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§ 30.11 What are the Attorney General's obligations in interstate situations?

(a) The Attorney General is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity;

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity; and

(4) Responding pursuant to §30.10 if the Attorney General receives a recommendation from a designated areawide agency transmitted by a single point of contact in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Attorney General uses the procedures in §30.10 if a state process provides a state process recommendation to the Department through a single point of contact.

§ 30.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

(1) *Simplify* means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) *Consolidate* means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) *Substitute* means that a state may use a plan or other document that it has developed for its own purposes to meet federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Attorney General.

(c) The Attorney General reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

§ 30.13 May the Attorney General waive any provision of these regulations?

In an emergency, the Attorney General may waive any provision of these regulations.

PART 31—OJJDP GRANT PROGRAMS

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AUTHORITY: 42 U.S.C. 5601 through 5785; Pub. L. 108–7, 117 Stat. 11; 5 U.S.C. 301.

SOURCE: 60 FR 28440, May 31, 1995, unless otherwise noted.

Subpart A—Formula Grants

GENERAL PROVISIONS

§ 31.1 General.

This subpart 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.

[60 FR 28440, May 31, 1995, as amended at 64 FR 19676, Apr. 21, 1999]

§ 31.2 Statutory authority.

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

§ 31.3 Formula grant plan and applications.

Formula Grant Applications for each Fiscal Year should be submitted to OJJDP by August 1st (60 days prior to the beginning of the fiscal year) or within 60 days after the States are officially notified of the fiscal year formula grant allocations. Beginning with FY 1995 and each subsequent fiscal year, all Formula Grant Applications are due no later than March 31 of the fiscal year for which the funds are allocated.

ELIGIBLE APPLICANTS

§ 31.100 Eligibility.

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

§ 31.101 Designation of State agency.

The Chief Executive of each State which chooses to apply for a formula grant shall establish or designate a State agency as the sole agency for supervising the preparation and administration of the plan. The plan must demonstrate compliance with administrative and supervisory board membership requirements established by the OJJDP Administrator pursuant to section 299 (c) of the JJDP Act. States must have available for review a copy of the State law or executive order establishing the State agency and its authority.

§ 31.102 State agency structure.

The State agency may be a discrete unit of State government or a division or other component of an existing State crime commission, planning agency or other appropriate unit of State government. Details of organization and structure are matters of State discretion, provided that the agency:

(a) Is a definable entity in the executive branch with the requisite authority to carry out the responsibilities imposed by the JJDP Act;

(b) Has a supervisory board (i.e., a board of directors, commission, committee, council, or other policy board) which has responsibility for supervising the preparation and administration of the plan and its implementation; and

(c) Has sufficient staff and staff capability to carry out the board's policies and the agency's duties and responsibilities to administer the program, develop the plan, process applications, administer grants awarded under the plan, monitor and evaluate programs and projects, provide administration/support services, and perform such accountability functions as are necessary to the administration of Federal funds, such as grant close-out and audit of subgrant and contract funds. At a minimum, one full-time Juvenile Justice Specialist must be assigned to the Formula Grants Program by the State agency. Where the State does not currently provide or maintain a full-time Juvenile Justice Specialist, the plan must clearly establish and document that the program and administrative support staff resources currently assigned to the program will temporarily meet the adequate staff requirement, and provide an assurance that at least one full-time Juvenile Justice Specialist will be assigned to the Formula Grants Program by the end of FY 1995 (September 30, 1995).

§ 31.103 Membership of supervisory board.

The State advisory group appointed under section 223(a)(3) may operate as the supervisory board for the State agency, at the discretion of the Governor. Where, however, a State has continuously maintained a broad-based law enforcement and criminal justice supervisory board (council) meeting all the requirements of section 402(b)(2) of the Justice System Improvement Act of 1979, and wishes to maintain such a board, such composition shall continue to be acceptable provided that the board's membership includes the chairman and at least two additional citizen members of the State advisory group. For purposes of this requirement a citizen member is defined as any person who is not a full-time government employee or elected official. Any executive committee of such a board must include the same proportion of juvenile justice advisory group members as are included in the total board membership. Any other proposed supervisory board membership is subject to case by case review and approval of the OJJDP Administrator and will require, at a minimum, "balanced representation" of juvenile justice interests.

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.

[60 FR 28440, May 31, 1995, as amended at 64 FR 19676, Apr. 21, 1999]

§ 31.201 Audit.

The State must assure that it adheres to the audit requirements enumerated in the "Financial and Administrative Guide for Grants, Guide Manual 7100.1 (current edition). Chapter 8 of the Manual contains a comprehensive statement of audit policies and requirements relative to grantees and subgrantees.

§ 31.202 Civil rights.

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

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

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

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

(1) Require that every applicant required to formulate an EEOP in accordance with 28 CFR 42.201 *et seq.*, submit a certification to the State that it has a current EEOP on file, which meets the requirement therein;

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

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

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

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

§ 31.203 Open meetings and public access to records.

The State must assure that the State agency, its supervisory board established pursuant to section 299(c) and the State advisory group established pursuant to section 223(a)(3) will follow

applicable State open meeting and public access laws and regulations in the conduct of meetings and the maintenance of records relating to their functions.

JUVENILE JUSTICE ACT REQUIREMENTS

§ 31.300 General.

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

[60 FR 28440, May 31, 1995, as amended at 64 FR 19676, Apr. 21, 1999]

§ 31.301 Funding.

(a) *Allocation to States.* Funds shall be allocated annually among the States on the basis of relative population of persons under age eighteen. If the amount allocated for Title II (other than parts D and E) of the JJDP Act is less than $75 million, the amount allocated to each State will not be less than $325,000, nor more than $400,000, provided that no State receives less than its allocation for FY 1992. The territories will receive not less than $75,000 or more than $100,000. If the amount appropriated for Title II (other than parts D and E) is $75 million or more, the amount allocated for each State will be not less than $400,000, nor more than $600,000, provided that parts D and E have been funded in the full amounts authorized. For the Territories, the amount is fixed at $100,000. For each of FY's 1994 and 1995, the minimum allocation is established at $600,000 for States and $100,000 for Territories.

(b) *Funds for local use.* At least two-thirds of the formula grant application to the state (other than the section 222(d) State Advisory Group set aside) must be used for programs by local government, local private agencies, and eligible Indian tribes, unless the State applies for and is granted a waiver by the OJJDP. The proportion of pass-through funds to be made available to eligible Indian tribes shall be based upon that proportion of the state youth population under 18 years of age who reside in geographical areas where the tribes perform law enforcement functions. Pursuant to section 223(a)(5)(C) of the JJDP Act, each of the standards set forth in paragraphs (b)(1)(i) through (iii) of this section must be met in order to establish the eligibility of Indian tribes to receive pass through funds:

(1)(i) The tribal entity must be recognized by the Secretary of the Interior as an Indian tribe that performs law enforcement functions as defined in paragraph (b) (2) of this section.

(ii) The tribal entity must agree to attempt to comply with the requirements of section 223(a)(12)(A), (13), and (14) of the JJDP Act; and

(iii) The tribal entity must identify the juvenile justice needs to be served by these funds within the geographical area where the tribe performs law enforcement functions.

(2) *Law enforcement functions* are deemed to include those activities pertaining to the custody of children, including, but not limited to, police efforts to prevent, control, or reduce crime and delinquency or to apprehend criminal and delinquent offenders, and/or activities of adult and juvenile corrections, probation, or parole authorities.

(3) To carry out this requirement, OJJDP will annually provide each state with the most recent Bureau of Census statistics on the number of persons under age 18 living within the state, and the number of persons under age 18 who reside in geographical areas where Indian tribes perform law enforcement functions.

(4) Pass-through funds available to tribal entities under section 223(a)(5)(C) shall be made available within states to Indian tribes, combinations of Indian tribes, or to an organization or organizations designated by such tribe(s), that meet the standards set forth in paragraphs (b)(1)(i)–(iii) of this section. Where the relative number of persons under age 18 within a geographic area where an Indian tribe performs law enforcement functions is too small to warrant an individual subgrant or subgrants, the state may, after consultation with the eligible tribe(s), make pass-through funds available to a combination of eligible tribes within the state, or to an organization or organizations designated by and representing a group of qualifying tribes, or target the funds on the larger tribal jurisdictions within the state.

(5) Consistent with section 223(a)(4) of the JJDP Act, the state must provide for consultation with Indian tribes or a combination of eligible tribes within the state, or an organization or organizations designated by qualifying tribes, in the development of a state plan which adequately takes into account the juvenile justice needs and requests of those Indian tribes within the state.

(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 percent cash match (dollar for dollar), and construction projects funded under section 299C(a)(2) which also require a 100 percent cash match.

(d) *Funds for administration.* Not more than ten percent 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. 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 on an equitable basis. Each annual application must identify uses of such funds.

(e) *Nonparticipating States.* Pursuant to section 223(d), the OJJDP Administrator shall endeavor to make the fund allotment under section 222(a), of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, directly available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of achieving deinstitutionalization of status offenders and nonoffenders, separation of juveniles from incarcerated adults, removal of juveniles from adult jails and lockups, and reducing the disproportionate confinement of minority youth in secure facilities. Absent a request for extension which demonstrates compelling circumstances justifying the reallocation of formula grant funds back to the State to which the funds were initially allocated, or the proceedings under section 223(d), formula grant funds allocated to a State which has failed to submit an application, plan, or monitoring data establishing its eligibility for the funds will, beginning with FY 1995 be reallocated to the nonparticipating State program on September 30 of the fiscal year for which the funds were appropriated. Reallocated funds will be competitively awarded to eligible recipients pursuant to program announcements published in the FEDERAL REGISTER.

§ 31.302 Applicant State agency.

(a) Pursuant to section 223(a)(1), section 223(a)(2) and section 299(c) of the JJDP Act, the State must assure that the State agency approved under section 299(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.

(b) *Advisory group.* Pursuant to section 223(a)(3) of the JJDP Act, the Chief Executive:

(1) Shall establish an advisory group pursuant to section 223(a)(3) of the JJDP Act. The State shall provide a list of all current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in this section of the Act.

(2) Should consider, in meeting the statutory membership requirements of section 223(A)(3) (A)–(E), appointing at least one member who represents each of the following: A locally elected official representing general purpose local government; a law enforcement officer; representatives of juvenile justice agencies, including a juvenile or family court judge, a probation officer, a prosecutor, and a person who routinely provides legal representation to youth in juvenile court; a public agency representative concerned with delinquency prevention and treatment; a representative from a private, nonprofit organization, such as a parents group, concerned with teenage drug and alcohol abuse; a high school principal; a recreation director; a volunteer who works with delinquent or at risk youth; a person with a special focus on the family; a youth worker experienced with programs that offer alternatives to incarceration; persons with special competence in addressing programs of school violence and vandalism and alternatives to expulsion and suspension; and persons with knowledge concerning

learning disabilities, child abuse, neglect, and youth violence.

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

§ 31.303 Substantive requirements.

(a) *Assurances.* The State must certify through the provision of assurances that it has complied and will comply (as appropriate) with sections 223(a)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (16), (17), (18), (19), (20), (21), (22), and (25), and sections 229 and 261(d), in formulating and implementing the State plan. The Formula Grant Application kit provides a form and guidance for the provision of assurances. OJJDP interprets the section 223(a)(16) assurance as satisfied by an affirmation that State law and/or policy clearly require equitable treatment on the required bases; or by providing in the State plan that the State agency will require an assurance of equitable treatment by all Formula Grant subgrant and contract recipients, and establish as a program goal, in conjunction with the State Advisory Group, the adoption and implementation of a statewide juvenile justice policy that all youth in the juvenile justice system will be treated equitably without regard to gender, race, family income, and mentally, emotionally, or physically handicapping conditions. OJJDP interprets the section 223(a)(25) assurance as satisfied by a provision in the State plan for the State agency and the State Advisory Group to promulgate policies and budget priorities that require the funding of programs that are part of a comprehensive and coordinated community system of services as set forth in section 103(19) of the JJDP Act. This requirement is applicable when a State's formula grant for any fiscal year exceeds 105 percent of the State's formula grant for FY 1992.

(b) *Serious juvenile offender emphasis.* Pursuant to sections 101(a)(10) and 223(a)(10) of the JJDP Act, OJJDP encourages States that have identified serious and violent juvenile offenders as a priority problem to allocate formula grant funds to programs designed for serious and violent juvenile offenders at a level consistent with the extent of the problem as identified through the State planning process. Particular attention should be given to improving prosecution, sentencing procedures, providing resources necessary for effective rehabilitation, and facilitating the coordination of services between the juvenile justice and criminal justice systems.

(c) *Deinstitutionalization of status offenders and non-offenders.* Pursuant to section 223(a)(12)(A) of the JJDP Act, the State shall:

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

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

(3) *Federal wards.* Apply this requirement to alien juveniles under Federal jurisdiction who are held in State or local facilities.

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

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

(d) *Contact with incarcerated adults.* (1) Pursuant to section 223(a)(13) of the JJDP Act the State shall:

(i) *Separation.* Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term *contact* includes any physical or sustained sight or sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. A juvenile offender in a secure custody status is one who is physically detained or confined in a locked room or other area set aside or used for the specific purpose of securely detaining persons who are in

law enforcement custody. Secure detention or confinement may result either from being placed in such a room or area and/or from being physically secured to a cuffing rail or other stationary object. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders. Separation must be accomplished architecturally or through policies and procedures in all secure areas of the facility which include, but are not limited to, such areas as admissions, sleeping, and shower and toilet areas. Brief and inadvertent or accidental contact between juvenile offenders in a secure custody status and incarcerated adults in secure areas of a facility that are not dedicated to use by juvenile offenders and which are nonresidential, which may include dining, recreational, educational, vocational, health care, sally ports or other entry areas, and passageways (hallways), would not require a facility or the State to document or report such contact as a violation. However, any contact in a dedicated juvenile area, including any residential area of a secure facility, between juveniles in a secure custody status and incarcerated adults would be a reportable violation.

(ii) In those instances where accused juvenile criminal-type offenders are authorized to be temporarily detained in facilities where adults are confined, the State must set forth the procedures for assuring no sight or sound contact between such juveniles and confined adults.

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

(iv) Those States which, based upon the most recently submitted monitoring report, have been found to be in compliance with section 223(a)(13) may, in lieu of addressing paragraphs (d)(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 delinquents are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of separating juveniles from adult criminals in jails or correctional facilities. A State is not prohibited from placing or transferring an alleged or adjudicated delinquent who reaches the State's age of full criminal responsibility to an adult facility when required or authorized by State law. However, the administrative transfer, without statutory direction or authorization, of 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 age of full criminal responsibility, is prohibited. A State is also precluded from transferring adult offenders to a juvenile correctional authority for placement in a juvenile facility. This neither prohibits nor restricts the waiver or transfer of a juvenile to criminal court for prosecution, in accordance with State law, for a criminal felony violation, nor the detention or confinement of a waived or transferred criminal felony violator in an adult facility.

(2) *Implementation.* The requirement of this provision is to be planned and implemented immediately by each State.

(e) *Removal of juveniles from adult jails and lockups.* Pursuant to section 223(a)(14)of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable for assuring that requirements of this section will be met beginning after December 8, 1985. Refer to §31.303(f)(4) to determine the regulatory exception to this requirement.

(2) Describe the barriers that a State faces in removing all juveniles from adult jails and lockups. This requirement excepts only those alleged or adjudicated juvenile delinquents placed in a jail or a lockup for up to six hours from the time they enter a secure custody status or immediately before or after a court appearance, those juveniles formally waived or transferred to criminal court and against whom

criminal felony charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

(3) *Collocated facilities.* (i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups, except as otherwise provided under the Act and implementing OJJDP regulations. Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with criteria established in paragraphs (e)(3)(i)(C)(*1*) through (*4*) of this section.

(A) A collocated facility is a juvenile facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered "related" when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer), or the specialized services that are allowable under paragraph (e)(3)(i)(C)(*3*) of this section.

(B) The State must determine whether a collocated facility qualifies as a separate juvenile detention facility under the four criteria set forth in paragraphs (e)(3)(i)(C) (*1*) through (*4*) of this section for the purpose of monitoring compliance with section 223(a)(12)(A), (13) and (14) of the JJDP Act.

(C) Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

(*1*) Separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and incarcerated adults in the facility. Separation can be achieved architecturally or through time-phasing of common use nonresidential areas; and

(*2*) Separate juvenile and adult programs, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility which provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. Time-phasing of common use nonresidential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and

(*3*) Separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (medical care, food service, laundry, maintenance and engineering, etc.) who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations (subject to State standards or licensing requirements). The day to day management, security and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population within the collocated facilities; and

(*4*) In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no State standards or licensing requirements, OJJDP encourages States to establish administrative requirements that authorize the State to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards.

(ii) The State must determine that the four criteria are fully met. It is incumbent upon the State to make the determination through an on-site facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria set forth in paragraphs (e)(3)(i)(C) (*1*) through (*4*) of this section.

(iii) Collocated juvenile detention facilities approved by the State and concurred with by OJJDP before December 10, 1996 may be reviewed by the State against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence or against the regulatory criteria set forth herein, as the State determines. Facilities approved on or after the effective date of this regulation shall be reviewed against the regulatory criteria set forth herein. All collocated facilities are subject to the separate staff requirement established by the 1992 Amendments to the JJDP Act, and set forth in paragraph (e)(3)(i)(C)(*3*) of this section.

(iv) An annual on-site review of the facility must be conducted by the compliance monitoring staff person(s) representing or employed by the State agency administering the JJDP Act Formula Grants Program. The purpose of the annual review is to determine if compliance with the criteria set forth in paragraphs (e)(3)(i)(C) (*1*) through (*4*) of this section is being maintained.

(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 (e) (1) and (2) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(f) *Monitoring of jails, detention facilities and correctional facilities.* (1) Pursuant to section 223(a)(15) of the JJDP Act, and except as provided by paragraph (f)(7) of this section, the State shall:

(i) Describe its plan, procedure, and timetable for annually monitoring jails, lockups, detention facilities, correctional facilities and non-secure facilities. The plan must at a minimum describe in detail each of the following tasks including the identification of the specific agency(s) responsible for each task.

(A) *Identification of monitoring universe:* This refers to the identification of all residential facilities which might hold juveniles pursuant to public authority and thus must be classified to determine if it should be included in the monitoring effort. This includes those facilities owned or operated by public and private agencies.

(B) *Classification of the monitoring universe:* This is the classification of all facilities to determine which ones should be considered as a secure detention or correctional facility, adult correctional institution, jail, lockup, or other type of secure or nonsecure facility.

(C) *Inspection of facilities:* Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and record keeping. The inspection must include:

(*1*) A review of the physical accommodations to determine whether it is a secure or non-secure facility or whether adequate sight and sound separation between juvenile and adult offenders exists and

(*2*) A review of the record keeping system to determine whether sufficient data are maintained to determine compliance with section 223(a) (12), (13) and/or (14).

(D) *Data collection and data verification:* This is the actual collection and reporting of data to determine whether the facility is in compliance with the applicable requirement(s) of section 223(a) (12), (13) and/or (14). The length of the reporting period should be 12 months of data, but in no case less than 6 months. If the data is self-reported by the facility or is collected and reported by an agency other than the State agency designated pursuant to section 223(a)(1) of the JJDP Act, the plan must describe a statistically valid procedure used to verify the reported data.

(ii) Provide a description of the barriers which the State faces in implementing and maintaining a monitoring system to report the level of compliance with section 223(a) (12), (13), and (14) and how it plans to overcome such barriers.

(iii) Describe procedures established for receiving, investigating, and reporting complaints of violation of section 223(a) (12), (13), and (14). This should include both legislative and administrative procedures and sanctions.

(2) For the purpose of monitoring for compliance with section 223(a)(12)(A) of the Act, a secure detention or correctional facility is any secure public or

private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders, or used for the lawful custody of accused or convicted adult criminal offenders. Accused status offenders or nonoffenders in lawful custody can be held in a secure juvenile detention facility for up to twenty-four hours, exclusive of weekends and holidays, prior to an initial court appearance and for an additional twenty-four hours, exclusive of weekends and holidays, following an initial court appearance.

(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. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

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

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

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juveniles may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile alleged or found in a violation hearing to have violated a Valid Court Order may be held only in a secure juvenile detention or correctional facility, and not in an adult jail or lockup.

(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 the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3)(i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must obtain and review a written report that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be

prepared and submitted by an appropriate public agency (other than a court or law enforcement agency).

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

(4) *Removal exception (section 223(a)(14)).* The following conditions must be met in order for an accused juvenile criminal-type offender, awaiting an initial court appearance, to be detained up to 24 hours (excluding weekends and holidays) in an adult jail or lockup:

(i) The State must have an enforceable State law requiring an initial court appearance within 24 hours after being taken into custody (excluding weekends and holidays);

(ii) The geographic area having jurisdiction over the juvenile is outside a metropolitan statistical area pursuant to the Bureau of Census' current designation;

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

(iv) The adult jail or lockup must have been certified by the State to provide for the sight and sound separation of juveniles and incarcerated adults;

(v) The State must provide documentation that the conditions in paragraphs(f)(4)(i) through (iv) of this section have been met and received prior approval from OJJDP. OJJDP strongly recommends that jails and lockups that incarcerate juveniles be required to provide youth specific admissions screening and continuous visual supervision of juveniles incarcerated pursuant to this exception; and

(vi) Pursuant to section 223(a)(14) of the JJDP Act, the nonMSA (low population density) exception to the jail and lockup removal requirement as described in paragraphs (f)(4) (i) through (v) of this section shall remain in effect through 1997, and shall allow for secure custody beyond the twenty-four hour period described in paragraph (f)(4)(i) of this section when the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within twenty-four hours, so that a brief (not to exceed an additional forty-eight hours) delay is excusable; or the facility is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until twenty-four hours after the time that such conditions allow for reasonably safe travel. States may use these additional statutory allowances only where the precedent requirements set forth in paragraphs (f)(4) (i) through (v) of this section have been complied with. This may necessitate statutory or judicial (court rule or opinion) relief within the State from the twenty-four hour initial court appearance standard required by paragraph (f)(4)(i) of this section.

(5) *Reporting requirement.* The State shall report annually to the Administrator of OJJDP on the results of monitoring for section 223(a)(12),(13), and (14) of the JJDP Act. The reporting period should provide 12 months of data, but shall not be less than six months. The report shall be submitted to the Administrator of OJJDP by 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 include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) Total number of public and private secure detention and correctional facilities, the total number reporting, and the number inspected on-site;

(C) The total number of accused status offenders and nonoffenders, including out-of-State runaways and Federal wards, held in any secure detention or correctional facility for longer than twenty-four hours (not including weekends or holidays), excluding those held pursuant to the valid court order provision as set forth in paragraph (f)(3) of this section or pursuant to section 922(x) of title 18, United States Code (which prohibits the possession of a handgun by a juvenile), or a similar State law. A juvenile who violates this

statute, or a similar state law, is excepted from the deinstitutionalization of status offenders requirement;

(D) The total number of accused status offenders (including valid court order violators, out of state runaways, and Federal wards, but excluding Title 18 922(x) violators) and nonoffenders securely detained in any adult jail, lockup, or nonapproved collocated facility for any length of time;

(E) The total number of adjudicated status offenders and nonoffenders, including out-of-state runaways and Federal wards, held for any length of time in a secure detention or correctional facility, excluding those held pursuant to the valid court order provision or pursuant to title 18 U.S.C. section 922(x);

(F) The total number of status offenders held in any secure detention or correctional facility pursuant to the valid court order provision set forth in paragraph (f)(3) of this section; and

(G) The total number of juvenile offenders held pursuant to title 18 U.S.C. section 922(x).

(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 nonoffenders 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 extent of compliance with section 223(a)(13) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months and the number inspected on-site;

(C) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide sight and sound separation;

(D) The total number of juvenile offenders and nonoffenders not separated from adult criminal offenders in facilities used for the secure detention and confinement of both juveniles and adults;

(E) The total number of State approved juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup, including a list of such facilities;

(F) The total number of juveniles detained in State approved collocated facilities that were not separated from the management, security or direct care staff of the adult jail or lockup;

(G) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have not been approved by the State, including a list of such facilities; and

(H) The total number of juveniles detained in collocated facilities not approved by the State that were not sight and sound separated from adult criminal offenders.

(iv) To demonstrate the extent of compliance with section 223(a)(14) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

(B) The total number of adult jails in the State AND the number inspected on-site;

(C) The total number of adult lockups in the State AND the number inspected on-site;

(D) The total number of adult jails holding juveniles during the past twelve months;

(E) The total number of adult lockups holding juveniles during the past twelve months;

(F) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and unapproved collocated facilities in excess of six hours, including those held pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section;

(G) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups and unapproved collocated facilities for less than six hours for purposes other than identification, investigations, processing, release to parent(s), transfer to

court, or transfer to a juvenile facility following initial custody;

(H) The total number of adjudicated juvenile criminal-type offenders held securely in adult jails or lockups and unapproved collocated facilities in excess of six hours prior to or following a court appearance or for any length of time not related to a court appearance;

(I) The total number of accused and adjudicated status offenders (including valid court order violators) and nonoffenders held securely in adult jails, lockups and unapproved collocated facilities for any length of time;

(J) The total number of adult jails, lockups, and unapproved collocated facilities in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which each is located;

(K) The total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than 24 hours in adult jails, lockups and unapproved collocated facilities pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section;

(L) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 48 hours, in adult jails, lockups and unapproved collocated facilities pursuant to the "removal exception" as noted in paragraph (f)(4) of this section, due to conditions of distance or lack of ground transportation; and

(M) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel, in adult jails, lockups and unapproved collocated facilities, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section.

(6) *Compliance.* The State must demonstrate the extent to which the requirements of sections 223(a)(12)(A), (13), (14), and (23) of the Act are met. If the State fails to demonstrate full compliance with sections 223(a)(12)(A) and (14), and compliance with sections 223(a)(13) and (23) by the end of the fiscal year for any fiscal year beginning with fiscal year 1994, the State's allotment under section 222 will be reduced by twenty five percent for each such failure, provided that the State will lose its eligibility for any allotment unless: the State agrees to expend all remaining funds (except planning and administration, State advisory group set-aside funds and Indian tribe pass-through funds) for the purpose of achieving compliance with the mandate(s) for which the State is in noncompliance; or the Administrator makes discretionary determination that the State has substantially complied with the mandate(s) for which there is noncompliance and that the State has made through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time. In order for a determination to be made that a State has substantially complied with the mandate(s), the State must demonstrate that it has: Diligently carried out the plan approved by OJJDP; demonstrated significant progress toward full compliance; submitted a plan based on an assessment of current barriers to DMC; and provided an assurance that added resources will be expended, be it formula grants or other funds, to achieve compliance. Where a State's allocation is reduced, the amount available for planning and administration and the required pass-through allocation, other than State advisory group set-aside, will be reduced because they are based on the reduced allocation.

(i) Full compliance with section 223(a)(12)(A) is achieved when a State has removed 100 percent of status offenders and nonoffenders 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 (copies are available from the Office of General Counsel, Office of Justice Programs, 633 Indiana Ave. NW., Washington, DC 20531).

(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*) The instances of noncompliance reported in the last submitted monthly report do not indicate a pattern or practice but rather constitute isolated instances; and

(*2*)(*i*) Where all instances of noncompliance reported were in violation of or departure from State law, rule, or policy that clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of section 223(a)(13), existing enforcement mechanisms are such that the instances of noncompliance are unlikely to recur in the future; or

(*ii*) An acceptable plan has been developed to eliminate the noncompliant incidents.

(iii)(A) Full compliance is achieved when a state demonstrates that the last submitted monitoring report, covering 12 months of actual data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of section 223(a)(14).

(B) Full compliance with de minimis exceptions is achieved when a State demonstrates that it has met the standard set forth in either of paragraphs (f)(6)(iii)(B) (*1*) or (*2*) of this section:

(*1*) *Substantive de minimis standard.* To comply with this standard the State must demonstrate that each of the following requirements have been met:

(*i*) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of section 223(a)(14);

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

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

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

(*v*) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(B)(*1*)(*iv*) of this section.

(*2*) *Numerical de minimis standard.* To comply with this standard the State must demonstrate that each of the following requirements under paragraphs (f)(6)(iii)(B)(2) (*i*) and (*ii*) of this section have been met:

(*i*) The incidents of noncompliance reported in the State's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the State; and

(*ii*) An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of State law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

(*iii*) *Exception.* When the annual rate for a State exceeds 9 incidents of noncompliance per 100,000 juvenile population, the State will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis standard unless the State has recently enacted changes in State law which have gone into effect and which the State demonstrates can reasonably be expected to have a substantial, significant and positive impact on the state's achieving full (100%) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

(*iv*) *Progress.* Beginning with the monitoring report due by December 31, 1990, any State whose prior full compliance status is based on having met the numerical de minimis standard set forth in paragraph (f)(6)(iii)(B)(*2*)(*i*) of this §31.303, must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100%) compliance in order to maintain eligibility for a continued finding of full compliance with de minimis exceptions.

(*v*) *Request submission.* Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the monitoring report due by December 31 of each calendar year. Any State reporting less than full (100%) compliance in any annual monitoring report may request a finding of full compliance with de minimis exceptions under paragraph (f)(6)(iii)(B) (*1*) or (*2*) of this section. The request may be submitted in conjunction with the monitoring report, as soon thereafter as all information required for a determination is available, or be included in the annual State plan and application for the State's formula grant award.

(C) *Waiver.* Failure to achieve full compliance as defined in this section shall terminate any State's eligibility for FY 1993 and prior year formula grant funds unless the Administrator of OJJDP waives termination of the State's eligibility. ln order to be eligible for this waiver of termination, a State must request a waiver and demonstrate that it meets the standards set forth in paragraphs (f)(6)(iii)(C) (1)–(7) of this section:

(*1*) Agrees to expend all of its formula grant award except planning and administration, advisory group set-aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(*2*) Removed all status and nonoffender juveniles from adult jails and lockups. Compliance with this standard requires that the last submitted monitoring report demonstrate that no status offender (including those accused of or adjudicated for violating a valid court order) or nonoffender juveniles were securely detained in adult jails or lock-ups for any length of time; or that all status offenders and nonoffenders securely detained in adult jails and lock-ups for any length of time were held in violation of an enforceable State law and did not constitute a pattern or practice within the State; and

(*3*) Made meaningful progress in removing juvenile criminal-type offenders from adult jails and lockups. Compliance with this standard requires the State to document a significant reduction in the number of jurisdictions securely detaining juvenile criminal-type offenders in violation of section 223 (a)(14) of the JJDP Act; or a significant reduction in the number of facilities securely detaining such juveniles; or a significant reduction in the average length of time each juvenile criminal-type offender is securely detained in an adult jail or lock-up; or State legislation has recently been enacted and taken effect and which the State demonstrates will significantly impact the secure detention of juvenile criminal-type offenders in adult jails and lock-ups; and

(*4*) Diligently carried out the State's jail and lockup removal plan approved by OJJDP. Compliance with this standard requires that actions have been undertaken to achieve the State's jail and lock-up removal goals and objectives within approved time lines, and that the State Advisory Group, required by section 223 (a)(3) of the JJDP Act, has maintained an appropriate involvement in developing and/or implementing the State's plan; and

(*5*) Submitted an acceptable plan, based on a assessment of current jail and lockup removal barriers within the State, to eliminate noncompliant incidents; and

(*6*) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(*7*) Demonstrates an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance.

(D) *Waiver maximum.* A State may receive a waiver of termination of eligibility from the Administrator under paragraph (f)(6)(iii)(C) of this section for a combined maximum of four Formula Grant Awards through Fiscal Year 1993. No additional waivers will be granted.

(7) *Monitoring report exemption.* States which have been determined by the OJJDP Administrator to have achieved full compliance with sections 223(a)(12)(A), (a)(14), and compliance with section 223(a)(13) of the JJDP and 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, law

enforcement lockup, detention 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), (13), and (14) of the JJDP Act; and

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

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

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

(C) Adequate procedures are set forth for enforcement of the statute and the imposition of sanctions for violations.

(g) *Juvenile crime analysis.* Pursuant to section 223(a)(8), the State must conduct an analysis of juvenile crime problems, including juvenile gangs that commit crimes, and juvenile justice and delinquency prevention needs within the State, including those geographical areas in which an Indian tribe performs law enforcement functions. The analysis and needs assessment must include educational needs, gender specific services, delinquency prevention and treatment services in rural areas, and mental health services available to juveniles in the juvenile justice system. The analysis should discuss barriers to accessing services and provide a plan to provide such services where needed.

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

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

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

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

(h) *Annual performance report.* Pursuant to section 223(a) and section 223(a)(22) the State plan shall provide for submission of an annual performance report. The State shall report on its progress in the implementation of the approved programs, described in the three-year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals. The annual performance report shall describe progress made in addressing the problem of serious juvenile crime, as documented in the juvenile crime analysis pursuant to section 223(a)(8)(A). The annual performance report must be submitted to OJJDP no later than June 30 and address all formula grant activities carried out during the previous complete calendar year, federal fiscal year, or State fiscal year for which information is available, regardless of which year's formula grant funds were used to support the activities being reported on, e.g., during a reporting period, activities may have been funded from two or more formula grant awards.

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

(j) *Minority detention and confinement.* Pursuant to section 223(a)(23) of the JJDP Act, States must demonstrate specific efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population, viz., in most States, youth between ages ten-seventeen are subject to secure custody. It is essential that States approach this statutory mandate in a comprehensive manner. The purpose of the statute and

the regulation in this part is to encourage States to address, programmatically, any features of its justice system, and related laws and policies, that may account for the disproportionate detention or confinement of minority juveniles in secure detention facilities, secure correctional facilities, jails, and lockups. The disproportionate minority confinement core requirement neither establishes nor requires numerical standards or quotas in order for a State to achieve or maintain compliance. Compliance with this provision is achieved when a State meets the requirements set forth in paragraphs (j)(1) through (3) of this section:

(1) *Identification.* Provide quantifiable documentation (State, county and local level) in the State's FY 1994 Formula Grant Plan (and all subsequent Multi-Year Plans) Juvenile Crime Analysis and Needs Assessment to determine whether minority juveniles are disproportionately detained or confined in secure detention and correctional facilities, jails and lockups in relation to their proportion of the State juvenile population. Guidelines are provided in the OJJDP Disproportionate Minority Confinement Technical Assistance Manual (see Phase I Matrix). Where quantifiable documentation is not available to determine if disproportionate minority confinement exists in secure detention and correctional facilities, jails and lockups, the State must provide a time-limited plan of action, not to exceed six months, for developing and implementing a system for the ongoing collection, analysis and dissemination of information regarding minorities for those facilities where documentation does not exist.

(2) *Assessment.* Each State's FY 1994 Formula Grant Plan must provide a completed assessment of disproportionate minority confinement. Assessments must, at minimum, identify and explain differences in arrest, diversion and adjudication rates, court dispositions other than incarceration, the rates and periods of prehearing detention in and dispositional commitments to secure facilities of minority youth in the juvenile justice system, and transfers to adult court (see Phase II Matrix). If a completed assessment is not available, the State must submit a time-limited plan (not to exceed twelve months from submission of the Formula Grant Application) for completing the assessment.

(3) *Intervention.* Each State's FY 1995 Formula Grant Plan must, where disproportionate confinement has been demonstrated, provide a time-limited plan of action for reducing the disproportionate confinement of minority juveniles in secure facilities. The intervention plan shall be based on the results of the assessment, and must include, but not be limited to the following:

(i) *Diversion.* Increasing the availability and improving the quality of diversion programs for minorities who come in contact with the juvenile justice system, such as police diversion programs;

(ii) *Prevention.* Providing developmental, operational, and assessment assistance (financial and/or technical) for prevention programs in communities with a high percentage of minority residents with emphasis upon support for community-based organizations (including non-traditional organizations) that serve minority youth;

(iii) *Reintegration.* Providing developmental, operational, and assessment assistance (financial and/or technical) for programs designed to reduce recidivism by facilitating the reintegration of minority youth in the community following release from dispositional commitments to reduce recidivism;

(iv) *Policies and procedures.* Providing financial and/or technical assistance that addresses necessary changes in statewide and local, executive, judicial, and legal representation policies and procedures; and

(v) *Staffing and training.* Providing financial and/or technical assistance that addresses staffing and training needs that will positively impact the disproportionate confinement of minority youth in secure facilities.

(4) The time-limited plans of action set forth in paragraphs (j) (1), (2) and (3) of this section must include a clear indication of current and future barriers; which agencies, organizations, or individual(s) will be responsible for taking what specific actions; when; and

what the anticipated outcomes are. The interim and final outcomes from implementation of the time-limited plan of action must be reported in each State's Multi-Year Plans and Annual Plan Updates. Final outcomes for individual project awards are to be included with each State's annual performance report (See paragraph (h) of this section).

(5) Technical assistance is available through the OJJDP Technical Assistance Contract to help guide States with the data collection and analysis, and with programmatic elements of this requirement. Information from the OJJDP Special Emphasis Initiative on Disproportionate Minority Confinement pilot sites will be disseminated as it becomes available.

(6) For purposes of this statutory mandate, minority populations are defined as: African-Americans, American Indians, Asians, Pacific Islanders, and Hispanics.

(k) Pursuant to section 223(a)(24) 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.

[60 FR 28440, May 31, 1995, as amended at 61 FR 65138, Dec. 10, 1996]

§ 31.304 Definitions.

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

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

(2) Any other agency, organization or institution which operates primarily for scientific, education, service, charitable, or similar public purposes, but which is not under public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax-exempt under the provisions of section 501(c)(3) of the 1954 Internal Revenue Code.

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

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

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

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

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

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

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

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

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

(k) *Other individual accused of having committed a criminal 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 court exercising criminal jurisdiction.

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

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

(o) *Valid court order.* The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word "valid" permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States.

(p) *Local private agency.* For the purposes of the pass-through requirement of section 223(a)(5), a local private agency is defined as a private non-profit agency or organization that provides program services within an identifiable unit or a combination of units of general local government.

GENERAL CONDITIONS AND ASSURANCES

§ 31.400 Compliance with statute.

The applicant State must assure and certify that the State and its subgrantees and contractors will comply with applicable provisions of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, as amended, and with the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93–415, as amended, and the provisions of the current edition of OJP Financial and Administrative Guide for Grants, M7100.1.

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

The applicant State must further assure and certify that the State and its subgrantees and contractors will adhere to other applicable Federal laws, orders and OMB circulars. These general Federal laws and regulations are described in greater detail in the Financial and Administrative Guide for Grants, M7100.1, and the Formula Grant Application Kit.

§ 31.402 Application on file.

Any Federal funds awarded pursuant to an application must be distributed and expended pursuant to and in accordance with the programs contained in the applicant State's current approved application. Any departures therefrom, other than to the extent permitted by current program and fiscal regulations and guidelines, must be submitted for advance approval by the Administrator of OJJDP.

§ 31.403 Civil rights requirements.

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

(a) Section 809(c) of the Omnibus Crime Control and Safe Streets Act as 1968, as amended, and made applicable by section 299(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended;

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

(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;

(f) The Department of Justice Non-Discrimination regulations, 28 CFR part 42, subparts C, D, E, and G;

(g) The Department of Justice regulations on disability discrimination, 28 CFR parts 35 and 39; and

(h) Subtitle A, title II of the Americans with Disabilities Act (ADA) of 1990.

§ 31.404 Participation by faith-based organizations.

The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

[Order No. 2703–2004, 69 FR 2838, Jan. 21, 2004]

Subpart B—Juvenile Accountability Incentive Block Grants

SOURCE: 64 FR 19676, Apr. 21, 1999, unless otherwise noted.

§ 31.500 Program purposes.

Funds are available under the Juvenile Accountability Incentive Block Grants (JAIBG) in FY 1998, FY 1999, and each subsequent fiscal year as funds are made available, for State and local grants to support the following program purposes:

(a) *Program purpose no. 1:* Building, expanding, renovating, or operating temporary or permanent juvenile correction or detention facilities, including the training of correctional personnel;

(b) *Program purpose no. 2:* Developing and administering accountability-based sanctions for juvenile offenders;

(c) *Program purpose no. 3:* Hiring additional juvenile judges, probation officers, and court-appointed defenders, and funding pre-trial services for juveniles, to ensure the smooth and expeditious administration of the juvenile justice system;

(d) *Program purpose no. 4:* Hiring additional prosecutors, so that more cases involving violent juvenile offenders can be prosecuted and backlogs reduced;

(e) *Program purpose no. 5:* Providing funding to enable prosecutors to address drug, gang, and youth violence more effectively;

(f) *Program purpose no. 6:* Providing funding for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders;

(g) *Program purpose no. 7:* Providing funding to enable juvenile courts and juvenile probation offices to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism;

(h) *Program purpose no. 8:* The establishment of court-based juvenile justice programs that target young firearms offenders through the establishment of juvenile gun courts for the adjudication and prosecution of juvenile firearms offenders;

(i) *Program purpose no. 9:* The establishment of drug court programs for juveniles so as to provide continuing judicial supervision over juvenile offenders with substance abuse problems and to provide the integrated administration of other sanctions and services;

(j) *Program purpose no. 10:* Establishing and maintaining interagency information sharing programs that enable the juvenile and criminal justice system, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts;

(k) *Program purpose no. 11:* Establishing and maintaining accountability-based programs that work with juvenile offenders who are referred by law enforcement agencies, or which are designed, in cooperation with law enforcement officials, to protect students and school personnel from drug, gang, and youth violence; and,

(l) *Program purpose no. 12:* Implementing a policy of controlled substance testing for appropriate categories of juveniles within the juvenile justice system.

§ 31.501 Eligible applicants.

(a) *Eligible applicants.* Eligible applicants in FY 1998, FY 1999, and each subsequent fiscal year as funds are made available, are States whose Governor (or other Chief Executive Officer for the eligible jurisdictions that are not one of the 50 States but defined as such for purposes of this program) certifies, consistent with guidelines established

by the Attorney General in consultation with Congress and incorporated into OJJDP's Program Guidance Manual, that the State is actively considering (or already has in place), or will consider within one year from the date of such certification, legislation, policies, or practices which, if enacted, would qualify the State for a grant. Specific information regarding qualifications can be found in the JAIBG Program Guidance Manual.

(b) *Qualifications.* Each State Chief Executive Officer must designate a state agency to apply for, receive, and administer JAIBG funds.

§ 31.502 Assurances and plan information.

(a) In its application for a Juvenile Accountability Incentive Block Grant (JAIBG), each State must provide assurances to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), absent a waiver as provided in the JAIBG Program Guidance Manual, that:

(1) The State will subgrant at least 75% of the State's allocation of funds to eligible units of local government to implement authorized programs at the local level; and

(2) The State, and each unit of local government applying for a subgrant from the State, will expend not less than 45% of any grant provided to such State or unit of local government, other than funds set aside for administration, for program purposes 3–9 in § 31.500 (c) through (i) of this subpart, and will not spend less than 35% for program purposes 1, 2, and 10 in § 31.500 (a), (b), and (j) of this subpart, unless the State certifies to OJJDP, or the unit of local government certifies to the State, that the interests of public safety and juvenile crime control would be better served by expending the grant award for purposes set forth in the twelve program areas in a different ratio. Such certification shall provide information concerning the availability of existing structures or initiatives within the intended areas of expenditure (or the availability of alternative funding sources for those areas), and the reasons for the State or unit of local government's alternative use.

(3) The funds provided under this part shall be administered in compliance with the standards set forth in part 38 (Equal Treatment for Faith-based Organizations) of this chapter.

(b) Following award of JAIBG funds to a State by OJJDP, but prior to obligation of program funds by the State or of subgrant funds by a unit of local government for any authorized program purpose, a State administering JAIBG funds must provide to OJJDP information that demonstrates that the State, or a unit of local government that receives JAIBG funds, has established a coordinated enforcement plan for reducing juvenile crime, developed by a Juvenile Crime Enforcement Coalition (JCEC).

(c) State coordinated enforcement plans must be developed by a Juvenile Crime Enforcement Coalition consisting of representatives of law enforcement and social service agencies involved in juvenile crime prevention. To assist in developing the State's coordinated enforcement plan, States may choose to utilize members of the State Advisory Group (SAG) established by the State's Chief Executive under section 223(a)(3) of Part B of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, codified at 42 U.S.C. 5633(a)(3), if appropriate membership exists, or use or establish another planning group that constitutes a coalition of law enforcement and social service agencies.

(d) When establishing a local Juvenile Crime Enforcement Coalition (JCEC), units of local government must include, unless impracticable, individuals representing:

(1) Police,
(2) Sheriff,
(3) Prosecutor,
(4) State or local probation services,
(5) Juvenile court,
(6) Schools,
(7) Business, and
(8) Religious affiliated, fraternal, nonprofit, or social service organizations involved in crime prevention.

(e) Units of local government may utilize members of Prevention Policy Boards established pursuant to section 505(b)(4) of Title V of the JJDP Act, codified at 42 U.S.C. 5784(b)(4), to meet the JCEC requirement, provided that

each JCEC meets the membership requirements listed in paragraph (d) of this section.

[64 FR 19676, Apr. 21, 1999, as amended by Order No. 2703–2004, 69 FR 2838, Jan. 21, 2004]

§ 31.503 Notice of proposed use of funds.

The mechanism for a State to report on the proposed use of funds by the State or by a subgrantee unit of local government is by electronic submission of a "Follow Up Information Form" to be provided to each participating State. The purpose of this report is for the State to provide assurances to OJJDP that funds expended by the State and its subgrantee units of local government will be used for authorized program purpose areas. Although no actual program descriptions will be required, information about the distribution of funds among the authorized program purpose areas must be provided. Upon receipt and review of the "Follow Up Information Form" by OJJDP, States may obligate program funds retained for expenditure at the State level. Similarly, the State shall require that each recipient unit of local government submit its proposed use of non-administrative funds to the State prior to drawdown of subgrant funds to implement local programs and projects. Upon receipt and review of the local unit of government's proposed fund use, the State shall authorize the local unit of government to obligate local subgrant funds. The State shall electronically submit a copy of the local subgrant information to OJJDP, as provided in the award package, within 30 days of the date that the local unit of government is authorized to obligate program funds under its subgrant award.

PART 32—PUBLIC SAFETY OFFICERS' DEATH AND DISABILITY BENEFITS

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APPENDIX TO PART 32—PSOB HEARING AND APPEAL PROCEDURES

AUTHORITY: Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. 3711 *et seq.*).

SOURCE: 57 FR 24913, June 11, 1992, unless otherwise noted.