs within the juvenile justice system and those within the criminal justice system. The major factors underlying this position, as stated in the DHR position paper, are as follows:

1. A philosophical and legal separation in the State of Nevada of the juvenile justice system and the criminal justice system.

2. The Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law 93-415) created a new administrative unit at the Federal level—the Office of Juvenile Justice and Delinquency Prevention (OJJDP)—to administer all LEAA juvenile programs, thereby splitting juvenile and adult programs at the Federal level.

3. If all juvenile justice system programs were planned and administered by the Commission, the result would be a duplication of DHR's efforts in the field of juvenile justice and delinquency prevention program planning and funding.

As a result of these factors DHR's position is that:

1. DHR should be responsible for providing services to youth in need of residential care or treatment.

2. DHR should have primary responsibility for development of delinquency prevention and diversion programs.

3. DHR should be the sole State agency for the establishment of standards for the receipt of Federal funds in the field of juvenile development and delinquency prevention programs.

4. DHR, the Commission, and LEAA should enter into a cooperative agreement to include, at minimum, the following points:

   a. All planning, program development, and implementation for youth development and delinquency prevention will be the responsibility of DHR.

   b. The State plan will be reviewed by the Commission to ensure compliance with Federal rules and regulations.

   c. The advisory group mandated by the act will be a part of the State Youth Services Agency function (an instrumentality of DHR) and report its findings and recommendations to the Commission. Membership will, insofar as possible, include those persons currently serving on youth agency advisory boards.

   d. All Federal funding for juvenile programs coming to the Commission through OJJDP will be made available to DHR for disbursement in accordance with Federal regulations and the approved State plan.

The DHR paper assumes that the State's comprehensive juvenile justice and delinquency prevention plan will encompass both Juvenile Justice Act funds and funds earmarked for juvenile programs under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Public Law 90-351, as amended by Public Law 91-644, Public Law 93-83, and Public Law 93-415) (hereinafter Crime Control Act), and that the funding for such plan will be through OJJDP. Consequently, the implications of the DHR paper extend to Crime Control Act funds, currently administered by the Commission, as well as to anticipated future funding under the Juvenile Justice Act.

Issues

1. What are the legally mandated functions of a State planning agency?
2. To what extent can these functions be delegated to another State agency, particularly as proposed by the Nevada Department of Human Resources?

In order to address the issues raised, it is necessary to examine the legally prescribed functions of an SPA under the Crime Control Act and its functions under the Juvenile Justice Act. The latter functions can be brought into clearer perspective by viewing the policy rationale behind the passage of the Juvenile Justice Act. The legal and policy examinations taken together provide the framework within which the Commission and DHR can come to an agreement that will be in harmony with the philosophy and law of the State of Nevada.

Crime Control Act

The provisions of the Crime Control Act related to the functions, powers, and responsibilities of SPA's have remained virtually unchanged since initial passage of that act in 1968.

Planning grants are provided for in Part B of the Crime Control Act. Planning grants are to be used for the development and adoption of comprehensive law enforcement and criminal justice plans based on an evaluation of State and local law enforcement and criminal justice problems. The purpose and use of planning grants is set forth in Sections 202 and 203(a) as follows:

> Section 202. The Administration shall make grants to the States for the establishment and operation of State law enforcement and criminal justice planning agencies (hereinafter referred to in the title as 'State planning agencies') for the preparation, development, and revision of the State plan required under section 303 of this title. . . .
>
> Section 203(a). A grant made under this part to a State shall be utilized by the State to establish and maintain a State planning agency. Such agency shall be created or designated by the chief executive of the State and shall be subject to his jurisdiction. . . .

Any use of planning grant funds that is inconsistent with these sections is not legally permissible.

Section 203(b) establishes the major functions of the created or designated SPA:

> (b) The State planning agency shall–
>
> (1) develop, in accordance with Part C, a comprehensive statewide plan for the improvement of law enforcement and criminal justice throughout the State;
>
> (2) define, develop, and correlate programs and projects for the State and the units of general local government in the State or combinations of States or units for improvement in law enforcement and criminal justice; and
>
> (3) establish priorities for the improvement in law enforcement and criminal justice throughout the State.

Although the creation or designation of the SPA by the Governor is a matter of his or her discretion, the Crime Control Act clearly establishes both additional requirements applicable to the SPA and the major functions it is to perform. These additional requirements include representation on SPA boards (and on any Regional Planning Unit) (Section 203(a)), mandatory passthrough of planning (Section 203(c)) and action funds (Section 303(a)(2)), and provisions related to conduct of the business of the SPA (Section 203(d)).

Congress established the SPA concept in order to promote comprehensive statewide law enforcement and criminal justice planning. An agency with a distinct systemwide planning function, representative of all elements of the law enforcement and criminal justice system, was the goal. Although an existent operating agency could be designated as the SPA, its planning function was required to be distinct and the additional requirements, outlined above, to be implemented fully. The major functions of the SPA were to be accomplished as a result of its ability to look at the whole system, plan comprehensively for the improvement of that system, take the lead role in implementing the plan in the

State, and establish priorities that would guide the allocation of scarce resources among competing operational interests of the system. Senator Roman L. Hruska, in debate on the Crime Control Act of 1968, clearly recognized the crucial role of the SPA in the establishment of priorities:

> Of critical importance is the requirement that the State planning agencies establish priorities for the improvement of law enforcement in their respective States. It is felt that the State agency, with its close proximity to the activities and problems of State and local law enforcement and yet free from day to day operating burdens, is best suited to make these fundamental determinations. (114 Cong. Rec. S 5350 (daily ed. May 10, 1968).)

The definition of "law enforcement and criminal justice" activity in Section 601(a) of the Crime Control Act defines the parameters of the SPA function:

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

This broad definition touches upon every facet of the law enforcement and criminal justice system. It clearly includes a broad range of juvenile-related programs. The concept of comprehensive planning is related directly to the expenditure of LEAA funds only in the sense that the result of the planning process determines the funding priorities of the State plan.

Block grants for law enforcement and criminal justice purposes, the result of the Part B planning process, are provided in Part C of the Crime Control Act. Section 302 requires each State desiring to participate in the grant program to "establish a State planning agency as described in Part B" and to "submit to the Administration through such State planning agency a comprehensive State plan developed pursuant to Part B." Section 303(a), in turn, requires the Administration to make block grants to the SPA if it has on file an approved comprehensive plan "which conforms with the purposes and requirements of this title."

There are 15 State plan requirements in Section 303(a) which must be met in the State plan. Those of significance to the SPA function include the requirement that each plan:

> (1) provide for the administration of such grants by the State planning agency; . . .
> (4) provide for procedures under which plans may be submitted to the State planning agency for approval or disapproval, in whole or in part, annually from units of general local government or combinations thereof having a population of at least two hundred and fifty thousand persons to use funds received under this part to carry out a comprehensive plan consistent with the State comprehensive plan for the improvement of law enforcement and criminal justice in the jurisdiction covered by the plan; . . .
> (8) provide for appropriate review of procedures of actions taken by the State planning agency disapproving an application for which funds are available or terminating or refusing to continue financial assistance to units of general local government or combinations of such units; . . .

(12) provide for such fund accounting, audit, monitoring, and evaluation procedures as may be necessary to assure fiscal control, proper management, and disbursement of funds received under this title.

In carrying out the responsibilities under Section 303(a)(4) above, Section 304 provides as follows:

Section 304. State planning agencies shall receive applications for financial assistance from units of general local government and combinations of such units. When a State planning agency determines that such an application is in accordance with the purposes stated in section 301 and is in conformance with any existing statewide comprehensive law enforcement plan, the State planning agency is authorized to disburse funds to the applicant.

Administration of grants by the SPA means, in the first instance, that the SPA is responsible for the proper expenditure of the funds that it disburses. It would be impossible for the SPA to administer grant funds if it were not able to exercise control over funds in the hands of subgrantees and contractors. LEAA Guideline Manual M 7100.1A, Financial Management for Planning and Action Grants, addresses the question of administration of planning and action grants in chapter 2, page 2, paragraph 3:

STATE PLANNING AGENCY SUPERVISION AND MONITORING RESPONSIBILITY. The State Planning Agency has primary responsibility for assuring proper administration of planning and action funds awarded under Title I. This includes responsibility for the proper conduct of the financial affairs of any subgrantees or contractor insofar as they relate to programs or projects for which Title I funds have been made available–and for default in which the State Planning Agency may be held accountable for improper use of grant funds.

a. *Delegation of Responsibility.* Grantees may delegate to another organization all or a significant portion of the responsibility for carrying out a program or project component. In such cases, the agreement between the grantee and its subgrantee or contractor should indicate the agreed scope of work to be performed by the latter.

b. *Grantee Responsibilities for Accounting by Delegate Agencies.* Where the conduct of a program or program component is so delegated, the grantee is, nevertheless, responsible for performance of all aspects of the program, including proper accounting for expenditure of funds by the delegate agencies . . . .

This guideline clearly permits delegation of administrative responsibility for carrying out a program or project component pursuant to an agreement with ultimate responsibility, however, remaining in the SPA.

Sections 303(a)(4) and (8) provide for submission of local plans to the SPA for approval or disapproval, with appropriate review procedures where the SPA acts negatively on the application for funds. Section 304 then provides that when the SPA approves the application that is in accord with Section 301 and the State plan, the SPA is authorized to disburse funds to the applicant. The responsibility for acting on local plans and disbursing funds is not made delegable either in the provisions of the act or by guideline. The act authorizes only the SPA, which has been legally authorized and approved by LEAA as meeting all statutory requirements, to disburse funds to units of general local government or combinations thereof. Delegations of such authority may be permissible with prior LEAA approval. The implications on statutory adherence and intent (e.g., would representative character requirement be avoided by a proposed mechanism) would be a consideration by LEAA in reviewing a requested delegation of authority.

Action funds that are not passed through to units or combinations of local government are not explicitly addressed in terms of the SPA role by the Crime Control Act. It would be inconsistent with the concept of the functions and responsibility of the SPA, however, if primary authority and responsibility for the receipt, control, disbursement, and administration of funds not passed through to local governments were to be vested in some other State agency or entity. LEAA Guideline Manual M 4100.1C, State Planning Agency Grants, lists the following SPA functions and responsibilities related to plan implementation (chapter 1, paragraph 10):

> f. Encouraging project proposals from State law enforcement and criminal justice agencies; . . .
>
> h. Monitoring progress and expenditures under grants to State law enforcement and criminal justice agencies, local units of government, and other recipients of LEAA grant funds; . . .
>
> k. Oversight and evaluation of the total State effort in plan implementation and law enforcement and criminal justice improvements.

These responsibilities of the SPA do not preclude important roles by other State agencies. In chapter 1, paragraph 11 of the guidelines just quoted, appropriate roles of other State agencies, as well as local agencies, are explicitly recognized:

> While responsibilities for State plan development, implementation, and correlation must ultimately reside in the State Planning Agency, subject to the jurisdiction of the State chief executive, this does not preclude important roles by State law enforcement, correctional, judicial and prosecutive agencies in plan development relating to their respective areas of competence, nor by local units of government and their law enforcement agencies, nor by public agencies maintaining programs to reduce and control crime, nor utilization of staff of other State agencies to assist with State Planning Agency functions.

It is important to recognize that these roles relate to plan development, not implementation, and that an application requirement exists for describing "the intended role of other agencies of State government . . . utilized to carry out major planning functions." (See LEAA Guideline Manual M 4100.1C, chapter 1, paragraph 18.)

The role must be set forth in an approved State plan before it can be exercised. The role can take a number of forms. Planning services can be contracted for in a particular area of expertise. Agency personnel can be designated to serve as staff of the SPA. The role definition should be a matter of negotiation and agreement.

A further limitation on the role of other State agencies is established by LEAA Office of General Counsel Legal Opinion No. 74-13 (July 2, 1973). That opinion concerned a proposed State law that would have provided that Crime Control Act funds be expended solely under the direction and control of a Coordinator of Federal-State programs who would have full supervision of the programs, their personnel, and work. This office held that:

> As long as the Coordinator is under the jurisdiction of the Governor and such 'control' is limited to management control, with policy control still vested in the supervisory board, this provision would not be inconsistent with . . . [the Act]. However, if the 'control' exercised by the Coordinator was interpreted to include policy direction through the establishment of priorities or revision of State plans after approval by the supervisory board, then such activity would be in conflict with the Act and LEAA would be unable to continue funding the . . .[SPA].

Although this opinion only answered the question of management or administration of grants, it clearly established that policy direction and control must remain in the SPA supervisory board.

Juvenile Justice Act

The Juvenile Justice and Delinquency Prevention Act of 1974 represents a definite shift by the Congress in its philosophy of separating juvenile delinquency prevention programing, which focuses outside the law enforcement and criminal justice system, from programing for adults and juveniles that occurs within the law enforcement and criminal justice system. This shift has been an evolving one. The Omnibus Crime Control and Safe Streets Act of 1968 did not focus on juvenile delinquency. The 1971 and 1973 amendments to the act, however, formalized LEAA responsibility in the juvenile delinquency prevention and rehabilitation areas to include all juvenile-related activity that involved the law enforcement and criminal justice system. The Juvenile Justice Act both complements this existing authority and establishes authority under that act to fund a broad range of juvenile delinquency prevention programs outside the law enforcement and criminal justice system.

The U.S. Senate played the lead role in bringing about this shift in philosophy and its embodiment in Federal law. The Senate Committee Report (S. Rept. 93-1011, July 16, 1974) and the floor debate on the Senate bill are replete with concern over the need for comprehensive program coordination on the Federal, State, and local levels. The Senate Judiciary Committee quoted testimony in support of placing the new program in LEAA in order to: "[a]void duplication of effort, not only at the Federal level but at the State level as well. Many States have developed very sophisticated criminal justice planning capabilities. New funds should not be brought into those States in such a manner that might allow duplication and conflict at the State level." (S. Rept. 93-1011, p. 32.)

Finally, in summarizing its amendment to place the program in LEAA, the committee report states: "... the planning input and administrative process already exists from the local to the State level and through the Federal level. Moreover, it is ideally suited to the supplemental effort in the juvenile delinquency area because, with little modification, the existing structure can go into action immediately. LEAA has a local planning structure. Each State has a substantial State planning and administrative structure. All of these organizations are already doing work in the juvenile delinquency area. Coordination ... becomes automatic under the Committee Amendment." (S. Rept. 93-1011, p. 3.)

In order to assure this coordination, the Juvenile Justice amended Section 303(a) of the Crime Control Act to require that:

> In order to receive formula grants under the Juvenile Justice and Delinquency Prevention Act of 1974 a State shall submit a plan for carrying out the purposes of that Act in accordance with this section and section 223 of that Act.

Section 223 of the Juvenile Justice Act, in turn, sets out the requirements for the State plan under that act. The first two requirements of Section 223(a) assure the coordination of programing desired by Congress:

> ... such plan must–
>
> (1) designate the State planning agency established by the State under Section 203 of such Title I as the *sole agency for supervising the preparation and administration of the plan;*
>
> (2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) (hereafter referred to in this part as the "State planning agency") has or will have *authority,* by legislation if necessary, to *implement such plan in conformity with this part;* [Emphasis added.]

These two subsections leave no doubt of congressional intent. The existing SPA must have the same authority and responsibility to implement the Juvenile Justice Act component of the State plan as it has to implement the Crime Control Act.

Congress was well aware that the Juvenile Justice Act would impact on States' current operations and would increase the scope of SPA coordination and planning roles. In order to assure the ability of the SPA to take into account a wider system responsibility, Congress took several important steps:

1. Congress expanded the declaration and purpose section of the Crime Control Act to emphasize the increased role in juvenile justice and delinquency prevention.

2. Congress amended the representation requirements for State and regional planning boards to include representation of agencies and organizations directly related to the prevention and control of delinquency.

3. Congress required that the State juvenile justice plan provide for an advisory group, broadly representative of all aspects of juvenile justice and delinquency prevention, to advise the SPA and its supervisory board.

These steps seek to assure that SPA's will be responsive to and representative of the entire law enforcement and criminal justice system, adult and juvenile. The end result, of course, is to have coordinated, systemwide planning.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP), established by Section 201(a) of the Juvenile Justice Act, does not represent an effort to split adult and juvenile programs on the Federal level. Rather, OJJDP as a new administrative office within LEAA, represents an effort by the Congress to coordinate LEAA's juvenile justice programs, establish policy direction on the Federal level, and place increased emphasis on juvenile justice programing. Crime Control Act funds will not be separated into adult and juvenile funds nor will OJJDP control or direct the States' allocations of such funds between adult and juvenile programs. These determinations will remain within the planning control of the SPA, subject only to the maintenance of effort requirement of Section 261(b) of the Juvenile Justice Act and Section 520(b) of the Crime Control Act.

The analogy between DHR's suggested role and the role of OJJDP at the Federal level is invalid and, in fact, compels an opposite conclusion. Coordination of systemwide planning by a single body is the key concept, not a further separation of adult and juvenile programs.

Nevada Law and Philosophy

The DHR position paper states that:

> Historically, the juvenile justice system has operated separate and apart from the criminal justice system . . . . It has been, and remains so, the philosophy of those working in the juvenile field, as well as those in executive and legislative positions, that the juvenile must be given the fullest opportunity to attain adulthood without the stigma and restraints attributed to involvement in the criminal justice system.

This philosophical statement is valid. However, provision of coordinated planning does not in any way conflict with a statement that the two systems, adult and juvenile, should operate as separate systems. The Juvenile Justice Act mandates separation of adult and juvenile offenders (Section 223(a)(12)-(14)). Its whole tenor demands enlightened, innovative treatment of juveniles in order to give them the fullest opportunity to attain adulthood without the stigma of any system. What is undeniable is the failure of social service agencies and law enforcement and criminal justice agencies to coordinate their efforts so that the juvenile can grow to adulthood with every opportunity available to become a productive citizen.

The Nevada Revised Statutes (N.R.S.) do not conflict with the need for coordinated planning.

N.R.S. Section 216.085 creates the Commission on Crimes, Delinquency, and Corrections with its stated purposes being:

> (a) To develop a comprehensive statewide plan for the improvement of law enforcement throughout the State;
>
> (b) To define, develop, correlate and administer programs and projects for the State and units of general local government in the State or for any combination of the State and units of general local government for improvement in law enforcement.

The statute gives the Commission responsibility for developing the comprehensive law enforcement plan and gives it the very functions mandated in Section 203(b) of the Crime Control Act related to programing. N.R.S. Section 216.105 further provides that the Commission has power to contract as necessary to "develop and implement a statewide law enforcement and delinquency control plan." As this section recognizes, and as discussed earlier, juvenile programing is an integral part of statewide law enforcement and criminal justice planning. Thus, juvenile planning has been and remains, by statute, a proper function of the Commission.

Through its Youth Services Agency, DHR also has statutory purposes, duties, and powers. N.R.S. Section 232.40 provides that: "The purpose of the youth services agency . . . is to provide services for youth who are in need of residential care or in need of treatment or both." This purpose is operational in nature. The section goes on to provide, however, that "The agency, through the department of human resources, shall be the sole State agency for the establishment of standards for the receipt of Federal funds in the field of juvenile development and delinquency prevention programs. The agency shall develop standards for implementation of programs aimed toward the prevention of delinquent acts of children and programs for the treatment of those brought to its attention. It shall assist in the development of programs for the predelinquent children whose behavior tends to lead them into contact with law enforcement agencies."

This office has no authority to construe State statutes. It appears, however, that the quoted statutory provisions overlap to some extent and could be construed as providing complementary and nonconflicting powers. Insofar as the quoted provisions of N.R.S. might be construed to conflict with the Crime Control Act or the Juvenile Justice Act, the Federal statute must prevail under the Supremacy Clause of the U.S. Constitution (see *King* v. *Smith,* 392 U.S. 309 (1968)).

Conclusion

The above discussion provides the basis upon which the following conclusions are drawn with regard to the DHR position paper:

1. DHR may be designated as the proper agency to provide services to youth in need of residential care or treatment. The proper role, if any, of other State agencies and private agencies to provide such services is within the discretion of the State.

2. Primary responsibility for development of delinquency prevention and diversion programs, insofar as LEAA funds are concerned, must remain in the Commission. DHR, as outlined, may play a substantial role in the development of such programs. This role could be achieved through contracting of planning services or utilization of DHR in a "staff" capacity to the Commission.

3. Standards for the receipt of LEAA funds are established by Federal statute in the first instance, and by the SPA through the approved State plan. Such plans are the responsibility of the designated SPA. Insofar as DHR sets standards contrary to Federal statute, such standards as far as the Federal funds are concerned, must yield to the Federal standards under the Supremacy Clause of the Constitution. Any such standards established for inclusion in the State plan must be subject to the approval of the Commission.

4. A cooperative agreement between DHR and the Commission is permissible, subject to the provisions of the applicable Federal statutes. LEAA has no authority nor any need to be a party to such an agreement.

As to the points of agreement suggested in the DHR position paper, the following conclusions are drawn:

1. All planning, program development, and implementation for youth development and delinquency prevention pursuant to the Crime Control Act and the Juvenile Justice Act must remain the primary responsibility of the Commission. Any delegation of authority by the Commission in these areas must be guided by the principles set forth in this opinion and be contained in an approved planning grant application and/or State plan.

2. The Commission must retain final authority and responsibility for the State plan both as to planning and program decisions and as to compliance with Federal rules and regulations. Otherwise, it would not be functioning in its statutory role as an SPA and would be ineligible for LEAA funding.

3. The advisory group is to be appointed by the chief executive of the State and is to serve in an advisory capacity to the SPA and its supervisory board. As long as the representation requirements of Section 223(a)(3) are met, it is permissible for the advisory group to be a part of the Youth Services Agency function and to utilize persons currently serving on youth agency advisory boards.

4. Both the Crime Control Act and the Juvenile Justice Act require that the administration of grants be the responsibility of the SPA. The SPA may delegate its supervision and monitoring responsibilities as provided by LEAA guidelines. However, aspects of the receipt and control of funds, final programmatic funding decisions, and disbursement of funds that concerns policy direction and control are responsibilities that may not be delegated to or placed in another State agency. This is implicit in the provisions of both acts as discussed above and settled by prior legal opinion of this office.

The Crime Control Act and the Juvenile Justice Act, taken together, provide Federal, State, and local governments with a comprehensive vehicle for coordination of the efforts of the law enforcement and criminal justice system at all levels of government. Congress has provided the statutory framework within which comprehensive planning and programing can occur on all levels of government. If the SPA is given the opportunity to carry out its statutory role in the spirit of cooperation with the agencies, institutions, and organizations that it serves, then a system may evolve that can meet the challenge of reducing crime in our Nation.

One final consideration of Federal law is relevant to the issues presented. The Intergovernmental Cooperation Act (Public Law 90-577) provides at 42 U.S.C. Section 4214 as follows:

> 4214. Eligible State Agency
> Notwithstanding any other Federal law which provides that a single State agency or multimember board or commission must be established or designated to administer or supervise the administration of any grant-in-aid program, the head of any Federal department or agency administering such program may, upon request of the Governor or other appropriate executive or legislative authority of the State responsible for determining or revising the organizational structure of State government, waive the single State agency or multimember board or commission provision upon adequate showing that such provision prevents the establishment of the most effective and efficient organizational arrangements within the State government and approve other State administrative structure or arrangements: Provided, That the head of the Federal department or agency determines that the objectives of the Federal statute authorizing the grant-in-aid program will not be endangered by the use of such other State structure or arrangements.

This provision would permit the Governor of Nevada to request the Administrator of LEAA to waive the applicable statutory provisions that establish the authority and responsibility of the designated SPA. It must be noted, however, that the House Report on the Intergovernmental Cooperation Act (H. Rept. 90-1845, Aug. 2, 1968) makes the following comment with regard to 42 U.S.C. Section 4214:

> The intent of this section is to allow States to reorganize their structure of government in order to permit integration of State agencies and functions; the goal is greater flexibility, to permit more efficient and practical State Governmental administration. *It is not the intent of this Act to permit State reorganizations that would fragment the administration of any federally aided program.* [Emphasis added.]

In light of the prior discussion indicating a clear congressional intent that the Crime Control Act and the Juvenile Justice Act be administered by a single SPA in order to achieve a coordinated effort, and the above comment in the House Report, such a waiver request would need to demonstrate that:

1. An indepth analysis of organizational structure or arrangements with the State of Nevada has been made;
2. The proposed structure or arrangements would permit establishment of the most effective and efficient organizational arrangements to carry out the purposes of the LEAA legislation; and
3. The benefits of the proposed structure or arrangements would outweigh any resultant fragmentation of the administration of the LEAA program.

JUVENILE FACILITY MONITORING SURVEY

The purpose of this survey is to identify and provide information on those residential facilities which are classified as secure detention or secure correctional facilities and as adult jails and lockups under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended in 1980. The information requested here is limited to that necessary for determining compliance with Section 223(a)(12), (13), (14), and (15) of the Act.

The survey from is divided into five sections:

- Facility Identification and Classification
- Compliance Information: Deinstitutionalization of Status Offenders and Non-offenders
- Compliance Information: Separation of Juveniles and Adults
- Compliance Information: Jail Removal
- Inspection Information

Please read the definitions and instructions provided at the end of this form prior to recording the information.

THIS FORM IS A TECHNICAL ASSISTANCE TOOL AND ITS USE IS OPTIONAL.

JUVENILE FACILITY MONITORING SURVEY

A. Facility Identification and Classification

1. Name: _____

2. Address: _____

3. Contact Person: _____

4. Telephone Number: _____

5. Capacity: Adult: _____ Juvenile: _____

6. Ownership:

   A. _____ Public
   B. _____ Private

7. Is the facility secure?

   A. _____ Yes
   B. _____ No

8. Type of facility:

   A. _____ Adult jail
   B. _____ Adult lockup
   C. _____ Secure detention facility
   D. _____ Secure correctional facility
   E. _____ Other _____

B. Compliance Information: Deinstitutionalization of Status Offenders and Non-Offenders

9. Reporting period: _____

10. Number of accused status offenders and non-offenders held 24 hours or more during the report period, excluding those held pursuant to a judicial determination that the juvenile violated a valid court order.

    #_____

11. Number of adjudicated status offenders and non-offenders held during the report period, excluding those held pursuant to a judicial determination that the juvenile violated a valid court order.

    #_____

12. Number of status offenders held during the report period pursuant to a judicial determination that the juvenile violated a valid court order.

    #_____

13. What are the constraints on compliance (check those which are applicable)?

    A. _____ Lack of funds
    B. _____ Legislation restrictions
    C. _____ Community resistance
    D. _____ Administrative restrictions
    E. _____ Court restrictions
    F. _____ Other _____

C. Compliance Information: Separation of Juveniles and Adults

14. Reporting period: _____

15. Can the facility be used for the secure detention and confinement of juvenile offenders and adult criminal offenders?

    A. _____ Yes
    B. _____ No

16. During the last 12 months, has the facility held:

    A. _____ Juvenile offenders only
    B. _____ Adult offenders only
    C. _____ Adult and juvenile offenders
    (If the answer is "C", answer questions #17-19.)

17. What was the total number of juvenile offenders and non-offenders held during the report period?

    #_____

18. Does the facility provide separation of juveniles and adult criminal offenders (include inmate trustees)?

    A. _____ Sight and sound separation
    B. _____ Sight separation only
    C. _____ Sound separation only
    D. _____ No separation

19. What are the constraints on compliance (check those which are applicable)?

A. _____ Lack of funds
B. _____ Legislation restrictions
C. _____ Community resistance
D. _____ Administrative restrictions
E. _____ Court restrictions
F. _____ Physical restrictions
G. _____ Other _____

D. Compliance Information: Jail Removal
(Complete this section if the facility is an adult jail or lockup)

20. Reporting period: _____

21. Has the facility held juveniles during the last 12 months?

A. _____ Yes
B. _____ No
(If the answer is "Yes", answer questions 22-25)

22. Number of juvenile criminal-type offenders held longer than six hours during the report period.

#_____

23. Number of accused and adjudicated status offenders or non-offenders held during the report period.

#_____

24. Is this facility in a county which meets the OJJDP removal exception?

A. _____ Yes
B. _____ No
C. _____ Unknown

25. Number of juveniles accused of serious crimes against persons held less than 48 hours during the report period.

#_____

E. Inspection Information

26. Date of current inspection: _____/_____/_____
month day year

27. Date of last inspection: _____/_____/_____
month day year

28. Who conducted the inspection?

A. _____ RPU
B. _____ CJC
C. _____ State correctional agency
D. _____ State social services agency
E. _____ State life safety agency
F. _____ Court
G. _____ Facility self-report
H. _____ Private contractor
I. _____ Other _____

29. Name of person certifying data: _____

30. Signature of person certifying data: _____

31. Title of person certifying data: _____

32. Comments: _____

INSTRUCTIONS
"Juvenile Facility Monitoring Survey"

The following are instructions for completing the "Juvenile Facility Monitoring Survey." If the information is unknown, enter "unknown", and state the reason(s) such information is not available.

A. Facility Identification and Classification

1. Name:

   Enter name of facility.

2. Address:

   Enter address of facility.

3. Contact person:

   Enter name of individual who is the primary contact regarding data on this facility.

4. Telephone number:

   Enter phone number of contact person.

5. Capacity:

   Enter the rated or established capacity this facility has for both adults and juveniles.

6. Ownership:

   Enter a check next to the appropriate type of ownership.

7. Is the facility secure?

   Enter a check next to the appropriate response.

8. Type of Facility:

   Enter a check next to the appropriate type.

B. Compliance Information: Deinstitutionalization of Status Offenders and Non-Offenders

The information required in this section concerns those public and private juvenile residential facilities which have been classified as a secure detention or correctional facility as defined in the current OJJDP regulations.

9. Reporting period:

   Enter the period of time for which information is being recorded.

10. Number of accused status offenders and non-offenders held 24 hours or more during the report period, excluding those held pursuant to a judicial determination that the juvenile violated a valid court order.

    Write in the number of accused status offenders and non-offenders held 24 hours or more in the facility during the report period. This number should not include (1) accused status offenders or non-offenders held less than 24 hours following initial police contact, (2) accused status offenders or non-offenders held less than 24 hours following initial court apearance, or (3) status offenders accused of violating a valid court order for which a probable cause hearing was held during the 24-hour grace period.

    The 24-hour period should not include non-judicial days. This provision is meant to accommodate weekends and holidays only.

    Where a juvenile is admitted on multiple offenses, the most serious offense should be utilized as the official offense for purposes of monitoring compliance.

11. Number of adjudicated status offenders and non-offenders held during the report period, excluding those held pursuant to a judicial determination that the juvenile violated a valid court order.

    Write in the number of adjudicated status offenders and non-offenders held in the facility during the report period. This number should not include those status offenders found in a violation hearing to have violated a valid court order.

    Where a juvenile is admitted on multiple offenses, the most serious offense should be utilized as the official offense for purposes of monitoring compliance.

12. Number of status offenders held during the report period pursuant to a judicial determination that the juvenile violated a valid court order.

    Write in the total number of status offenders accused of violating a valid court order pursuant to a judicial determination, based on a hearing during the 24-hour grace period, that there is probable cause to believe the juvenile violated the court order and the number of status offenders found in a violation hearing to have violated a valid court order.

13. What are the contraints on compliance?

    Enter a check(s) which indicate the major constraint impeding the facility's compliance with the deinstitutionalization of status offenders and non-offenders.

C. Compliance Information: Separation of Juveniles and Adults

The information required in this section concerns the separation of juveniles and adults in residential facilities which can be used for the secure detention and confinement of both juvenile offenders and adult criminal offenders.

14. Reporting period:

Enter the period of time for which information is being recorded.

15. Can the facility be used for the secure detention and confinement of juvenile offenders and adult criminal offenders?

Enter a check next to the appropriate response. A "yes" response means that the facility by statute, certification, or licensing "can be used" to detain juveniles but does not necessarily mean it "was" used to detain juveniles.

16. During the last 12 months, has the facility held:

A. Juvenile offenders only
B. Adult offenders only
C. Adult and juvenile offenders

Enter a check next to appropriate response. If the response is "C", answer questions 17, 18, and 19. If the response is "A" or "B", move to question 20.

17. What was the total number of juvenile offenders and non-offenders held during the report period?

Enter the number of juvenile offenders and non-offenders held in the facility during the report period. This number should not include other individuals accused of having committed a criminal offense or convicted of a criminal offense and individuals subject to the jurisdiction of a court other than juvenile court.

18. Does the facility provide separation of juveniles and adult criminal offenders (include inmate trustees)?

Separation means adult inmates and juveniles cannot see each other and no conversation is possible (sight and sound). This prohibition seeks as absolute a separation as possible and permits no more than haphazard or accidental contact between juveniles and incarcerated adults. Areas in which separation must be achieved includes, but is not limited to, admissions, sleeping, toilet and shower, dining, recreational, educational, vocational, transportation, and health care. Separation may be established through architectural design or time phasing use of the area to prohibit contact by juveniles and adult offenders. The elimination of contact includes contact with adult trustees.

19. What are the constraints on compliance?

Enter a check(s) which indicates the major constraint impeding the facility compliance with separating juveniles and adults.

D. Compliance Information: Jail Removal

Complete this section if the facility is an adult jail or lockup. The information required in this section concerns the removal of juveniles from adult jails and lockups.

20. Reporting period:

Enter the period of time for which information is being recorded.

21. Has the facility held juveniles during the last 12 months?

Enter a check next to the appropriate response. If the response is "Yes", answer questions 22, 23, 24, and 25. If the response is "No", move to question 26.

22. Number of juvenile criminal-type offenders held longer than six hours during the report period.

Enter the number of juvenile criminal-type offenders held in the facility in excess of six hours during the report period. This number should include those juveniles accused of serious crime against persons held in those counties meeting the removal exception criteria. This number should not include (1) status offenders and non-offenders held and, (2) criminal-type offenders held less than six hours.

23. Number of accused and adjudicated status offenders or non-offenders held during the report period.

Enter the total number of status offenders and non-offenders held for any period of time in the facility, including those held for less than six hours.

24. Is this facility in a county which meets the OJJDP removal exception?

Enter a check next to appropriate response. If the answer is "Yes" or "Unknown", complete question 25. If the answer is "No" move to question 26.

25. Number of juveniles accused of serious crimes against persons held less than 48 hours during the report period.

Enter the number of juveniles accused of serious crime against persons which are held less than 48 hours in the facility.

E. Inspection Information

26. Date of current inspection:

Enter the date that the facility was inspected for purposes of monitoring compliance with deinstitutionalization, separation and jail removal.

27. Date of last inspection:

Enter the date that the facility was last inspected for purposes of monitoring compliance with deinstitutionalization, separation and jail removal.

28. Who conducted the inspection?

Enter the most appropriate response which describes the agency conducting the inspection.

29, 30, 31. Name, signature and title of person certifying the data.

The individual certifying the data on this form should type or print their name on 29 and should provide their signature and title on items 30 and 31.

32. Comments:

Enter any comments which should accompany this survey.

DEFINITIONS

Secure Detention or Correctional Facilities --

(A) Any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or non-offenders; or

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

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

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

Juvenile who is accused of having committed an offense -- A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

Juvenile who has been adjudicated as having committed an offense -- A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.

Juvenile offender -- An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law, i.e., a criminal-type offender or a status offender.

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

Status offender -- A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

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

Lawful custody -- The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

Other individual accused of having committed a criminal offense -- An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction.

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

Adult jail -- A locked facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

Adult lockup -- Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold person after they have been formally charged.

Serious crime against person -- The juvenile must be accused of a crime to include: criminal homicide, forcible rape, mayhem, kidnapping, aggravated assault, robbery, and extortion accompanied by threats of violence, or others as designated by the State and approved by OJJDP.

CHECKLIST TO DETERMINE VALID COURT ORDER VIOLATIONS

This checklist may be used to determine whether an individual non-criminal juvenile offender (i.e., status offender) was under a valid court order and whether such juvenile has either been accused of violating valid court order or found to be in violation of a valid order. Such determination may result in his/her placement in a secure facility pursuant to Section 223(a)(12)(A) of the JJDP Act, as amended.

A. DETERMINING WHETHER A VALID COURT ORDER EXISTS

1. Was the juvenile brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority?

   _____ Yes
   _____ No
   _____ Unknown

2. Was the order one which regulated the future conduct of the juvenile?

   _____ Yes
   _____ No
   _____ Unknown

3. Was a hearing conducted which observed proper procedures?

   _____ Yes
   _____ No
   _____ Unknown

4. Did the court enter a judgment and/or remedy in accord with established legal principles?

   _____ Yes
   _____ No
   _____ Unknown

5. Did the juvenile in question receive adequate and fair warning of the consequences of violating the order at the time it was issued?

   _____ Yes
   _____ No
   _____ Unknown

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

   _____ Yes
   _____ No
   _____ Unknown

7. Was such warning reflected in the court record and proceedings, (i.e., noted in transcript or copy placed in court file)?

_____ Yes
_____ No
_____ Unknown

If there is a "no" or "unknown" response to any one of the above seven questions, then a valid court order did not exist, thus the juvenile in question can not be securely detained pursuant to the valid court order provision of Section 223(a)(12)(A) of the JJDP Act, as amended.

B. DETERMINING WHETHER A JUVENILE ACCUSED OF VIOLATING A VALID COURT ORDER MAY BE SECURELY DETAINED

8. Was there a judicial determination, based upon a hearing before a court of competent jurisdiction, that there was probable cause to believe the juvenile violated a valid court order?

_____ Yes
_____ No
_____ Unknown

9. If the juvenile was in secure detention at the time of the hearing, was the probable cause hearing held during the 24-hour grace period permitted for a non-criminal juvenile offender (i.e., status offender) under OJJDP monitoring policy?

_____ Yes
_____ No
_____ Unknown

10. Was the juvenile held for protective purposes or to assure the juvenile's appearance at the violation hearing, as provided or prescribed by State law?

_____ Yes
_____ No
_____ Unknown

11. Was the juvenile held, pending a violation hearing, within the maximum length of time permitted by State law?

_____ Yes
_____ No
_____ Unknown

12. Did the judge presiding over the probable cause hearing determine that all elements of a valid court order exist (i.e., items 1 through 7 of this checklist)?

_____ Yes
_____ No
_____ Unknown

13. Did the judge presiding over the probable cause hearing determine that the applicable due process rights were afforded the juvenile in connection with either (1) the initial hearing at which the court order was rendered or (2) the probable cause hearing?

_____ Yes
_____ No
_____ Unknown*

(*If the response to item 13 is "Unknown", were each of the following due process rights provided in connection with either (1) the initial hearing at which the court order was rendered or (2) the probable cause hearing?)

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

_____ Yes
_____ No
_____ Unknown

(B) The right to a hearing before a court;

_____ Yes
_____ No
_____ Unknown

(C) The right to an explanation or the nature and consequences of the proceeding;

_____ Yes
_____ No
_____ Unknown

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

_____ Yes
_____ No
_____ Unknown

(E) The right to confront witnesses;

_____ Yes
_____ No
_____ Unknown

(F) The right to present witnesses;

_____ Yes
_____ No
_____ Unknown

(G) The right to have a transcript or record of the proceedings;

_____ Yes
_____ No
_____ Unknown

(H) The right of appeal to an appropriate court.

_____ Yes
_____ No
_____ Unknown

If the answer is "no" or "unknown" to any one of the questions in items 8 through 13 above, then the juvenile accused of violating a valid court order and held in a secure facility beyond the 24-hour grace period permitted for non-criminal juvenile offenders (i.e., status offenders) under the OJJDP monitoring policy is for the purposes of monitoring, reported as a violation incident to Section 223(a)(12)(A) and is <u>not</u> considered eligible to securely detain under the valid court order provision.

C. DETERMINING WHETHER A JUVENILE FOUND TO HAVE VIOLATED A VALID COURT ORDER MAY BE SECURELY HELD

14. Was there a judicial determination, based upon a hearing before a court of competent jurisdiction, that the juvenile violated a valid court order?

_____ Yes
_____ No
_____ Unknown

15. Did the judge presiding over the violation hearing determine that all elements of a valid court order exist (i.e., items 1 through 7 of this checklist)?

_____ Yes
_____ No
_____ Unknown

16. Did the judge presiding over the violation hearing determine that the applicable due process rights were afforded the juvenile in connection with the violation hearing?

_____ Yes
_____ No
_____ Unknown*

(*If the response to item 16 is "Unknown" were each of the following due process rights provided in connection with the violation hearing?)

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

_____ Yes
_____ No
_____ Unknown

(B) The right to a hearing before a court;

_____ Yes
_____ No
_____ Unknown

(C) The right to an explanation or the nature and consequences of the proceeding;

_____ Yes
_____ No
_____ Unknown

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

_____ Yes
_____ No
_____ Unknown

(E) The right to confront witnesses;

_____ Yes
_____ No
_____ Unknown

(F) The right to present witnesses;

_____ Yes
_____ No
_____ Unknown

(G) The right to have a transcript or record of the proceedings;

_____ Yes
_____ No
_____ Unknown

(H) The right of appeal to an appropriate court.

_____ Yes
_____ No
_____ Unknown

17. Did the judge presiding over the violation hearing determine there was no less restrictive alternative appropriate to the needs of the juvenile and the community?

_____ Yes
_____ No
_____ Unknown

If the answer is "no" or "unknown" to any one of the questions in items 14 through 17 above, then the juvenile found to have violated a court order and held in a secure facility is, for the purposes of monitoring, reported as a violation incident to Section 223(a)(12)(A) and is not considered eligible to be securely held under the valid court order procedures.

D. DETERMINING WHETHER THE JUVENILE IS A NON-OFFENDER

18. Was the juvenile a non-offender such as an abused, dependent or neglected child?

_____ Yes
_____ No
_____ Unknown

If the answer to question 18 is "yes", then the juvenile in question can not be securely detained pursuant to the valid court order provision of Section 223(a)(12)(A) of the JJDP Act, as amended.

THIS FORM IS A TECHNICAL ASSISTANCE TOOL AND ITS USE IS OPTIONAL

STATE MONITORING REPORT

A. GENERAL INFORMATION

1. NAME AND ADDRESS OF STATE MONITORING AGENCY

_____

_____

_____

2. CONTACT PERSON REGARDING STATE REPORT

Name:_____ Phone #:_____

3. DOES THE STATE'S LEGISLATIVE DEFINITION OF CRIMINAL-TYPE OFFENDER, STATUS OFFENDER, OR NON-OFFENDER DIFFER WITH THE OJJDP DEFINITION CONTAINED IN THE CURRENT OJJDP REGULATIONS?

_____

_____

IF YES, HOW? _____

_____

_____

_____

_____

_____

_____

4. (To be answered only if response to item 3 above is yes.)
DURING THE STATE MONITORING EFFORT WAS THE FEDERAL DEFINITION OR STATE DEFINITION FOR CRIMINAL-TYPE OFFENDER, STATUS OFFENDER AND NON-OFFENDER USED? _____

_____

_____

SECTION 223(a)(12)(A)

B. DEINSTITUTIONALIZATION OF STATUS OFFENDERS AND NON-OFFENDERS

The information required in this section concerns those public and private juvenile residential facilities which have been classified as a secure detention or correctional facility as defined in the current OJJDP regulations.

1. BASE REPORTING PERIOD _____

_____

CURRENT REPORTING PERIOD _____

_____

Enter the period of time for which information is being recorded to measure compliance with Section 223(a)(12)(A).

2. NUMBER OF PUBLIC AND PRIVATE JUVENILE DETENTION AND CORRECTIONAL FACILITIES.

Enter the number of juvenile residential facilities which have been classified as public and private secure detention and correctional facilities as defined in the OJJDP regulations.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____

3. NUMBER OF PUBLIC AND PRIVATE SECURE DETENTION AND CORRECTIONAL FACILITIES RECEIVING AN ON-SITE INSPECTION DURING THE PAST YEAR FOR PURPOSES OF COMPLIANCE WITH SECTION 223(a)(12)(A).

TOTAL_____ PUBLIC_____ PRIVATE_____

4. TOTAL NUMBER OF ACCUSED STATUS OFFENDERS AND NON-OFFENDERS HELD 24 HOURS OR MORE IN PUBLIC AND PRIVATE JUVENILE DETENTION AND CORRECTIONAL FACILITIES DURING THE REPORT PERIOD, EXCLUDING THOSE HELD PURSUANT TO A JUDICIAL DETERMINATION THAT THE JUVENILE VIOLATED A VALID COURT ORDER.

Write in the number of accused status offenders and non-offenders held 24 hours or more in the facilities during the report period. This number should not include (1) accused status offenders or non-offenders held less than 24 hours following initial police contact, (2) accused status offenders or non-offenders held less than 24 hours following initial court appearance, or (3) status offenders accused of violating a valid court order for which a probable cause hearing was held during the 24-hour grace period.

The 24-hour period should not include non-judicial days. This provision is meant to accommodate weekends and holidays only.

Where a juvenile is admitted on multiple offenses, the most serious offense should be utilized as the official offense for purposes of monitoring compliance.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____

5. TOTAL NUMBER OF ADJUDICATED STATUS OFFENDERS AND NON-OFFENDERS HELD IN PUBLIC AND PRIVATE JUVENILE DETENTION AND CORRECTIONAL FACILITIES DURING THE REPORT PERIOD, EXCLUDING THOSE HELD PURSUANT TO A JUDICIAL DETERMINATION THAT THE JUVENILE VIOLATED A VALID COURT ORDER.

Write in the number of adjudicated status offenders and non-offenders held in the facilities during the report period. This number should not include those status offenders found in a violation hearing to have violated a valid court order.

Where a juvenile is admitted on multiple offenses, the most serious offense should be utilized as the official offense for purposes of monitoring compliance.

	TOTAL	PUBLIC	PRIVATE
Baseline Data	_____	_____	_____
Current Data	_____	_____	_____

6. TOTAL NUMBER OF STATUS OFFENDERS HELD IN ANY SECURE DETENTION OR CORRECTIONAL FACILITIES PURSUANT TO A JUDICIAL DETERMINATION THAT THE JUVENILE VIOLATED A VALID COURT ORDER.

Write in the total number of status offenders accused of violating a valid court order pursuant to a judicial determination, based on a hearing during the 24-hour grace period, that there is probable cause to believe the juvenile violated the court order and the number of status offenders found in a violation hearing to have violated a valid court order.

	TOTAL	PUBLIC	PRIVATE
Current Data	_____	_____	_____

SECTION 223(a)(12)(B)

C. PROGRESS MADE IN ACHIEVING DEINSTITUTIONALIZATION OF STATUS OFENDERS AND NON-OFFENDERS

1. PROVIDE A NARRATIVE SUMMARY REVIEW OF THE PROGRESS MADE IN ACHIEVING THE REQUIREMENTS OF SECTION 223(a)(12)(A). (This summary should briefly discuss the extent of the state's compliance in implementing Section 223(a)(12)(A), including any existing, new, or proposed state legislation or policy which has either positive or negative impact on compliance. Attach additional sheets as necessary.)

2. NUMBER OF ACCUSED AND ADJUDICATED STATUS OFFENDERS AND NON-OFFENDERS WHO ARE PLACED IN FACILITIES WHICH (A) ARE NOT NEAR THEIR HOME COMMUNITY; (B) ARE NOT THE LEAST RESTRICTIVE APPROPRIATE ALTERNATIVE; AND (C) DO NOT PROVIDE THE SERVICES DESCRIBED IN THE DEFINITION OF COMMUNITY-BASED.

DISCUSS THE PROGRESS MADE IN ACHIEVING THE ABOVE. (Attach additional sheets as necessary.)

SECTION 223(a)(13)

D. SEPARATION OF JUVENILES AND ADULTS

The information required in this section concerns the separation of juveniles and adults in residential facilities which can be used for the secure detention and confinement of both juvenile offenders and adult criminal offenders.

Adequate separation means adult inmates and juveniles cannot see each other and no conversation is possible. Separation may be established through architectural design or time phasing use of an area to prohibit simultaneous use by juveniles and adults.

1. BASE REPORTING PERIOD _____

   _____

   CURRENT REPORTING PERIOD _____

   _____

   Enter the period of time for which information is being recorded to measure progress toward compliance with Section 223(a)(13).

2. WHAT DATE HAS BEEN DESIGNATED BY THE STATE FOR FULL COMPLIANCE WITH THE SEPARATION REQUIREMENTS OF SECTION 223(a)(13)?

   _____

3. TOTAL NUMBER OF FACILITIES WHICH CAN BE USED FOR THE SECURE DETENTION AND CONFINEMENT OF BOTH JUVENILES OFFENDERS AND ADULT CRIMINAL OFFENDERS?

   Baseline Data _____

   Current Data _____

4. TOTAL NUMBER OF FACILITIES USED FOR THE SECURE DETENTION AND CONFINEMENT OF BOTH JUVENILE OFFENDERS AND ADULT CRIMINAL OFFENDERS DURING THE PAST TWELVE (12) MONTHS.

   Baseline Data _____

   Current Data _____

5. TOTAL NUMBER OF FACILITIES RECEIVING AN ON-SITE INSPECTION DURING THE PAST YEAR FOR PURPOSES OF COMPLIANCE WITH SECTION 223(a)(13).

   _____

6. TOTAL NUMBER OF FACILITIES USED FOR THE SECURE DETENTION AND CONFINEMENT OF BOTH JUVENILE AND ADULT OFFENDERS WHICH DID NOT PROVIDE ADEQUATE SEPARATION OF JUVENILES AND ADULTS.

   Basline Data _____

   Current Data _____

7. TOTAL NUMBER OF JUVENILE OFFENDERS AND NON-OFFENDERS NOT ADEQUATELY SEPARATED IN FACILITIES WHICH WERE USED FOR THE SECURE DETENTION AND CONFINEMENT OF BOTH JUVENILE OFFENDERS AND ADULT CRIMINAL OFFENDERS DURING THE REPORT PERIOD.

   Baseline Data _____

   Current Data _____

8. PROVIDE A NARRATIVE SUMMARY REVIEW OF THE PROGRESS MADE IN ACHIEVING THE REQUIREMENTS OF SECTION 223(a)(13).
   (This summary should briefly discuss the extent of the state's compliance in implementing Section 223(a)(13), including any existing, new, or proposed state legislation or policy which has either positive or negative impact on compliance. Attach additional sheets as necessary.)

_____

_____

_____

_____

_____

_____

_____

_____

_____

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_____

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_____

SECTION 223(a)(14)

E. REMOVAL OF JUVENILES FROM ADULT JAILS AND LOCKUPS

The information required in this section concerns the removal of juveniles from adult jails and lockups as defined in the current OJJDP regulations.

1. BASE REPORTING PERIOD _____

_____

CURRENT REPORTING PERIOD _____

_____

Enter the period of time for which information is being recorded to measure progress toward compliance with Section 223(a)(14).

2. NUMBER OF ADULT JAILS

Enter the total number of facilities meeting the definition of adult jails as contained in the current OJJDP regulations.

Baseline Data _____

Current Data _____

3. NUMBER OF ADULT LOCKUPS

Enter the total number of facilities meeting the definition of adult lockups as contained in the current OJJDP regulations.

Baseline Data _____

Current Data _____

4. NUMBER OF ADULT JAILS AND LOCKUPS RECEIVING AN ON-SITE INSPECTION DURING THE PAST YEAR FOR PURPOSES OF COMPLIANCE WITH SECTION 223(a)(14).

ADULT JAILS _____

ADULT LOCKUPS _____

_____ TOTAL

5. TOTAL NUMBER OF ADULT JAILS HOLDING JUVENILES DURING THE PAST TWELVE MONTHS.

Baseline Data _____

Current Data _____

6. TOTAL NUMBER OF ADULT LOCKUPS HOLDING JUVENILES DURING THE PAST TWELVE MONTHS.

Baseline Data _____

Current Data _____

7. TOTAL NUMBER OF ADULT JAILS AND LOCKUPS IN AREAS MEETING THE "REMOVAL EXCEPTIONS"

Enter the number of adult jails and lockups which are located in those counties having a low population density pursuant to the removal exception criteria submitted by the State and approved by OJJDP pursuant to the current regulations.

Baseline Data _____

Current Data _____

Provide a listing of those counties which meet the OJJDP approved criteria. (Attach additional sheets as necessary.)

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

8. TOTAL NUMBER OF JUVENILE CRIMINAL-TYPE OFFENDERS HELD SIX (6) HOURS OR MORE IN ADULT JAILS.

Enter the total number of juvenile criminal-type offenders held in all adult jails in excess of six hours during the report period. This number should include those juveniles accused of serious crime against persons held in those counties meeting the removal exception criteria. This number should not include (1) status offenders and non-offenders held (2) criminal-type offenders held less than six hours, and (3) juveniles held in adult lockups.

Baseline Data _____

Current Data _____

9. TOTAL NUMBER OF JUVENILE CRIMINAL-TYPE OFFENDERS HELD SIX (6) HOURS OR MORE IN ADULT LOCKUPS.

Enter the total number of juvenile criminal-type offenders held in all adult lockups in excess of six hours during the report period. This number should include those juveniles accused of serious crime against persons held in those counties meeting the removal exception criteria. This number should not include (1) status offenders and non-offenders held (2) criminal-type offenders held less than six hours, and (3) juveniles held in adult jails.

Baseline Data _____

Current Data _____

10. TOTAL NUMBER OF ACCUSED AND ADJUDICATED STATUS OFFENDERS AND NON-OFFENDERS HELD IN ADULT JAILS OR LOCKUPS.

Enter the total number of status offenders and non-offenders held for any period of time in adult jails and lockups, including those held for less than six hours.

Baseline Data _____

Current Data _____

11. TOTAL NUMBER OF JUVENILES ACCUSED OF SERIOUS CRIME AGAINST PERSONS HELD LESS THAN 48 HOURS IN ADULT JAILS AND LOCKUPS IN AREAS MEETING THE "REMOVAL EXCEPTIONS."

Enter the number of juveniles accused of serious crime against persons which are held less than 48 hours in those adult jails and lockups located in counties meeting the removal exception criteria developed by the State and approved by OJJDP.

Baseline Data _____

Current Data _____

NOTE: The total number of non-compliance instances with Section 223(a)(14) can be derived by adding the data in items E-8, E-9, and E-10 then subtracting from that total the data in item E-11.

12. PROVIDE A NARRATIVE SUMMARY REVIEW OF THE PROGRESS MADE IN ACHIEVING THE REQUIREMENTS OF SECTION 223(a)(14). (This summary should briefly discuss the extent of the state's compliance in implementing Section 223(a)(14), including any existing, new, or proposed state legislation or policy which has either positive or negative impact on compliance. Attach additional sheets as necessary.)

THIS FORM IS A TECHNICAL
ASSISTANCE TOOL AND ITS
USE IS OPTIONAL

REQUEST FOR A FINDING OF FULL COMPLIANCE WITH DE MINIMIS EXCEPTIONS TO SECTION 223(a)(12)(A)

The information required in this form addresses data elements and information needed to request a finding of full compliance with de minimis exceptions to Section 223(a)(12)(A) of the JJDP Act pursuant to the policy and criteria for full compliance with de minimis exceptions as published in the January 9, 1981, Federal Register, Part VII. Refer to the published policy for full and detailed information.

GENERAL INFORMATION

1. NAME AND ADDRESS OF CRIMINAL JUSTICE COUNCIL

_____

_____

_____

_____

2. NAME AND PHONE NUMBER OF CONTACT PERSON

Name: _____ Phone #: _____

A. CRITERION A -- THE EXTENT THAT NON-COMPLIANCE IS INSIGNIFICANT OR OF SLIGHT CONSEQUENCE.

1. Number of accused status offenders and non-offenders held in excess of 24 hours and the number of adjudicated status offenders and non-offenders held in secure detention or secure correctional facilities.

   (The information required in this item must cover the most recent and available 12 months of data or available data for less than 12 months, projected to 12 months in a statistically valid manner.)

ACCUSED		ADJUDICATED		TOTAL
_____	+	_____	=	_____

2. Total juvenile population under age 18 of the State according to the most recent available U.S. Bureau of Census data or census projection.

   _____

   Source and year of population data. _____

   _____

3. Is the data used 12 months of actual data or less than 12 months of actual data projected to cover 12 months. (check one)

   Actual _____ Projected _____

4. What dates does the 12 months of data or less than 12 months of data actually cover.

   _____

5. If the data was projected to cover a 12-month period, provide the specific data used in making the projection and the statistical method used to project the data.

	ACCUSED		ADJUDICATED		TOTAL
Data:	_____	+	_____	=	_____

   Statistical Method of Projection: _____

   _____

   _____

   _____

   _____

   _____

   _____

6. Calculation of status offender and non-offender detention and correctional institutionalization rate per 100,000 population under age 18.

Status offenders and non-offenders held (total, #1 above) = _____ (a)

Population under age 18 (#2 above) divided by 100,000 = _____ (b)

Rate _____ (a) ÷ _____ (b) = _____

NOTE: If the rate is less than 5.8 per 100,000 population, the State does not have to respond to criterion B and C contained in Section B and C of this format.

7. (Option)
Provide additional pertinent statistics deemed relevant in determining the extent to which the number of non-compliant incidences is insignificant or of slight consequence. (attach additional sheets as necessary)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

B. CRITERION B -- THE EXTENT TO WHICH THE INSTANCES OF NON-COMPLIANCE WERE IN APPARENT VIOLATION OF STATE LAW OR ESTABLISHED EXECUTIVE OR JUDICIAL POLICY.

1. Provide a brief narrative discussion to describe the non-compliant incidences. This description must include a statement of the circumstances surrounding the apparent instances of non-compliance. (attach additional sheets as necessary)

2. Describe whether the instances of non-compliance were in apparent violation of State law, established executive policy or established judicial policy. Attach a copy of the pertinent or applicable law and/or policy.

C. CRITERION C -- THE EXTENT TO WHICH AN ACCEPTABLE PLAN HAS BEEN DEVELOPED.

A plan is to be developed to eliminate the non-compliant incidents within a reasonable time when the instances of non-compliance (1) indicate a pattern or practice or (2) appear to be sanctioned by or consistent with State law or established executive or judicial policy, or both.

1. Do the instances of non-compliance indicate a pattern or practice?

   Yes _____ No _____

2. Do the instances of non-compliance appear to be sanctioned or allowable by State law, established executive policy or established judicial policy?

   Yes _____ No _____

NOTE: If either or both of the answers to items (1) and (2) above are "yes", proceed to item 4. If both answers are "no", complete item (3) only.

3.a. Explain the basis for determining that the instances of non-compliance do not indicate a pattern or practice. (attach additional sheets as necessary)

_____

_____

_____

_____

_____

_____

b. Explain the basis for determining that the instances of non-compliance are in apparent violation of State law, executive policy, or judicial policy. (attach additional sheets as necessary)

_____

_____

_____

_____

_____

_____

4. Develop a plan to eliminate the non-compliant instances within a reasonable time. The following must be addressed as elements of an acceptable plan.

   a. If the instances of non-compliance are sanctioned by or consistent with State law or executive or judicial policy, then the plan must detail a strategy to modify the law or policy to prohibit non-compliant placement so that it is consistent with the Federal deinstitutionalization requirement.

   b. If the instances of non-compliance were in apparent violation of State law or executive or judicial policy, but amount to or consitute a pattern or practice rather than isolated instances of non-compliance, the plan must detail a strategy which will be employed to rapidly identify violations and ensure the prompt enforcement of applicable State law or executive or judicial policy.

   c. In addition, the plan must be targeted specifically to the agencies, courts, or facilities responsible for the placement of status offenders and non-offenders in non-compliance with Section 223(a)(12)(A). It must include a specific strategy to eliminate instances of non-compliance through statutory reform, changes in facility policy and procedure, modification of court policy.

Summary of Participation in the JJDP Act
and Compliance with Sections 223(a)(12), (13), and (14)
for FY 1983 Formula Grant Eligibility

May 9, 1983

The initial year States and territories could participate in the JJDP Act was FY 75. During the initial year of participation, 45 of the 56 eligible States and territories received an award. Six States withdrew from participation prior to the FY 76 awards. This made a total of 39 States and territories participating for the full fiscal year. During FY 76, four additional States and territories began participation, thus making a total of 43 participating States.

Four more States began participation in FY 77 which made a total of 47 States receiving an award. However, two States withdrew from participation prior to the FY 78 award, thus making a total of 45 States and territories participating for the full 1977 fiscal year.

During FY 78, another five States began participation. No State receiving a FY 78 award withdrew from participation, thus a total of 50 States participated during the full 1978 fiscal year. In FY 79, an additional territory became eligible for participation, thus raising the number of eligible States and territories to 57. During FY 79, no State withdrew participation, but one additional territory began participation. This made a total of 51 States and territories participating during FY 79. During FY 80, one State withdrew, thus 50 States participated in the Act. During FY 81, one State renewed participation, one State began participation, and one State withdrew leaving 51 States and territories participating in the JJDP Act of 1974, as amended. During FY 82 one State renewed participation making a total of 52 participating States and territories. To date, during FY 1983, the number of participating States is unchanged. The five States not participating in the Act are:

Nevada
North Dakota
Oklahoma
South Dakota
Wyoming

Section 223(a)(15) requires States to provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of subparagraphs (12)(A), (13) and (14) are met, and for annual reporting of the results of such monitoring to the Administrator. December 31st of each year has been established as the date for submitting the annual monitoring report. According to the most recently submitted and reviewed State Monitoring Report, the following, to date, is a summary of compliance with Section 223(a)(12)(A) and (13).

SECTION 223(a)(12)(A)

Deinstitutionalization of Status Offenders and Non-Offenders

A. Of the 52 participating States, 43 have participated for five or more years and are thus required to achieve full compliance with Section 223(a)(12)(A) of the Act to maintain eligibility for FY 83 Formula Grant funds. Of these 43 States, a determination has been made that the following 42 States and territories are in full compliance pursuant to the policy and criteria for full compliance with de minimis exceptions.

American Samoa
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Guam
Idaho
Illinois
Indiana
Iowa
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Montana
New Hampshire
New Jersey
New Mexico
New York
Ohio
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
Tennessee
Texas
Trust Territories
Vermont
Virginia
Virgin Islands
Washington
Wisconsin

One of these 43 States have not to date been found to be in full compliance with the deinstitutionalization requirement. That State is:

Alaska

B. Of the 52 participating States, eight must achieve substantial or better compliance to be eligible for FY 83 formula funds and four of these States (e.g., designated with *) must achieve full compliance for FY 84 formula fund eligibility.

*Alabama
*Hawaii
*Kansas
*Mississippi
North Carolina
Northern Marianas
Utah
West Virginia

All eight have demonstrated substantial or better compliance and the Northern Marianas has been found in full compliance.

C. One of the 52 participating States, Nebraska, must demonstrate progress to maintain eligibility for FY 83 funds and must achieve substantial or better compliance for FY 86 formula fund eligibility.

SECTION 223(a)(13)

Separation of Juveniles and Adult Offenders

There are 34 States which have demonstrated compliance with Section 223(a)(13) of the Act. Sixteen other States have reported progress while two reported no progress.

Those 34 States which have been found in compliance with the separation requirements are:

American Samoa
Arizona
Arkansas
Connecticut
Delaware
District of Columbia
Georgia
Guam
Hawaii
Illinois
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Nebraska
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Northern Marianas
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
Wisconsin

The 16 States reporting progress are:

Alabama
Alaska
California
Colorado
Florida
Idaho
Indiana
Iowa
Kansas
Mississippi
Missouri
Montana
Ohio
Oregon
Trust Territories
West Virginia

The two States reporting no progress are Tennessee and Kentucky.

SECTION 223(a)(14)

Removal of Juveniles from Adult Jails and Lockups

All participating States and territories must demonstrate full compliance or substantial compliance (i.e., 75% reduction) with the jail removal requirement by December 1985. Eligibility for FY 1983 formula grant funds is not dependent upon the States' level of compliance with the jail removal requirement of Section 223(a)(14). Refer to the "Discussion" section of this paper for information on the number of juveniles held in adult jails and lockups.

DISCUSSION

The summary of State participation in the JJDP Act and compliance with the deinstitutionalization and separation requirements of Sections 223(a)(12) and (13) of the Act is based upon the 1981 monitoring reports which determined States' eligibility for FY 1983 formula funds (10/1/82 - 9/30/83).

Attached are two fact sheets showing the number of status offenders and non-offenders held in secure detention and correctional facilities and the number of juveniles held in regular contact with incarcerated adult persons. The data presented represents a 12-month period and was actual data for some States and projected to cover a 12-month period for other States. All current data is that provided as "current data" in the 1981 monitoring reports. The baseline data for the number of status offenders and non-offenders held in secure detention and correctional facilities is that provided as "baseline data" in the 1979 reports. The baseline data for the number of juveniles held in regular contact with adult offenders is that provided as "baseline data" in the 1981 reports. Only participating States are included in the figures.

The nationwide baseline data for the number of status offenders and non-offenders held in secure detention and correctional facilities was determined to be 199,341. The nationwide current data showed 22,833 status offenders and non-offenders held in secure detention and correctional facilities. Thus, by comparing baseline and current data, the number of status offenders and non-offenders held in secure facilities has been reduced by 88.5% over the past 5 to 7 years. According to the 1980 census, approximately 62,132,000 juveniles under the age of 18 reside in the participating States. Thus, the number of status offenders and non-offenders currently held computes to a national ratio of 36.7 status offenders and non-offenders securely held per 100,000 juvenile population under age 18. This national ratio is in excess of the maximum rate which an individual State must achieve to be eligible for a finding of full compliance with the deinstitutionalization requirements of Section 223(a)(12)(A) of the JJDP Act, pursuant to OJJDP's policy and criteria for de minimis exceptions to full compliance. It should also be noted that these figures do not include those status offenders and non-offenders held less than 24 hours during weekdays and those held up to an additional 48 hours (i.e., a maximum of 72 total hours) over the weekend.

The number of juveniles held in regular contact with incarcerated adults has reduced from 97,847 to 27,552. This computes to a 71.8% reduction over approximately a 5-year period.

Based upon the number of status offenders and non-offenders currently held in secure facilities, which is a 88.5% reduction in the number held five or more years ago, and based upon the fact that 43 States and territories have been found in full compliance with de minimis exceptions, it is evident that substantial progress has been made in attaining the deinstitutionalization objective of the Act. However, considering, as stated above, that status offenders held less than 24 hours are not included and considering that States can securely hold status offenders at a level acceptable for a finding of full compliance pursuant to the de minimis policy, it is also evident that the deinstitutionalization objectives have not been fully met. It is also noted that OJJDP determines compliance a Statewide aggregate data, thus cities, counties, regions or districts may not have achieved local compliance in their efforts to deinstitutionalize.

The efforts to deinstitutionalize status offenders and non-offenders and to separate juveniles from incarcerated adults is a continual strive to achieve the objective of the Act in all aspects and in all localities. Once achieved, the same deligent effort must be provided by the Federal, State and local agencies to ensure compliance is maintained. The impetus to achieve and maintain compliance must continue at all levels or gradually there will be lessening of the thrust and progress will slowly dwindle.

States' eligibility for FY 1983 formula funds is based upon the 1981 monitoring report and the subsequent finding of compliance based upon the review of that report. The date that OJJDP released the final formula grant regulations, which States must adhere in monitoring and reporting compliance, corresponds to the exact date which the 1981 reports were due (i.e., December 31, 1981). Thus, the first monitoring report which States must show the extent of compliance with the jail removal requirement of Section 223(a)(14) of the Act is the 1982 report. To date, OJJDP has received most of the 1982 reports and they are currently being reviewed and analyzed by OJJDP and are being modified and revised, as needed, by the States.

Since all reports have not been reviewed and analyzed and, as stated above, since the 1982 reports are the first to reflect State progress towards jail removal, OJJDP does not have information available from State monitoring reports to indicate how many juveniles are held in adult jails and lockups. However, other sources of information and data are available to OJJDP which provides an indication of the extent to which juveniles are detained in adult jails.

There is a great variation in the estimates of the annual number of children who are held in adult jails and lockups. One of the earliest projections and perhaps the highest is that of Rosemary Sarri, who in her 1974 publication entitled Under Lock and Key: Juveniles in Jails and Detention suggested that 500,000 juveniles are incarcerated in adult jails and lockups each year. The University of Illinois, Community Research Center (CRC) documented in a 1978 survey that 170,714 juveniles where held in adult jails. Given the actual survey response rate, this figure is an estimated actual total of 213,647 juveniles held annually in adult jails. In addition, CRC documented 11,592 juveniles in adult lockups. Again, given the response rate to the survey, the estimated actual number of juveniles held in adult lockups is 266,261. This yields an overall estimate of 479,908 persons below the age of eighteen held for any length of time in an adult jail or lockup during 1978.

OJJDP conducted a survey during the first six months of 1981 to respond to a report required by Congress pursuant to the jail removal amendment to the JJDP Act. Reiterating that only 35 of the 50 States had reported as of the deadline for the return of the survey, this response showed that the number of juveniles detained in adult jails and lockups for any given day during January - June of 1981 was 1,778. The most recent data on juveniles in jails comes from the OJARS's Bureau of Justice Statistics. In a February 1983 BJS Bulletin entitled Jail Inmates 1982, a U.S. Bureau of the Census survey was released which showed the number of juveniles held in adult jails. Significantly, this survey did not include adult lockups and this is critical with respect to juveniles because it is the police lockup and the drunk tank to which alleged juvenile offenders are so often relegated pending court appearance. The 1982 BJS/Bureau of Census data shows and the Bulletin dated February 1983 states the following:

Despite persistent efforts to remove juveniles from adult facilities, the estimated number of juveniles in adult jails in June 1982 (1,700) was unchanged from that reported more than 4 years earlier. Juvenile status is a legal concept denoting that the individual will appear before a juvenile court for adjudication or placement rather than before an adult court. In most States, juveniles are persons who have not reached their 18th birthday, but in a few States juvenile status ends with the 16th birthday. In addition, most States allow juveniles to be tried as adults if circumstances warrant it. Consequently, it is possible for an inmate with adult status to be younger than some of the inmates with juveniles status.

The average daily inmate population for juveniles was not reported for the year ending on June 30, 1982, nor was the average length of stay. If the average daily population approximates the number in jail on June 30 and if an assumption of an average stay of 2 days is made--an assumption considered reasonable by juvenile justice researchers--then more than 300,000 juveniles would have been held in jail at some time during the 12-month period.

As shown, there is much data and information on the placement of juveniles in adult jails and lockups. Regardless of the true figure, it is clear that the practice of jailing juveniles has not diminished during the last decade.

Attachments

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DW/5-9-83

TITLE:

SECTION 223(a)(12)

Number of Status Offenders and Non-Offenders Held in Secure Facilities*A

	Baseline*B	Current*C
ALABAMA	4,836	412
ALASKA	485	18
ARIZONA	4,410	632
ARKANSAS	3,702	0
CALIFORNIA	34,216	3,470
COLORADO	6,123	370
CONNECTICUT	699	125
DELAWARE	374	0
DIST. OF COLUMBIA	178	11
FLORIDA	9,188	22
GEORGIA	4,047	432
HAWAII	681	567
IDAHO	1,836	88
ILLINOIS	5,391	1,902
INDIANA	7,494	1,296
IOWA	1,204	11
KANSAS	3,826	576
KENTUCKY	4,849	1,104
LOUISIANA	3,179	111
MAINE	41	0
MARYLAND	857	4
MASSACHUSETTS	37	0
MICHIGAN	14,344	612
MINNESOTA	6,309	31
MISSISSIPPI	1,170	244
MISSOURI	4,786	366
MONTANA	1,224	85
NEBRASKA	546*D	624
NEVADA	Not Participating	
NEW HAMPSHIRE	200	1
NEW JERSEY	217	57
NEW MEXICO	2,376	48
NEW YORK	7,933	4
NORTH CAROLINA	2,678	580
NORTH DAKOTA	Not Participating	
OHIO	16,552	3,259
OKLAHOMA	Not Participating	
OREGON	4,110	190
PENNSYLVANIA	3,634	45
RHODE ISLAND	1,572	55
SOUTH CAROLINA	1,568	184
SOUTH DAKOTA	Not Participating	
TENNESSEE	4,078	2,940
TEXAS	4,722	976
UTAH	2,448	689
VERMONT	218	36
VIRGINIA	6,558	232
WASHINGTON	9,600	131
WEST VIRGINIA	627	113
WISCONSIN	2,847	134
WYOMING	Not Participating	
PUERTO RICO	961	46
AMERICAN SAMOA	4	0
GUAM	228	0
TRUST TERRITORIES	0	0
VIRGIN ISLANDS	178	0
NO. MARIANAS	0	0

TOTALS

Baseline	Current
199,341	22,833

*A - All Data is 12 month actual or projected to cover a 12 month period

*B - Baseline data is that provided as baseline data in 1979 report.

*C - Current data is that provided as current data in 1981 report.

*D - Nebraska baseline data is that provided as baseline data in 1981 report.

TITLE:

SECTION 223(a)(13)

Number of Juveniles Held in Regular Contact With Adults*A

	Baseline*B	Current*B
ALABAMA	3,300	1,104
ALASKA	824	463
ARIZONA	25	0
ARKANSAS	8,724	36
CALIFORNIA	3,041	2,271
COLORADO	4,750	1,537
CONNECTICUT	3	2
DELAWARE	0	0
DIST. OF COLUMBIA	0	0
FLORIDA	1,996	104
GEORGIA	1,769	10
HAWAII	1	0
IDAHO	2,011	?
ILLINOIS	777	0
INDIANA	8,580	2,616
IOWA	1,993	776
KANSAS	1,716	168
KENTUCKY	5,702	5,874
LOUISIANA	3,523	180
MAINE	1,186	0
MARYLAND	229	0
MASSACHUSETTS	0	0
MICHIGAN	0	0
MINNESOTA	3	0
MISSISSIPPI	2,280	108
MISSOURI	3,278	348
MONTANA	1,878	213
NEBRASKA	0	0
NEVADA	Not Participating	
NEW HAMPSHIRE	74	0
NEW JERSEY	42	17
NEW MEXICO	6,696	0
NEW YORK	27	0
NORTH CAROLINA	0	0
NORTH DAKOTA	Not Participating	
OHIO	5,751	1,248
OKLAHOMA	Not Participating	
OREGON	1,798	40
PENNSYLVANIA	3,196*C	14*C
RHODE ISLAND	176	0
SOUTH CAROLINA	3,984	0
SOUTH DAKOTA	Not Participating	
TENNESSEE	7,574	9,806
TEXAS	370	0
UTAH	22	449
VERMONT	0	12
VIRGINIA	5,624	1
WASHINGTON	2,088	4
WEST VIRGINIA	940	138
WISCONSIN	1,857	0
WYOMING	Not Participating	
PUERTO RICO	3	0
AMERICAN SAMOA	0	0
GUAM	0	0
TRUST TERRITORIES	3	2
VIRGIN ISLANDS	13	0
NO. MARIANAS	20	12

TOTALS

Baseline	Current
97,847	27,552

*A - All data is 12 month actual or projected to cover a 12 month period.

*B - Baseline and Current data is that provided as baseline and current in 1981 report.

*C - Pennsylvania data is that provided in 1980 report.