

IMPROVING ACCOUNTABILITY AND OVERSIGHT OF JUVENILE JUSTICE GRANTS

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IMPROVING ACCOUNTABILITY AND OVERSIGHT OF JUVENILE JUSTICE GRANTS

TUESDAY, APRIL 21, 2015

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:01 a.m., in Room 226, Dirksen Senate Office Building, Hon. Charles E. Grassley, Chairman of the Committee, presiding.

Present: Senators Grassley, Tillis, Durbin, Whitehouse, and Franken.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Chairman GRASSLEY. In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act with two goals in mind: first, to prevent at-risk youth from entering the criminal justice system; second, is to help minors already in the system become valuable members of society.

To help States achieve these goals, the JJDP Act authorizes the Justice Department to award Federal grants to States. However, the law says that the Federal money comes with strings attached. Specifically, States must comply with four core requirements in order to qualify for grants.

First, States must not imprison children for committing offenses that would not be unlawful if they were committed by adults; truancy, as an example.

Second, juveniles must not be detained in adult jails unless some narrow exceptions apply.

Third, when children are held in adult jails, they cannot be housed with adult inmates or next to adult cells.

Fourth, States must address the disproportionate contact of minority youth with the justice system.

These four requirements are the bedrock of the system that Congress designed to help juveniles, and Judge Teske and Mr. Soler are here to explain why these protections are so important.

To ensure States' compliance with these requirements, the Act created the Office of Juvenile Justice and Delinquency Prevention, or the OJJDP. By law, that office is supposed to cut a State's funding for the following year by 20 percent anytime States fail to satisfy one of the four requirements in a given year.

In other words, Congress designed these grants to be earned each year, not to be handed out as an entitlement.

Today we will examine whether the Justice Department has been doing its job to make sure States qualify for Federal funding.

Last year, multiple whistleblowers contacted me about the Justice Department's failure to follow the law. The whistleblowers allege that it is common knowledge among the States that the Justice Department did not take compliance with the four core requirements very seriously.

The whistleblowers also claimed that States know the Justice Department does not even check if they are submitting accurate reports in their annual application for grants. So many States allegedly report whatever figures they want in order to keep money flowing, even if the data is false or incomplete.

At the same time, States that submit honest data are reportedly being penalized for having their grants reduced as the law requires.

In January 2014, for example, the Inspector General found that the Department had failed to hold the State of Wisconsin accountable despite an admission of fraud from a State employee.

Of course, the true victims in all of this are the children who come in contact with inadequate juvenile justice systems.

So to get to the bottom of these allegations, I wrote a letter to the Department in September last year. The Office of Special Counsel expressed similar concern last September and again in January. Special Counsel Carolyn Lerner, who will be testifying here today, asked the Attorney General to investigate these allegations.

Two separate whistleblowers had brought the allegations to her office's attention, as well. The Office of Special Counsel found that there is a substantial likelihood that each of their allegations reveal possible violation of law, a gross waste of resources, and gross mismanagement of juvenile justice grant funds.

For its part, the Department initially responded to my inquiry by standing by its practices. The Department also sought to downplay the allegations by blaming the problem squarely on the shoulders of a single State official in Wisconsin.

So I sent three more letters with allegations of DOJ's widespread mismanagement in other States, including Virginia, Tennessee, Illinois, Puerto Rico. I also explained to the Department how its own responses to my initial letter revealed fundamental misunderstanding of the law.

Now, to its credit, the Department has now owned up to its problems. The Justice Department admitted to having a compliance monitoring policy in place since 1997 that is, quote, "not permitted under the statute," unquote.

The Justice Department has disbursed more than \$2 billion in the past 40 years to State and local authorities under this Act. Given the unlawful 1997 policy, there is a question as to how much of this was granted to States that jailed young people in violation of funding requirements. To shed light on these issues, Ms. Karol Mason is here to testify as Assistant Attorney General of the Office of Justice Programs.

I want to thank Ms. Mason for her leadership and showing a commitment to accountability and beginning to fix these problems at long last.

As they say, the first step to recovery is admitting that you have a problem and it is encouraging that the Department has finally taken that step. But it should not have taken 7 years and the intervention of Office of Special Counsel or Inspector General or the Congress for the Department to take whistleblower allegations seriously.

Whistleblowers are a linchpin to transparency and accountability. They should be lauded for their efforts, but are often treated like skunks at a picnic and subject to retaliation, which we all know is illegal, but it still happens.

So, I want to thank Ms. Elissa Rumsey and Ms. Andrea Coleman who are here to testify today. Both of them have been trying to bring these issues to light since 2008. Their testimony today will include accounts of resistance and retaliation they experienced from agency officials for simply trying to do their job in accordance with law.

In addition, I want to thank several whistleblowers who will not be testifying today, but provided valuable information as part of the investigation. These individuals made similar allegations of resistance and whistleblower retaliation. So, I want to reiterate to Ms. Mason the need to improve the treatment of whistleblowers.

Finally, I want to thank Professor Dean Rivkin, who operates a public interest clinic that represents juveniles in Tennessee. The professor will testify about his efforts to alert the Justice Department about discrepancies of data in Tennessee. He will also contrast those official reports with a number of juvenile incarcerations that he personally observed in court.

We must remember that the true victims in all this are the young people, children who face an inadequate juvenile justice system.

That is why my colleague here to my left, Senator Whitehouse, and I introduced a bill in December to revise and extend the statute, which has not been reauthorized since 2002. The bill updates protections and extends programs established in the Act and authorizes funds for the law for 5 years.

It also takes steps to improve the treatment of youth under the Act by bolstering core protections, improving conditions for detained juveniles, incorporating new science on adequate adolescence development, and increasing accountability and oversight in administering the law.

That last part is the subject of this hearing and I hope that we will have a better idea of what can be done legislatively to improve accountability and oversight. Whatever measures we come up with, however, will be useless if the law is not actually followed.

Now, I call on my friend, Senator Whitehouse, for his remarks.

**OPENING STATEMENT OF HON. SHELDON WHITEHOUSE,
A U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator WHITEHOUSE. Thank you, Chairman. Good morning, everybody.

I first want to thank Chairman Grassley for holding this important hearing and thank the witnesses who are here today for their time and their testimony.

Let me particularly welcome Judge Teske, who has come here all the way from Georgia. He brings with him the high regards of our colleague, Johnny Isakson, and I know Senator Isakson would want me to extend to you his best wishes for being here; and, also, Mark Soler, who is the executive director of the Center for Children's Law and Policy, in addition to the witnesses who have already been recognized by the Chairman.

I really applaud Chairman Grassley's efforts to improve the juvenile justice system when it fails the children that it is supposed to serve and I am very proud to be working with him on legislation to reauthorize and strengthen the Juvenile Justice and Delinquency Prevention Act.

As the Chairman has pointed out, I am to the left of him—in more ways than one, I would add—but we are working very well together on this legislation and it is a pleasure and a privilege to be working with him and his staff.

The JJDP Act celebrated its 40th anniversary last summer, but it has not been reauthorized since 2002. Since 2002, we have learned a lot about adolescent development and about best juvenile justice practices. So, it is long past time to update the law governing the Federal Government's role in reforming juvenile justice.

This hearing, of course, is about accountability and I applaud Chairman Grassley for his efforts to improve oversight over Federal dollars.

Thanks to the Chairman's efforts, the Department of Justice has acknowledged the longstanding and systemic problems in its Office of Juvenile Justice and Delinquency Prevention's compliance monitoring program. I have been encouraged by the Department's response to Chairman Grassley's inquiries and I look forward to hearing more about how OJJDP will address compliance issues going forward.

Through this Committee's oversight and legislation the Chairman and I expect to introduce in the coming weeks, we are poised to make significant improvements to the Juvenile Justice and Delinquency Prevention Act.

The reauthorization Chairman Grassley and I introduced last year contained important new provisions to hold grantees accountable and provide incentives to grantees that consistently pass muster.

The bill also contains strengthened transparency requirements. I anticipate this year's legislation to contain the same safeguards and I hope our witnesses will be able to discuss, based on their own experiences, how the new language will help improve program accountability.

Before I conclude my remarks, I would like to take a step back for a moment. It is because of JJDP Act that, for the most part, our children are not locked up in adult prisons, that they are not placed in solitary confinement, that they are not shackled for running away from home or failing to attend school.

We need to reauthorize this statute and revive its mission. And we also have to face the consequences of Federal juvenile justice funding having been cut dramatically in the last decade. Funding for the Act's main grant programs, Title 2 and Title 5, have been cut, respectively, by 40 percent and 80 percent. At the same time,

OJJDP went for far too long with ineffective or nonexistent leadership.

We should not spend scarce resources on States that make no efforts to comply with JJDP and we should never tolerate fraud on the local, State, or Federal levels.

At the same time, we must be mindful of creating unfunded mandates and of the message we send when we fail to update key legislation and cut Federal support for programs that are proven to make a difference.

So thank you, Chairman Grassley, and I look forward to today's hearing.

Chairman GRASSLEY. I am going to give just a short introduction and I will introduce all and then we will do the testimony from my left to my right.

Elissa Rumsey is a compliance monitor in the Office of Juvenile Justice and Delinquency Prevention at the Department of Justice.

Steven Teske is chief judge, Clayton County Juvenile Court, Georgia.

Dean Rivkin, professor of law at the University of Tennessee College of Law.

Mark Soler is executive director of the Center for Children's Law and Policy.

Andrea Coleman is the disproportionate minority contact coordinator at the Office of Juvenile Justice and Delinquency Prevention at the Department of Justice.

Would you proceed, Ms. Rumsey?

STATEMENT OF ELISSA RUMSEY, COMPLIANCE MONITOR, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. RUMSEY. Thank you, Chairman Grassley and Members of the Committee.

My testimony concerns illegal conditions in States that incarcerate children not charged with a crime, sometimes with adult felons, falsify reports that enable the receipt of millions in Federal grant dollars, and benefit from DOJ's coverup of this fraud.

I will illustrate this misconduct through two States that have been particularly brazen: Wisconsin and Virginia.

My name is Elissa Rumsey. I am the compliance monitor in the DOJ's OJJDP. My job is to enforce the JJDP Act.

I have monitored jails in over half of the United States, which, I think, gives me a pretty clear picture of what is happening to kids in jails.

This testimony is in response to the Committee's request and is submitted in my personal capacity alone.

As Senator Grassley noted, the JJDP Act provides that jails should not be detaining children who are not charged with a crime. DOJ regulations do allow States some very minor exceptions in this area, but only in juvenile-only facilities.

Wisconsin, in contrast, began submitting data in 2005, 2006, and 2007 that showed detention rates nearly 10 times higher than allowed by our regulations. In fact, these data showed such a dramatic increase from years prior that OJJDP did, in fact, restrict Wisconsin's funding in 2007.

The State protested this finding of noncompliance. My superiors responded to me by preventing me from assessing the situation on-site in Wisconsin. But it turns out I did not really need to go to Wisconsin, because internal emails later obtained by our own Inspector General made clear that Wisconsin was falsifying reports in return for millions of dollars in Federal grants.

Wisconsin officials wrote emails that include the following admissions, and I am going to quote to you from these emails because I found them so striking when they were provided to me.

Quote, "Our complete lack of a compliance monitoring system is what has set us back." From a different Wisconsin employee, quote, "Wisconsin DOC assures us we will find enough violations on all core requirement areas, like an adult inmate and children being held together in jails, that we will not receive Federal funds."

And finally, from the State agency administrator in Wisconsin who is tasked with overseeing millions in DOJ grant funds, he wrote the following in an email, quote, "We supply the evidence that convicted us and now want DOJ to forgive us. Every time I think we have a good case, I learn of another flaw on our end. Elissa knows her business and is not inclined to back off."

These are Wisconsin's own words. Back in 2007 when they were writing these emails, of course, I did not know about it and I tried to learn more about this dramatic increase in illegal detentions in Wisconsin, but I was blocked at every turn. The State officials denied there was a problem.

After almost a year of back-and-forth with the State, I asked one of the officials to call me. He did. He said Wisconsin is faking the data. He also said watch your back.

Within weeks of this warning, I reported the allegations to our Inspector General. Subpoenas were issued. OIG staff went to jails in Wisconsin and saw the fraud themselves. They even got two confessions from Wisconsin State officials.

Unfortunately, the retaliation back at the office for me mounted. As Senator Grassley noted, I really was the skunk at the company picnic for a number of years.

I had to file a lawsuit. I had to hire an attorney. And fortunately, the MSPB, the court in this jurisdiction, did find in my favor in 2013. And, of course, more cause for hope when Chairman Grassley showed his interest and wrote letters to DOJ asking what is really happening here.

Finally, there was a report that the OIG posted in late September which says the fraud did, in fact, occur. I remain concerned about other States like Virginia, where I have seen adult inmates walking freely in juvenile facilities among children. I have heard officials from Virginia say that State compliance officials know that DOJ will accept false data and still find compliance.

I can also speak to OJJDP's failure to hold other jurisdictions, like Puerto Rico, accountable despite years of noncompliance with funding requirements, as well as issues like this in other States.

I welcome questions from the Committee on these issues and I thank Chairman Grassley so much for his time and attention to this matter. Thank you.

[The prepared statement of Ms. Rumsey appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Ms. Rumsey.
Now, Judge Teske.

STATEMENT OF HON. STEVEN C. TESKE, CHIEF JUDGE, JUVENILE COURT OF CLAYTON COUNTY, JONESBORO, GEORGIA

Judge TESKE. Good morning, Chairman Grassley, Ranking Member Whitehouse, and Members of the Senate Judiciary Committee. Thank you for having me here to testify today about improving accountability and oversight of juvenile justice grants.

In addition to my judicial duties, I have served on the Federal Advisory Committee for Juvenile Justice and have the pleasure of serving for former Governor Sonny Perdue and our current Governor, Nathan Deal, on our State advisory group.

I co-chair the Oversight and Implementation Committee of our Reform Commission and I can appreciate why we are here and the oversight role of this distinguished body to bring transparency to the accountability and oversight of juvenile justice grants.

I, like my colleagues at the National Council of Juvenile Family Court Judges, am a supporter of the reauthorization of the JJDPa because it is a strategic Act of Congress that has helped to bring consistent use of those practices that go to the core of effective juvenile justice, what the JJDPa refers to as the four core protections.

It goes without saying that because JJDPa has assisted States to make significant improvements in their local juvenile justice systems, imagine how much more effective those systems will become with improved accountability and oversight measures.

To illustrate my point, I will take just a moment to point out some Georgia examples. When I took the bench in 1999, my county was inundated with high commitment rates to State custody, of which most were kids of color and nonviolent offenses.

In search of ways to improve our system, I found the Annie E. Casey Foundation's Juvenile Detention Alternative Initiative, which inspired me to create a number of programs using Federal funding. These programs, ceded by JJDPa funds, have accomplished the following in my county: an 83 percent decrease in the average daily detention population; a 75 percent reduction in the average daily population of minority youth; 77 percent fewer commitments to State custody; 70 percent fewer commitments of minority youth; yet—get this—a 62 percent decrease in juvenile arrests.

Our statewide reforms, also ceded by JJDPa formula moneys, has resulted in a 62 percent reduction in commitments to State custody, which included the removal of the valid court order exception for status offenders.

To improve upon what is already effective, I have noted some accountability and oversight issues of attention and offer some solutions.

Notwithstanding any findings that may be made that grants were fraudulently obtained, to which serious controls must be contemplated to preclude future fraud, I am here to speak to another dimension of accountability and oversight deficiencies that are just as serious, but may be overlooked, and that is the compliance process.

It came to my attention in 2007 during a FACJJ meeting that some States were audited using more restrictive criteria than others. As the conversation evolved, I learned from juvenile justice specialists around the country the following: The DMC compliance manual itself is 389 pages in length and extremely difficult to follow.

Guidelines contained in this compliance manual lack specificity. The rules continuously change without notice in an opportunity to provide feedback. Audit findings were delivered to States up to 2 years after the audit. For example, our last audit in Georgia occurred in 2010. We did not receive the findings until 2012. But we were expected to respond to their letter within 60 days, and we did, having already addressed many of those issues.

The compliance monitor did not reply until 2014, a total of 4 years. And this is a widespread issue across the country.

My concern then, and it remains a concern today, is compliance findings that are made using subjective criteria that can create tension externally between the States and OJJDP and internally between compliance staff and those administrators who may be acting to correct an errant outcome due to subjective interpretation.

I recommend the following: standardize practices for compliance monitoring; help States develop comprehensive data collection systems; revise the compliance manuals; provide State representatives notice and comment of changes in compliance criteria; reauthorize the JJDPa with accountability provisions with the necessary funding.

The time is right to reauthorize the JJDPa and in so doing make the changes necessary to improve the accountability and oversight of juvenile justice grants. I do not view this hearing as an obstacle to reauthorization, but an opportunity to improve upon a historical and strategic Act of Congress that has assisted States that, like mine, do the right thing for our youth.

And to that end, Chairman Grassley, I want to express my gratitude to you for bringing transparency to this reauthorization process.

[The prepared statement of Judge Teske appears as a submission for the record.]

Chairman GRASSLEY. Thank you.

Now, Professor Rivkin.

STATEMENT OF DEAN HILL RIVKIN, PROFESSOR AND CLINIC LEAD, PUBLIC INTEREST LAWYERING PRACTICUM, UNIVERSITY OF TENNESSEE COLLEGE OF LAW, KNOXVILLE, TENNESSEE

Professor RIVKIN. Mr. Chairman, Senator Whitehouse, Members of the Committee, my name is Dean Hill Rivkin. I appreciate the opportunity to testify today.

I am a College of Law Distinguished Professor at the University of Tennessee College of Law, where I have taught since 1976. With the assistance of Community Cooperating Attorney Brenda McGee, who is here with me, and law students, I teach a course called the Public Interest Lawyering Practicum.

Since 2009, we have represented in juvenile court youth prosecuted by the State for the status offense of truancy, which is not

a crime in Tennessee. Youth in status offense cases in Tennessee are not entitled to counsel, which makes Federal and State oversight—effective Federal and State oversight especially critical.

A number of our clients had been locked up in the juvenile court's secured detention facility following their problematic pleas of guilty. These lockups range from 24 hours to a week or longer.

In the juvenile jail, our clients were shackled, indiscriminately drug tested, asked to strip, given orange jail jumpsuits, and placed in a facility that held serious juvenile offenders.

They were not screened for mental health problems and, indeed, one of our clients threatened suicide following her release from the detention facility and was admitted to a psychiatric hospital through her parents.

We sought to halt these practices by urging our State agency to exercise more vigilant oversight. Suffice it to say that our questions about data that we had obtained from the local juvenile court were never satisfactorily answered.

After exhausting these efforts with the State agency, we turned to OJJDP for assistance. In the spring of 2013, following the appointment of a new administrator, we conveyed our concerns about the problems in Tennessee.

In July 2013, I received a telephone call from an official of OJJDP who said he was following up on my communication. In this conversation, I was informed that OJJDP was preparing to conduct an audit of Tennessee, the first full audit since 2005. I offered to send this official the local detention data that we possessed and to meet with the auditing staff to convey our catalog of concerns.

The official told me that he was not interested in the data and left the impression that OJJDP would conduct the audit without meeting with us. They did not.

The audit was released in January 2014. It failed to consider the information that we possessed and other information about Tennessee's compliance practices.

Significantly, the auditors only looked at 4 months of TCC data from our county, despite the data that we had that showed many more lockups. This was 2012.

Also, the audit failed to mention the large number of lockups under OJJDP's so-called 24-hour exception. This exception, which finds no grounding in the absolute ban on secured detention in the Act, allows courts to jail status offenders for up to 24 hours before and after, excluding weekends.

In our county alone, 237 non-DSO lockups were reported in 2012. We believe that this was an abuse of this exception and OJJDP turned a blind eye by not meeting with us about this.

The audit also failed to reconcile the sizable discrepancies in valid court orders in Tennessee. There were 212 reported in the audit for 2012, despite the fact that the State statistics showed the number of CO referrals to be 889 for 2012.

Based on our experiences, we believe that the compliance system as it is currently administered is one of the least transparent of any Federal program that I have encountered. Public access is limited. The bureaucratic language is mind-boggling.

Without greater transparency and clarity, accountability, which is the touchstone of this Act, suffers.

In conclusion, the need for a strong Federal presence, with adequate funding, to prevent vulnerable children from being incarcerated for non-crimes is even more important today than it was in 1974. We believe—I believe Congress should proceed with a fortified reauthorization of the Act in light of the evidence presented here.

Thank you for inviting me.

[The prepared statement of Professor Rivkin appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Professor Rivkin.

Now, Mr. Soler.

STATEMENT OF MARK SOLER, EXECUTIVE DIRECTOR, CENTER FOR CHILDREN'S LAW AND POLICY, WASHINGTON, DC

Mr. SOLER. Mr. Chairman and Members of the Committee, my background is summarized in the bio that I submitted, but I think it suffices to say I have worked on juvenile justice reforms around the country for the last 37 years.

I want to start by thanking you, Mr. Chairman, and you, Senator Whitehouse, for introducing S.2999 in the last Congress. As you know, the Act has been essentially unchanged since 1992. Yet, every year, some 1.3 million young people enter the juvenile justice system in this country, more than the entire population of the 20 largest cities in the State of Iowa, more than the entire population of the State of Rhode Island, and that is just arrests, which is only one way that young people get into the system.

For a statute that affects millions of children and their families every year, it is long past time for an update.

S.2999 includes critical revisions to the Act and I urge you to keep them in the legislation when you introduce it in this session. Particularly important are the provisions to keep youth awaiting trial in criminal court out of adult jails; to enforce the prohibition on locking up status offenders by phasing out the valid court order exception; to support the elimination of solitary confinement and dangerous restraints in juvenile facilities—and I particularly want to thank Senator Durbin for your interest in that and work on that issue; and, finally, to provide much needed guidance to the States on how to reduce racial and ethnic disparities in the system.

These important reforms and others in 2999 will improve OJJDP's ability to help States ensure that the juvenile justice system is fair, safe, and effective.

The Juvenile Justice and Delinquency Prevention Act, however, has already proved its value many times over and I have seen its impact firsthand.

When I first started this work in 1978, 4 years after passage of the Act, there were 500,000 children held in adult jails in this country for some period of time. I worked with many jurisdictions around the country to help them remove children from adult jails pursuant to the core requirements of the Act.

I also brought litigation to protect children in adult jails when local authorities ignored the mandates of the Act. For example, I represented a 15-year-old girl in southeast Ohio who was held in the county jail for staying out overnight and was subsequently raped by a jailer.

I represented youth held in the Boise, Idaho, jail, where a boy was put in jail for not paying \$73 in parking tickets and was beaten to death by other inmates over a 14-hour period.

I worked on the case of a teenaged girl in California who was jailed for curfew violation for being in the town square at night and then hanged herself in her cell.

I represented the family of a young boy in La Grange, Kentucky, who hanged himself in his cell on the second floor of the jail while the jailer sat in his office on the first floor.

I have seen the needless tragedies that occur when the mandates of the Juvenile Justice Act are not followed. This statute saves children's lives and prevents physical and sexual abuse. We would all want our own children or our nieces and nephews, if they got in trouble, to have the protections of this Act.

The Office of Juvenile Justice and Delinquency Prevention has had a mixed track record over the past 20 years. During the second half of the 1990s, it was a leader in the field. For much of the last 15 years, however, until recently, OJJDP did not keep up with advancements in the field or provide strong leadership.

It did not help that appropriations for system improvements were cut by 80 percent or that the Obama administration did not name a permanent administrator for the agency until 4 years after he took control of the executive branch of government.

The vacuum in leadership was partially filled by the Annie E. Casey Foundation through its successful Juvenile Detention Alternatives Initiative to reduce unnecessary use of detention without jeopardizing public safety and by the John D. and Catherine T. MacArthur Foundation, whose Models for Change initiative supported important reforms in mental health services, representation by counsel, reduction of racial and ethnic disparities, aftercare, and other areas.

But even large foundations cannot replace the authority and resources of a Federal agency and some foundations eventually leave juvenile justice and move on to other areas of social reform, as the MacArthur Foundation has recently done.

I applaud Bob Listenbee for his efforts over the last 2 years to engage OJJDP more effectively on the critical issues in our field. He has brought energy, commitment, and intelligence to a difficult and complex task.

To fully realize its role as a leader, OJJDP needs to continue to reform itself. Fortunately, there are two recent reports from the National Research Council to provide guidance.

First is "Reforming Juvenile Justice: A Developmental Approach," a really superb compendium of recent research in the field and its relevance to the mission and goals of OJJDP.

The second report, "Implementing Juvenile Justice Reform," published last year, was commissioned by Mr. Listenbee soon after he took over as administrator of OJJDP. It lays out a thoughtful, detailed, 3-year plan for OJJDP to implement the findings of the earlier report, ensure that juvenile justice reforms are grounded in knowledge about adolescent development, and support his role as a leader in the field.

I urge the Committee to support Mr. Listenbee and OJJDP as they seek to follow that plan.

Thank you.

[The prepared statement of Mr. Soler appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Mr. Soler.

Now, Ms. Coleman.

STATEMENT OF ANDREA R. COLEMAN, DISPROPORTIONATE MINORITY CONTACT COORDINATOR, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. COLEMAN. Good morning. I would like to thank the Senate Judiciary Committee for allowing me to speak today. My name is Andrea R. Coleman and I am the Disproportionate Minority Contact, or DMC, Coordinator for the U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention, or OJJDP.

Prior to joining the Department in 2007, I served as the DMC coordinator for the great State of Kentucky. I have over 15 years of experience working with at-risk and delinquent youth in various settings.

In 2009, I received the Assistant Attorney General's award in recognition of outstanding contributions to the mission and goals of the U.S. Department of Justice's Office of Justice Programs.

As a subject matter expert in this area, I have worked to help State and local efforts to reduce the disproportionate number of minority youth who come into contact with the juvenile justice system pursuant to Section 223(a)(22) of the Juvenile Justice and Delinquency Prevention Act, or the JJDP Act.

OJJDP is a distinctive Federal agency because it has the statutory duty to hold States accountable for violations of the DMC, or disproportionate minority contact, requirement by withholding a portion of their Title 2 formula grants.

Unfortunately, based on my years of experience in reviewing DMC compliance plans submitted by all 55 States, territories, and the District of Columbia, I have often wondered how OJJDP, in good conscience, can allow certain States to receive full funding despite clear evidence of violation of this core requirement.

For example, Illinois has continued to receive full funding even though I made several recommendations of noncompliance starting in 2008. I made these recommendations because Illinois' submitted DMC plans did not even meet the program requirements such as not submitting enough data to determine whether DMC even exists, which is part of the regulatory requirement. However, my supervisors overturned my recommendations and gave the State full funding. Unfortunately, this practice of not holding States accountable continued even after Mr. Robert Listenbee became administrator of OJJDP in 2013.

I and other OJJDP staff members recommended findings of noncompliance against Illinois and other States. However, Mr. Listenbee overturned these recommendations without providing any substantive information in support of that decision and per a brief meeting with the head of the Office of Justice Programs' Office of General Counsel or OGC.

Even further, Mr. Listenbee and his leadership team announced that all States would get a, quote, "pass" for their compliance with

the DMC core requirement with respect to their funding for Fiscal Year 2014.

As recently as last week, OJJDP staff were told that this blanket, quote, "pass" would be issued again for Fiscal Year 2016's Title 2 formula grant funds.

This means that States like Illinois that have not met the funding requirements will receive grants in the same manner that States that have met or even exceeded those requirements, such as Connecticut, Iowa, and Utah. This strikes me as unfair.

Other States have flatly admitted to me over the years that they will not even attempt to achieve compliance with the DMC core requirement as stated in the JJDP Act or in the regulations because they know that OJJDP will not enforce them. This decades-old failure continues because Mr. Listenbee has focused more on his relationships with advocacy groups rather than on the States and compliance with the DMC core protections and the first three of the JJDP Act.

For example, Mr. Listenbee did not want States to participate in a stakeholders meeting in March 2014 until I forced the issue. When he finally relented, Mr. Listenbee wanted me to invite DMC officials who were minorities, which would have excluded the juvenile justice specialist for the State of Connecticut, who has worked over 35 years to elevate the State's DMC work to national recognition.

According to a letter that was sent to Chairman Grassley in October, which the staff never saw, including me, the reason that no State will be found out of compliance with the DMC core requirement is because a new compliance monitoring tool is being developed. However, I was the one who developed this tool way back in 2011. This tool is called the Disproportionate Minority Compliance Determination Assessment Instrument, or the CDAI.

Even after the CDAI was piloted, no senior leader would grant final approval. A proposal was submitted to Mr. Listenbee and his senior leadership team in June 2013 and again in February 2014, in addition to other status inquiries, but all to no avail.

When Mr. Listenbee was appointed to be administrator in March 2013, I, like many other staff members, were excited that he would bring his expertise and vision to OJJDP, particularly with addressing DMC. However, compliance monitoring issues have been exacerbated under his tenure and individuals who speak up suffer retaliation.

After I made recommendations of noncompliance in 2013 and voiced concerns in 2014 and 2015, my job duties were reassigned to another staff member, even though I still hold the title as OJJDP's DMC coordinator.

These experiences have been extremely difficult to me, to say the least, but what I do not want to get lost in all of this is the unfair treatment of youth, regardless of their race and ethnicity, who have come into contact with our Nation's juvenile justice system and that is why I am here to testify today. I want to make sure that the agency that I proudly work for achieves this mission on behalf of our Nation's youth.

So, I want to thank you for giving me the opportunity to testify today and I look forward to answering any of your questions.

Thank you.

[The prepared statement of Ms. Coleman appears as a submission for the record.]

Chairman GRASSLEY. Thanks to all the panel. We will have 7-minute rounds of questions, unless there is objection.

By the way, does the Senate Minority Whip need to go early because you have other responsibilities? Because if you do, I will let you go.

Ms. Rumsey, as you noted in your opening, it is disturbing that the Department has been handing out grants to States despite admissions of noncompliance with these requirements.

In my January letter to the Department, I asked about allegations that the Office of General Counsel for the Office of Justice Programs approved handing out money to States that failed to meet the statutory requirements.

Briefly, what can you tell us about this allegation that the General Counsel's office signed off on the practice that the Department now admits is inconsistent with law?

Ms. RUMSEY. Thank you, Chairman Grassley. It is my understanding they wrote the memo which creates that practice, the secret legal memo which essentially authorizes or sort of retrospectively authorizes what Wisconsin was doing.

So, in fact, there was an email with the subject line "Wisconsin" which has a legal opinion attached to it, which essentially allows Wisconsin to do what they are doing, which is lock up non-offenders.

So, it is my understanding that they actually wrote the memo that allows this practice.

And I just want to add, quickly, too, this came to light because of the dogged work of the DOJ/OIG special investigator who worked this case for over a year and a half and was abruptly removed in late 2009, at which point the Wisconsin case went dormant.

Chairman GRASSLEY. Thank you.

Now, Professor Rivkin, you wrote to the Department in November 2013 asking why the Department was not interested in receiving the data that you had concerning compliance issues in your State.

The letter will be submitted to the record, without objection.

[The information appears as a submission for the record.]

Chairman GRASSLEY. The Department needs to improve its handling of such reports. So my question, Why was the Department uninterested in hearing about violations and do you have any recommendations for improving the Department's management of the Justice grants?

Professor RIVKIN. Chairman Grassley, asking me why they did not accept it would only lead to speculation. This audit, the audit that was done in September 2013 was the first audit since 2005, 8 years.

In terms of recommendations, I believe there needs to be more frequent audits than once every 8 years. There needs to be greater collection of data and the integrity of that data. This is a time of great sophistication in data collection and yet the data does not appear to be as robust as it should be.

There should be much greater transparency in this agency rather than guidance documents and compliance regulations that go on and on. And I think there needs to be greater public participation among people in the States when audits take place and when OJJDP comes in. Those are some recommendations, Mr. Chairman, that I think would be prudent.

Chairman GRASSLEY. Ms. Coleman, some in the juvenile justice community have sought to blame States' noncompliance issues on reductions in the budget of the program. Yet, the Department policy that unlawfully rewarded noncompliant States with Federal money existed long before those budget cuts.

You noted in your statement that in my home State of Iowa and other States, like Connecticut and Utah, have not only met the core funding requirements, but exceeded them.

How much funding in juvenile justice grants do these compliant States get more or less than other States?

Ms. COLEMAN. Yes. So funding is actually an issue and, as others have noted, the funding has dropped precipitously over the last decade. But these States actually are our minimum States.

So over the last couple of years, Connecticut, Iowa, and Utah have received roughly around \$400,000 annually in Title 2 formula grant funds to carry out various functions of the JJDP Act. So, they have actually been able to exceed the core protections of the JJDP Act.

And particularly with the DMC core requirement, we have done a study that is soon to be released and even though they have received the minimum amount of funding, they have really been able to exceed the core protections.

So although funding is really an issue, they have really been able to come up with some resourceful ways to exceed the core protections and do really well and we have seen this through their data.

So although funding, again, is an issue, it is not the only issue and they have been very resourceful in being able to exceed the core protections and work and do really well.

Chairman GRASSLEY. I want to ask you another question about "blanket pass."

Ms. COLEMAN. Sure.

Chairman GRASSLEY. The Justice Department sent me a letter in October that confirms your allegations that the Department issued a "blanket pass" to States regarding disproportionate minority contact requirements.

This letter will be submitted to the record, without objection.

[The information appears as a submission for the record.]

Chairman GRASSLEY. In your view, how does this "blanket pass" square with the requirements in the statute?

Ms. COLEMAN. It does not square at all. OJJDP is required annually to make annual determinations of requirement with all the four core protections of the Act, including DMC, pursuant to Section 223(a)(22) and its accompanying regulations. And so the letter that was sent in 2014, that will also be sent this year for 2016 funds, is unprecedented.

Since DMC has been a core requirement in 1992, this has never occurred. States have never been given, quote, "a blanket pass" for

funding. It has never happened. Under this administration is the only time it has ever occurred. So, it does not square with the law.

Chairman GRASSLEY. Senator Whitehouse.

Senator WHITEHOUSE. I am going to be here through the entire hearing. So let me yield to my distinguished senior colleague, the Senator from Illinois.

Senator DURBIN. Thanks, Mr. Chairman, and thank you, Senator Whitehouse, for accommodating my schedule a little bit here.

Ms. Coleman, we took a closer look at your testimony involving my State, obviously, with great interest and I might say at the outset that one of the gentlemen on the Juvenile Justice Commission in Illinois is retired Judge Timberlake, whom I greatly respect, who has been a leader in the areas of juvenile justice.

It appears that the first notification Illinois had that it was out of compliance was in 2012. They were also notified that they had the right to appeal, which they did. And during the course of the appeal, I think, according to Judge Timberlake's letter, they answered the data collection issues which were raised in the 2012 notice and by 2013 they were given a notification that they were going to continue to receive funding and that they were in compliance.

So, they were not ignoring it. When they were notified, they moved on it and I am glad they did. We want to gather this information.

I think most of us would concede that on a national basis we have disproportionate minority contact in virtually all aspects of our justice system and we certainly want to make sure that we, as a Nation, address it and particularly among children.

I had a hearing in another Subcommittee a year or 2 ago on the school-to-prison pipeline. Many of the offenses which these young people are accused of and then incarcerated because of, God forbid they would have been doing the same thing when I was in school, I might not be sitting here today—but it is a reality.

Mr. Soler, if I have pronounced your name correctly, you have highlighted some of the most egregious examples of students who, for what was considered a disciplinary infraction when I was in school, is now viewed in the criminal context with disastrous results personally and on the reputations of these individuals.

Judge Teske, I remember when you testified at that hearing. You were as impressive then as you are today. And I will tell you the thing that struck me the most in your testimony is when you waved 389 pages of Federal jargon on how these agencies are supposed to comply with all of the things that we can dream up.

I would like to ask you—you gave some specific examples, but how can we simplify this so we serve the cause of justice, put limited resources—incidentally, this program has been cut by 80 percent in funding over the last 10 years—put these limited resources to work to remedy the injustice that has been described?

Judge TESKE. Senator, first of all, regarding the compliance matter, let me just say there is actually a great deal of good information in here. However, I think that it can be divided up separately. And when we talk about a compliance manual, let us talk about only those rules and regulations that the States need to comply and then make reference to some other separate document.

The other problem is that—and it is kind of a perfect storm that is coming about here, and that is why I was hoping in my testimony to bring another dimension to what Ms. Rumsey and Ms. Coleman are sharing with us, which are egregious situations, no doubt about it.

But thanks to them in bringing this about. Let us explore the entire universe. And what I mean by that is that we have—this perfect storm includes not only the 80 percent reduction in funding, but at the same time, there was an expansion of the monitoring universe, and the States were pushing back.

We were asked to start inspecting shopping malls, going into group homes. I have a letter here, 2014, that says it's from a compliance monitor and Georgia is pushing back, saying wait a minute, the JJDPa does not specifically expressly say that. Why is this going on? That is creating more expense to us when, in fact, funding is going down.

So when you have that happening, that is creating tension between States and OJJDP. That is a dynamic happening.

And then I think we are witnessing another part of the dynamics going on internally within OJJDP, as well. Now, that is not withstanding egregious and flat-out fraud like Wisconsin. That is a whole separate issue. But there are other issues going on that we need to take a look at.

Now, let me close by saying that in terms of the programs, like what we did in Clayton County, Governor Deal, in the March 5, front page, Atlanta Journal Constitution, lead story, titled "Clayton County Program Model for State." Governor Deal put me on the Reform Commission for a reason. He wanted to know how can we take the 77 percent reduction in commitments and do it statewide.

And to Governor Deal's credit, he turned to our State advisory group and he said how can we use these formula moneys, how can we use moneys that we need to be reducing DMC and do it effectively. Well, let us look at statewide reform. And because of using these formula moneys on a statewide basis, attacking the most egregious, highest commitment counties in the State of Georgia, we have reduced commitments by 62 percent, most of them kids of color, in one fell swoop.

And so last year, January 2014, Bob Listenbee comes down and meets with me and my juvenile justice specialist, Joe Vignati, at CDC. He says, "How did you all do it?" We explained it to him. And then not too long later, he comes back with the SMART grant. He says, "Let us see if we can help States be more effective in reducing DMC by taking it on statewide instead of all this piecemeal, patchwork stuff that is going on in the States, which are good in that piecemeal, patchwork way, but let us really sock it, let us do the knockout."

Senator DURBIN. I have to reclaim because I am running out of time here. But, Mr. Chairman, I understand this program has not been reauthorized for a long, long time, 2002, and I hope that this hearing is an indication of our sentiment that it should be. And I hope that we will keep an eye on the key goals that started us down this path.

But I think Judge Teske's experience, again, impresses me so much, that he has results to show and we should be encouraging

States to either look for better programs or, at least, to follow your example in the approach you are taking.

So thank you for this hearing and thanks to all the witnesses.

Chairman GRASSLEY. I think a long time before I became Chairman, Senator Whitehouse and I had agreed on a basic format and we are ready to move forward.

Senator DURBIN. Great.

Chairman GRASSLEY. And hope you will follow.

Senator DURBIN. I would be happy to. And I also, as Mr. Soler mentioned, focusing on aspects such as isolation, segregation, and solitary confinement for children in America, come on. We are better than that and I hope that some aspects of that will be included.

Thank you.

Chairman GRASSLEY. Thank you.

Senator TILLIS.

Senator DURBIN. I would ask that these two letters be made part of the record, without objection.

Chairman GRASSLEY. Without objection, so ordered.

[The information appears as submissions for the record.]

Senator TILLIS. Thank you, Mr. Chair.

Ms. Rumsey, before I ask a couple of questions, I am curious. As Judge Teske was commenting, you seemed to have a reaction to a few things. Do you want to expound on that?

Ms. RUMSEY. I have never monitored shopping malls as part of my job.

Senator TILLIS. But it sounds like, at least in one case, we had somebody on the ground who was asked to.

Ms. RUMSEY. Specifically, they may have been asked to monitor police departments which exist in shopping malls, which is not very common and, again, in my over 10 years doing this work, I have never once monitored a shopping mall.

Senator TILLIS. I do know down in North Carolina, particularly in urban areas, that is increasingly common in terms of police presence. So maybe that explains it, maybe not.

But, Judge Teske, I wanted to come to you. You are from down in Clayton County and on its face, it sounds like you all are doing good things in Clayton County and producing positive outcomes.

You lifted up that procedure manual which has—or the policy manual which has some 300 or 400 pages in it, but there was something interesting that you said. You lifted up the 300- or 400-page document and then you said, “But now we need some more specifics.”

So one question I have that goes back to the problem I have—I came from State government to the Federal Government—is, that we spend so much time dictating precisely what you do, but we do not spend enough time measuring what you accomplish.

So, as we are going back and looking at reauthorization, to what extent should we be looking at measuring outcomes and having interventions based on—we have baseline information—measuring outcomes and modifying funding as a result of a failure to meet what we believe are reasonable outcomes, which may have to vary from State-to-State or region-to-region based on the circumstances, the demographics?

What are your thoughts on that?

Judge TESKE. I completely agree, Senator. First of all, in my domain of being a judge, specifics means reducing, not expanding.

Senator TILLIS. Good. It does not mean that up here, by the way. [Laughter.]

Judge TESKE. So there is kind of—the data definition there. But directly to your point, as you recall, initially, in my testimony, I made reference that I chair the Oversight and Implementation Committee of our Criminal Justice Reform Commission. Yet, again, another great idea of Governor Deal, he wanted to make sure that we do not do what other States have done in the past, including our own, historically, where we reform something and then we pat each other on the back and we walk away without thinking, well, did we just enact something that really works? We need to measure it.

So in fact, in our second year, what we did in my committee is we brought in researchers and analysts to help us develop an outcome and performance measure document.

We are now creating a centralized juvenile data system. What we are doing is collecting that data, using that document, plugging the data in so that we can measure whether it is working.

Governor Deal said let us keep the commission going so we can continue making changes and recommending to the legislature. So, you are absolutely correct.

Senator TILLIS. Well, I hope that we will focus on that because I think the way you get to a more reasonable document that is more likely to be complied with is to start looking at this a different way in terms of measuring outcomes.

Ms. Coleman, you seemed to react to the question, so I was going to come to you next.

Ms. COLEMAN. Thank you, Senator. I want to note the document that he is referring to is the Disproportionate Minority Contact Technical Assistance Manual and we are—actually, it has gone through several reiterations over the years and I was actually—that is part of my job duties and responsibilities and we were actually working to reduce that.

That is one of my job duties and responsibilities that I was actually working on before it was actually reassigned to another staff member. And the purpose of that document, actually, is guidance for States to implement the DMC reduction model.

And, yes, it is a mammoth monster and I always say that if you cannot sleep at night, you should pick up that manual, you should read it. So that was actually one of the things that I was working on is actually shortening that guidance and condensing it.

And currently, if you do go online, you can actually take it into pieces. You do not have to take the whole manual. So, if you want some assistance on data collection, you can just print out the first chapter and take that. If you want to look at evidence-based or best practices on interventions, you can just print out that section.

So you do not have to print out that mammoth document. You can take it in pieces. But as I was stating in my testimony, those were one of the duties that were actually reassigned to another staff member that I am no longer able to work on.

Senator TILLIS. Thank you. And I should have mentioned to begin with, Ms. Coleman and Ms. Rumsey, thank you for your

courage in stepping up and identifying some things that you think are problems, and I am sorry for the financial burden that you and your family are facing in what I think was doing the right thing.

I have a question for both of you. Do you feel that there were people in the OJJDP that intentionally misread and applied the statute or is this just an example of careless application?

I will let both of you respond in my remaining time.

Ms. RUMSEY. Yes is the short answer.

Senator TILLIS. I can ask a follow-up. You can continue.

Ms. RUMSEY. And a lot of this is hindsight. As I said in my testimony, I was provided some emails—

Senator TILLIS. Well, maybe I should ask just a follow-up. Is it a systemic problem or is it just an example of maybe certain sections or certain people not actually doing their jobs?

Ms. COLEMAN. I will go ahead. It is hard to see you at the other end of the table.

I think it is a combination of factors. I think sometimes folks are put in place of content areas in which they have no background and experience and I do not think that is a DOJ problem. I think sometimes it is a governmentwide problem.

We have some senior leaders that have no background in criminal or juvenile justice that are placed in positions of leadership. So sometimes that is difficult. So then you have staff, such as myself and Ms. Rumsey and others, that do have the experience and then we are trying to basically train them on the job. And so that is somehow difficult. And then you do just have people that will not enforce the law, as we have stated in our testimony today, and so then that creates the situation that Judge Teske says, that we go and we do these onsite audits and then you get a report 4 and 5 years later, which I think is just a disservice not only to kids in these systems, but to the American people when you expect a report and it comes 4 or 5 years later.

So it is a lack of enforcement of the law, much to our protesting over and over, and it is just that people will not do it, for whatever reasons.

Senator TILLIS. Thank you.

Thank you, Mr. Chair.

Chairman GRASSLEY. Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Professor Rivkin, as you noted in your testimony, OJJDP's compliance monitoring system has historically lacked transparency and accountability.

As an advocate with a wealth of experience navigating the juvenile justice system, you nonetheless found it incredibly difficult to report your observations to the body tasked with program oversight. And once you connected with OJJDP, your offer to submit data to document noncompliance was rebuffed.

In your view, what were the consequences of OJJDP's decision to disregard your data not just in terms of taxpayer dollars, but particularly to young people in the criminal justice system?

Professor RIVKIN. By failing to look at the local detention data, as I said, the statistics that we had and our experience with our clients, there was an absence of on-the-ground understanding of

what was happening to kids when they were being locked up in our community for non-crimes, for these status offenses.

And I have to say I was—and I am not often this nonplused. After 45 years, almost, of a legal career, I was nonplused that they said to me they were not interested in trying to reconcile these numbers. And as a result, the integrity of the entire process was significantly reduced.

Kids continued to be locked up and, as I mentioned, the DSO violations in our county may have reduced, although the integrity of that data is in question, but instead the whack-a-mole sort of situation is that mostly runaways are being locked. The default is to lock up, to arrest and then to lock up a runaway under this, I think, legally dubious 24-hour exception and bring them to jail, and that is an issue that we very much would have wanted to raise if we had a chance to meet.

We did not even know when the auditors were coming. So there is real human cost. There is efficiency cost. One way of getting a simpler system, frankly, would be for Congress to make it very clear that the language that they adopted in Section 223 in 1974 that says that States cannot lock up kids in secured detention for status offenses, which is as plain as day, as far as I can tell, would be the law and forget about the exceptions or phase the exceptions out, if Congress so wishes.

It would make compliance a whole lot easier and my hunch is that there would be a significant reduction in these lockups.

Senator FRANKEN. Thank you. I want to talk about mental health. Among the compliance failures you identified in your testimony, you mentioned that juvenile clients that your students represented were not screened for mental health conditions and one of the consequences was that one of your clients threatened suicide after being released and was subsequently admitted to a psychiatric facility.

Professor RIVKIN. Yes.

Senator FRANKEN. One of the issues that I have been most focused on is how to improve the ways in which people with mental health conditions interact with the criminal justice system and I have just reintroduced a bill, with a number of my colleagues on both sides of the aisle, that would assist in training law enforcement on how to recognize and how to respond appropriately to individuals who have mental health issues or are experiencing mental health crises.

And that would invest in mental health courts so that people with mental health issues are directed or diverted to treatment rather than incarcerated, because right now we are really using our criminal justice system as a substitute for a fully functioning mental health system and that has to stop.

Based on your experience representing juvenile offenders, how would you characterize the juvenile justice system's ability to adequately protect young people with mental health issues and conditions?

Professor RIVKIN. From our observations, very poorly, and this legislation, I think, would be very promising.

What we were able to do with our clients was to stabilize their school experience. We were doing truancy cases. And many of our

clients had either identified educational disabilities or the school system had not screened them very well.

I have to say that our school system, over the course of the last 6 years, through a lot of advocacy and school meetings, has done a much better job of using the Individuals with Disabilities Education Act to screen individuals before filing petitions.

And I am really happy to say that in our county, the number of petitions—and in our State, there is a State prosecutor there with a kid—the number of petitions in our county dropped from hundreds and hundreds each year to 26 last year and the major part of it was the screening done by the school system for largely mental health-related issues.

Senator FRANKEN. In the SCH mark-up, we included more mental health in schools.

Professor RIVKIN. I think it would be really helpful to keep kids, as we say, in school and out of court.

Senator FRANKEN. I see some nodding. Would anybody else like to comment briefly on that?

Yes, Mr. Soler?

Mr. SOLER. I think the provisions in the Act, in 2999, to include trauma-informed care and trauma considerations are really critically important. Many of the children we see in the system live lives in trauma all the time. They live in violent communities. They may live in violent families.

Many, many of them, an enormously high percentage, are exposed to trauma and by putting this into 2999, putting it into the legislation, it will assist in having more of a focus on this issue to make sure that there are the right kinds of training for personnel in the juvenile justice system and also that people will understand that young people who have been traumatized do not react to things in the same way that children who have not.

They may react in ways that cause behavior—cause problems inside of juvenile facilities, but it is not because they are being wilfully disobedient to the staff in there. These kids are traumatized and they are acting it out.

Senator FRANKEN. Thank you.

Judge TESKE. Senator, I just wanted to say traumatized people traumatize people and we need to keep that in mind and why it is there. The JJDPa and what it provides and what Mark is saying is so important because what we do not need to do is put kids in a system, detaining them unnecessarily, that traumatizes them more.

Senator FRANKEN. Thank you.

Chairman GRASSLEY. Now, Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman.

Let me just take a moment of my time to thank Senator Franken for his work on the education bill on the mental health issue. I am on the Health Committee with him and I think we made really good progress in that area.

Let me also say that for those who are skeptical about Washington's ability to get things done and sense too much partisanship around here, under the very expert leadership of Chairman Alexander and Ranking Member Murray, we did a very significant piece of legislation in a hotly contested issue area that cleared the

Committee 22–0. So I hope that Chairman Grassley and I can match that on the JJDPA reauthorization here in the Judiciary Committee.

Ms. Coleman and Ms. Rumsey, both of you exhibited considerable frustration with the failures at the State level that were being accommodated rather than addressed and I have to believe that that frustration is founded in a sense of purpose and value to the underlying JJDPA program, and clearly this is an area in which two very talented people have dedicated your professional skills. Could you say something, just briefly, about the role of the Juvenile Justice and Delinquency Prevention Act and why it is that you are so committed to having that enforced and why that is your career?

Ms. Coleman and then Ms. Rumsey.

Ms. COLEMAN. Thank you so much for the question, Senator Whitehouse. My dedication to this actually started before I became a Federal Government employee. Before I came to the Department of Justice, I did this work in the State of Kentucky. Go Cats, go Cards—had to get that in there for my folks in Kentucky who are watching.

This started long before I got here, my investment in the JJDP Act. Again, I did this work there, serving as the disproportionate minority contact coordinator and also working on the juvenile accountability block grant, serving as the Title 5 coordinator, working long ago under the serious violent offender re-entry work.

I mean, I have done this JJDP Act work for so long, being with the JJDP Act, sort of feeling like it is my baby, so to speak.

Senator WHITEHOUSE. And you have seen the difference that it makes.

Ms. COLEMAN. I have seen the difference. I remember when Kentucky was a nonparticipating State. Wyoming—we were with Wyoming. So when OJJDP would have its national conference, we would actually have our own little table because we were sort of the bad children of the—we had some very serious challenges in Kentucky.

So I have seen where it has come and I have seen the impact on the ground in the weeds. So this legislation, I can attest to what everyone has said here—saw some very awful things happening to children in the Bluegrass State.

So, it is very, very important that this Act gets reauthorized.

Senator WHITEHOUSE. Ms. Rumsey—

Ms. COLEMAN. And so coming to the Federal level and seeing it at the sort of 30,000-foot-high level, that is my commitment. And so this is more than a job to me when I go and visit the facilities and do the work with Ms. Rumsey and other staff.

I mean, this almost sort of brings an emotional—this is emotional for me. Seeing what happens to these children in the facilities and seeing the minority over-representation, that is why I am here today. It is not really to point fingers. It is really to ensure that we hold States accountable, that we protect these children and that we make sure that taxpayer dollars are being spent wisely.

So that is my commitment to the JJDPA and why the reauthorization is so important.

Senator WHITEHOUSE. Ms. Rumsey?

Ms. RUMSEY. Thank you. The best way to describe why I do what I do is to actually go into jails and see where these kids are being housed. And if I may recommend one very close to here, the Baltimore City Detention Center, BCDC, you have probably heard of it because it made the front page of The Washington Post a year or so ago.

And if you go into that facility, you will see children in isolation in the most extreme circumstances that are shocking and unbelievable and disgraceful. And I do the work I do because the impact it has is that changes are made, often after the Justice Department shows up.

For example, there was a 16-year-old girl in isolation in BCDC, which is a 1,000-bed adult jail, so very few juveniles there, thankfully, but if they are there, it is not a good place. Right? A 16-year-old girl there, should not have been there. There was an AAG with me there, along with a number of other staff.

We were told within an hour she was moved out because we all saw this girl in a circumstance she should not have been in. We expressed our concerns as politely as we could and the good news is, she was moved to the juvenile justice system almost immediately.

So that is why I do what I do, because I think the power of this law is the change that we can bring to children's lives can be immediately. Now, quickly, I want to say, too, I think oversight is still so important here, because you are going to hear from Carolyn Lerner later today that she has ordered a reinvestigation of sorts of the Wisconsin case and our OIG is handling that. That began about 7 months ago and they still have not talked to me.

So in some ways, I am still the skunk at the company picnic. They are reluctant to talk to me for some reason. I am not sure why. But hopefully I will get the chance at some point to share what I know in hopes of actually fixing the problems which I believe still exist in Wisconsin.

Thank you.

Senator WHITEHOUSE. Judge Teske, you come at this as a former prosecutor, as someone with a background in corrections. You are from the enforcement part of law enforcement.

The numbers that you gave showed substantially reduced engagement and intervention with the criminal justice system. Just remind us why that is a good thing.

Judge TESKE. We cannot let appearances fool us. The get-tough rhetoric can be convenient, it can be quick, but the problem is that we are now armed with so much research over the last 40 years that we know that if we do not do it right, be right on crime, smart on crime, that we do not do those things that make us look soft, if we get the courage, we are going to find out in the end that we are going to have better safety in the community. We are going to improve community safety.

I remember the days in Clayton County we had drive-by shootings every week. I cannot remember the last one now. I cannot remember the last one. And we are the poorest county in all metro Atlanta.

The AJC education reporter wants to know how come our graduation rates are going up, how come we are beating the trend, the

research, when our graduation rates should be going down because we are the poorest county; but the other ones are either steady or going down and they are wealthier than we are.

Well, I will tell you why. It is because we collaborate, because we have a backbone agency, a private and public—we took the research, we put it together, we followed it, and, most important of all, we were able to cede it with Federal money because of the JJDP.

You can have all the research you want, but until you get something to at least get it going, like my daddy said, in the old carburetor, “Son, when you go fill it up when you run out of gas, because I know you are going to, because, you know, kids are neurologically wired to do stupid things, make sure you do not pour all the gas out in that tank, just leave a little bit to pour in the carburetor, it just takes just a little bit,” and that is what JJDP is all about.

We just need that little bit to help us States get going.

Senator WHITEHOUSE. For what it is worth, my wife would probably say that it is men who are neurologically wired to do stupid things, it is not kids. But that is after 30 years of marriage to me. [Laughter.]

Judge TESKE. Well, Senator, actually, women are ahead of us. Their prefrontal lobe cortex is developed at 23, ours is 25.

Senator WHITEHOUSE. So let me thank all the witnesses. Let me thank the Chairman. I think this has been a very, very useful hearing. And I think the point that Judge Teske closed with is one that we have already accepted and agree with on this Committee at the adult level with the Second Chance Act and with some of the criminal justice reform legislation that we are working on.

I have seen it in my home State of Rhode Island, in which we address some of the issues related to incarceration, reduced incarceration rates, got people exited better and out of the prison sooner, and saw our crime rate go down, not up, in coordination with that.

So I am very pleased that the Committee, I think, is going in the right direction here and I hope that we can make real progress, and I think the witnesses have been terrific in helping to guide us in that direction.

So a great hearing, Mr. Chairman, and thank you.

Chairman GRASSLEY. And I associate myself with your remarks.

Before the panel goes, thank you all for your participation and particularly, as whistleblowers in this town know, I consider whistleblowers patriotic citizens who just want to do their job and have government do what government is supposed to do, and I thank you for that.

Before you leave, I would like Ms. Coleman and Ms. Rumsey to know that I am going to ask this first question of Ms. Mason after she testifies: Can I have your commitment that the Department will not engage in any prohibited personnel practices against Ms. Rumsey and Ms. Coleman for their testimony here today or for their previous communication with this Committee?

I thank all of you and you are dismissed now.

Would the next panel come, please? Well, you cannot come until they leave, but they are going to leave.

[Pause.]

Chairman GRASSLEY. Thank you all for being here. I am going to give a short introduction.

Karol Mason is Assistant Attorney General for the Office of Justice Programs at the Department of Justice. The Office of Juvenile Justice and Delinquency Prevention is a component of the Office of Justice Programs.

Carolyn Lerner heads the U.S. Office of Special Counsel. She has been serving in that role since June 2011.

I will start with you, Ms. Mason.

STATEMENT OF HON. KAROL V. MASON, ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. MASON. Good morning. Thank you, Chairman Grassley and Senator Whitehouse and distinguished Members of the Committee.

I am pleased to be here and grateful for the opportunity to discuss the efforts of the Department of Justice to improve our implementation of the Juvenile Justice and Delinquency Prevention Act so that we achieve the goals underlying the JJDPa to help our Nation's youth to become productive citizens and the visionary leaders that they are capable of becoming.

As Assistant Attorney General for the Office of Justice Programs, which includes the Office of Juvenile Justice and Delinquency Prevention, investing in our youth so that we unlock their tremendous potential is one of the primary reasons that I wanted to lead the Office of Justice Programs.

Ensuring that we have an effective and fair juvenile justice system is one of my top priorities. I believe that the road to safe and healthy communities begins with the assurance of opportunity for our young people, especially those who come into contact with the justice system.

Providing that opportunity to take responsibility, to change behavior, and ultimately to become productive and successful members of their communities lies at the heart of the mission at the Office of Justice Programs and, indeed, it is a fundamental moral obligation that we all share.

This administration and this Department of Justice have devoted substantial attention and resources to meeting the needs of challenged and justice-involved youth. Efforts like the Supportive School Discipline Initiative and our work with the Department of Education to provide educational services to youth in correctional facilities are designed to keep kids out of the juvenile justice system and ensure that those who come into our care are given the support, education and guidance they need to get on the right path.

The provisions of the Juvenile Justice and Delinquency Prevention Act and particularly the four core protections set forth by the law provide a framework for advancing this critical work. For more than 40 years, the Department of Justice has used its grant-making authority under the JJDPa to make a positive difference in the lives of the young people who come into contact with the juvenile justice system.

As you know, the Act sets nationwide standards for State-based juvenile justice systems and authorizes our Office of Juvenile Jus-

tice and Delinquency Prevention to award funds to assist States in improving their juvenile justice systems.

While I can assure you that the leadership and staff of OJJDP are committed to fulfilling the mandates of the law, I am also aware of some of the serious problems in the way the office has monitored compliance with the Act, problems that we have begun to address.

They arise from three overarching problems: regulations that are outdated and inconsistent with the law; vague standards that lead to subjectivity in compliance findings; and, delays in making compliance determinations.

While we are already developing new policies to improve compliance with the statute and to avoid these errors in the future, last month we created a new core protections division in OJJDP, which, on an interim basis will be led by an experienced auditor. The division will develop guidelines that streamline the process for submitting compliance data and it will create an online tool that will allow States to submit data and enable us to analyze that data in a more timely fashion.

We are also tightening the timeline for making compliance determinations to ensure that States are held accountable for compliance failures. We are developing objective standards to guide our review and analysis and we will make routine use of field audits to monitor State compliance activity and identify areas where technical assistance is needed.

Finally, we are reviewing all available options to determine whether OJJDP can recover any of the funds that were improperly awarded to States because of failures in the compliance monitoring process. In fact, in response to the Inspector General's recent report outlining systemic failures in Wisconsin, we have frozen all of that State's unspent formula grant funds and notified officials of our plan to conduct an audit within the next 60 days.

We will be both thorough and expeditious in taking these steps. Our goal and my pledge to you is to ensure that our compliance monitoring efforts are consistent with the law so that we fulfill our job of protecting our youth and putting them on a path for success.

I am grateful to you, Senator Grassley, and to the full Committee for calling these issues to our attention and I applaud those who brought these serious matters to light. I encourage anyone—anyone—who has knowledge of error, waste, or malfeasance in the administration of OJJDP programs to come forward immediately. They will continue to have my full support.

Thank you for the opportunity to speak to you today and I will be happy to answer any questions you may have.

[The prepared statement of Ms. Mason appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Ms. Mason.

Now, Ms. Lerner.

**STATEMENT OF HON. CAROLYN LERNER, SPECIAL COUNSEL,
U.S. OFFICE OF SPECIAL COUNSEL, WASHINGTON, DC**

Ms. LERNER. Chairman Grassley, Ranking Member Whitehouse, Members of the Committee, thank you very much for the opportunity to testify.

I also want to thank Chairman Grassley and this Committee for your ongoing interest in whistleblower issues and for your support of the Office of Special Counsel in enforcing the Whistleblower Protection Act.

OSC is an independent Federal agency. We investigate and prosecute on behalf of over 2 million Federal employees. We fulfill this role with a staff of about 135 employees and one of the smallest budgets of any Federal law enforcement agency.

OSC provides a safe channel through which Federal employees may allege violations of law, rule or regulations, gross mismanagement, gross waste of funds and abuse of authority, or a substantial and specific danger to public health or safety.

Unlike its role in retaliation and other prohibited personnel practice cases, OSC does not have investigative authority in disclosure cases. Rather, OSC first evaluates whistleblower disclosures using a substantial likelihood of wrongdoing standard.

In making this determination, we interview the whistleblower and assess the reliability of their information, among other factors. If this threshold determination is made, I send the information to the head of the appropriate agency, who is then required to investigate.

When we receive the agency's report of investigation, I assess whether the findings appear reasonable and are complete. The assessment considers whether the findings are credible and consistent based upon the facts in the disclosure, the agency report, and the whistleblower's input.

I then send the report with my determination and the whistleblower's comments to the President and to Congress.

This oversight role improves Government operations in three key ways. First, if an agency is reluctant to investigate wrongdoing raised internally, OSC can compel an investigation. Second, OSC provides an important accountability and quality control function in the investigative process. For example, the whistleblowers, who are often the experts on the allegations, can comment on the investigation and corrective actions. And OSC also ensures that the actions taken by the agency are reasonable. Third and finally, the process is transparent as OSC makes the results public.

The number of referrals to agency heads for investigation varies by year, but is generally between 40 and 60 cases or about 5 percent of all disclosures received annually.

In 2014 and 2015, OSC referred two cases involving the Office of Juvenile Justice and Delinquency Prevention, OJJDP, to the Attorney General for investigation. The cases involve allegations that OJJDP failed to ensure that States and localities complied with the Juvenile Justice and Delinquency Prevention Act and that despite documented noncompliance, States continued to receive grants in further violation of the Act.

OSC referred the cases to the Justice Department on September 16, 2014 and January 13, 2015. The Justice Department's Office of Inspector General is conducting the investigations for DOJ.

In addition, OSC is also reviewing allegations that an employee was retaliated against for reporting related concerns about OJJDP.

Because all of these cases are ongoing, I cannot say more about them at this time. Doing so would compromise the ongoing inves-

tigation and my oversight of the OIG investigation and Department response. It could also potentially prejudice our determinations in the reprisal case.

I want to acknowledge the Committee staff who I understand have communicated these limitations to the Members of the Committee.

Thank you again for the opportunity to testify. I look forward to answering your questions.

[The prepared statement of Ms. Lerner appears as a submission for the record.]

Chairman GRASSLEY. Thank you, Ms. Lerner.

I will have four questions for Ms. Mason and one question for you. I will start with Ms. Mason.

I want to make sure that there are no repercussions against the two Department of Justice employees who testified on our first panel. I am particularly concerned about the allegations of past retaliation and other misconduct that involved officials in your General Counsel's office.

So a simple question: Can I have your commitment that the Department will not engage in any prohibited personnel practices against Ms. Rumsey or Ms. Coleman for their testimony here today or for their previous communications with the Committee?

Ms. MASON. You absolutely have my commitment, Senator, and thank you for this opportunity to answer that question. In fact, I welcome their input and, as we work through these solutions to the problems you have identified, they are an integral part of our process to fix this situation.

Chairman GRASSLEY. My understanding is that the Department—for you, Ms. Mason—that the Department has not yet recovered any funds that were given to the States under the unlawful policy.

Now, I would like to have today a ballpark estimate of how much money has been unlawfully disbursed under this policy. If you cannot give me that figure today, could you commit to providing an estimate to the Committee by a date certain?

Ms. MASON. Thank you for the question, Senator. As we have mentioned in the past in our communications with your staff and our briefings with your staff, because of the subjectivity that is built into the current policies and practices, we are having a difficult time being able to determine on an objective basis, and re-create the decisions.

So, it is—I could not give you a time limit as we dig into this to try to figure out what moneys, if any, need to be returned as a result of earlier decisions. But I can assure you that going forward, we are going to have a robust policy that is objective and transparent so that everyone going forward knows what the rules are and we will hold every State accountable going forward.

Chairman GRASSLEY. I want to ask you a question about “blanket pass.” In October, the Department informed me that since 2013, it has been telling States that they will not be found out of compliance with the DMC requirement pending the development of a new monitoring tool.

Ms. Coleman testified that she developed this tool in 2011, 4 years ago, but could not even get status updates about where it stands in the Department's approval process.

So to you, Ms. Mason. It is unclear whether the administrator even has the authority to suspend compliance determinations like this. I asked you this question in my February letter, but have not received a response.

Do you believe that the administrator has the authority to suspend statutory requirements and, if so, what is the basis for that authority?

Ms. MASON. Thank you for the opportunity to explain what we are doing with our disproportionate minority contact compliance process.

As we have explained to your staff, we have determined that we do not have the adequate tool that gives it the objectivity we need to determine compliance with the disproportionate minority contact core requirement. So we are using this time, in close consultation with everyone involved at the Office of Justice Programs—excuse me—OJJDP who is part of the core compliance team.

We are also working closely with the Bureau of Justice Statistics and others to develop a tool that will withstand scrutiny and will be more objective.

We expect to have that tool available to begin testing and letting people know about it by the end of the summer. So, I think that it is in our best interest to develop a tool that is fair and objective so that we can hold States fairly accountable for the compliance with that core requirement.

Chairman GRASSLEY. Ms. Lerner, multiple witnesses testified on the first panel that their job duties were stripped away after reporting what they believed to be waste, fraud, and mismanagement within the Department. To me, that sounds a lot like retaliation and textbook example of a prohibited personnel practice.

For the benefit of other whistleblowers in the agency who may fear similar reprisal, would you please explain what options are available to them for reporting retaliation and prohibited personnel practices to your office?

Ms. LERNER. Sure. A lot of whistleblowers start internally. They can go to their IG office. They can always come to this Committee or to Congress. But the Office of Special Counsel is specifically there for Federal employees who believe that they have been subjected to a prohibited personnel practice and we will take their case through our complaints examining unit.

We often can get a quick resolution through mediation. We have a very robust alternative dispute resolution program. So that if someone comes to us and they suggest that something is happening to them that should not be, we can get it into mediation quickly.

We can also get a stay of the personnel action. So, for example, if someone is being threatened with termination, someone is being threatened with a relocation, we can often get a voluntary stay or pause on that activity through the agency. If we cannot get it voluntarily through the Department of Justice, we can go to the Merit Systems Protection Board.

So, there are a lot of tools in our arsenal that we can—or enough tools in our toolkit that we can use to protect whistleblowers and we will do so very robustly.

Chairman GRASSLEY. One last question for Ms. Mason. I had sent a letter in January 2015. I asked you to respond to allegations of the Office of Justice Programs' Office of General Counsel that it issued a secret legal opinion to retroactively justify grants that were given to Wisconsin in violation of the law.

According to whistleblowers, this opinion overturned a decades-old interpretation at the agency, a change that should have involved public notice and comment. To date, I have not heard from you regarding this allegation. So, would you be able to provide this Committee with a copy of that legal opinion?

Ms. MASON. Thank you for the question, Senator. As you know, this is part of an active investigation by the Office of the Inspector General in response to the inquiry from the Office of Special Counsel.

We would be happy to meet with your staff and give them an opportunity to review that document.

Chairman GRASSLEY. I would not think a legal opinion would be so central to an investigation that you could not give us the legal document without interfering with the investigation, right?

Ms. MASON. As I have said, Senator, we will be happy to provide that information to your staff.

Chairman GRASSLEY. Thank you.

Senator WHITEHOUSE.

Senator WHITEHOUSE. Thank you, Chairman.

Two things. First, Chairman Grassley mentioned in his opening statement that there had been, in response to his inquiries about this, an original letter that came back from the Department of Justice that I have not seen yet, but that apparently said everything is fine, do not worry, and then there was a—

Chairman GRASSLEY. You can see that letter. We will get it.

Senator WHITEHOUSE. Great. And then there was a follow-up when the questions got asked a little bit more pointedly, in which the Department said, "oops, okay, yes, you are right, and here are the problems." The follow-up letter, I think, was the April 14 letter.

I have to say, as a former United States Attorney, as somebody who thinks very highly of the Department of Justice, as somebody who is very proud of the Department of Justice, I am pretty concerned that that first letter got out and I would be interested in your opinion on why it is that adequate inquiries were not made in response to a letter from, I guess, then the Ranking Member of the Senate Judiciary Committee such that the Department ended up being put in a position where they sent out a letter that proved not to be either accurate or complete and had to be corrected after the fact.

That is not what we expect from the Department of Justice. You guys are supposed to meet a way higher standard than that. What on earth happened?

Ms. MASON. Senator, thank you for the opportunity to address your concerns.

I share your concerns about the way that we have been operating our compliance process. I think what happened, Senator, is that as

we dug into this issue more deeply, we discovered more issues and more problems. And so I apologize for any miscommunication we may have provided to you all, but we do acknowledge that there is a problem. We acknowledge that things do need to be corrected and we are in the process of doing that.

Senator WHITEHOUSE. I hope that part of this review will not just include what happened in Wisconsin or what happened in Virginia, but will also look into how it came to pass that an apparently inaccurate or, at least, incomplete letter was sent about this to the Senate Judiciary Committee.

Something misfired somewhere in the Department and I think an explanation of what went wrong is a worthy part of your inquiry.

Ms. MASON. Thank you for that, Senator, but I want to make sure that you all understand what we are doing to correct the problem.

What we are doing is we have invited our Office of Audit Assessment and Management, which is our own internal audit and compliance division, to help us work with the Office of Juvenile Justice and Delinquency Prevention to develop a robust compliance process.

We take your inquiries, we take the concerns very seriously, because our first priority is to protect the children. So, we are using all of the tools we have available to us to figure out how do we develop a system that will ensure that the States are complying with the law and making sure that the protections that we need for our young people are there.

Senator WHITEHOUSE. Well, I do not want to get ahead of my skis here, having not actually seen the letter, but I will reserve the right to put in a question for the record that I hope will focus on whatever went—if something went wrong, what it was so that part of that inquiry is to answer that question.

The second thing also comes out of the April 14 letter, in which the Department says that OJJDP's compliance monitoring program relied on regulations that were outdated and inconsistent with the current version of the JJDP Act.

OJJDP failed to update regulations to reflect statutory revisions, the letter said. Many current regulations remain unchanged from their initial publication in 1981, the letter said, and no new regulations have been released since 1996, the letter said.

Now, developing administrative regulations is something that is 100 percent within the purview of the executive branch of government. That is something that you control absolutely.

I am less interested in going back and trying to figure out what went wrong such that regulations did not keep track even with statutory changes, although I suspect that ought to be a matter of interest to the Department and what the heck happened there, but I am really concerned that if we go through the effort to reauthorize the JJDP Act and we get a good bipartisan bill out, which I hope we will, and it makes some of the changes that the previous panels and other people who have been working with us to implement, that you will be quick off the mark to make appropriate administrative regulation changes to follow through on what we will have done.

I do not want to pass a new statute and have the Department wander off and not bother to update its regulations again. What kind of assurance do we have that that will not happen?

Ms. MASON. Well, Senator, we actually need your guidance. We are in the process now of revising the regulations to update them because our goal is to make sure that we are complying with the law.

So, we would like some guidance from you all as to whether we should hold back on that now and wait for the enactment of the JJDPa or whether we should proceed with the regulations. We will do whatever you direct us to do.

But I can assure you that our number one priority is to make sure that we are complying with the law because it's in our best interest—everyone's interest to protect the children that the JJDPa is designed to protect.

And I would like to offer one clarification about our response in January. I do not have the specific letter in front of me at the moment.

Senator WHITEHOUSE. Nor do I.

Ms. MASON. But I do not think that we sent a message that there were no problems. We acknowledged that there were issues with our compliance process. We have always accepted responsibility in this administration, under my watch, for the errors that are in place.

I have never pretended that everything is fine. We know that there is a problem and we have been working to correct these issues well before the letters came from Senator Grassley and the Office of Special Counsel.

Once the problems came to our attention, we started digging in to try to figure out what has happened—what has happened and why it has happened, and began focusing on how do we get ahead of this and prepare a robust compliance process that satisfies the law.

Senator WHITEHOUSE. Well, I am not in a position to anticipate how quickly we will get our reauthorization passed through the Senate, let alone through the House and to the President's desk for signature, but I think it is a very safe bet that it is at least going to be a considerable number of months.

And my feeling is that the American public and the organizations that work with you have the right to be working with an agency whose regulations are up-to-date and whether it is only bringing them up-to-date for those few months until the bill comes along and then you have to go back and do it again, I think that is part of what your job is.

So, I would encourage you to do both in the quickest available timeframe under the Administrative Procedures Act.

Ms. MASON. Thank you.

Senator WHITEHOUSE. That is my personal sense of it. I do not know if the Chairman has anything to add, but I will yield back. Thank you.

Chairman GRASSLEY. Before you go, thank you for your testimony. What you show is good faith of changing things. I hope they materialize. I hope that you can do what you can to right things

with the whistleblowers that I think have been mistreated within your department.

Now, I am going to say something that I would say to any department. Whistleblowers are patriotic people. We could not do our job of oversight—I do not see how you can do your job as an administrator or any administrator, because you have got so many people working under you. If something is wrong and you cannot know everything that is right and wrong, people come to you with a good-faith effort to point out something is wrong, it ought to be treated with a priority if you did not know about it.

It reminds me of the first whistleblower I ever got acquainted with, Ernie Fitzgerald, a long-time employee of the Department of Defense. He testified before Congress that the wings were going to fall off of the C5-A. Nixon said fire the SOB. He was 10 or 12 years through the courts getting his job back and when he got it back, he was in the attic of the Pentagon, because I went over and saw what sort of an attic he was in. And just this week there was some testimony or something on the news about some whistleblower at the VA that has got some little closet office with no jobs to do.

Those are messages that are sent that, by golly, there is great peer pressure to go along to get along and we do not appreciate anybody that is going to make our agency look bad.

It just does not seem right. We are all working for the same doggone—I should not say doggone taxpayers—we are working for the same taxpayers and we have got one customer, the American public, and we all have got to pull together. And I just do not understand.

You know, I told one President one time—well, I tell every President this, but this is the answer one President gave me when I said, we need a Rose Garden ceremony to honor whistleblowers then they will know from the top of the bureaucracy to the bottom that that is a worthy thing to do if something is wrong.

I am ashamed to say it was a Republican President. One Republican President said, “Well, if we did that, we would have 3,000 of the whistleblowers come out of the woodwork.”

Well, that is exactly what you should want to happen. If there are 3,000 things that are wrong, we ought to be getting on those 3,000 things and correcting them.

Now, I am yelling at you and you are just one person, but we have got to change things in Government generally.

This is not an Obama problem. It is a culture problem within Government that we have got to correct.

Thank you all very much. Meeting adjourned.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

“Improving Accountability and Oversight of Juvenile Justice Grants.”

Tuesday, April 21, 2015
Dirksen Senate Office Building, Room 226
10:00 a.m.

Panel I

Ms. Elissa Rumsey
Compliance Monitor
Office of Juvenile Justice and Delinquency Prevention
U.S. Department of Justice

The Honorable Steven C. Teske
Chief Judge
Clayton County Juvenile Court, Georgia

Mr. Dean Rivkin
Professor/Clinic Lead University of Tennessee Law School
Public Interest Lawyering Practicum

Mr. Mark Soler
Executive Director
Center for Children’s Law and Policy

Ms. Andrea Coleman
Disproportionate Minority Contact Coordinator
Office of Juvenile Justice and Delinquency Prevention
U.S. Department of Justice

Panel II

The Honorable Karol Mason
Assistant Attorney General
Office of Justice Programs (OJP)
U.S. Department of Justice

The Honorable Carolyn Lerner
Special Counsel
U.S. Office of Special Counsel

Senate Judiciary Committee Hearing Opening Statement:
Andrea R. Coleman
April 21, 2015

Good morning. I would like to thank the Senate Judiciary Committee for allowing me to speak today. My name is Andrea R. Coleman and I am the Disproportionate Minority Contact or (DMC) Coordinator for the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention or (OJJDP). Prior to joining the Department in 2007, I served as the DMC Coordinator for the great state of Kentucky. I have over fifteen years' experience working with at risk and delinquent youth in various settings.

In 2009, I received the *Assistant Attorney General's Award* in recognition of my outstanding contributions to the mission and goals of the U.S. Department of Justice's Office of Justice Programs or (OJP). As a Subject Matter Expert in this area, I have worked to help state and local efforts to reduce the disproportionate number of minority youth who come into contact with the juvenile justice system, pursuant to Section 223(a)(22) of the Juvenile Justice and Delinquency Prevention or (JJDP) Act.

OJJDP is a distinctive Federal agency because it has the statutory duty to hold states accountable for violations of the DMC requirement by withholding a portion of their Title II Formula Grants. Unfortunately, based on my years of experience in reviewing DMC Compliance Plans submitted by the states, I have often wondered how OJJDP can in good conscience allow certain states to receive full funding despite clear evidence of violations of core requirements.

For example, Illinois has continued to receive full funding even though I made several recommendations of noncompliance starting in 2008. I made these recommendations because Illinois submitted DMC plans that did not meet program requirements such as not submitting enough data to determine whether DMC even exists. However, my supervisors overturned my recommendations and gave the state full funding.

Unfortunately, this practice of not holding states accountable continued even after Mr. Robert Listenbee became Administrator of OJJDP in 2013. I and other OJJDP staff recommended findings of non-compliance against Illinois and other states. However, Mr. Listenbee overturned these recommendations without providing any substantive information in support of that decision and per a brief meeting with the head of OJP's Office of General Counsel or (OGC).

Even further, Mr. Listenbee and his leadership team announced that all states would get "a pass" for their compliance with the DMC requirement with respect to their funding for Fiscal Year 2014. As recently as last week, OJJDP staff was told that this blanket "pass" would be issued again for Fiscal Year 2016 funds.

This means that states like Illinois that have not met funding requirements will receive grants, in the same manner as states that have met – or even exceeded – those requirements, such as Connecticut, Iowa, and Utah. This strikes me as unfair. Other states have flatly stated to me that they will not even attempt to achieve compliance with certain regulatory requirements because they know that OJJDP will not ever enforce them.

This decades' old failure continues because Mr. Listenbee has focused more on his relationship with advocacy groups, rather than on states. For example, Mr. Listenbee did not want states to participate in a stakeholders meeting in March 2014 until I forced the issue. When

he finally relented, Mr. Listenbee only wanted to invite state DMC officials who were minorities, which would have excluded the Juvenile Justice Specialist for the state of Connecticut, who has worked for over 35 years to elevate that state's DMC work to national recognition.

According to a letter that was sent to Chairman Grassley in October, the reason that no state will be found out of compliance with the DMC requirement is because a new compliance monitoring tool is being developed.

However, I am the one who developed this tool, way back in 2011. The tool is called the DMC Compliance Determination Assessment Instrument or the (CDAI). Even after the CDAI was piloted, no senior leader would grant final approval. A proposal was submitted to Mr. Listenbee and his senior leadership team in June 2013 and again in February 2014 – in addition to various other status inquiries – but, all to no avail.

When Mr. Listenbee was appointed to be Administrator in March 2013, I, like many staff members, was excited that he would bring his expertise and vision to OJJDP, particularly with addressing DMC. However, compliance monitoring issues have been exacerbated under his tenure and individuals who speak up suffer retaliation. After I made recommendations of non-compliance in 2013 and voiced concerns in 2014 and 2015, my job duties were reassigned to another staff member even though I still hold the formal title as OJJDP's DMC Coordinator.

These experiences have been extremely difficult for me, to say the least. But, what I don't want to get lost in all of this, is the unfair treatment of youth, regardless of their race and ethnicity, who come into contact with our nation's juvenile justice systems. And that is why I'm here to testify today: to make sure that the agency that I proudly work for achieves its mission on behalf of our youth. So, I want to thank you all again for giving me the opportunity to be here. I look forward to answering your questions.

**Testimony of Carolyn Lerner, Special Counsel
U.S. Office of Special Counsel**

**U.S. Senate
Committee on the Judiciary**

Accountability and Oversight of Juvenile Justice Grants

April 21, 2015, 10:00 A.M.

Chairman Grassley, Ranking Member Leahy, and Members of the Committee:

Thank you for the opportunity to testify today about the U.S. Office of Special Counsel (OSC). OSC is an independent federal investigative and prosecutorial agency. Our primary mission is to safeguard the merit system by protecting employees from prohibited personnel practices (PPPs), especially reprisal for whistleblowing. OSC also provides federal employees with a secure channel for disclosing wrongdoing in government agencies. My testimony today will focus on our process for receiving and evaluating whistleblower disclosures, and the critical role that these disclosures play in promoting government accountability.

As stated, OSC provides a safe channel through which federal employees may allege violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. Unlike its role in retaliation and other PPP cases, OSC does not have investigative authority in disclosure cases. Rather, OSC evaluates disclosures of information to determine whether there is a "substantial likelihood" that wrongdoing has been disclosed. In making this determination, OSC reviews the information, interviews the whistleblower, and assesses their credibility and the reliability of their information, among other factors. If, based on this review, OSC makes a "substantial likelihood" determination, I transmit the information to the head of the appropriate agency. The agency head, or their designee, is required to conduct an investigation and submit a written report on the investigative findings to my office.

Upon receipt of the agency's report, I am required by law to determine whether the report contains the information required by the statute and whether the findings of the agency head appear reasonable. I will determine the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the whistleblower's comments on the report. I then transmit the report with my office's determination and the whistleblower's comments to the President and the congressional committees with oversight responsibility for the agency involved. OSC is also required to place the report and whistleblower comments in a public file.

Through this process, Congress has tasked OSC with a critical oversight role in reviewing allegations of potential government misconduct. The system is beneficial to improving government operations in three key ways. First, if an agency is reluctant to investigate possible wrongdoing raised internally by a whistleblower, OSC can compel the agency to conduct an investigation. Second, OSC provides an important accountability and quality control function in the investigative process. The whistleblowers, who are commonly the experts on the subject

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matter of the allegations, are allowed to comment on the quality of the investigation and corrective actions. OSC also maintains a dialogue with the investigating agency throughout the process to make sure that the actions taken are reasonable and address the concerns raised by the whistleblowers. Finally, the process is transparent. At the conclusion, OSC posts the results on our website, creating a public record of all cases which have been referred for investigation.

In recent years, the OSC disclosure process has prompted significant changes in government operations. Our cases have saved lives and millions of taxpayer dollars. For example, whistleblowers at the Air Force's Port Mortuary in Dover, Delaware disclosed misconduct regarding the improper handling of human remains of fallen service members. After OSC reviewed the allegations and made recommendations, the Air Force took important, wide-scale corrective action. OSC's work helped to ensure that problems were identified and corrected, and the Air Force is now better able to uphold its sacred mission on behalf of fallen service members and their families.

In addition, OSC's work with whistleblowers at the Department of Homeland Security (DHS) exposed the department's longstanding failure to manage hundreds of millions of dollars in annual overtime payments. The lack of adequate safeguards in these overtime payments resulted in a significant waste of taxpayer dollars over many years. Repeated investigations in response to OSC referrals confirmed that overtime payments were routinely provided to individuals who were not eligible to receive them. This work resulted in a series of reforms within DHS, multiple congressional hearings, and bipartisan support for legislation to revise the pay system for Border Patrol agents that will result in \$100 million in annual cost savings at the Department of Homeland Security—an amount roughly five times the size of OSC's annual appropriation.

Finally, in a report to the President and Congress last year, OSC documented severe shortcomings in Department of Veterans Affairs' (VA) investigations of threats to patient care at VA hospitals. This work with VA whistleblowers led to an overhaul of the VA's internal medical oversight office, drastically improving the reports now issued in response to OSC referrals. Just recently, a VA report confirmed an egregious threat to the health and safety of veterans at a medical center in Beckley, West Virginia. In order to meet budget goals, the facility altered prescriptions for veterans over the objections of their mental health providers, with no medical reason for the substituted drugs, in violation of VA policies. The VA investigated, determined that the substitutions created medical risks for the impacted veterans, and recommended both corrective steps to be taken and disciplinary actions for those responsible. It is this type of accountability that the OSC disclosure process promotes.

The number of whistleblower disclosures received by OSC has increased tremendously. The number of disclosures received by OSC has more than doubled in the last five years, and more than quadrupled in the last ten. OSC carefully reviews each disclosure received, and refers only a small percentage for investigation. The number of formal referrals to agency heads for investigation varies by year, and is generally between 40 and 60 cases, or approximately five percent of disclosures received.

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In 2014 and 2015, OSC referred two cases involving the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to the Attorney General for investigation under the provisions of 5 U.S.C. § 1213. The cases generally involve allegations that OJJDP failed to properly ensure that states and localities complied with the requirements of the Juvenile Justice and Delinquency Prevention Act of 1974. Notwithstanding documented noncompliance, states continue to receive grants, in further violation of the Act.

OSC referred the cases to the Justice Department on September 16, 2014 and January 13, 2015, respectively. The Justice Department's Office of Inspector General (OIG) is conducting the investigations on behalf of the Department. The reports are due to OSC on May 12, 2015. However, based on our communications with the OIG, we anticipate that the OIG will likely request an extension. OSC will grant an extension request where an agency demonstrates that it is conducting a good faith investigation that will require more time to successfully complete.

OSC is concurrently reviewing allegations that an employee was retaliated against for reporting related concerns about OJJDP.

Because these cases are ongoing, I cannot say more about them at this time, without compromising the ongoing investigation, my oversight of the OIG investigation and Department response, or prejudicing our determinations in the reprisal case. I acknowledge and appreciate the efforts of Committee staff, who I understand have communicated these limitations to the Members of the Committee.

I thank you for the opportunity to testify.

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Special Counsel Carolyn N. Lerner

The Honorable Carolyn N. Lerner heads the United States Office of Special Counsel. Her five-year term began in June 2011. Prior to her appointment as Special Counsel, Ms. Lerner was a partner in the Washington, D.C., civil rights and employment law firm Heller, Huron, Chertkof, Lerner, Simon & Salzman, where she represented individuals in discrimination and employment matters, as well as non-profit organizations on a wide variety of issues. She previously served as the federal court appointed monitor of the consent decree in *Neal v. D.C. Department of Corrections*, a sexual harassment and retaliation class action.

Prior to becoming Special Counsel, Ms. Lerner taught mediation as an adjunct professor at George Washington University School of Law, and was a mediator for the United States District Court for the District of Columbia and the D.C. Office of Human Rights.

Ms. Lerner earned her undergraduate degree from the University of Michigan, where she was selected to be a Truman Scholar, and her law degree from New York University (NYU) School of Law, where she was a Root-Tilden-Snow public interest scholar. After law school, she served two years as a law clerk to the Honorable Julian Abele Cook, Jr., Chief U.S. District Court Judge for the Eastern District of Michigan.



Department of Justice

STATEMENT OF

**KAROL V. MASON
ASSISTANT ATTORNEY GENERAL
OFFICE OF JUSTICE PROGRAMS**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

AT A HEARING ENTITLED

**IMPROVING ACCOUNTABILITY AND OVERSIGHT OF
JUVENILE JUSTICE GRANTS**

**PRESENTED
April 21, 2015**

**Statement of Karol V. Mason
Assistant Attorney General, Office of Justice Programs
U.S. Department of Justice
Before the Senate Judiciary Committee
United States Senate
April 21, 2015**

Chairman Grassley, Ranking Member Leahy, and other distinguished members of the Committee, thank you for inviting me to speak here today. I appreciate the opportunity to discuss the Department of Justice's efforts to improve implementation of the Juvenile Justice and Delinquency Prevention Act (JJDP Act).

For more than forty years, the Department has used its grant-making authority under the JJDP Act to help protect children and families who come into contact with the juvenile justice system. As you know, the Act sets nationwide standards for state-based juvenile justice systems and empowers the Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP) to award funds to ensure compliance with those standards. Thanks to the hard work and enlightened vision of OJJDP and its many partners in the juvenile justice field, our nation has made significant strides in ensuring justice and safety for youth, families, and communities. Today, violent crime arrest rates for youth are at their lowest point since at least 1980. Between 1997 and 2011, the population of youth in residential placement declined by 42 percent, and the number of youth in residential placement for committing status offenses like violating curfew, running away from home, and underage drinking has decreased by 64 percent.

As the Assistant Attorney General for the Office of Justice Programs (OJP), which oversees OJJDP, I have seen firsthand the crucial role that OJJDP plays in safeguarding our communities and improving the lives of children in crisis. However, we are aware of long-standing problems in the way OJJDP monitors states' compliance with the Act. In part due to concerns raised by this Committee, we have been reviewing OJJDP's compliance monitoring program, which has revealed a number of errors and systemic flaws in the program's operation. Although our review is ongoing, we wanted to share with you some of our preliminary findings and our efforts to resolve these issues.

The three overarching problems with OJJDP's compliance monitoring program are: (1) the regulations governing the program are old, outdated, and inconsistent with the JJDP Act, as amended; (2) the standards used to make compliance determinations are vague, thus injecting substantial subjectivity into the monitoring process, and (3) the extended timeline between a state's filing of a compliance report and OJJDP's compliance determination is inconsistent with the statute.

Before going further, it is helpful to briefly review several key features of the law. Under the JJDP Act, states must comply with twenty-eight requirements in order to receive formula grant funds. Of the twenty-eight, four are deemed “core” requirements because the JJDP Act requires that a state’s award be reduced for non-compliance with any of the core requirements: (1) the deinstitutionalization of status offenders (DSO); (2) jail removal; (3) sight and sound separation; and (4) addressing disproportionate minority contact, where it exists (DMC).

The law uses a carrot-and-stick funding mechanism to ensure compliance. OJJDP awards grant funds on an annual basis to help states meet their statutory obligations, but if a state fails to comply with a core requirement, not only must OJJDP reduce that state’s funding by twenty percent in the following fiscal year, but the state must also agree to spend fifty percent of its annual allocation to achieve compliance in the relevant core requirement.

Our preliminary review indicates that, between fiscal years 2007 and 2014, OJJDP imposed funding reductions in approximately sixty instances of noncompliance, totaling approximately \$12 million in cuts across seventeen states. It appears, however, that this funding mechanism did not always work as it was supposed to, and there were some instances where a state was permitted to “cure” its noncompliance and avert a funding cut by submitting supplemental data from subsequent years, as discussed more fully below.

As I said, we have identified three overarching problems. Let me describe them in greater detail.

1. Old, Outdated, and Inconsistent Regulations

The first problem is that OJJDP’s compliance monitoring program relies on regulations that are old, outdated, and inconsistent with the current version of the JJDP Act.

As you know, the Act was first passed in 1974 and has been reauthorized several times since, most recently in 2002. In some instances, OJJDP failed to update the regulations to reflect these statutory revisions, and many of the current regulations remain unchanged from their initial publication in 1981. No new regulations have been released since 1996.

However, since at least the 1990s, OJJDP has provided states with written guidance for complying with the JJDP Act. During the 2000s, this assistance took the form of published “Guidance Manuals,” which OJJDP released in December 2001,

September 2003, January 2007, and October 2010. In some ways, these Guidance Manuals were more up-to-date than the regulations, in that they reflected some of the statutory changes that the regulations did not. In other ways, unfortunately, these Manuals simply incorporated and repeated many of the practices that were inconsistent with the Act itself.

One of the clearest illustrations of these outdated regulations is the “*de minimis*” exception to certain core requirements. The *de minimis* exception was first conceived thirty-five years ago as a way to allow states to demonstrate substantial compliance with a core requirement—and avoid a funding reduction—by proving to OJJDP that the extent of their noncompliance was “insignificant” or otherwise insubstantial. In regulations published in 1981, OJJDP created a complicated rubric that purportedly established how and when states qualified for the exception. The problem is that this complicated rubric relied on statistics compiled in 1979, and has not been updated since. These standards—incorporating decades-old data—were repeated in all four Guidance Manuals, and formed the basis for compliance determinations through the 2010s, despite major changes in the juvenile justice system during the intervening years.

We recognize that it has taken far too long for OJJDP to develop new regulations. We understand that the Committee is looking to reauthorize or otherwise amend the JJDP Act, and so as we undertake reforms at OJJDP, we will look to the Committee for guidance whether we should expedite new regulations or wait for Congress to pass new legislation.

2. Vague Standards for Compliance Determinations

Another problem uncovered during our review is the vagueness of the standards used to make compliance determinations. A number of key terms used in OJJDP regulations and policies are unclear or ill-defined, which resulted in individual reviewers making their own subjective decisions about their meaning and thus injecting substantial subjectivity into the monitoring process.

Once again, the *de minimis* exception illustrates this problem. As I said before, a state that fell short of full compliance could nonetheless be found in substantial compliance—and avoid a funding cut—by meeting certain criteria under the *de minimis* exception. Yet some of those rules were so vague as to be essentially meaningless.

Consider, for example, the DSO core requirement. According to the Guidance Manuals going back at least as far as 2001, a state with a DSO violation rate between 5.8 and 17.6 per 100,000 could achieve compliance under the *de minimis* exception if the state “adequately met” two criteria, which were described as “Criterion B” and

“Criterion C.” This created two problems. First, neither the Manuals nor the regulations defined the term “adequately met,” leaving OJJDP reviewers to rely on their own judgment when assessing whether that standard was satisfied. Second, the “criteria” themselves were remarkably unclear. It appears that a state could meet “Criterion C,” for example, by demonstrating, in certain circumstances, a plan for *future* compliance, which runs contrary to the very idea of linking funding grants to a state’s performance in the prior year.

These vague standards contributed to the failure of process we have discovered at OJJDP. Under my direction and the direction of the Administrator of OJJDP, OJJDP is revising its policies and guidance documents to bring greater clarity to the process and to provide reviewers with a set of objective standards for evaluating compliance.

3. Extended Timeline Between Compliance Reporting and Compliance Determinations

A third problem relates to the extended timeline between a state’s filing of a compliance report and OJJDP’s compliance determination. The Act requires that OJJDP’s grant funding determinations be based on data submitted by the states for the prior year. In practice, however, there has been a two- to three-year lag between the states’ data submission and the fiscal year affected by the compliance determination.

OJJDP used this extended timeline to provide assistance to states that were not in compliance with the core requirements based on their initial data submissions. In some cases, it appears that OJJDP permitted states to submit additional—or “supplemental”—data from later time periods as a way of avoiding a funding reduction, essentially allowing subsequent compliance to excuse prior noncompliance. Our ongoing review suggests that this practice extended as far back as 1997, and the use of extended timelines and supplemental data was reflected in all four Guidance Manuals.

We recognize that these practices do not reflect the current version of the statute. Going forward, we will no longer accept supplemental data and we are working to shorten the gap between the submission of a state’s data and OJJDP’s compliance determination based on that data. As part of our review, we are attempting to determine what portion of OJJDP’s annual compliance determinations involved the use of supplemental data or conditional awards, and we intend to update the Committee as we gather more details about this practice.

Ongoing Efforts to Resolve Problems and Improve Process

There is much work left to do. Even at this preliminary stage, it is clear that these problems represent both a failure of process and a lack of internal controls within OJJDP used to ensure proper implementation of the Act. Although our review remains ongoing, we are already developing new policies to improve compliance with the statute and to make certain that such errors do not happen in the future.

Last month, we created a new “Core Protections Division” within OJJDP, which will be responsible for ensuring adherence to the Act. We appointed an experienced auditor and one of my trusted advisors to serve as the Division’s first Acting Associate Administrator. With the assistance of OJP leadership, the new Acting Associate Administrator will be working with OJJDP to develop consistent compliance guidelines for states, to streamline the process for submitting compliance data, and to establish an objective and data-driven process to assess compliance.

In addition, we are reviewing all available options to determine whether OJJDP can recover any of the funds that were improperly awarded to states because of failures in the compliance monitoring process. We anticipate, however, that recovery could be difficult, in part because these compliance failures, inconsistencies, and poor record-keeping make it challenging for OJJDP to determine which states received funds to which they were not entitled. As the Committee is aware, a six-year OIG investigation has revealed systemic failures in Wisconsin. OJJDP has frozen all of Wisconsin’s unspent formula grant funds and notified the State of its plan to conduct an audit within the next 60 days.

We appreciate you bringing your concerns to our attention, and we look forward to collaborating with you as we try to resolve these longstanding issues within this important grant program. Thank you for this opportunity, and I look forward to taking your questions.

**Testimony of Dean Hill Rivkin
College of Law Distinguished Professor
University of Tennessee College of Law**

**U.S. Senate Committee on the Judiciary
Accountability and Oversight of Juvenile Justice Grants
April 21, 2015, 10:00 A.M.**

My name is Dean Hill Rivkin. I am College of Law Distinguished Professor at the University of Tennessee College of Law, where I have taught since 1976. With the assistance of community cooperating attorney, Brenda McGee, I teach a clinical course with law students called "Public Interest Lawyering: Education Law Practicum" ("The Practicum").

Since 2009, we have represented in juvenile court youth prosecuted by the State for the status offense of truancy, which is not a crime. Before we became their attorneys, most of our clients had already pled guilty, despite having had solid defenses to the charges—such as trauma, disability, and mental health issues.

A number of our clients had been locked up in the juvenile court's secure juvenile detention facility following their pleas of guilty. These lock-ups ranged from periods of up to 24 hours to a week or longer, which is a violation of the JJDPA's Deinstitutionalization of Status Offenders – or DSO – requirement. In the juvenile jail, our clients were shackled, indiscriminately drug tested, asked to strip, given orange jail jump-suits, and placed in a facility that held serious juvenile offenders. They were not screened for mental health problems. One of our clients threatened suicide, following her release from the detention facility, and was admitted to a psychiatric hospital by her parents.

We sought to halt these practices and urged our State agency – the Tennessee Commission on Children and Youth ("TCCY") – to exercise more vigilant oversight over DSO issues. We questioned TCCY whether its data was accurate and complete. These questions were never satisfactorily answered. We also obtained local detention statistics documenting numerous lock-ups of status offenders. These included hundreds of secure detentions not only in truancy cases but also in runaway cases, for tobacco use, and for curfew violations.

After exhausting our efforts with TCCY, we turned to OJJDP for assistance. In the spring of 2013, following the appointment of a new OJJDP Administrator, we conveyed our concerns to OJJDP about the problems in Tennessee. In July, 2013, I received a telephone call from an official at OJJDP, who stated that he was following up on my communication with the Administrator about the problems in Tennessee.

In this conversation, I was informed that OJJDP was preparing to conduct an Audit of Tennessee, the first full Audit since 2005. I offered to send to this official the local detention data that we possessed and to meet with OJJDP staff to convey our catalogue of concerns about DSO problems in our County and the State. The official stated that he was not interested in our data and left the impression (later confirmed) that OJJDP would conduct the Audit without meeting with us.

The Audit was released in January, 2014. It failed to consider the information that we possessed about Tennessee's compliance practices. For example, the local juvenile detention data that we possessed showed numerous secure detentions for truancy and other status offenses. These detentions were not reflected in the State data sent to OJJDP. The Auditors did not ask to review the data that we offered. Instead, the Auditors only looked at four months of TCCY data from 2012.

Significantly, the Audit failed to mention the large number of lock-ups under OJJDP's so-called 24-hour exception. This exception, which finds no grounding in the absolute ban on secure detention in the JDPA, allows courts to jail status offenders for 24 hours before a court hearing and 24 hours after, excluding weekends and holidays. In Knox County alone, 237 non-DSO lock-ups were reported in 2012. In our view, Knox County is abusing the 24-hour exception, and OJJDP turned a blind eye to this abuse.

Based on our experiences, we believe that the compliance system as it is currently administered by OJJDP is one of the least transparent systems of any federal program that I've encountered. Public access is limited. Bureaucratic language abounds. Without greater transparency and clarity, accountability—the touchstone of success for the JJDPA--suffers.

In conclusion, the need for a strong federal presence, with adequate funding, to prevent vulnerable children from being incarcerated for non-crimes is even more important today than it was in 1974. Congress should proceed forthwith with a fortified reauthorization of the JJDPA in light of the evidence presented at this hearing.

Thank you.

TESTIMONY OF ELISSA RUMSEY
BEFORE THE SENATE JUDICIARY COMMITTEE
APRIL 21, 2015

Chairman Grassley and members of the Senate Judiciary Committee, thank you for requesting my testimony today about the Juvenile Justice and Delinquency Prevention Act (JJDP)¹. This law was first passed by Congress in 1974 and as you know, reauthorized numerous times since. I sincerely thank you for taking steps to enhance the beneficial impact of this important law, specifically discouraging waste, fraud and abuse in federal grants to individual States.

My name is Elissa Rumsey. I am the Compliance Monitoring Coordinator in the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, known as OJJDP. I have held this position for ten years. This testimony, in response to the Committee's request, is submitted in my personal capacity alone. It is not a statement on behalf of OJJDP, whom I appreciate for honoring my right to speak as a private citizen.

I am proud to serve in achieving this law's benefits. However, I am deeply concerned that failure to act against false state compliance records has sustained funding for activities that directly undermine both it and the law's purpose -- helping foster children who are mistreated. To the contrary, there is significant evidence that funding persists despite practices of regularly mixing foster children,

¹ 42 U.S.C. § 5601 *et seq.*

caught after running away from domestic violence or sexual abuse, in jails with adult prisoners. The purpose of funding with controls is so that these type abuses will not occur. Serious enforcement must be restored.

My responsibilities have given me unique experience to recognize alarm bells when the program is not working in practice. They have included analyzing custody data sent to DOJ by State governments wishing to receive an annual formula grant commensurate with each State's compliance with four "core requirements" or "core protections". These protections were designed for our most at-risk youth: those under arrest. Part of the data analysis I do involves onsite inspection of facilities, primarily adult jails and lockups, to examine circumstances in which people, including children, find themselves after arrest. I have monitored law enforcement facilities in over half of the United States. In its 40-year history, the JJDP Act has been enormously successful in reducing levels of crime by juveniles, and by inference, crime by the adults that they will shortly become.

Nevertheless, severe challenges remain due to lack of enforcement. Thus, in my testimony today I will focus on three jurisdictions in which children still do not receive the full benefit of the JJDP Act: Virginia, Puerto Rico and Wisconsin.

But, first, I want you to know a bit about my background (such that you will see my qualifications to do this work): I grew up as the daughter of a corrections official; my mother worked in the Sacramento County, California Jail. I myself

have worked in the Alameda County, California, Jail; and I currently do volunteer work in the Arlington County, Virginia, Adult Detention Center. And, in my current position, as noted, I oversee data collection and on-site monitoring of facilities, in particular adult jails and lockups, covered by the JJDP Act.

If helpful, I can prepare a detailed overview of the four core protections enshrined in the JJDP Act and which you, our Congress, decreed must be enforced by DOJ. In short, I will note that all core protections involve juveniles detained by police whether under arrest or not. The statute effects those protections not by ordering the individual States to comply but rather by providing funds to achieve and maintain compliance with the law. One of the core protections is to separate foster children who run away from sexual abuse or domestic violence from adult criminals in adult jails, when the children are caught and detained.

As noted earlier, I am a civil servant and my job is to analyze and assess compliance data submitted by state governments to determine if participating states qualify for an annual federal grant from DOJ/OJJDP. In late 2007, I was provided evidence that the State of Wisconsin had submitted fraudulent compliance data to DOJ/OJJDP and that State agency managers were covering it up.

I disclosed to my superiors my concern that the State of Wisconsin had submitted false data and was thus committing fraud by receiving federal grants it was not entitled to. Initially I felt confident the problem would be resolved when it

was brought to light. I also tried to work through the State of Wisconsin. But in late 2007 a Wisconsin State government official, an attorney and former prosecutor, told me that Wisconsin was submitting false compliance data to DOJ, and knowingly taking federal grant funds that the State was not eligible to receive. This same Wisconsin official had a warning for me -- "watch your back." At the time, I found such a statement perplexing, and quite frankly, I did not take the warning seriously. My mistake. When I disclosed my concerns about Wisconsin's possible fraud to the DOJ's Office of Inspector General, in early 2008, as DOJ staff are trained to do, I felt some comfort that the problem would be fixed. Again, my mistake.

Within six months of reporting the suspected Wisconsin fraud to DOJ/OIG, I learned that the Wisconsin State employee was right, that I needed to watch my back. Without warning, I was stripped of many of my professional responsibilities, especially my compliance monitoring duties, and prohibited from conducting a compliance audit in the State of Wisconsin, which was scheduled for the spring of 2008. At the same time, my performance evaluations were adversely affected. In addition, my disclosing of the submission of fraudulent data from Wisconsin was a contributing factor to the cancelation of my telework agreement, which set precedent in the federal employee case law. Specifically, the Merit Systems Protection Board (MSPB) formally found that one performance evaluation and the

cancelation of my teleworking agreement constituted prohibited personnel actions in violation of the Whistleblower Protection Act² and ordered corrective action.³

And the Department of Justice has adamantly refused to reimburse me for the more than \$250,000 dollars in legal fees, even though the Whistleblower Protection Act requires it.⁴ Winning, thus, has become like losing, at least in terms of the financial impact blowing the whistle has on my family.

Soon after I reported Wisconsin's alleged use of fraudulent compliance data to the Department of Justice's Office of Inspector General, the OIG began a careful investigation which involved subpoenas requiring Wisconsin State government officials to turn over data. The OIG, led by Special Agent Jill Semmerling, also conducted site visits to Wisconsin jails, in order to validate the fraud. There was frequent communication between me and Special Agent Semmerling, most done over the phone as she was based in Chicago. Throughout her investigation there was a sense of vindication that officials were acknowledging the problem and that the unsafe practices in Wisconsin would be corrected.

But then the unthinkable happened: Ms. Semmerling was abruptly removed from case in October 2009, after investigating for a year and a half. The agent

² Whistleblower Protection Act of 1989, Pub.L. 101-12 as amended.

³ *Rumsey v. Department of Justice*, 120 M.S.P.R. 259, 263-64 & 271 (2013).

⁴ 5 U.S.C. § 1221(g)(2). A proceeding for reimbursement for my substantial legal fees and costs is pending within the Merit Systems Protection Board.

who took over for Ms. Semmerling did not communicate with me at all. And while I did meet him twice, he refused to subsequently discuss the matter with me. This I find troubling and quite frankly insulting, in part because the current IG has publicly stated numerous times how the Agency protocol is to support whistleblowers to treat them as colleagues with neutrality; to essentially keep whistleblowers in the loop. An example of the lack of communication is that when the final report regarding its investigation was issued by the IG last September, I found out about it like everyone else: the Internet. Seven years of my life devoted to this cause, and I don't even get a phone call regarding what was coming.

In a more positive vein, the OIG report concludes that the State of Wisconsin did in fact knowingly submit false compliance data to DOJ/OJJDP from 2001-2008, receiving tens of millions of dollars in return. According to the OIG, the criminal statute of limitations expired prior to the Department's ability to bring any criminal action even though the OIG's untimely final report does confirm the suspected fraud that I reported in Wisconsin. It is unfortunate that the OIG did not act before the statute of limitations expired.

I also wonder about enforcement against ongoing violations. Sadly, based on my review of available data, it is my belief that that fraud in Wisconsin continues. Wisconsin has vastly and knowingly underreported the number of police facilities

covered by the JJDP Act; lied about the number and nature of onsite monitoring it purported to have conducted; and locked up kids for “non-offenses” -- specifically for allegedly running away from foster homes.

That said, I have never been allowed to physically monitor on-site in Wisconsin. Everything I know I know from paper. Sadly, at least seven (7) of my current DOJ/OJJDP co-workers have in fact monitored all throughout the state of Wisconsin, and yet none of them, to my knowledge, reported the fraud. In their defense, it is my understanding the State of Wisconsin went to extreme lengths to hide the data from DOJ/OJJDP staff during the onsite tours. The next site visit is scheduled for next month; again, I will not be allowed to attend. Nevertheless, as noted, the compliance data currently submitted by Wisconsin are significantly problematic to the extent that I can estimate that the State remains noncompliance without leaving DC.

Virginia is another participating JJDP Act jurisdiction that appears to have submitted false compliance data to obtain federal grants for which the State was not qualified to receive. And, indeed, I have repeatedly heard one former State compliance official say, now employed by my agency, that State compliance officials have known for years that DOJ/OJJDP would accept incorrect data and improperly find compliance, and thus States did not need to take the requirements seriously.

My concerns with Virginia began in 2005. I instantly noted problems in the data set submitted by the State. When I raised concerns with Virginia State officials, I was met with hostility and an adamant refusal to correct the identified problems. When I subsequently conducted an audit in Virginia, in 2007, it was contentious and vitriolic to the extent that it was clear to me that the State was submitting false data and equally clear that my superiors had and would continue to tolerate this fraud. It was shortly after this audit that my performance evaluation was lowered and my compliance oversight duties removed.

Puerto Rico is a jurisdiction in which I have inspected law enforcement facilities on a number of occasions. I consider the conditions of confinement some of the worst existing in the world. In fact, based on my personal observations I am certain that children are endangered on a regular basis and that these children are thus on track for negative futures. It was in the year 2000 that DOJ/OJJDP decided to take a close look at Puerto Rico. The Commonwealth had been reporting compliance data that was deemed suspect by DOJ/OJJDP's, and I was asked by my then-supervisor Ms. Chyrl Penn Jones to travel to Puerto Rico and audit that Commonwealth's compliance efforts. Mr. Greg Thompson accompanied me on the audit and thus observed as I did -- children held in cells with adult inmates in clear violation of the JJDP Act; police facilities unconstitutional in operation and

quite frankly, terrifying; and government staff paid by federal grants funds who were unqualified to monitor facilities for compliance with custody requirements.

After working closely with Puerto Rican staff for a number of years to address the problems, other DOJ/OJJDP staff was assigned to work with Puerto Rico and thus my involvement became limited. Moreover, while Puerto Rico has been deemed noncompliant with two of the four core requirements, it is my contention, after review of the annual data sets submitted by Puerto Rico, that the Commonwealth is out of compliance with all requirements and should become a nonparticipating jurisdiction. This has not occurred.

In fact, that is the case with all the states in this testimony. The bottom line is that in each case there has been no accountability. The flow of funding was not even interrupted, despite evidence of concealing sustained consequences that are counterproductive for the children it is supposed to benefit.

Thank you for the opportunity to discuss the substantial benefits of the JJDP Act, and the material reductions it has already effected in juvenile crime rates. Before I conclude my testimony, I would like to answer a question I imagine is on everyone's mind, a question I hear all the time: Why did I blow the whistle and why do I stay at DOJ/OJJDP? I blew the whistle because it was my job to report suspected and alleged waste, fraud and abuse. I blew the whistle because I could not live with myself knowing that this crime was occurring against children and I

was not doing my job to fix the problem. I stay because I believe strongly in the agency's mission, to ensure that youth who come into contact with the justice system are treated fairly and the outcome of that contact is beneficial to society. I stay because I want to see this problem fixed, and I want to be part of the solution.

I would be happy to answer questions.

Thank you.

Children's Law and Policy

TESTIMONY OF MARK SOLER, EXECUTIVE DIRECTOR
CENTER FOR CHILDREN'S LAW AND POLICY
WASHINGTON, DC
BEFORE THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
APRIL 21, 2015

Mr. Chairman and Members of the Committee:

I am an attorney and the Executive Director of the Center for Children's Law and Policy. I have worked on juvenile justice reforms throughout the country for the past thirty-seven years.

I want to start by thanking you, Mr. Chairman, and you, Senator Whitehouse, for your commitment to protect troubled and at-risk youth by introducing S. 2999 in the last Congress to reauthorize the Juvenile Justice Act, and Senator Leahy for his years of commitment to this issue. As you know, the Act has been essentially unchanged since 1992. Yet every year, some 1.3 million young people enter the juvenile justice system in this country, more than the entire populations of the 20 largest cities in Iowa combined, more than the entire population of the state of Rhode Island. And that's just arrests, which is only one way youth get into the system. For a statute that affects millions of children and their families every year, it is long past time for an update.

S. 2999 includes critical revisions to the Act, and I urge you to keep them in the legislation that you introduce in this session. Particularly important are the provisions to keep youth awaiting trial in criminal court out of jails; to enforce the prohibition on locking up status offenders by phasing out the "Valid Court Order" exception; to support the elimination of solitary confinement and dangerous restraints in juvenile facilities; and to provide much-needed guidance to states on how to reduce racial and ethnic disparities in the system.

These important reforms will improve OJJDP's ability to help states ensure that the juvenile justice system is fair, safe, and effective.

The Juvenile Justice and Delinquency Prevention Act, however, has already proved its value many times over, and I have seen its impact firsthand. When I started this work in 1978, four years after the passage of the Act, there were 500,000 children held in adult jails in this country for some period of time every year. I worked with many jurisdictions to help them remove children from adult jails, pursuant to the core requirements in the

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Act. I also brought litigation to protect children in adult jails when local authorities ignored the mandates of the Act. For example, I represented a 15-year-old girl in southeast Ohio who was held in a county jail for staying out overnight and was subsequently raped by a jailer. I represented a boy in Portland, Maine, who was charged with theft of a bicycle and was sexually assaulted in the county jail by an older juvenile. I represented youth held in the Boise, Idaho jail, where a boy was put in jail for not paying \$73 in parking tickets, and was beaten to death by other inmates over a 14-hour period. I worked on the case of a teenage girl in California who was jailed for curfew violation for being in the town square at night, then hanged herself in her cell. I represented the family of a young boy in LaGrange, Kentucky, who hanged himself in his cell on the second floor of the jail, while the jailer sat in his office on the first floor.

I have seen the needless tragedies that occur when the mandates of the Juvenile Justice Act are not followed. This statute saves children's lives and prevents physical and sexual abuse. We would all want our own children, if they got in trouble, to have the protections of the Act.

The Office of Juvenile Justice and Delinquency Prevention has had a mixed track record over the past 20 years. During the second half of the 1990s, it was a leader in the field. For much of the last 15 years, however, until recently, OJJDP did not keep up with advancements in the field or provide strong leadership. It did not help that appropriations for the agency were cut by 80% over the last decade, or that the Obama administration did not name a permanent Administrator for the agency until four years after it took control of the Executive Branch.

The vacuum in leadership was partially filled by the Annie E. Casey Foundation, through its successful Juvenile Detention Alternatives Initiative (JDAI) to reduce unnecessary use of detention without jeopardizing public safety, and by the John D. and Catherine T. MacArthur Foundation, whose Models for Change juvenile justice initiative supported important reforms in mental health services, representation by counsel, reduction of racial and ethnic disparities, aftercare, and other areas. But even large foundations can't replace the authority and resources of a federal agency. And some foundations eventually leave juvenile justice and move on to other areas of social reform, as the MacArthur Foundation has recently done.

I applaud Bob Listenbee for his efforts over the past two years to engage OJJDP more effectively on the critical issues in our field. He has brought energy, commitment, and intelligence to a difficult and complex task.

To fully realize its role as a leader in juvenile justice, OJJDP needs to continue to reform itself. Fortunately, it has two recent reports from the National Research Council to provide guidance. The first report, *Reforming Juvenile Justice: A Developmental Approach* (2013), is a superb compendium of the latest research in juvenile justice and its relevance to the mission and goals of OJJDP. The second report, *Implementing Juvenile Justice Reform: The Federal Role*, published last year, was commissioned by Mr. Listenbee soon after he took over as Administrator of OJJDP. It lays out a thoughtful,

detailed, three-year plan for OJJDP to implement the findings of the earlier report, ensure that juvenile justice reforms are grounded in knowledge about adolescent development, and support its role as a leader in the field. I urge the Committee to support Mr. Listenbee and OJJDP as they seek to follow that plan.

**The Honorable Steven C. Teske
Judge, Clayton County Juvenile Court, Georgia**

**Testimony before the Senate Committee on the Judiciary Hearing on “Improving
Accountability and Oversight of Juvenile Justice Grants”**

April 21, 2015

Good Morning, Chairman Grassley, Ranking Member Whitehouse, and members of the Senate Judiciary Committee. Thank you for having me here to testify today about Improving Accountability and Oversight of Juvenile Justice Grants.

My name is Steven Teske and I currently serve as the chief judge at the Clayton County Juvenile Court in Georgia, a suburb of Atlanta. In addition to the sixteen years I have spent on the court, I have been involved in the juvenile justice system in many other capacities. At the Governor’s request, I represented the 13th Congressional District on the Board of Georgia Children and Youth Coordinating Council (and served as the Chair of the Board), vice-chair of the Governor’s Office for Children and Families, Georgia commission on Family Violence, and serve on the Judicial Advisory Council to the Board of the Department of Juvenile Justice. I also served as a representative for Georgia on the Federal Advisory Committee on Juvenile Justice for the United States Department of Justice’s Office of Juvenile Justice and Delinquency Prevention from 2007-11.

I am a member of the Georgia Council of Juvenile Court Judges and served as its president from 2008-09. I am also a member of the National Council of Juvenile and Family Court Judges (NCJFCJ) and serve on its Board of Directors. I am also chair of the School Pathways Committee of NCJFCJ that provides oversight and implementation of the technical assistance made available jurisdictions seeking to develop school-justice partnerships.

In 2012, Governor Nathan Deal appointed me to serve on the Georgia Council for Criminal Justice Reform, which studied the juvenile justice system resulting in sweeping recommendations to the Governor that were unanimously approved by our legislature. The Governor appointed me in 2013 to the Commission on Criminal Justice Reform to continue the study of adult and juvenile justice reforms and to provide oversight and implementation of the changes enacted. I am co-chair of the Oversight and Implementation Committee.

Since 2010, I have been serving as a designated judge of the superior court hearing both adult civil and criminal matters.

In my testimony today, I would like to provide some historical background of accountability and oversight practices of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) that I believe will provide the context from which a framework can be created to improve accountability and oversight of juvenile justice grants. I will be sharing this background from my own experiences having served many years as the chair designee for our State Advisory Group (SAG) in which I often interacted with OJJDP compliance monitors as well as my service on the

Federal Advisory Committee for Juvenile Justice in which I had the opportunity to hear the perspectives of the many juvenile justice specialists across this nation that I believe their concerns as state representatives relative to accountability and oversight measures and processes have yet to be heard. Finally, I offer these perspectives only to identify the problem from which I believe this distinguished body in its oversight role can identify the solution(s). In an attempt to be helpful to this end, I will conclude my testimony by providing what I hope will be solutions to what I perceive are the impediments to effective accountability and oversight of juvenile justice grants.

Background: JJDP, OJJDP, and the Four Core Protections

We do not have a national, centralized juvenile justice system. Instead, there are more than 56 different juvenile justice systems independently operated by the U.S. States, territories, the District of Columbia, and local governments. Consequently, laws, policies, and procedures can vary widely from state to state and among local jurisdictions, creating a patchwork of juvenile justice systems resulting in inconsistent outcomes for youth, families, and communities, including youth exposure to physical, mental, and emotional injury. To address these inconsistencies and to improve outcomes for youth and community safety, Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDP) in 1974. The last re-authorization was in 2002.

The JJDP is designed to bring consistency in juvenile justice best practices among all the States by identifying four protections based in research that are core to delinquency prevention and rehabilitation. States who comply with the core protections receive federal funding for programming that promote the core protections. A State deemed out of compliance must lose 20% of its funding and the remaining funds must be dedicated to solving the issues that caused the noncompliance. The issue of accountability when a State is deemed noncompliant by a compliance officer is at the heart of today's hearing. However, I proffer, based on information I will share later in my testimony, that this is only half of the problem. The other half is the methodology by which compliance officers measure and the confusion surrounding what is to be measured, and this goes to oversight.

The four core protections include:

- **Deinstitutionalization of Status Offenders (DSO)**: Status offenses are offenses that only apply to minors whose actions would not be considered offenses if they were adults. The most common are skipping school, running away, breaking curfew, and possession or use of alcohol. Under the JJDP, status offenders may not be held in secure detention or confinement. There are, however, several exceptions to this rule, including allowing some status offenders to be detained for up to 24 hours. The DSO provision seeks to ensure that status offenders who have not committed a criminal offense are not held in secure juvenile facilities for extended periods of time or in secure adult facilities for any length of time. These children, instead, should receive community-based services, such as day treatment or residential home treatment, counseling, mentoring, family support, and alternative education.

- Adult Jail and Lock-Up Removal (Jail Removal): Youth may not be detained in adult jails and lock-ups except for limited times before or after a court hearing (6 hours), in rural areas (24 hours plus weekends and holidays), or in unsafe travel conditions. This provision does not apply to children who are tried or convicted in adult criminal court of a felony level offense. This provision is designed to protect children from psychological abuse, physical assault, and isolation. Children housed in adult jails and lock-ups have been found to be eight times more likely to commit suicide, two times more likely to be assaulted by staff, and 50 percent more likely to be attacked with a weapon than children in juvenile facilities, according to U.S. Department of Justice Studies.
- "Sight and Sound" Separation: When children are placed in an adult jail or lock-up, as in exceptions listed above, "sight and sound" contact with adults is prohibited. This provision seeks to prevent children from psychological abuse and physical assault. Under "sight and sound," children cannot be housed next to adult cells, share dining halls, recreations areas, or any other common spaces with adults, or be placed in any circumstances that could expose them to threats or abuse from adult offenders.
- Disproportionate Minority Contact (DMC): States are required to assess and address the disproportionate contact of youth of color at all points in the justice system - from arrest to detention to confinement. Studies indicate that youth of color receive tougher sentences and are more likely to be incarcerated than white youth for the same offenses. With youth of color making up one-third of the youth population, but two-thirds of youth in the juvenile justice system, this provision requires states to gather information and assess the reason for disproportionate minority contact.

The JJDP is intended to create a federal-state partnership for the administration of juvenile justice and delinquency prevention by providing:

- juvenile justice planning and advisory system, establishing State Advisory Groups (SAGs), spanning all states, territories and the District of Columbia;
- Federal funding for delinquency prevention and improvements in state and local juvenile justice programs; and
- Operation of a federal agency (Office of Juvenile Justice and Delinquency Prevention (OJJDP)) dedicated to training, technical assistance, model programs, and research and evaluation, to support state and local efforts.

The JJDP also established the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in order for the federal government to function as a responsive and responsible partner with all states under the JJDP. However, for years the lack of effective compliance guidelines coupled with inefficient compliance techniques as reported by juvenile justice specialists and SAG members in numerous States has weakened this partnership.

The Need for Re-Authorization of the JJDP: A Georgia Example

I am concerned that the questions around accountability and oversight of juvenile justice grants by OJJDP may cause Congress to question the need for re-authorization of the JJDP. Despite the concerns of accountability and oversight, the outcomes of many programs and practices that were created using federal funds far outweighs any negative outcomes as a result of less than desirable compliance measures. This is not to minimize in the least the importance of addressing ways to improve accountability and oversight of juvenile justice grants. It goes without saying that because JJDP has assisted States to make significant improvements in their local juvenile justice systems, imagine how much more effective those systems will be with improved accountability and oversight measures and tools in place. I am asking this distinguished body to separate those trees from the forest and address the accountability and oversight concerns knowing that by doing so you will be improving upon an already proven act of Congress.

To illustrate my point that the JJDP is a proven act of Congress, I will share some examples of what JJDP has done in Georgia by beginning in my own county of Clayton.

When I took the bench in 1999, my county was inundated with high commitment rates to state custody and overwhelming probation caseloads of which most were kids of color and non-violent offenses. In search of ways to improve our system, I found the Annie E. Casey Foundation Juvenile Detention Alternative Initiative (JDAI). The Casey model inspired me to create a number of programs using federal funding that have resulted in significant reductions in racial and ethnic disparities, detentions, commitments to state custody, and the removal of the valid court order exception. These programs seeded by federal funds provided by the JJDP include the following:

- FAST Panel (Finding Alternatives for Safety and Treatment): a multidisciplinary panel of experts that meets before every detention hearing to assess each youth and family and make recommendations to the judge for alternatives to detention. This panel, called the FAST Panel has resulted in 85% of all youth released with a re-offense rate waiting to return to court of less than one percent (1%).
- Second Chance Program: A program for deep-end youth eligible for commitment to state custody, but allowed to remain in the community with intensive supervision and treatment. Since 2010, forty-eight youth have graduated with a 6% re-offense rate compared to the 65% re-offense rate of the youth committed. This program has saved the State approximately 3.9 million dollars while increasing public safety.
- System of Care: An independent backbone agency with a board of directors that braid public and private stakeholders and an executive director and staff that receive referrals from the school system of at-risk youth for assessment and treatment. This agency coordinates all child service agencies to deliver evidence based programs for the prevention of delinquency. The programs associated with this agency have reduced school arrests by 83%, status filings in the court by 86%, while improving school attendance, behavior, and test scores. Despite our county being the poorest in all metro Atlanta, our graduation rates have been steadily increasing and posted the highest increase in graduation rates for the last academic year.

These programs, seeded by federal funds from JJDP, have accomplished the following:

- 83% decrease in average daily detention population (ADP)
- 75% reduction in ADP of minority youth
- 47% reduction in average length of stay
- 77% fewer commitments to state custody
- 70% fewer commitments of minority youth, BUT a
- 62% reduction in juvenile arrests.

In our efforts to reform juvenile justice statewide, which was led by our Governor Nathan Deal, these Clayton County programs became a model for reform.¹ Our Governor created a criminal justice reform commission to study the juvenile justice system, which reforms resulted in a 62% reduction in commitments to state custody using federal formula grant monies from the JJDP. These funds were used to rehabilitate youth in the community along with their families using evidence based programs listed on the OJJDP website. Our reforms also included the removal of the valid court order exception for status offenders.

How to Improve Accountability and Oversight of Juvenile Justice Grants

Notwithstanding any findings that may be made that grants were fraudulently obtained to which serious controls must be contemplated to preclude future fraud, I am here to speak to another dimension of accountability and oversight deficiencies that are just as serious but may be overlooked.

Improving accountability and oversight first requires an understanding of how OJJDP conducts its compliance audits. The concerns of juvenile justice specialists came to light during a meeting of the Federal Advisory Committee for Juvenile Justice in 2007. I attended that meeting as a Georgia representative and heard statements from several state representatives describing the disparate treatment of compliance standards among the States. Then administrator, Robert Flores, was in attendance and after hearing these alarming comments, I suggested to the administrator that if true, such disparate treatment should be met with immediate corrective action. In response, OJJDP staff met with the state representatives to begin the dialogue after the conclusion of the meeting.

What I already knew as a SAG member and from my juvenile justice specialist and confirmed by an overwhelming number of specialists from around the country, is the following:

- The DMC compliance manual itself is 389 pages in length and extremely difficult to follow;
- The other compliance manual is approximately 100 pages in length;
- Many of the guidelines contained in the compliance manual lack specificity and invites differing interpretations depending on the compliance monitor;

¹ Rhonda Cook, *Clayton County Program Becomes Model for State Reform*, Atlanta Journal Constitution, Section A, front page.

- The rules continuously change without notice and an opportunity to provide feedback, including an expansion of the monitoring universe such as shopping malls, adult psychiatric facilities, and group homes;
- Lack of a standardized process to achieve compliance upon loss of funding; and
- Poor communication from compliance monitors that creates confusion among the state representatives. For example, our last audit occurred in 2010. We did not receive the findings until 2012, but we were expected to respond to their letter within 60 days and we did. The compliance monitor did not reply until 2014—two years later. This is a widespread issue.
- Delayed findings from OJJDP as far out as two years is grounded in old data of which some, if not all, deficiencies have been corrected (See the Georgia 2012 letter responding to the OJJDP 2010 audit not provided until 2012 as an example)

Absent the voice of juvenile justice specialists and SAG members like myself, I am very concerned that the ultimate solution to improving accountability will be deficient because the diagnostics were not complete. Juvenile justice specialists and SAG members offer tremendous insight into what occurs in the weeds when compliance officers travel to localities and conduct audits. I believe that how those audits are performed and the tools by which they conduct those audits are themselves require improvement that would address the other half of this problem—oversight.

I suspicion, based upon what I personally know coupled with an appreciation for managing change at the local and state levels, that compliance officers may be making noncompliance findings using flawed measurements. If this is occurring, and the risk is high under these circumstances, it creates a paradox in which turmoil and tension occurs between the states and OJJDP as well inside OJJDP between compliance monitors and those administrators who may acknowledge these flaws and may intervene to correct an errant outcome. What is understandably viewed by compliance monitors as a violation of the law by their administrators for not enforcing the de minimus rule is viewed as corrective action of the audit by administrators and there lies the paradox, which will continue until action is taken to correct the underlying problems.

To that end, I recommend the following:

- Standardize practices for Compliance Monitoring with defined processes including definite time limits;
- Provide states with technical assistance to develop effective and comprehensive data collection systems, which is essential to accountability and oversight;
- Revise the compliance manuals and remove superfluous material and provide specificity to avoid the subjective interpretation that creates disparate compliance treatment resulting in both external and internal tension;
- Monitoring should focus on areas that are genuine issues to avoid unnecessary use of precious resources and expense. It does not make sense to dedicate massive amounts of manpower and energy to jail removal when this occurs .00005 times a year;
- Although not a regulatory agency, in the least require OJJDP to give notice to the states of any substantive compliance change in the manuals and an opportunity to provide

feedback to avoid an expansion of the monitoring universe that was not intended by Congress (Please note that 42 U.S.C 5672 (d) requires the administrator to consult with the state representatives before making any rules or regulations as it relates to compliance)² ; and

- Mandate annual training for all state representatives specific to the compliance manuals and require training within a time certain after a compliance rule has been issued after notice and comment from the state representatives.

Conclusion

I want to conclude by pointing out that the current administrator visited me and my former juvenile justice specialist, Joe Vignati,³ during January 2014 in Atlanta to ask how Georgia was able to make sweeping reforms with unanimous approval. Notwithstanding the fact that it would not have occurred but for our Governor's leadership, he was impressed with our use of formula funds to bring programs to local communities in one fell swoop that effectively reduced commitments and thus racial disparities. He would later create the SMART grant to replicate similar statewide reforms to effectuate the core protections with substantial outcomes as never seen before.

The time is ripe to re-authorize the JJDPA and in so doing make the changes necessary to improve the accountability and oversight of juvenile justice grants. I do not view this hearing as an obstacle to re-authorization, but an opportunity to improve upon an historical and strategic Act of Congress that has assisted states like mine to do the right thing for our youth. I suspect the irony in what brings us here today is in the opportunity to make better the great things already accomplished.

To that end Chairman Grassley, I want to express my gratitude to you for bringing transparency to this re-authorization process by first seeking to clean up what needs cleaning so we may be stronger in the end for the sake of our youth.

² 42 USC 5672 (d) Rules, regulations, and procedures states: The Administrator is authorized, after appropriate consultation with representatives of States and units of local government, to establish such rules, regulations, and procedures as are necessary for the exercise of the functions of the Office and only to the extent necessary to ensure that there is compliance with the specific requirements of this title or to respond to requests for clarification and guidance relating to such compliance.

³ Joe Vignati was named Assistant Deputy Commissioner for the Georgia Department of Juvenile Justice and appointed by Governor Nathan Deal to serve as co-chair of the Juvenile Justice Funding Committee, which oversees the development and implementation of the Georgia Juvenile Re-Investment program.

**Statement of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
Hearing on “Improving Accountability and Oversight of Juvenile Justice Grants”
April 21, 2015**

Today we examine a very important topic: the management of juvenile justice grants to states. Federal grants that help states improve their juvenile justice systems and prevent young people from becoming involved in crime can transform communities. I have seen firsthand the success of such efforts in my home state of Vermont. In order to achieve successful outcomes, however, it is critical that both federal and state officials are good stewards of these grants - the safety of our youth and our communities depend on it. I share Chairman Grassley's commitment to ensuring these grants are responsibly managed and overseen at every level.

Most of these grants are authorized by the Juvenile Justice and Delinquency Prevention Act (JJDP), which has helped provide crucial services for young people for the last 40 years. These services keep our communities safe by reducing juvenile crime, advancing programs and policies that keep children out of the criminal justice system, and encouraging states to implement policies designed to steer those children who do enter the juvenile justice system back on track to become contributing members of society.

First enacted in 1974, the last five-year reauthorization was in 2002. I led JJDP reauthorization efforts in 2008 and 2009, and both years the bills were reported out of the Senate Judiciary Committee, but were never considered by the full Senate. I thank Chairman Grassley and Senator Whitehouse for their continuing efforts to reauthorize the Juvenile Justice and Delinquency Prevention Act. I am hopeful we can do so this Congress.

As we consider reauthorization, we must examine what is working and what needs improvement. We have a responsibility to ensure that grantees get the guidance they need to comply with federal standards, and are held accountable if they fall short. I appreciate the witnesses who are here today to tell us about problems they have encountered with the administration of these programs. We must be transparent about the challenges if we are to build a stronger system and help young people more effectively.

The JJDP has benefitted countless young people and communities over the past 40 years, and I want to mention just a few examples of the important services the JJDP has made possible in Vermont. The Juvenile Drug Court for Franklin and Grand Isle Counties is funded by the JJDP and provides proactive intervention and treatment for youth who struggle with substance abuse. Under the supervision of a judge, a team of attorneys, counselors, and educators works with each young person to develop a plan for success. These grants fund job readiness and conflict resolution programming for youth at the Woodside Juvenile Rehabilitation Center, and trainings for Woodside staff to perform effective youth assessment screenings. The JJDP has supported a truancy program in Chittenden County that has had great success identifying which children

are missing school and then working with those children and their families to address the causes and get them back on track. All of these programs are vitally important to helping young people become successful, productive adults. Our communities are stronger and safer when these programs are administered responsibly and efficiently.

The latest JJDPa reauthorization, introduced last year, contains many important improvements in services and protections for youth, and it increases accountability measures to ensure state compliance with federal standards. Importantly, it requires states to identify racial and ethnic disparities in their juvenile justice systems, and develop strategies to reduce them. I look forward to working with Chairman Grassley and Senator Whitehouse on reintroduction of this legislation to ensure our youth get the services they need to succeed.

I thank our witnesses who are here today to represent a broad range of expertise on the administration and impact of these grants. Your perspective on this issue is extremely valuable, and I look forward to hearing your testimony.

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QUESTIONS SUBMITTED TO ANDREA R. COLEMAN BY SENATOR GRASSLEY

**Questions for the Record from Senator Charles E. Grassley for
Andrea Coleman
U.S. Senate Committee on the Judiciary
Hearing on “Improving Accountability and Oversight of Juvenile Justice Grants”
Submitted on April 28, 2015**

1. Resistance and Retaliation

- a. Which officials at OJP or OJJDP resisted your efforts to bring compliance issues to light or retaliated against you for such efforts?
- b. What did your job duties consist of prior to Administrator Listenbee’s tenure?
- c. What do your current job duties consist of?
- d. When did your job duties change? Please provide a timeline of these events and describe each instance briefly.
- e. Are there any other concerns you wish to inform the Committee regarding how the Department responded to your efforts to do your job in accordance with the law, or how the Department is currently responding to those efforts?

2. DMC Assessment Tool

- a. What is the Relative Rate Index?
- b. What is the CDAI?

3. “Blanket Pass” or “Not out of compliance determinations”

- a. How have states responded to the “not out of compliance” notifications that the Department has been issuing to all states with respect to the DMC requirement since 2013?

QUESTIONS SUBMITTED TO HON. KAROL V. MASON BY SENATOR GRASSLEY

**Questions for the Record from Senator Charles E. Grassley for
Karol Mason
U.S. Senate Committee on the Judiciary
Hearing on “Improving Accountability and Oversight of Juvenile Justice Grants”
Submitted on April 28, 2015**

1. Legality of “not out of compliance” notifications

In an October 28, 2014 letter, the Justice Department stated that:

Pending implementation of [an assessment] tool, OJJDP has notified states that they are not out of compliance with the DMC core requirement and has offered training and technical assistance to ensure each state continues to address DMC with the juvenile justice system.¹

The Department also stated that “the ‘not out of compliance’ notifications began in 2013 and *will* continue each year until the tool is implemented” and that each state would be offered training and technical assistance during this period.²³

However, the statute requires OJJDP to base Title II Formula Grant funding decisions on annual, state-specific assessments of compliance.³ Mere offers of training and technical assistance cannot satisfy this requirement. The Administrator has the duty and authority to find individual states either compliant or non-compliant -- but it is unclear what part of the statute authorizes him to declare all states “not out of compliance” even *before* conducting these annual, state-specific assessments, with regard to the DMC requirement.

At the April 21st hearing, I asked you whether the OJJDP Administrator has legal authority to suspend statutory requirements in this manner. Unfortunately, your response failed to answer the question because it did not cite any legal authority in support of these “not out of compliance” determinations. Instead, you stated as follows:

We do not have an adequate tool that gives us the objectivity we need to determine compliance with the disproportionate minority contact core requirement We are . . . working . . . to develop a tool that will withstand scrutiny and will be more objective It is in our best interest to develop a tool that is fair and objective so that we can hold states fairly accountable for the compliance with that core requirement.⁴

¹ Letter from the Hon. Peter J. Kadzik, Assistant Attorney General, U.S. Department of Justice, to Sen. Charles E. Grassley, Ranking Member, Sen. Comm. On the Judiciary (Oct. 28, 2014).

² *Id.* (emphasis added).

³ U.S.C. § 5633 (a), (c)(1), and (c)(2).

⁴ U.S. Senate Committee on the Judiciary, *Improving Accountability and Oversight of Juvenile Justice Grants*, (Apr. 21, 2015), <http://www.judiciary.senate.gov/meetings/improving-accountability-and-oversight-of-juvenile-justicegrants/>.

Questions

- a. According to the OJJDP website, there have been only three instances since Fiscal Year 2006 in which OJJDP reduced a state's funding by 20% based on a finding of noncompliance with the DMC requirement.⁵
 - i. Since FY 2006, has OJJDP's failure to develop an objective assessment tool led to over-enforcement or under-enforcement of the DMC requirement?
 - ii. Since FY 2006, which states in which years were unfairly *denied* JJDP funds to which they were entitled – due to OJJDP's failure to develop an objective tool to assess compliance with the DMC requirement?
 - iii. Since FY 2006, which states in which years unfairly *obtained* JJDP funds to which they were *not* entitled – due to OJJDP's failure to develop an objective tool to assess compliance with the DMC requirement?
- b. How is it fair to penalize American taxpayers for OJJDP's failure to develop an objective DMC assessment tool, by giving out federal grants to states for which OJJDP claims there is currently no objective way to determine compliance with statutory funding requirements?
- c. At the hearing, you stated that "I can assure you that going forward we are going to have a robust policy that is objective and transparent, *so that everyone going forward knows what the rules are.*"⁶
 - i. Has OJJDP notified all states that all states have received "not out of compliance" notifications since 2013 and will continue to do so for Fiscal Year 2016?
 - ii. What are the rules that govern DMC compliance assessments for states while the assessment tool is being developed?
 - iii. What is the statutory basis for these rules?
- d. According to Ms. Andrea Coleman, the DMC Coordinator at OJJDP, she developed in 2011 the Compliance Determination Assessment Instrument (CDAI) to assist with making annual determinations of compliance with the DMC requirement. Is there another tool that is currently in development at OJJDP?
 - i. If so, please describe this tool.
 - ii. If not, why has OJJDP not approved the CDAI?
- e. According to OJJDP: "If a state fails to demonstrate compliance with any of the [JJDP's] core requirements in a given year, OJJDP reduces its formula grant for the

⁵ American Samoa in FY 2009; Mississippi in FY 2007; and Northern Mariana Islands in FY 2007. See <http://www.ojjdp.gov/compliance/compliancedata.html>.

⁶ U.S. Senate Committee on the Judiciary, *Improving Accountability and Oversight of Juvenile Justice Grants*, (Apr. 21, 2015), <http://www.judiciary.senate.gov/meetings/improving-accountability-and-oversight-of-juvenile-justicegrants/> (emphasis added).

subsequent fiscal year by 20 percent for each requirement where the state is noncompliant, as required by the JJDP Act.”⁷

- i. How are the “not out of compliance” notifications compatible with 42 U.S.C. § 5633 (a), (c)(1), and (c)(2)?
 - ii. How are the “not out of compliance” notifications compatible with CFR 31.303(j)?
 - iii. Is OJJDP staff required to review states’ DMC compliance plans even though they are receiving these notifications?
 - iv. Does OJJDP base its annual compliance determinations of the DMC requirement on whether a state received training and technical assistance, or on whether that state *actually complied* with the DMC requirement during the year in question?
- f. Since OJJDP began sending out these notifications in 2013, which states in which years have received training and technical assistance with respect to the DMC requirement?
 - g. Prior to 2013, did OJJDP ever send out “not out of compliance” notifications to any state, with respect to any core requirement of the JJDP Act? If so, when, and to which states?
 - h. Which provision of the statute authorizes the Administrator to issue these “not out of compliance” notifications?

2. Recovery of Funds Disbursed Under Unlawful DOJ Policy That Dates Back to 1997

In an April 14, 2015 letter, the Justice Department admitted that it had in place a policy since 1997 that was “not permitted by the statute” in that it allowed states to obtain JJDP Act funds even after submitting non-compliant data.⁸ At the April 21st hearing, I asked whether you could commit to providing a ball-park estimate of how many federal taxpayer dollars were wrongfully disbursed to states under this unlawful policy.

You did not commit to providing this figure by a date certain, stating as follows:

Because of the subjectivity that is built into the current policies and practices, we are having a difficult time being able to determine on an objective basis and recreate the decisions. So . . . I could not give you a time limit as we dig into this to try to figure out what monies, if any, need to be returned as a result of earlier decisions.⁹

⁷ Letter from the Hon. Peter J. Kadzik, Assistant Attorney General, U.S. Department of Justice, to Sen. Charles E. Grassley, Ranking Member, Sen. Comm. On the Judiciary (Oct. 28, 2014).

⁸ Letter from the Hon. Peter J. Kadzik, Assistant Attorney General, U.S. Department of Justice, to Sen. Charles E. Grassley, Ranking Member, Sen. Comm. On the Judiciary (Apr. 14, 2015).

⁹ U.S. Senate Committee on the Judiciary, *Improving Accountability and Oversight of Juvenile Justice Grants*, (Apr. 21, 2015), <http://www.judiciary.senate.gov/meetings/improving-accountability-and-oversight-of-juvenile-justicegrants/>.

Questions

- a. Why do decisions need to be recreated at all in order to obtain this ball-park estimate? Why is this not a straightforward matter of reviewing and tallying records?
- b. In which years, and for how many core requirements, were states allowed to submit supplemental data under the 1997 policy which the Department recently admitted was inconsistent with the statute?
- c. For each instance referenced in Question 2(b) above, what is 20% of the total amount of Title II formula grant funds the state received in that year?¹⁰
- d. What is the sum of all the 20% calculations referenced in Question 2(c), above?
- e. Other than your concerns about OJJDP's ability to assess states' compliance with the DMC requirement, do you have concerns about the objectivity of compliance determinations that OJJDP made under the 1997 policy with respect to any of the three other core requirements? If so:
 - i. Which other core requirements?
 - ii. What is subjective about these compliance determinations? iii. Who has determined that these determinations are subjective?
 - iv. Do these concerns of subjectivity warrant "not out of compliance" notifications to be sent to all states with respect to the other core requirements as well?
 - v. In practice, are there any core requirements for which OJJDP is less likely to reduce a state's funding for noncompliance?

3. Regulations

At the April 21st hearing, Senator Whitehouse correctly stated to you that "developing administrative regulations is something that is 100% within the purview of the executive branch of government. That is something that you control absolutely."¹¹

Senator Whitehouse also stated to you his preference that OJJDP begin revising and updating regulations now to match the current statute, independent of the timing of the next reauthorization of the JJDP. ¹²

I agree.

¹⁰ 42 U.S.C. § 5633 (a)(19) requires participating states to have procedures necessary for "accurate accounting of funds received" under the Act, so states should have these numbers available.

¹¹ U.S. Senate Committee on the Judiciary, *Improving Accountability and Oversight of Juvenile Justice Grants*, (Apr. 21, 2015), <http://www.judiciary.senate.gov/meetings/improving-accountability-and-oversight-of-juvenilejustice-grants/>.

¹² *Id.*

Questions

- a. Since April 21, 2015, what actions has OJJDP taken to update the JJDPA regulations?
- b. When were the JJDPA regulations – pursuant to the 2002 reauthorization – first drafted and by whom?
- c. According to one whistleblower, JJDPA regulations were drafted and have been ready to go since at least 2007 – with multiple iterations produced and multiple consultations occurring with national leaders. Reportedly, a viable draft of these regulations is currently “sitting on the OJP shared computer drive, waiting to be issued.” Is this true?
- d. OJJDP's 24-hour exception is embodied in 28 C.F.R. 31.303(f)(2), promulgated in 1996. What is the legal authority for this exception to the Act's ban on secure detention for status offenders stated in Section 223(a)(12) of the JJDPA?
- e. If the 24 hour exception is deemed to be valid, why is its use by courts not a detailed part of OJJDP's monitoring, like the Valid Court Order (VCO) exception?

4. OJJDP's Core Protections Division

According to your written statement for the hearing:

Last month, we created a new “Core Protections Division” within OJJDP, which will be responsible for ensuring adherence to the Act. We appointed an experienced auditor and one of my trusted advisors to serve as the Division's first Acting Associate Administrator. With the assistance of OJP leadership, the new Acting Associate Administrator will be working with OJJDP to develop consistent compliance guidelines for states, to streamline the process for submitting compliance data, and to establish an objective and data-driven process to assess compliance.

Questions

- a. How does the new Core Protections Division differ from the Audit and Compliance Team established in 2013 – the latter of which was explained in detail in the Department's October 28, 2014 letter?
- b. Have any employees in the Audit and Compliance Team been assigned to the Core Protections Division? If so, who, and how many have not been so assigned?
- c. What role will Ms. Andrea Coleman play in the Core Protections Division?
- d. What role will Ms. Elissa Rumsey play in the Core Protections Division?

- e. At a September 29, 2014 briefing provided to Committee staff, the Justice Department made available two subject matter experts from OJJDP – Ms. Janet Chiancone and Mr. Greg Thompson – to answer questions raised in my September 5, 2014 letter. Ms. Chiancone was the only one who spoke up when Committee staff asked questions that other briefers refused to answer. According to multiple whistleblowers, OJP and OJJDP leadership subsequently removed Ms. Janet Chiancone from leading OJJDP's compliance monitoring efforts, despite her eminent qualifications and experience in this area. What role will Ms. Janet Chiancone play in the Core Protections Division?
- f. Will OJJDP be selecting a permanent Associate Administrator of the Core Protections Division? Will the Acting Associate Administrator be allowed to apply for this position on a permanent basis?
- g. Why is this position Acting? Is the Core Protections Division temporary?
- h. Whistleblowers allege that the Acting Associate Administrator lacks background or experience in conducting audits and determining the adequacy of states' system for compliance monitoring pursuant to Section 204(b)(6) and Section 223(a)(14) or with addressing Disproportionate Minority Contact Section 223(a)(22) pursuant to the JJDP. Whistleblowers also claim that the Acting Associate Administrator lacks experience monitoring facilities covered by the JJDP, such as adult jails and lockups.
 - a. Please describe the Acting Associate Administrator's background or experience in these areas.
 - b. Was the Acting Associate Administrator competitively selected for the position?

5. OJJDP's Failure to Hold Wisconsin Accountable

According to your testimony, OJJDP has frozen all of Wisconsin's unspent formula grant funds and notified the State of its plan to conduct an audit within the next 60 days. The Justice Department's October 28, 2014 letter indicates that OJJDP froze these funds in October 2014. However, according to the Inspector General, the Report of Investigation detailing Wisconsin's violations referenced above was provided to OJJDP in January 2014.

Question

- a. Why did OJJDP wait until October 2014 to place a special condition on Wisconsin's FY 2013 and 2014 funds?

6. Whistleblower Allegations of Misconduct by OJP Office of General Counsel

As I noted at the hearing, whistleblowers allege that officials within your Office of General Counsel engaged in various forms of misconduct.

Multiple whistleblowers have named Rafael Madan and Charlie Moses as officials in your General Counsel's office who allegedly engaged in misconduct and whistleblower retaliation.

In my January 14, 2015 letter, I asked several questions concerning this misconduct, but those questions remain unanswered, to date.

Questions

- a. According to the OIG Special Agent who notified Deputy General Counsel Charlie Moses about the OIG investigation of Wisconsin, Mr. Moses responded by asking "Who is the whistleblower?" In your view, is this an acceptable method of responding to a DOJ employee's effort to report concerns of mismanagement internally?
- b. Do you believe OJP's General Counsel Rafael Madan is able to be objective in his dealings with OJJDP Compliance Staff? Multiple present and past employees of OJJDP have answered this question in the negative in communications with my staff.
- c. Has OGC ever issued a legal opinion or memorandum relating to the JJDP Act or Title II, Formula B grants that was not published? If so, why does OGC not make all of its guidance public so that this process is uniform and transparent?
- d. Has OGC ever issued a legal opinion or memorandum that applied either contemporaneously or retroactively to the compliance determination of Wisconsin or any other state or territory for funding under the JJDP Act?
- e. What is OGC's current interpretation of the VCO exception?
- f. What was OGC's previous interpretation of the VCO exception?
- g. How long did OJJDP operate under the previous interpretation?
- h. When and why did OGC change its interpretation of the VCO exception?
- i. Did OGC seek public comment in making this change? If not, why not?
- j. Did OGC notify all participating states and territories of this change in interpretation? If so, when and how? If not, why not?
- k. Did OGC's change in interpretation affect the compliance determination for Wisconsin for data reported for calendar years 2001-2010? If so, how?
- l. Who drafted this legal opinion in 2007?

- m. Is the 2007 opinion still in effect? Does OJP OGC still allow states like Wisconsin to be in compliance with the DSO requirement despite detaining non-offenders?

7. **Andrea Coleman**

At the hearing, Ms. Coleman testified that many of her job duties as DMC Coordinator at OJJDP were reassigned to other staff after she made recommendations of DMC noncompliance in 2013 and after she voiced similar concerns in 2014 and 2015. According to Ms. Coleman, prior to Administrator Listenbee's tenure, she was allowed to voice such concerns and recommend non-compliance when necessary, without having her job duties subsequently reassigned for doing so.

- a. What were Ms. Coleman's job duties prior to Administrator Listenbee's tenure?
- b. What were Ms. Coleman's job duties at the start of Administrator Listenbee's tenure?
- c. What are Ms. Coleman's current job duties?
- d. If Ms. Coleman's allegations are true, will you consider reinstating her previous job duties as DMC Coordinator? Why or why not?

8. **OJJDP's Compliance Monitoring of Tennessee**

At the hearing, Professor Dean Rivkin testified that OJJDP refused to meet with him before or during OJJDP's 2013 Audit of Tennessee.

Questions

- a. Why did OJJDP refuse to meet with Professor Rivkin before or during the Audit?
- b. Is DOJ willing to meet with Professor Rivkin now?
- c. Will DOJ now review Professor Rivkin's raw detention data concerning Knox County and reconcile this data with the information reported by TCCY?
- d. Will DOJ now reconcile the under-reporting and monitoring of VCO violation hearings in Tennessee? According to Professor Rivkin, OJJDP's 2013 Audit reported 227 VCO violation hearings in Tennessee in 2012, but his state court statistics show that there were in fact 889 such hearings in 2012.
- e. Why was there an eight year period between the 2005 Audit and the 2013 Audit?
- f. Why was it necessary for Professor Rivkin to file a FOIA request to obtain a copy of the 2013 Audit?
- g. Why was the 2013 Audit not publicly posted on the OJJDP website?

- h. Will you provide this Committee with a non-redacted copy of this 2013 Audit?

9. Enforcement of 42 U.S.C. § 5633 (c)(2)(A)

- a. If a state is out of compliance with one or more core requirement, and the state has received a funding reduction for this noncompliance, how does OJJDP ensure that a state is truly spending 50% of its formula grant funding to come back into compliance with a given core requirement?

10. Definition of Juveniles

The federal government considers individuals under age eighteen to be juveniles. Similarly, 41 states make a similar delineation where the “maximum age of juvenile court jurisdiction is age 17.”¹³ Nine states, however, draw the line between adults and juveniles at either age 16 or 15. For purposes of receiving formula grant funding under the JJDPA, the act specifies that “funds shall be allocated annually among the States on the basis of relative population of people under age eighteen.”¹⁴

- a. If nine states set the maximum age of juvenile court jurisdiction below seventeen—and as such, are not necessarily treating all individuals under age eighteen as juveniles for court purposes—may these states be using their formula grant funding to serve a lower number of “juveniles” than might be assumed by the formula as laid out by the JJDPA?
- b. As such, might these states be receiving a larger proportion of money per juvenile (as defined by the state justice systems) through the formula grant program?
- c. Does OJJDP expect that states are serving *all* eligible individuals under age 18 with formula grant funding, or does OJJDP leave the age of individuals served with juvenile justice funding up to the discretion of the states?

¹³ National Conference of State Legislatures, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, October 1, 2014. Seven states draw the line between juveniles and adults at age 16, and two states draw the line at 15.

¹⁴ 42 U.S.C. § 5632.

QUESTIONS SUBMITTED TO PROF. DEAN HILL RIVKIN BY SENATOR GRASSLEY

**Questions for the Record from Senator Charles E. Grassley for
Dean Rivkin
U.S. Senate Committee on the Judiciary
Hearing on “Improving Accountability and Oversight of Juvenile Justice Grants”
Submitted on April 28, 2015**

1. OJJDP Audit of Tennessee

- a. At the hearing, you testified that you attempted to inform OJJDP of compliance monitoring issues in Tennessee prior to the 2013 Audit. Who did you speak to at OJJDP and who refused to accept your data?
- b. How did you obtain a copy of OJJDP’s 2013 Audit of Tennessee?
- c. What discrepancies or deficiencies did you observe in the 2013 Audit?

QUESTIONS SUBMITTED TO ELISSA RUMSEY BY SENATOR GRASSLEY

**Questions for the Record from Senator Charles E. Grassley for
Elissa Rumsey
U.S. Senate Committee on the Judiciary
Hearing on “Improving Accountability and Oversight of Juvenile Justice Grants”
Submitted on April 28, 2015**

1. Wisconsin

- a. What led you to believe that Wisconsin submitted fraudulent compliance data?
- b. Who from OJP made the strongest effort to ensure that Wisconsin received grants to which it was not entitled?

2. Virginia

What led you to believe that Virginia was out compliance, despite data submissions that indicated compliance?

3. Puerto Rico

What led you to believe that Puerto Rico was out of compliance?

4. Other Jurisdictions

Can you give me some examples of other jurisdictions that you believe have been out of compliance?

5. Compliance Monitoring Practices in General

- a. Do you have any suggestions about how your agency could better monitor states' compliance with the statutory core protections?
- b. Has compliance improved in recent years – or has it become more problematic?
- c. Have questionable compliance monitoring practices continued? Can you give me examples?

6. Resistance and Retaliation

- a. How much money in legal fees have you paid to win your job back?
- b. Did Professor Dean Rivkin give you any data from Knox County, Tennessee? If so, when, and what did you do with it?
- c. Which officials at OJP or OJJDP resisted your efforts to bring compliance issues to light or retaliated against you for such efforts?

- d. Are there any other concerns you wish to inform the Committee regarding how the Department responded to your efforts to do your job in accordance with the law, or how the Department is currently responding to those efforts?

QUESTIONS SUBMITTED TO MARK SOLER AND HON. STEVEN C. TESKE
BY SENATOR KLOBUCHAR

Senate Committee on the Judiciary
“Improving Accountability and Oversight of Juvenile Justice Grants”

Questions for the Record: Senator Amy Klobuchar

Questions for Mr. Soler and Chief Judge Teske:

The Juvenile Justice and Delinquency Prevention Act (JJDP Act) has been in place since 1974.

- In your experience, what benefits has this law provided for kids who may interact with the system, as well as for the broader criminal justice system?
- What would the impact be of a formal reauthorization of the program, rather than annual appropriations?
- What changes do you believe are necessary in any reauthorization of the program?

RESPONSES OF ANDREA R. COLEMAN TO QUESTIONS SUBMITTED
BY SENATOR GRASSLEY

**Questions for the Record from Senator Charles E. Grassley for
Andrea Coleman
U.S. Senate Committee on the Judiciary
Hearing on “Improving Accountability and Oversight of Juvenile Justice Grants”
Submitted on April 28, 2015**

1. Resistance and Retaliation

- a. Which officials at OJP or OJJDP resisted your efforts to bring compliance issues to light or retaliated against you for such efforts?

Prior to OJJDP’s reorganization in 2013 Mr. Greg Thompson, Senior Advisor to Administrator Bob Listenbee and Ms. Chyrl Jones, Deputy Administrator for Programs, resisted my efforts to bring compliance issues with Disproportionate Minority Contact (DMC) to light. They did so in their previous roles as Associate Administrator and Deputy Associate Administrator of the former State Relations and Assistance Division (SRAD). Mr. Thompson’s primary reasoning for resisting my efforts is that DMC does not have numerical standards or quotas similar to other JJDP Act core requirements (Deinstitutionalization of Status Offenders (DSO), Separation, and Removal of Juveniles from Adult Jails and Lockups). While Mr. Thompson is correct that there are no numerical standards or quotas therefore OJJDP cannot hold states out of compliance for the *extent* of DMC, Section 223(a)(22) of the Juvenile Justice and Delinquency Prevention (JJDP) Act clearly says that states must implement delinquency prevention and systems improvement strategies to reduce it. Moreover, 28 CFR 31.303(j) provides specific requirements of what states must do to achieve and maintain compliance with the DMC core requirement.

Although Mr. Thompson and Ms. Jones resisted my efforts to bring recommendations of DMC non-compliance to light, there was no formal retaliation via reassigning my job duties to another staff member. Conversely, I am being retaliated against by Administrator Bob Listenbee and Chief of Staff Shanetta Cutlar because I consistently make recommendations of non-compliance for states that do not meet the requirements of Section 223(a)(22) of the JJDP Act and 28 CFR 31.303(j) and (k). I also believe the retaliation is occurring because I question why states will continue to receive a “blanket pass” for DMC compliance in 2015 and possibly 2016. The retaliation even occurred after the April 21st Senate Judiciary Committee Hearing despite Senator Chuck Grassley’s statements and requests regarding retaliation against whistleblowers. Ms. Cutlar engaged in retaliatory behavior by singling me out at OJJDP’s Compliance Policy and Procedures meeting on April 28, 2015 by attempting to hold me responsible for states receiving the “blanket pass” in 2014 because I am the DMC Coordinator (See Attachment A: OJJDP’s Compliance Policy and Procedures Meeting Summary). As a result of this retaliation Mr. Listenbee is designating Chief of staff Shanetta Cutlar to oversee all DMC activities that includes reassigning existing duties to Ms. Tina Borner who is considerably less experienced. Additionally, I am excluded from meetings that

are directly related to my job duties such as facilitating the redesign of the DMC website; Ms. Cutlar also assigned this task to Ms. Borner.

Because of the retaliation I believe me and/or Ms. Rumsey were not considered for the Acting or permanent Associate Administrator position in the new Core Protections Division. On March 20, 2015 Mr. Listenbee told compliance staff we would be moved to the new Division and Ms. LeToya Johnson, Senior Advisor to AAG Karol Mason, would serve as Acting Associate Administrator. Ms. Rumsey asked Mr. Listenbee if I or she were considered because we are the most senior compliance staff and he stated: "No you were not because we need someone who is already a GS-15." When I asked why there would be an acting Associate Administrator when the job position was posted and closed Mr. Listenbee responded it would take 3-6 weeks to hire a permanent Associate Administrator (See Attachment B: Email from Elissa Rumsey-Follow-Up to March 20 Meeting). To my knowledge no further action has occurred to interview for the permanent position. Though I have no supporting documentation, I believe Ms. Rumsey and I qualified for the position and OJP/OJJDP did not want to interview us because they believed or knew we were whistleblowers.

b. What did your job duties consist of prior to Administrator Listenbee's tenure?

My job duties as OJJDP's DMC Coordinator prior to Administrator Listenbee's tenure were:

- Reviewed states and U.S. Territories annual DMC Compliance Plans.
- Developed the DMC Compliance Determination Assessment Instrument (CDAI) and managed the testing and validation process.
- Prepared reports to the President and Congress on DMC.
- Wrote expert Senate testimony on minority overrepresentation at arrests and in secure juvenile detention and adult facilities as a result of school-based policies.
- Assisted with revising Formula Grant Consolidated Regulation 28 CFR Part 31.
- Served as the Co-Chair for the Coordinating Council on Juvenile Justice's Racial and Ethnic Disparities Team with Bryan Samuels, former Administrator of Health and Human Services' Administration for Children, Youth, and Families (ACYF).
- Served as a peer reviewer for the Department of Justice's National Institute of Justice (NIJ).
- Developed and managed the DMC and Community and Strategic Planning (CASP) Project.
- Managed large scale research under the DMC Field Initiated Research and Evaluation (FIRE) Program.
- Wrote DMC technical reports, publications, and concept papers.
- Conducted DMC presentations at various national, state, and local conferences and trainings in over 25 states and localities.
- Provided and facilitating training and technical assistance on various juvenile justice issues.
- Started to manage the Smart on Juvenile Justice's Technical Assistance to End Racial and Ethnic Disparities.

- Answered DMC inquiries from states and juvenile justice system stakeholders.

Additionally, OJJDP formed a partnership with DOJ's Civil Rights Division in 2009 to conduct and/or facilitate statistical analyses for investigations and litigations of state and local criminal and juvenile justice systems pursuant to Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994. As OJJDP's DMC Coordinator I served as the Primary Point of Contact (POC) for investigations and litigations directly related to DMC. I carried out the following duties until August 2015:

- Provided interpretation of juvenile justice data from the Investigation of the Juvenile Court of Memphis and Shelby County at the press conference with Thomas E. Perez, Labor Secretary, and former Assistant Attorney General of the Civil Rights Division.
- Provided and/or facilitated training and technical assistance for the DMC Provisions in the DOJ Memorandum of Agreement with Shelby County, Tennessee that included but is not limited to: training juvenile justice staff, developing and implementing objective decision-making instruments and revising policies and procedures.
- Prepared quantitative reports and interpreted for several state and local criminal and juvenile justice systems that included Meridian, Mississippi, Franklin County and Hamilton County Ohio, and St Louis County, Missouri.

c. What do your current job duties consist of?

My current job duties as OJJDP's DMC Coordinator consist of:

- Reviewing states and U.S. Territories annual DMC Compliance Plans.
- Managing the DMC and Community and Strategic Planning (CASP) Project.
- Managing the DMC Field Initiated Research and Evaluation (FIRE) Program extension.
- Answering some DMC inquiries from states and juvenile justice system stakeholders.

Note: For any DMC activities to move forward they must be approved by Ms. Cutlar even though Ms. Johnson serves as the Acting Associate Administrator of the new Core Protections Division. This includes DMC training and technical assistance, publications, DMC presentations and/or trainings, etc.

d. When did your job duties change? Please provide a timeline of these events and describe each instance briefly.

My job duties began to change in February 2014 (See Attachment C: Reassignment of Job Duties Timeline).

e. Are there any other concerns you wish to inform the Committee regarding how the Department responded to your efforts to do your job in accordance with the law, or how the Department is currently responding to those efforts?

I am concerned states will continue to receive a “blanket pass” for DMC funding because OJP/OJJDP will not approve the CDAI I developed in 2011. AAG Mason, OGC, and OJJDP say the “not out of compliance determinations” language meets the statutory threshold but the JJDP Act and the CFR clearly says will be found in or out of compliance with DMC. So, even if this language is used all states are in compliance because they will receive their DMC funding which indeed is a “blanket pass” even if their DMC Compliance Plans do not meet the statutory and regulatory requirements. To my knowledge this language is unprecedented and has not been used to make determinations of compliance since DMC was elevated to a core requirement by Congress in 1992.

I am also concerned that Mr. Listenbee’s relationship with the advocacy community is causing him to make decisions that may contradict Section 223(a)(22) of the JJDP Act and 28 CFR 31.303(j) and (k). For example, Mr. Listenbee, upon advice from the advocacy community, told compliance staff at a meeting in July 2014 the Relative Rate Index (RRI) will not be used because it does not properly capture the extent of DMC for Hispanic/Latino youth. When I stated that the lack of data for these youth has nothing to do with the RRI as a measure, he raised his voice and asked to explain why states do not have these data. I explained that 28 CFR 31.303(j)(6) does require states to collect these data but some states have better systems and resources to do so than others. Additionally, the basis of the RRI is in 28 CFR 31.303(j)(1) and OJJDP has allocated considerable funding since 2005 to develop the infrastructure via a Web-Based Data Entry System, providing training and technical assistance to states, and developing instructional materials. When I asked what the alternative measure to the RRI would be he did not answer and moved on to the next meeting agenda item. I asked him and Ms. Cutlar at follow-up meetings and the response was that it was going to happen but again no alternative measure was offered. The problem is that Mr. Listenbee is communicating with states that this will occur as Colorado, Montana, and Washington are having discussions with other states saying this was the guidance they received directly from Mr. Listenbee’s statement about the RRI shows a clear lack of understanding of the measure and what it was designed to do. Additionally, this continues a pattern and practice of Mr. Listenbee making decisions without statutory basis similar to the “blanket pass” for states.

Another concern is the implementation of the Core Protections Division, which in my view, is also in direct retaliation against Ms. Janet Chiancone for concurring with my recommendations of non-compliance since 2013 that includes advocating for final approval of the CDAI, and trying to consistently enforce the JJDP Act and 28 CFR 31.303 which Mr. Thompson and Ms. Jones did not do in their roles in the former SRAD.

2. DMC Assessment Tool

a. What is the Relative Rate Index?

The RRI is the measure states are required to use to determine the extent of DMC which is based on the requirements in 28 CFR 31.303(j) (1), (2), and (6)¹. States are required to submit their most recent data minimally once every three years statewide and for at least three local jurisdictions where minority youth comprise at least 1% of the youth population ages 10-17². The statistical basis for the RRI is the chi square distribution test. For example, for a given decision (a finding of guilt/delinquency) it calculates the expected number of cases involving white (non-Hispanic) youth and minority youth that would be expected to have the targeted decision (guilt), if there were no differences in the rates of that decision. It then calculates how divergent the *actual* results are from that *expectation*, and compares the size of the divergence to what could be expected to occur by chance at a given significance level. The 'standard' significance level is $p=.05$, meaning that a divergence of this magnitude (or larger) might occur by chance in 1 of 20 comparisons ($.05 = 1/20$). For states that want to use a different level of significance, they have the option of choosing .10, .05, or .01. Simply stated, the chi-square test involves a comparison between what is observed and what would be expected to have occurred by chance.

The RRI is then based on the computation and comparison of rates. After this is computed a proportion is created that yields a single index number. Thus, an RRI of 1.0 for contact with all juvenile justice contact points (except for diversion and probation) means there is statistical parity (i.e. there is no DMC). An RRI of less than 1.0 for diversion and probation means there is DMC because minority youth are probably being processed formally instead of being diverted from formal processing and/or they are not probated at the same rates compared to white (non-Hispanic) youth. Thus, if the RRI is above 1.0 with identified variables (e.g. rates of offending/contact with the juvenile justice system, socioeconomic factors, equal access to programming for all youth, etc.) being equal then some phenomenon or phenomena are occurring that would not be expected to have occurred by chance.

b. What is the CDAI?

The CDAI is an objective tool I developed in 2011 with indicators to assist OJJDP with making annual determinations of compliance with Section 223(a)(22) of the JJDP Act, the requirements in 28 CFR 31.303(j) and (k), and guidance from the *Disproportionate Minority Technical Assistance Manual, 4th Edition*. OJJDP's Compliance Analysts are to complete the tool after they have reviewed a state's annual DMC Compliance Plan that includes RRI data, assessment and/or evaluation studies, and other supporting

¹ The RRI is the revised requirement in the CFR as it more accurately measures DMC pursuant to the 2002 reauthorization of the JJDP Act.

² Some states the age of criminal responsibility is aged 16 so the data would reflect ages 10-16. Furthermore about 36 states submit these data annually which exceeds OJJDP's minimum requirement of once every three years.

documentation. The tool is weighted and the determination of compliance is mostly based on the CDAI score. Since CDAI has not received final approval staff have been using the 2013 version with no scoring criteria as a guide to assist with making determinations of compliance.

I also developed the CDAI to address Mr. Thompson's consistent statements that finding states out of compliance with DMC would be nearly impossible because there are no numerical standards or quotas like the other three core requirements of the JJDP Act. After various revisions to the CDAI, per comments from OJP's Office of General Counsel (OGC), the states, and DOJ's Bureau of Justice Statistics, it still did not receive final approval. During the process OGC had additional questions which I responded to via memorandum (see Attachment D: Memorandum dated October 3, 2012: Response to OGC Request: DMC Compliance Determination Assessment Instrument (CDAI)). After Mr. Listenbee was appointed Administrator in 2013 Ms. Chiancone and I, immediately began to work to obtain approval. We submitted a timeline to Mr. Listenbee and his senior leadership staff that includes Ms. Cutlar in June 2013 and continued to follow-up all throughout 2014 (See Attachment E: CDAI Timeline and Next Steps-submitted to OJJDP leadership 6-27-13).

3. "Blanket Pass" or "Not out of compliance determinations"

- a. How have states responded to the "not out of compliance" notifications that the Department has been issuing to all states with respect to the DMC requirement since 2013?

Some states such as Arizona and Texas initially responded with confusion because they weren't sure whether they were in or out of compliance because OJJDP had never issued the "blanket pass or "not out of compliance determinations". Oklahoma was "dismayed at the DMC wording" because the letter did not accurately reflect what activities they had addressed and did not believe it needed technical assistance as the letter suggested (See Attachment F: Oklahoma DMC Compliance). What Oklahoma and other states did not know when they received the letters in October 2014 but now know is that all states received the "blanket pass" that included recommending states seek training and technical assistance even if they didn't need it.

ATTACHMENT I TO RESPONSES OF ANDREA R. COLEMAN
TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

**OJJDP Compliance Policy and Procedures Meeting Summary:
Shanetta Cutlar and Andrea R. Coleman Exchange**

April 28, 2015

At OJJDP's Compliance Policy and Procedures Meeting Chief of Staff Shanetta Cutlar asked me if I was the DMC Coordinator; I responded yes I hold the title. She then asked me the same question again. I responded I have the title but most of my duties have been reassigned to another staff member who was at the meeting. She did not respond to that statement but said since I have the job it was my responsibility to make recommendations of compliance to Bob Listenbee in 2014 as I stated recently. She then asked what my process was for reviewing states' DMC Compliance Plans. Ms. Cutlar said again that if states received a "pass" in for 2015 funding and I am the DMC Coordinator it must be because of the review process and my recommendations and "just wants to get a handle on the process". I responded that I conducted a cursory review of the following state that were assigned to me in 2014: American Samoa, Commonwealth of the Northern Mariana Islands (CMNI), Delaware, Georgia, Kentucky, Idaho, Illinois, Louisiana, Oregon, South Dakota, and Texas. This also included checking the DMC Web-Based Data Entry System except for American Samoa and CMNI because they are not required to enter data into the System. Ms. Cutlar stated she wasn't aware of the DMC Web-Based Data Entry System however, I had discussed the System in various meetings.

I was opposed to the "pass" language" and as I had recently stated, per her reference, I also made recommendations of noncompliance to Mr. Willie Bronson and Ms. Janet Chiancone (my then supervisors former Deputy Associate and Associate Administrator of the Audit and Compliance Division) but wasn't sure if these recommendations were made to Bob Listenbee because of the "pass" language. I then advised her to ask the other OJJDP Compliance Analysts Ms. Julie Herr and Ms. Tina Borner in attendance at the meeting about the review process for their assigned states (Ms. Elissa Rumsey was on annual leave). Ms. Borner stated she did not review any DMC Compliance Plans and Ms. Herr advised Ms. Cutlar to defer Mr. Bronson and Ms. Chiancone about the review process. However, Ms. Herr sent a follow-up email to clarify her response at the meeting (see enclosed). Ms. Cutlar said several times after she questioned my colleagues upon my request, that her intent was not to "single me out". I thanked her for the clarification but responded by stating I indeed felt singled out" and the implication is that I was responsible for the review process which led to states receiving the pass for 2015 Title II funds for DMC. She said for the record she wanted to again clarify she was not singling me out but simply wanted to clarify the determination process in 2014. She excused herself because she said she had another meeting to attend at 10:00 am. She sent a follow-up email on April 29, 2015 to which I responded (see enclosed).

**ATTACHMENT II TO RESPONSES OF ANDREA R. COLEMAN
TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY**

Fwd: Follow-up to March 20 meeting

From: Coleman, Andrea <Andrea.Coleman@usdoj.gov>
To: Andrea (colemant200@aol.com) <colemant200@aol.com>
Subject: Fwd: Follow-up to March 20 meeting
Date: Tue, Mar 24, 2015 10:10 am

Sent from my Verizon Wireless 4G LTE smartphone

----- Original
 message -----
From: "Rumsy, Elissa"
Date: 03/24/2015 10:38 AM
(GMT-05:00):
To: "Listerbee, Robert L."
Cc: "Jones, Chyrl", "Chiancone, Janet",
 "Bronson, Willie", "Coleman, Andrea", "Borner, Tina", "Herr, Julie"
Subject:
 Follow-up to March 20 meeting

Bob - thanks for the opportunity to followup
 with questions after last Friday's meeting.

You noted during the meeting that
 I, Andrea, Julie and Tina will be reassigned to OJJDP's new Core Protections
 Division effective April 2. We were also informed that OJPs Letoya Johnson has
 been appointed to serve as Acting Associate Administrator for the new
 division.

While the Associate Administrator job is a career position and
 currently under competition you advised that Letoya is not competing for the
 (permanent) job and that you did not consider appointing Andrea or I for the
 "Acting" opportunity as you felt a GS-15 was needed. Given our colleague Jim
 Antal, a then- GS 14, was recently appointed to "Act" in an Associate
 Administrator/ GS 15 position at OJJDP, I had hoped the same opportunity would
 have been provided to me and Andrea. Nevertheless, I look forward to working
 with Letoya and thus during last Friday's call I asked if you would share with
 us Letoya's background and experience monitoring law enforcement facilities
 covered under the JJDPA. You said you didn't know what Letoya's experience was
 relative to JJDPA and that you would get back to us with that
 information.

Subsequently you mentioned that Janet would be on the hiring
 panels for the Core Protections Division vacancies including for the Associate
 Administrator position. I asked if you could share who else is on the hiring
 panels and you said Theron would sit on the panels and that you would get back
 to us regarding who the other interviewers will be.

Finally, thank you for
 taking my question regarding the status of the JJDPA Regulations (which you told
 Andrea and I that Greg was writing, when she and I met with you 2 years
 ago/shortly after you arrived at OJJDP). I was pleased to hear that regulating
 the JJDPA will be a top priority of the new Core Protections Division. Many of
 us career staff began working on the Regs immediately upon the last JJDPA
 reauthorization in 2002. Although the prior Administration declined to move
 forward and seek public comment on the draft JJDPA Regs OJJDP staff worked so
 hard to write, regrettably we have still not accomplished this in 2015. I
 believe you have read the draft Regs OJJDP staff finalized in 2012, a product
 that received significant input from OGC. Having read the draft Regs I hope
 you'll agree the document includes some extraordinary new protections for youth
 in custody, including:

1. Ensuring access to counsel is explicitly required
 for youth subject to the VCO exception, an exception to the DSO core protection
 which allows status offenders (and nonoffenders according to OGC) to be held
 indefinitely in secure juvenile facilities;
2. Clarifying the definition of
 "adult inmate" which has never been regulated given it appeared for the first
 time in the 2002 Reauthorization. This would have a tremendous impact on states'
 ability to comply with Separation, e.g. States may continue to follow
 long-standing OJJDP policy with the certainty and legitimacy that regulations
 confer. Regulations that address the States' ability to house youth in
 juvenile-only facilities even when such youth have been prosecuted for felonies
 in adult court would bring JJDPA regulations in line with numerous
 recommendations such as both NAS reports, PREA, and the Senate's 2009 attempt
 at JJDPA reauthorization (S.B. 678).
3. Regulating the "C" in DMC. This, as
 you know, has still not occurred since the 2002 JJDPA reauthorization which
 changed DMCs terminology from "Confinement" to "Contact". The implications for
 communities like Ferguson (Missouri) and every other State in the nation are
 enormous. Moreover, the intersection of all core requirements could not be
 clearer in this regard, in particular when we look at the race of those youth
 not protected, as it were, by all core protections. In other words, violations
 of the first 3 core protections almost always include a majority if not an
 exclusivity of minority youth. We know this problem begins with police contact
 ie when we examine which kids get arrested, and which kids end up detained in
 the police station ("adult lockup"), and which kids are charged and moved

[https://mail.aol.com/webmail-std/en-us/PrintMessage\[3/26/2015 11:13:11 AM\]](https://mail.aol.com/webmail-std/en-us/PrintMessage[3/26/2015 11:13:11 AM])

Fwd: Follow-up to March 20 meeting

through the system, it almost always indicates DMC.

There are many more examples of important protections that issuing the updated JJDPa regulations would provide for vulnerable youth in custody; I hope we will see these protections implemented soon.

Thanks again for allowing the above questions after last Friday's brief meeting about my reassignment. I look forward to further dialogue with you.

Regards,
Elissa

Sent from my Verizon
Wireless 4G LTE smartphone

ATTACHMENT III TO RESPONSES OF ANDREA R. COLEMAN
TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

Reassignment of Job Duties: Timeline of Andrea R. Coleman

Overview

The official Disproportionate Minority Contact Coordinator (DMC) job description has three categories which are: program planning and management work, program and policy advice and guidance, research and analysis work. Based on these categories I believe my duties have been reassigned by Administrator Bob Listenbee to Chief of staff Shanetta Cutlar who carries them out or reassigns them to another Audit and Compliance Division staff member. I believe this is retaliation for recommending states be found out of compliance in 2013 and 2014 pursuant to Section 223(a)(22) of the Juvenile Justice and Delinquency Prevention (JJDP) Act (DMC core requirement) and CFR 31.303(j) and (k) to Mr. Listenbee.

Not only is the retaliation occurring because I consistently make recommendations of non-compliance, it is also because I question why the DMC Compliance Determination Assessment Instrument (CDAI) cannot be finalized, and why no recommendations of non-compliance will be accepted until 2017. Ms. Cutlar advised, in OJJDP's response to Senator Chuck Grassley's inquiry dated October 28, 2014, no state will be found out of compliance until the CDAI is approved. I developed the CDAI in 2011 in consultation with OJJDP contractors CSR, Incorporated and the Bureau of Justice Statistics (BJS) as an objective tool to assist OJJDP staff with making consistent determinations of compliance with the DMC. The CDAI is as result of OJJDP's longstanding policy of not finding states out of compliance with DMC since 2008.

I also believe this is also retaliation as Mr. Listenbee not only verbally blamed me for states being in compliance ("if states have not been found out of compliance you need to look in the mirror...") it is also because he, Ms. Cutlar, and Ms. Chyrl Jones, Deputy Administrator for Programs, believed and now know I am a whistleblower due the current investigations of how OJJDP is administering the DMC core requirement. As Mr. Listenbee continues to direct Ms. Cutlar to oversee the DMC work which she often reassigns it to another Audit and Compliance Division staff member, it should be noted that she does not have supervisory authority.

Below is summaries of specific occurrences I believe led to the reassignment of my duties as a direct result of retaliation per the reasons stated above.

Program and Policy Advice and Guidance

In part, the program and policy advice and guidance category says the DMC Coordinator plans and develops high quality national training programs designed to educate grantees while addressing OJJDP goals and initiatives. Trains state/local planning agencies, and other public/private organizations on the JJDP Act requirements: deinstitutionalization of states offenders; separation of adults and juveniles in secure custody; removal of juveniles from adult jails and lockups; and reduction of disproportionate minority contract with the juvenile justice system. Oversees training requirements, statistics, trend analysis, and legislative initiatives. Responds to requests for information concerning DMC activities and evaluates existing training programs to determine the need for new innovative training programs. As a component of program and policy advice and guidance, I was assigned with making recommendations of non-compliance with DMC, training state, and state/local planning agencies, and other public/private

organizations on the JJDP Act requirements, and overseeing training requirements, statistics, and trend analysis.

Trainings and Technical Assistance

February 2014

Ms. Cutlar told me Mr. Listenbee instructed her to conduct a DMC presentation at George Washington University and I was to prepare her for it. After meeting with her several times Ms. Cutlar declined to conduct the presentation because she said she was unqualified to do so. I conducted the presentation, however Ms. Cutlar accompanied me and was instructed by Mr. Listenbee to "keep a lid on Andrea" according to a note on her steno pad that she unwittingly gave to me during a phone call with the event's organizer. Once I saw this comment I immediately reported it to Mr. Bronson and Ms. Chiancone. Prior to this occurrence I had conducted DMC trainings and presentations in over 20 states and localities and oversaw training requirements that included consulting with other OJJDP staff.

June 2014

I was invited to conduct a DMC to Wyoming to conduct a DMC presentation however but Mr. Listenbee did so. Although it is within his purview as Administrator to conduct any presentations, he may have done so without knowledge regarding OJJDP's TTA efforts to assist Wyoming with becoming a participating state in the JJDP Act. Before this occurrence, I oversaw statistics and trend analysis which is directly related to Wyoming's non-participating status in the JJDP Act and conducted DMC trainings and presentations in over 20 states and localities as stated above.

July 2014

On Wednesday, July 2nd I was carbon copied on an email sent by Mr. Will Bronson to Laura Craig Mason, an OJJDP contractor, asking questions about the peer review process for the Smart on Juvenile Justice Technical Assistance to End Racial and Ethnic Disparities in the Juvenile Justice System solicitation. On Thursday, July 3, 2014 Mr. Bronson sent an email to me directly saying he would manage the solicitation and would like me to be on the peer review panel and to manage the grant once awarded. Mr. Bronson also asked me for recommendations for the peer review panel, which would be internal to OJP/OJJDP staff per the June 26th kick-off meeting. On Wednesday, July 9th I forwarded my recommendations for the peer review panel to Mr. Bronson and after several email exchanges on that day we came to a consensus.

On July 16th I, along with the other selected peer reviewers, received an email from Mr. Bronson stating "I have been informed by the front office that this review will use external reviewers. Thx anyway for your willingness to review. I really appreciate it. thx." I also received an email chain with discussion from OJJDP senior leadership (Mr. Listenbee, Ms. Shanetta Cutlar, and Ms. Chyrl Jones) stating this was the direction they were going.

During my regularly scheduled biweekly meeting with Mr. Bronson on July 16th I asked why I would no longer facilitate the grant review process. I was told, in part, that the peer review would be external and that the OJJDP Subject Matter Experts (SMEs) would be other OJJDP staff members that included a colleague in the Audit and Compliance Division who is now

directed by Ms. Cutlar to carry out the DMC Coordinator's responsibilities, a Senior Policy Advisor to Mr. Listenbee, and two state and/or local DMC Coordinators. I met with Janet Chiancone around 5:00 pm to discuss my concerns. I verbally stated to Ms. Chiancone this was an attempt to retaliate against me for making recommendations of noncompliance in 2013 and 2014. Before this occurrence I oversaw DMC training and technical assistance and/or facilitated the peer review for solicitations.

October 2014

On October 14th I participated in a meeting via telephone with Mr. Listenbee. The purpose of the meeting was to discuss current and pending DMC activities that included Training and Technical Assistance (TTA) for the Juvenile Court of Memphis and Shelby County (JCMSC) per the DOJ Memorandum of Agreement¹ and compliance with DMC. Mr. Listenbee advised that Ms. Cutlar is in charge so all DMC activities must be approved by her and will most likely be carried out by the newly created Smart on Juvenile Justice Technical Assistance to End Racial and Ethnic Disparities in the Juvenile Justice System. After the discussion Mr. Listenbee sent an email saying he never instructed any of his staff to keep states in compliance with DMC and wanted to know who told me to do so. I responded to his email saying that the focus should not be on how the message was communicated to the Audit and Compliance Division but it was as evidenced by his signature on the 2013 and 2014 letters allowing states to receive their Title II Formula Grant funds.

Program Planning and Management Work

In part, the program and program planning and management work says the DMC Coordinator plans and develops high quality national training programs designed to educate grantees while addressing OJJDP goals and initiatives. Trains state/local planning agencies, and other public/private organizations on the JJDP Act requirements: deinstitutionalization of states offenders; separation of adults and juveniles in secure custody; removal of juveniles from adult jails and lockups; and reduction of disproportionate minority contact with the juvenile justice system. Oversees training requirements, statistics, trend analysis, and legislative initiatives. Responds to requests for information concerning DMC activities and evaluates existing training programs to determine the need for new innovative training programs. I was tasked with planning and developing high quality national state, and local training programs designed to educate grantees and communities while addressing OJJDP goals and initiatives such as DOJ's signature initiatives; and, as stated above, conducting training on the JJDP Act requirements.

October 2014

Ms. Chiancone presented a chart, which I developed, of current and pending DMC activities on October 16, 2014 at the weekly scheduled Racial and Ethnic Disparities (R&ED) Team Meeting facilitated by Ms. Cutlar; the chart was approved by Ms. Chiancone's first line supervisor Ms. Nancy Ayers, Deputy Administrator of Operations. Ms. Cutlar was visibly angry because no one asked her if the chart could be developed and presented at the meeting. She said although Mr.

¹ OJJDP has established an informal partnership with DOJ's Civil Rights Division in the Investigation of the Juvenile Court of Memphis and Shelby County (JCMSC) released April 12, 2012. The partnership includes directly providing and/or facilitating training and technical assistance per the Memorandum of Agreement. See

Listenbee put her in charge of the R&ED Team. "She will go out into the hallway and here something different..." She also asked Mr. Listenbee at a subsequent meeting to affirm that she was in charge. To my knowledge, I am not aware of any subject matter in OJJDP where Ms. Cutlar² has to approve all activities and not consult with first and second line supervisors.

July 2014

(See above in Program and Policy Advice and Guidance)

Noncompliance Recommendations

February 2015

In 2013 I made recommendations of non-compliance for Illinois, Louisiana, and South Carolina DMC core requirement and that 13 states should be placed on quarterly reporting as a measure of accountability. I also made recommendations of noncompliance in 2014 for the same states including Arkansas. Ms. Cutlar told the Audit and Compliance Division on February 19th and 26th that all states will be found "not out of compliance" in 2015 and no recommendations of non-compliance would be accepted until FY 2017 as stated above. I advised Mr. Listenbee and Ms. Cutlar verbally this is unprecedented language as the JJDP Act and CFR Part 28 Part 31.303 says states are either in or out of compliance with the DMC core requirement. Furthermore, although this language was used since all states received their Title II Formula Grant funds, it means all states are indeed in compliance with the DMC core requirement.

March 2015

On March 6th Ms. Chiancone advised Ms. Cutlar I would working on other projects in the Audit and Compliance Division and across OJJDP that included data calls and assisting with data collection and other research related projects. Ms. Cutlar, told her, in part, she needed verification from HR if this could occur and "she cannot pick and choose what she works on." Ms. Chiancone advised she could assign these projects to because she is my second line supervisor. I am assisting with these projects because most of my duties have been reassigned to Ms. Cutlar who is carrying them out directly and/or assigned them to another Audit and Compliance Division staff member. I now have few duties as the DMC Coordinator per the official job description. The only duties remaining are to answer data inquiries from states and to manage two states' DMC Community and Strategic Planning (CASP) Project grant awards. I am no longer minimally allowed to: design and/or conduct national, state, and/or local trainings or presentations, manage any TTA, make any recommendations of non-compliance based on states' annual DMC Compliance Plans, manage any DMC web-based systems or platforms, or provide any DMC policy guidance.

Research and Analysis Work

The incumbent of this position will provide expert analysis and advice on complex program issues related to OJJDP's core requirement related to Section 223(a)(22) Disproportionate Minority Contact (DMC) of the Juvenile Justice and Delinquency Prevention (JJDP) Act.

² This does not include grants management as deadlines are often set by the Office of the Chief Financial Officer (OCFO), the Office of Audit Assessment and Management (OAAM), and/or other OJP offices and bureaus.

Provides specialized expertise to local communities, State agencies, and the juvenile justice field. Advises OJJDP on new developments and the most effective approaches to DMC issues and articulates the benefits of interventions to effectively reach the intended goals of the core requirement. Similar to the other program areas, I was tasked with plans and develops high quality national training programs designed to educate grantees while addressing OJJDP goals and initiatives; training state/local planning agencies, and other public/private organizations on the JJDP Act requirements, overseeing training requirements, statistics, trend analysis.

DMC Web-Based Research and Technology Platforms

March 2015

On March 6, 2015 the Audit and Division member that is now carrying out the DMC duties, forwarded an email to me, Mr. Bronson, Ms. Chiancone and other OJJDP staff. The email was from OJJDP's National Training and Technical Assistance Center (NTTAC) which hosts OJJDP's DMC Web-Based System and the Virtual Resource Center (VRC). The System is a repository containing state and local DMC data that OJJDP requires the states to enter as a component of their annual DMC Compliance Plans. I have worked directly with NTTAC since mid-2008 as the System Administrator on behalf of OJJDP which includes recommending design improvements, increasing the capacity, and functioning. Additionally, I extracted, aggregated, and analyzed these data for national, state, and local trainings and presentations, and for research included in OJJDP and other publications.

I also developed, with assistance from NTTAC, the VRC in 2011. The purpose of the VRC is for OJJDP and jurisdictions to share information, literature and research, resources, and tools that may assist states and localities with their DMC reduction efforts. The email forwarded by the Audit and Compliance Division staff member was sent directly to her which has never occurred to my knowledge. This leads me to believe NTTAC was been instructed not to contact me directly as she will now serve as the Systems' Administrator for both platforms.

ATTACHMENT IV TO RESPONSES OF ANDREA R. COLEMAN
TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY



U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Washington, D.C. 20531

Memorandum

To: Charles Moses, Deputy General Counsel
Office of General Counsel (OGC)

Marie Burke, Attorney Advisor
Office of General Counsel (OGC)

Vicky O'Brien, Attorney Advisor
Office of General Counsel (OGC)

Susan Searby, Attorney Advisor
Office of General Counsel (OGC)

CC: Listed on Page 3

From: Andrea R. Coleman, Disproportionate Minority Contact (DMC) Coordinator
Office of Juvenile Justice and Delinquency Prevention (OJJDP) *ARC*

Date: October 3, 2012

Re: Response to OGC Request: DMC Compliance Determination Assessment Instrument (CDAI)

Below are responses to OGC's questions on the development and implementation of the DMC CDAI. The responses include hypertext links that contain requested supporting documentation.

Question: Since 2008, OJJDP has not made any DMC funding related denials except for possibly American Samoa. Why are there DMC funding denials being made now when they have not been previously made? What is the reason for the change with respect to enforcement?

Response: The DMC funding denials are being made now when they have not been previously made for several reasons. Unlike Section 223(a) (11), (12), and (13) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, Section 223(a) (22) does not have the numerical de minimis rates to assist with making annual determinations of compliance. As a result, these determinations were contingent upon who reviewed the Plans, discussions with states that would potentially be out of compliance, and informal policies. In FY 2010 OJJDP began consistently administering Formula Grant Consolidated Regulation 28 CFR Part 31 Section §31.303(j) which included requiring states to identify and explain DMC throughout their juvenile justice systems. Although this occurred, determinations of compliance with DMC were still being made based on the aforementioned criteria. To minimize this, the CDAI was

Disproportionate Minority Contact Compliance Determination Assessment Instrument (CDAI)

developed in FY 2011 to help assist in making consistent determinations. The indicators in the draft and subsequent versions are primarily based on 28 CFR Part 31 Section §31.303(j) and guidance in OJJDP's *Disproportionate Minority Contact Technical Assistance Manual, 4th Edition*.

Question: Were the states given notice that OJJDP would take a different approach, other than the use of the CDAI, in evaluation FY 2012 DMC plans? If so, please explain and provide supporting documents, for example was this discussed last fall at the National Conference?

Response: OJJDP announced the CDAI on the DMC Coordinators bimonthly conference calls on July 13th and 14th, 2011 which is reflected in the Conference Call Summary. States were advised the tool would be piloted in FY 2011 and that they would have an opportunity to assist with its further development. To determine whether the CDAI as a tool contained face and content validity, OJJDP sought assistance from CSR, Incorporated. A randomly selected group of states was asked to participate in a conference call on August 26, 2011. The randomly selected states received a copy of the draft and were advised to have comments, questions, and suggestions prepared prior to the focus group on October 10, 2011, which was during OJJDP's National Conference. Five additional states also attended the focus group and provided comments after the randomly selected states had an opportunity to do so.

CSR, Incorporated completed a report based on the focus group and revisions were made to the CDAI (see enclosed report). OJJDP and CSR, Incorporated then conducted a webinar on January 26, 2012 to allow states to discuss the revised draft based on the focus groups comments and suggestions. Another webinar was conducted on March 20, 2012 and states were again advised of the CDAI's purpose and were able to answer questions and provide answers in real time. As a result of the two webinars and subsequent open comment periods, a list of Questions and Answers were posted on OJJDP's National Training and Technical Assistance Center's (NTTAC) website. The CDAI was piloted again in FY 2012 to assist with making determinations of compliance as the version was based on states' comments, OGC, and OJJDP. Further, Dr. Howard Snyder reviewed the tool and provided minor revisions. Although the CDAI is not final it was extremely helpful as an internal tool, because it enabled OJJDP to make consistent decisions based on set criteria. It was especially helpful for the states found out of compliance because OJJDP was able to clearly document how the determination was made.

OJJDP also reviewed information submitted in states' DMC quarterly reports. The purpose of quarterly reporting is to track states' progress with addressing the deficiencies identified in the annual DMC compliance determination letters; 13 states were placed on quarterly reporting in FY 2012 (see enclosed report template). States with major inadequacies in their compliance plans were placed on quarterly reporting starting in FY 2008.

Question: Were the states given notice that their DMC solicitation responses – or absence thereof – would be of such critical importance in determining whether they would receive DMC funding? This is particularly important in that as far as we know, OJJDP has had a history over the past several years of passing the DMC narratives as at least acceptable. Again, please provide any documents that might be relevant in this regard.

Response: Due to the aforementioned criteria the DMC narratives in previous plans were deemed acceptable.

Disproportionate Minority Contact Compliance Determination Assessment Instrument (CDAI)

Question: Are the portions of the solicitation/application narratives relating to DSO, Jail Removal and Separation evaluated in the same way as DMC. If no, why not?

Response: DSO, Jail Removal, and Separation are not evaluated in the same way as DMC. In my opinion, it is partially because the de minimis rates make it much easier to determine states' compliance status. OJJDP has typically used the annual Compliance Monitoring Report that states are required to submit to make determinations for DSO, Separation, and Jail Removal.

Question: Were the states that you propose to find out of compliance with DMC given any specific notice they were trending toward being found out in 2012? For example, have on-site reviews indicated that this was a problem in these particular states in the past? If so, please provide any such documents. Additionally, please forward copies of the DMC determination letters each state received last year.

Response: The states that OJJDP proposed to find out of compliance were not given any specific notice. However, all three states were placed on quarterly reporting and two states (Illinois and South Carolina) received training and technical assistance beginning in 2010 which included on-site training for the State Advisory Group's DMC Committee and developing data collection, analysis, and assessment study plans (see enclosed FY 2011 DMC compliance determination letters). These states were also given at least two opportunities each to provide additional information.

CC: Melodee Hanes, Acting Administrator
Office of Juvenile Justice and Delinquency Prevention (OJJDP)

Marilyn Roberts, Deputy Administrator
Office of Juvenile Justice and Delinquency Prevention (OJJDP)

Gregory Thompson, Associate Administrator
Office of Juvenile Justice and Delinquency Prevention (OJJDP)

Chyrl Jones, Deputy, Associate Administrator
Office of Juvenile Justice and Delinquency Prevention (OJJDP)

ATTACHMENT V TO RESPONSES OF ANDREA R. COLEMAN
TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

OJJDP's DMC Compliance Determination Assessment Instrument (CDAI)

Background, Next Steps and Timeline

Purpose

Unlike Section 223(a) (11), (12), and (13) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, Section 223(a) (22) does not have the numerical *de minimis* rates to assist with making annual determinations of compliance. Determinations of compliance with the Disproportionate Minority Contact (DMC) core requirement would be aided by the establishment of a process that consistently applies the requirements outlined in the Formula Grant Consolidated Regulation 28 CFR Part 31 Section §31.303(j) and guidance provided in OJJDP's *Disproportionate Minority Contact Technical Assistance Manual*, 4th Edition. To this end, OJJDP began a process in early 2011 to develop the Compliance Determination Assessment Instrument (CDAI). The CDAI was developed to be a tool for use by OJJDP staff as they review and analyze information submitted by the States related to their DMC plans and activities. Although it is designed to be an internal tool, OJJDP has always believed it is important that external stakeholders and experts be consulted in the development of the tool, and that the final version is made available for the field's information.

Background

Since 2011, OJJDP has worked closely with our Evaluation Management Contractor (CSR, Incorporated) to develop the CDAI tool and validate the tool for use by OJJDP staff. During this period, the CDAI has been reviewed by a number of internal and external experts on DMC and data collection methods. In addition, OGC has reviewed the tool and provided legal guidance where appropriate. Below is a summary of the timeline and activities related to the CDAI tool development to date:

June 6, 2011	First draft of the CDAI was developed by the DMC Coordinator with consultation from CSR, Incorporated
July 13 and 14, 2011	OJJDP announced on the DMC bimonthly conference calls that it would be developing the CDAI tool. States were advised the tool would be piloted in 2011 and they would have an opportunity to assist with further development.
August 26, 2011	OJJDP held a conference call with a randomly selected group of states to get input to assist with the development of the CDAI tool.
Late Summer/Early Fall 2011	The first draft of the CDAI tool was completed.
October 10, 2011	As part of a test of the tool's face and content validity, CSR conducted a focus group of state level DMC staff at the OJJDP National Conference.

October 21, 2011	CSR submits a report to OJJDP with results of the face/content validity review, which includes recommended revisions based on the results.
January 26 and March 20, 2012	OJJDP holds webinars for the states to discuss revisions made based on the outcome of the focus group input. States are encouraged to provide additional comments/input to the tool.
April 2012	OJJDP posts a series of FAQs regarding the CDAI on the National Training and Technical Assistance Center (NTTAC) website.
June 7, 2012	OJJDP and CSR, Incorporated with the Office of General Counsel (OGC) to discuss revised CDAI. The revisions were based on comments from the Focus Group and the webinars conducted on January 26 th and March 20 th 2012.
Summer 2012	OJJDP's DMC Coordinator pilots the use of the tool in the determination process for states. OJJDP did not rely solely on the CDAI tool for 2013 funding determinations, the tool was used to assist with ensuring the consistent application of DMC determination criteria and comprehensive documentation
Fall 2012	OJJDP asks Howard Snyder, the Deputy Director of Law Enforcement, Prosecution, Courts, Recidivism and Special Projects at the Bureau of Justice Statistics (BJS) to review tool and provide feedback. He recommended some minor revisions to the tool.
March 16, 2013	OJJDP met with OGC to discuss the additional revisions suggested by Dr. Howard Snyder and OJJDP.
May/June 2013	Slight revisions made to the format of the CDAI, incorporating skip patterns and scoring weights.
July 2013	OJJDP finalizes draft of the protocol which guides administration of the CDAI instrument.

Next Steps

Review and Validation of the CDAI Tool by Expert Panel

OJJDP has identified three individuals that have the requisite expertise to review and provide guidance to OJJDP on the CDAI tool and its administration. These individuals each have a substantial amount of experience and knowledge regarding the DMC core requirement, state and local level DMC activities and the Relative Rate Index. In addition, as researchers, all are knowledgeable regarding with instrument development and data collection methods. OJJDP plans to have these individuals review the CDAI tool for both content validity and administration purposes. The three individuals are:

- Dr. Michael Leiber, Chair and Professor of Criminal Justice and Criminology, University of South Florida

- Dr. Lisa Hutchinson, Director, Arkansas' Division of Youth Services, Arkansas Department of Human Services
- Dr. Bill Feyerherm, Professor of Criminal Justice and Criminology, Portland State University.

Attached is more detailed information regarding these individuals' expertise and backgrounds. The expected completion date of the review will be August 31, 2013.

Final Piloting of the CDAI Tool by OJJDP's ACT Team

OJJDP's newly created Audit and Compliance Team (ACT) will be reviewing State DMC Plans this summer to make DMC compliance determination recommendations for FY 2014 funding. Since this is the first year that the ACT team will go through this process as a team, it is our intent to use the CDAI tool to guide our process and at the same time conduct a final pilot of the use of the CDAI tool as an internal DMC compliance determination instrument. The goal will be to verify that the use of the CDAI helps ensure that determination criteria are applied consistently, and that strengths and weaknesses are consistently and thoroughly documented.

Please note that although the tool will be used to guide the process of determinations this summer, it is not intended that OJJDP will use the CDAI tool to actually make determinations of compliance with the DMC core requirement for FY 2014 funding. The primary goal is to pilot the tool so that it can be finalized and be used by the ACT Team in making determinations for FY 2015 funding.

OJJDP will work with CSR, Inc. to carry out the piloting of the tool by the ACT Team. The expected completion date of the pilot will be September 30, 2013.

OGC Review of Final CDAI Tool

Upon completion of the Expert Panel review and ACT Team pilot, OJJDP will finalize the tool and provide it to OGC for a final review for legal purposes. It is not anticipated that this review would result in any structural or non-legal content changes to the tool.

OJJDP anticipates that the OGC review of the final CDAI tool would take 30 days, and it is expected that the review would be complete by November 30, 2013.

Final Step/Approval

Once all reviews have been completed, the ACT Team will forward the CDAI tool with related supporting documentation to the OJJDP Administrator for final approval. Upon approval, a copy of the tool and materials will be posted online and States will be notified. Our anticipated posting date is January 2014.

Consultant Biographies

William Feyerherm received his PhD in Criminal Justice Systems from the State University of New York at Albany in 1977. He is currently a professor of Criminology and Criminal Justice at Portland State University, where he was the Vice Provost for Research and Dean of Graduate Studies from 1997 through 2010. His research activities focus on the role of race and culture in the processing of youth within the juvenile justice system.

He currently serves as a member of the Federal Advisory Committee on Juvenile Justice and the Oregon Youth Development Council, a body developed to oversee all State services for youth aged 6 through 20. In recent years he has served on other advisory bodies including: the Oregon Juvenile Justice Advisory Commission, the Multnomah County Juvenile Justice Advisory Council, the Multnomah County Local Public Safety Coordinating Council, and the Oregon Law Enforcement Contacts Policy Commission (examining racial profiling in law enforcement). He is a consultant to the federal Office of Juvenile Justice and Delinquency Prevention on issues of Disproportionate Minority Contact (DMC), including the development and interpretation of the Relative Rate Index measure for DMC.

For OJJDP, Dr. Feyerherm is directing (along with Marcia Cohen), the DMC evaluation, "Expanding the Use of Disproportionate Minority Contact Data: Analysis of Patterns to Identify Best Practices." He also serves as an expert consultant to the Civil Rights Division of the US Department of Justice on the development of cases involving patterns of disparate treatment of juveniles in juvenile court systems. In 2002, Dr. Feyerherm received the W.E.B. Du Bois Award from the Western Society of Criminology for his contributions to racial and ethnic issues in criminology.

Dr. Lisa Hutchinson received her Ph.D. from the University of New Orleans in Louisiana and also holds a B.S. in Social and Rehabilitative Services, as well as an M.S. in Criminal Justice with a Juvenile Justice emphasis. Her current research interests are school crime, effects of parental incarceration on children, substance abuse by juveniles and other similar topics. Dr. Hutchinson has worked in delinquency prevention, juvenile probation, and juvenile corrections. Informed by her practitioner experiences, she has spent much of her time concentrating on applied research. During her tenure as Research Coordinator for the Metropolitan Crime Commission, she headed an annual evaluation of all Criminal Court Judges in Orleans and Jefferson (LA) parishes and coordinated the Pretrial Research Study, which assessed the current pretrial process in both parishes. As an independent contractor in the Orleans Parish Juvenile Court, she participated in an in-depth assessment and reorganization of the court's abuse and neglect system. Through her work as a practitioner and community advocate, Dr. Hutchinson has been involved in the design and implementation of numerous juvenile justice programs, as well as coordination and provision of related training.

Dr. Hutchinson spent three years on the Kentucky State Advisory Group, serving as Policy and Program Chair. She is currently on the Disproportionate Minority Contact Committee of the Arkansas State Advisory Committee. She is also Vice Chair of the

Juvenile Justice Section of the Academy of Criminal Justice Sciences and is a founding member of the National Association for Children of Incarcerated Parents. In addition, she has served on the board of many nonprofit agencies and has been a consultant to several local, state, and federal juvenile agencies. Dr. Hutchinson currently the Director of the Arkansas Department of Human Service's Division of Youth Services.

Dr. Michael Leiber is a professor in Criminal Justice at the Wilder School of Government and Public Affairs, Virginia Commonwealth University. He received a Ph.D. in Criminal Justice from the State University of New York at Albany. He has been a consultant for the Office of Juvenile Justice & Delinquency Prevention (OJJDP) since 1994 and has provided services to over 35 states. The services provided include report writing, acting as the national trainer to juvenile justice specialists, DMC coordinators, and state advisory councils on the disproportionate overrepresentation of minority youth in secure facilities.

For five years, Dr. Leiber served on the state of Iowa's governor's juvenile justice advisory group (SAG) and was the chair of the disproportionate minority contact (DMC) subcommittee. He acts as a reviewer for a number of academic journals and is on the editorial boards of the *Journal of Youth Violence & Juvenile Justice* and the recently created journal, *Race and Justice: An International Journal*. Starting in the fall of 2010, he will become editor of the *Journal of Crime & Justice*.

Dr. Leiber has published articles and reports on issues related to juvenile delinquency and juvenile justice with a focus on race/ethnicity. He worked extensively on the 2nd edition of the *Disproportionate Technical Assistance Manual* and was a coauthor on the assessment chapter of the 3rd and 4th editions. He conducted four studies on race and juvenile justice decision making in Iowa and the results of one of those efforts are in a book by the State University of New York Press (2003). In 2008, Dr. Leiber received the W.E.B. Du Bois award for significant contributions to the field of racial and ethnic issues in criminology from the Western Society of Criminology.

ATTACHMENT VI TO RESPONSES OF ANDREA R. COLEMAN
TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

FW: Oklahoma DMC Compliance

From: Coleman, Andrea <Andrea.Coleman@usdoj.gov>
To: Coleman0200 <Coleman0200@aol.com>
Subject: FW: Oklahoma DMC Compliance
Date: Tue, Oct 14, 2014 11:59 am

From: Bronson, Willie
Sent: Tuesday, October 14, 2014 6:55 AM
To: Coleman, Andrea; Chiancone, Janet
Cc: Borner, Tina
Subject: RE: Oklahoma DMC Compliance

Ok thx. While I can appreciate your view...until full achievement is reached, and parity is reached at every contact point, all states can do more. This is part of what has got to change....we have to be steadfast and work until there are NO disparities...as unimaginable as that might be. So, I want to respond to each state and let them know, regardless of their efforts, what more can be done. The language gives me no heartburn at all, and these responses are indicative of how much more work we and they have to do. Thx

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Coleman, Andrea"
Date: 10/13/2014 9:26 PM (GMT-05:00)
To: "Bronson, Willie", "Chiancone, Janet"
Cc: "Borner, Tina"
Subject: RE: Oklahoma DMC Compliance

Will and Janet,

Good evening. Although OK still has DMC/R&ED like all states, it has been identified as one of the case studies in the DMC FIRE study for reductions in arrests and detention for at least three consecutive years. As Anna mentioned OK has worked tremendously hard implementing the CASP curriculum to fidelity, completing a DMC assessment and implementation plan, continuing to enhance its data collection and analysis, implementing the CT police curriculum, and other initiatives. The only phase of the DMC Reduction Model OK hasn't implemented is Phase IV (conducting a methodological evaluation of its DMC strategies).

My concern is that more states will contact OJJDP because the FY 2015 language is such a departure from the typical DMC compliance determination and there was no outreach beforehand. Additionally, for the states that have made measurable progress

[https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx\[12/8/2014 3:32:47 PM\]](https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx[12/8/2014 3:32:47 PM])

FW: Oklahoma DMC Compliance

the letter may generate more questions and some backlash. I will forward Arizona's email and you already have the one from Texas.

Just my two cents©.

Sincerely,

Andrea

From: Bronson, Willie
Sent: Friday, October 10, 2014 4:02 PM
To: Chiancone, Janet
Cc: Coleman, Andrea; Borner, Tina
Subject: RE: Oklahoma DMC Compliance

Great! I will work with Andrea and Tina on this.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Chiancone, Janet"
Date: 10/10/2014 4:00 PM (GMT-05:00)
To: "Bronson, Willie"
Cc: "Coleman, Andrea"
Subject: RE: Oklahoma DMC Compliance

Totally agree!!

From: Bronson, Willie
Sent: Friday, October 10, 2014 4:00 PM
To: Chiancone, Janet
Cc: Coleman, Andrea
Subject: RE: Oklahoma DMC Compliance

Yep!! I was inclined to develop some standard response. ... ut their tone is troubling....I think we should now develop pointed responses back to Tx, Ok, and any other state to show them exactly how they could

[https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx\[12/8/2014 3:32:47 PM\]](https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx[12/8/2014 3:32:47 PM])

FW: Oklahoma DMC Compliance

improve and do better, regardless of their efforts.....its laughable coming from these two states where I k ow disproportionate still exists in some regard.....

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Chiancone, Janet"
Date: 10/10/2014 3:51 PM (GMT-05:00)
To: "Bronson, Willie"
Cc: "Coleman, Andrea"
Subject: RE: Oklahoma DMC Compliance

I know. I can't believe I'm saying this but I think this language may actually be a good thing, cause it is giving them a heads up that things are changing and they are getting worried. So they aren't out of compliance, but they aren't in either! ☺ Now we just need to follow through !

From: Bronson, Willie
Sent: Friday, October 10, 2014 3:49 PM
To: Chiancone, Janet
Cc: Coleman, Andrea
Subject: Fwd: Oklahoma DMC Compliance

While I do appreciate their efforts, some of these states act like they have solved all dmc....seems strange to take this tact to me.....

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Bronson, Willie"
Date: 10/10/2014 3:46 PM (GMT-05:00)
To: "Kelly, Anna" , "Coleman, Andrea"
Cc: "Neylan, Carol" , "Broyles, Laura" , "Chiancone, Janet"

[https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx\[12/8/2014 3:32:47 PM\]](https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx[12/8/2014 3:32:47 PM])

FW: Oklahoma DMC Compliance

Subject: RE: Oklahoma DMC Compliance

Good day. We will be glad to provide information that would assist your state to continue to work to achieve full compliance. While we appreciate your efforts, all states and territories can take additional steps to continue to work towards fully eliminating all racial and ethnic disparities. And, we believe all states could benefit from continued strategic engagement in this area. The Office will work to provide you with the guidance you request in the coming days, however, given that there was not a finding of noncompliance, there is nothing to officially resolve.

We will provide the requested guidance in the next few weeks. Thanks and have a good weekend.

Will

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Kelly, Anna"

Date: 10/10/2014 3:26 PM (GMT-05:00)

To: "Coleman, Andrea"

Cc: "Neylan, Carol", "Broyles, Laura", "Bronson, Willie"

Subject: Oklahoma DMC Compliance

Ms. Andrea Coleman

Oklahoma has received our compliance finding letter. I must say we are surprised and dismayed by the DMC compliance wording. I know Laura Broyles has a call into you, and is awaiting a return call to discuss this. But I cannot allow the language in the finding to stand unaddressed or challenged. It does not reflect DMC compliance efforts in Oklahoma. I am shocked that any issues or concerns OJJDP may have had were not discussed with Oklahoma prior to the compliance finding language being written. Past practice with OJJDP has been requests to the State for any clarification or additional information to address any concerns with a compliance plan. Joint resolution was sought to resolve issues prior to any finding language being written.

Considering we have had recent requests from OJJDP to 1. teach the model to other states, 2. present at DMC conferences, and 3. requests for our permission to post our DMC plan as an example of an excellent plan on the DMC website, you can imagine the shock and dismay we felt upon reading the compliance language. We have been highlighted in the FIRE study and in the CASP process evaluation as examples of excellent progress in addressing DMC.

Finally, we have achieved actual reduction in the RRI numbers at contact points where we have focused intervention efforts. Arrest in particular has significantly decreased, as has detention rates. We have also reached parity at many of the other contact points. I request specific written guidance from OJJDP as to the areas Oklahoma should address to be in "full" compliance with DMC. We do NOT need additional "training and technical assistance" in implementing the model. We have fully implemented the DMC Reduction

[https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx\[12/8/2014 3:32:47 PM\]](https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx[12/8/2014 3:32:47 PM])

FW: Oklahoma DMC Compliance

Model and our efforts are ongoing in Identification, Assessment, Intervention, Monitoring and Evaluation.

Again, I am requesting written clarification of OJJDP specific concerns regarding Oklahoma's compliance with DMC Reduction and I thank you in advance for your assistance,

Anna Kelly, JJ Specialist

State of Oklahoma

Office of Juvenile Affairs

o. 405 530-2804

c. 405 409-6922

RESPONSES OF HON. KAROL V. MASON TO QUESTIONS SUBMITTED
BY SENATOR GRASSLEY

**Questions for the Record from Senator Charles E. Grassley for
Karol Mason
U.S. Senate Committee on the Judiciary
Hearing on “Improving Accountability and Oversight of Juvenile Justice Grants”
Submitted on April 28, 2015**

1. Legality of “not out of compliance” notifications

In an October 28, 2014 letter, the Justice Department stated that:

Pending implementation of [an assessment] tool, OJJDP has notified states that they are not out of compliance with the DMC core requirement and has offered training and technical assistance to ensure each state continues to address DMC with the juvenile justice system.¹

The Department also stated that “the ‘not out of compliance’ notifications began in 2013 and *will* continue each year until the tool is implemented” and that each state would be offered training and technical assistance during this period.^{23 45}

However, the statute requires OJJDP to base Title II Formula Grant funding decisions on annual, state-specific assessments of compliance.³ Mere offers of training and technical assistance cannot satisfy this requirement. The Administrator has the duty and authority to find individual states either compliant or non-compliant -- but it is unclear what part of the statute authorizes him to declare all states “not out of compliance” even *before* conducting these annual, state-specific assessments, with regard to the DMC requirement.

At the April 21st hearing, I asked you whether the OJJDP Administrator has legal authority to suspend statutory requirements in this manner. Unfortunately, your response failed to answer the question because it did not cite any legal authority in support of these “not out of compliance” determinations. Instead, you stated as follows:

We do not have an adequate tool that gives us the objectivity we need to determine compliance with the disproportionate minority contact core requirement We are . . . working . . . to develop a tool that will withstand scrutiny and will be more objective It is in our best interest to develop a tool that is fair

¹ Letter from the Hon. Peter J. Kadzik, Assistant Attorney General, U.S. Department of Justice, to Sen. Charles E. Grassley, Ranking Member, Sen. Comm. On the Judiciary (Oct. 28, 2014).

² *Id.* (emphasis added).

³ U.S.C. § 5633 (a), (c)(1), and (c)(2).

⁴ *Id.* (emphasis added).

⁵ U.S.C. § 5633 (a), (c)(1), and (c)(2).

and objective so that we can hold states fairly accountable for the compliance with that core requirement.⁶

Questions

- a. According to the OJJDP website, there have been only three instances since Fiscal Year 2006 in which OJJDP reduced a state's funding by 20% based on a finding of noncompliance with the DMC requirement.⁷

- i. Since FY 2006, has OJJDP's failure to develop an objective assessment tool led to over-enforcement or under-enforcement of the DMC requirement?

In April 2013, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Administrator learned that OJJDP's method for determining states' compliance with Disproportionate Minority Contact (DMC) was not based on a consistent objective standard. Instead, the determinations were based on the subjective judgment of the individual reviewing an individual state's DMC plan. In light of this information, the Office of Justice Programs' (OJP) Office of General Counsel (OGC) examined OJJDP's practices and found that, in the absence of clear and objective standards for collecting and measuring data, OJJDP's method for determining states' compliance with DMC may not have been legally defensible. Thus, beginning in September 2013, all participating states received funding determination notice letters that advised that states were not out of compliance with the DMC core requirement. States were strongly encouraged to prioritize and increase their efforts to eliminate systemic racial and ethnic disparities and to seek training and technical assistance from OJJDP to assist the state with fully implementing the OJJDP DMC Reduction Model. In sending this guidance, OJJDP sought to promote the goals of the DMC requirement without unfairly and arbitrarily penalizing states based on the individual standards of different reviewers—and depriving communities of much-needed funding to support juvenile justice—by applying an unworkable compliance standard. Notably, OJJDP staff continues to review states' DMC compliance plans with the goal of providing technical assistance to the states.

OJJDP is actively working to develop a legally sound and objective standard against which to judge all states' compliance with DMC on an equitable basis. It is speculative to assess whether the lack of an objective tool led to over-enforcement or under-enforcement of the DMC requirement. However, it is clear that, absent an objective tool, consistent determinations are unlikely. It is OJJDP's plan to develop an objective tool not to increase or decrease the amount of states found out of compliance but instead to ensure consistent and legally defensible standards aligned with the JJDPA. As we develop this tool, OJJDP is working closely with OJP's Bureau of Justice Statistics;

⁶ U.S. Senate Committee on the Judiciary, *Improving Accountability and Oversight of Juvenile Justice Grants*, (Apr. 21, 2015), <http://www.judiciary.senate.gov/meetings/improving-accountability-and-oversight-of-juvenile-justicegrants/>.

⁷ American Samoa in FY 2009; Mississippi in FY 2007; and Northern Mariana Islands in FY 2007. See <http://www.ojjdp.gov/compliance/compliance.html>.

Office of Audit, Assessment and Management; Office of General Counsel; and three technical assistance grantees who are leading experts in the field of racial and ethnic disparities, specifically, the W. Haywood Burns Institute, Center for Children's Law and Policy, and Development Services Group. The objective tool will be part of a new policy and accompanying procedures establishing consistent compliance guidelines for states, streamlining the process for submitting compliance data, and establishing an objective and data-driven process to assess compliance.

- ii. **Since FY 2006, which states in which years were unfairly denied JJDP funds to which they were entitled – due to OJJDP's failure to develop an objective tool to assess compliance with the DMC requirement?**

As detailed above, the previous practice (under which assessments were made) was not based on a consistent objective standard. We are not, however, aware of any states that were unfairly denied JJDP funds to which they were entitled.

- iii. **Since FY 2006, which states in which years unfairly *obtained* JJDP funds to which they were *not* entitled – due to OJJDP's failure to develop an objective tool to assess compliance with the DMC requirement?**

We are continuing our review of the matter. We are, however, aware that for FY 2013 funding, three states, South Carolina, Illinois, and Louisiana, received their entire FY 2013 Part B Formula Grant allocation, and for FY 2014, four states, Arkansas, Illinois, Louisiana, and South Carolina, received their entire FY 2014 Part B Formula Grant allocation, despite initial recommendations to reduce funding based on preliminary concerns about whether they had satisfied the DMC requirement. Full awards were made because OJJDP determined there was insufficient legal basis for a noncompliance determination, without being arbitrary.

- b. **How is it fair to penalize American taxpayers for OJJDP's failure to develop an objective DMC assessment tool, by giving out federal grants to states for which OJJDP claims there is currently no objective way to determine compliance with statutory funding requirements?**

A critical purpose of the Title II, Part B, and Formula Grant Program is to encourage states to protect the nation's youth from certain harmful conditions in the justice system. The grant funds awarded to states were used to improve the juvenile justice system, a core purpose of the statute. As stated above, we are nevertheless developing policies and procedures to ensure that only those states in compliance with JJDP and the core requirements receive their full grant allocation.

- c. At the hearing, you stated that “I can assure you that going forward we are going to have a robust policy that is objective and transparent, *so that everyone going forward knows what the rules are.*”⁸

- i. Has OJJDP notified all states that all states have received “not out of compliance” notifications since 2013 and will continue to do so for Fiscal Year 2016?

Beginning in September 2013, all states participating in the JJDPA received funding determination notice letters that advised that states were not out of compliance with the DMC core requirement. States were strongly encouraged to prioritize and increase their efforts to eliminate systemic racial and ethnic disparities and to seek training and technical assistance from OJJDP to assist the state with fully implementing the OJJDP DMC Reduction Model.

- ii. What are the rules that govern DMC compliance assessments for states while the assessment tool is being developed?

Please see above response.

- iii. What is the statutory basis for these rules?

In addition to the JJDPA, all OJJDP grant decisions must also follow general OMB grant regulations, as well as requirements of cross-cutting statutes, such as the Administrative Procedure Act. It is correct that the JJDPA requires OJJDP to assess compliance with all of the core requirements, including DMC. However, OJJDP must also ensure that their actions are legally defensible. In April 2013, the OJJDP Administrator learned that OJJDP’s method for determining states’ compliance with DMC was not based on a consistent objective standard. Instead, the determinations were based on the subjective judgment of the individual reviewing an individual state’s DMC plan. In light of this information, OJP OGC examined OJJDP’s practices and found that, in the absence of clear and objective standards for collecting and measuring data, OJJDP’s method for determining states’ compliance with DMC may not have been legally defensible.

- d. According to Ms. Andrea Coleman, the DMC Coordinator at OJJDP, she developed in 2011 the Compliance Determination Assessment Instrument (CDAI) to assist with making annual determinations of compliance with the DMC requirement. Is there another tool that is currently in development at OJJDP?

- i. If so, please describe this tool.

⁸ U.S. Senate Committee on the Judiciary, *Improving Accountability and Oversight of Juvenile Justice Grants*, (Apr. 21, 2015), <http://www.judiciary.senate.gov/meetings/improving-accountability-and-oversight-of-juvenile-justicegrants/> (emphasis added).

OJJDP is actively working to develop a legally sound and objective standard against which to judge all states' compliance with DMC on an equitable basis. OJJDP is working closely with OJP's Bureau of Justice Statistics; Office of Audit, Assessment and Management; Office of General Counsel; and three technical assistance grantees who are leading experts in the field of racial and ethnic disparities, specifically, the W. Haywood Burns Institute, Center for Children's Law and Policy, and Development Services Group. The objective tool will be part of a new policy and accompanying procedures establishing consistent compliance guidelines for states, streamlining the process for submitting compliance data, and establishing an objective and data-driven process to assess compliance. Although draft policies have been distributed within OJJDP, there is no final policy that has been approved by all of the relevant stakeholders.

ii. If not, why has OJJDP not approved the CDAI?

Please see above response.

- e. According to OJJDP: "If a state fails to demonstrate compliance with any of the [JJDP's] core requirements in a given year, OJJDP reduces its formula grant for the subsequent fiscal year by 20 percent for each requirement where the state is noncompliant, as required by the JJDPA."⁹**

As we explained in our letter dated June 26, 2015, OJJDP's practice has been to reduce funding in the fiscal year subsequent to the year an actual finding of noncompliance was made by the Administrator – which generally occurred approximately 2-3 years after the year of the non-compliant activity.

i. How are the "not out of compliance" notifications compatible with 42 U.S.C. § 5633 (a), (c) (1), and (c) (2)?

Please see response 1 (c)(iii) above. In April 2013, the DMC Coordinator opined in writing that OJJDP's current method of determining states' compliance with DMC was not based on any consistent standard, nor on the JJDPA or OJJDP's regulations implementing the Formula Grant program. Instead, the determinations of whether a state was in or out of compliance (and consequently subject to a reduction in formula grant funding), were based upon the subjective judgment of the individual reviewing a particular state's DMC plan. Based on this determination and the fact that any finding of noncompliance based on these vague standards would be found to be arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C. § 706(2), OJJDP was not prepared to defend DMC noncompliance determinations. As described above, OJJDP is developing a legally sound and statistically valid standard against which to judge all states' compliance with DMC on an equitable basis.

⁹ Letter from the Hon. Peter J. Kadzik, Assistant Attorney General, U.S. Department of Justice, to Sen. Charles E. Grassley, Ranking Member, Sen. Comm. On the Judiciary (Oct. 28, 2014).

ii. How are the “not out of compliance” notifications compatible with CFR 31.303(j)?

See above response. While we recognize that these notifications were not compatible with C.F.R. 31.303(j), compliance with the Administrative Procedure Act is equally important in light of the facts discussed above.

iii. Is OJJDP staff required to review states’ DMC compliance plans even though they are receiving these notifications?

OJJDP staff continues to review states’ DMC compliance plans even though states are receiving these notifications. As noted above, while states were notified that they were “not out of compliance” with the DMC core requirement, states were strongly encouraged to prioritize and increase their efforts to eliminate systemic racial and ethnic disparities and to seek training and technical assistance from OJJDP to assist the state with fully implementing the OJJDP DMC Reduction Model. In that regard, OJJDP has consistently offered training and technical assistance in this area, and a review of the DMC compliance plans has assisted in identification of states where assistance is needed.

iv. Does OJJDP base its annual compliance determinations of the DMC requirement on whether a state received training and technical assistance, or on whether that state *actually complied* with the DMC requirement during the year in question?

Please see above responses concerning compliance determinations and use of training and technical assistance.

f. Since OJJDP began sending out these notifications in 2013, which states in which years have received training and technical assistance with respect to the DMC requirement?

In 2013, no states received training and technical assistance for compliance with the DMC requirement. In June 2014, OJJDP provided Core Requirements training to all states. With the assistance of a recently awarded grant to experts in the field of racial and ethnic disparities, specifically, the W. Haywood Burns Institute, Center for Children’s Law and Policy, and Development Services Group, we are now prepared to provide DMC technical assistance.

g. Prior to 2013, did OJJDP ever send out “not out of compliance” notifications to any state, with respect to any core requirement of the JJDP Act? If so, when, and to which states?

OJJDP is unaware of any such notifications prior to 2013.

h. Which provision of the statute authorizes the Administrator to issue these “not out of compliance” notifications?

See response 1 (c)(iii) above. As noted above, the JJDP requires OJJDP to assess compliance with all of the core requirements, including DMC. Additionally, OJJDP must also ensure that its actions are legally defensible. Since OJP OGC determined that OJJDP’s method for determining states’ compliance with DMC may not have been legally defensible, beginning in September 2013, all participating states received funding determination notice letters that advised that states were not clearly found by the Administrator to be out of compliance with the DMC core requirement. Until a legally defensible standard has been developed, which can be applied uniformly to all jurisdictions, we are not in the position to actually assess DMC monetary penalties.

2. Recovery of Funds Disbursed Under Unlawful DOJ Policy That Dates Back to 1997

In an April 14, 2015 letter, the Justice Department admitted that it had in place a policy since 1997 that was “not permitted by the statute” in that it allowed states to obtain JJDP funds even after submitting non-compliant data.¹⁰ At the April 21st hearing, I asked whether you could commit to providing a ball-park estimate of how many federal taxpayer dollars were wrongfully disbursed to states under this unlawful policy.

You did not commit to providing this figure by a date certain, stating as follows:

Because of the subjectivity that is built into the current policies and practices, we are having a difficult time being able to determine on an objective basis and recreate the decisions. So . . . I could not give you a time limit as we dig into this to try to figure out what monies, if any, need to be returned as a result of earlier decisions.¹¹

Questions

a. Why do decisions need to be recreated at all in order to obtain this ball-park estimate? Why is this not a straightforward matter of reviewing and tallying records?

As a result of our review, we have found that records dating back to 1997 are incomplete or not available, making it difficult, if not impossible, to validate compliance determinations made by OJJDP. Specific OJP record retention requirements, as approved

¹⁰ Letter from the Hon. Peter J. Kadzik, Assistant Attorney General, U.S. Department of Justice, to Sen. Charles E. Grassley, Ranking Member, Sen. Comm. On the Judiciary (Apr. 14, 2015).

¹¹ U.S. Senate Committee on the Judiciary, *Improving Accountability and Oversight of Juvenile Justice Grants*, (Apr. 21, 2015), <http://www.judiciary.senate.gov/meetings/improving-accountability-and-oversight-of-juvenile-justicegrants/>.

by the National Archives and Records Administration (NARA), generally require retention of all grant records, for a period of four years after the close of each grant. Additionally, the Grant Management System (GMS) (which is OJP's official system of records for grant information) contains all such records in an electronic format. Unfortunately, it is apparent that although OJJDP had been retaining all grant documents electronically in GMS consistent with this policy, apparently the documents used in part for determining compliance with the core requirements had been retained, if at all, in a paper format, by individual compliance program managers. OJJDP has physically moved to new office space five times since 1997 alone, and unfortunately, such moves have contributed to the loss of paper files from individuals in OJJDP. As a result of this review, OJJDP has modified its policy to include all compliance documents in the electronic systems, which should ensure that in the future it complies with all OJP record retention requirements as approved by NARA.

- b. In which years, and for how many core requirements, were states allowed to submit supplemental data under the 1997 policy which the Department recently admitted was inconsistent with the statute?**

While our review of past OJJDP Formula Grant practices is ongoing, it appears that states were allowed to submit supplemental data for each of the three core requirements that relied upon data. OJJDP did not consistently document instances in which supplementation was allowed, and as noted above, OJJDP records are incomplete. As a result, it is impossible to identify all the instances in which supplementation was allowed.

- c. For each instance referenced in Question 2(b) above, what is 20% of the total amount of Title II formula grant funds the state received in that year?¹²**

Unfortunately, due to incomplete records and poor documentation, we do not have access to this information.

- d. What is the sum of all the 20% calculations referenced in Question 2(c), above?**

Please see above response.

- e. Other than your concerns about OJJDP's ability to assess states' compliance with the DMC requirement, do you have concerns about the objectivity of compliance determinations that OJJDP made under the 1997 policy with respect to any of the three other core requirements? If so:**

- i. Which other core requirements?**

¹² 42 U.S.C. § 5633 (a)(19) requires participating states to have procedures necessary for "accurate accounting of funds received" under the Act, so states should have these numbers available.

The new Core Protections Unit is developing policies and procedures to ensure consistent standards aligned with the JJDP. In addition to concerns regarding DMC discussed below, we have determined that the regulations governing compliance with the three other core requirements are out of date. Moreover, both the regulations themselves, and the method by which they were implemented, allowed for significant subjectivity on the part of reviewers.

ii. What is subjective about these compliance determinations?

For example, the *de minimis* exception for the Deinstitutionalization of Status Offenders core requirement allows a state with a certain level of compliance to be found compliant if it “adequately meet[s]” two criteria: (a) noncompliant incidents violated state law, and (b) an “acceptable plan” has been developed that is designed to eliminate the noncompliant incidents. States with lower rates of compliance are eligible for the *de minimis* exception if they “fully satisfy” two criteria: (a) noncompliant incidents violated state law, and (b) an “acceptable plan” has been developed that is designed to eliminate the noncompliant incidents. However, OJJDP has never defined the terms “adequately meet[s],” “fully satisfy,” or an “acceptable plan.” Similarly vague and undefined terms are used in the Jail Removal requirements.

iii. Who has determined that these determinations are subjective?

In conducting our review, we identified various vague terms. OJJDP, in consultation with OJP’s Office of General Counsel and the Office of the Assistant Attorney General, has found these terms are subjective. The Assistant Attorney General for OJP has directed that specific action be taken to ensure consistent and objective policies and procedures are developed, and that staff be adequately trained to ensure consistent application of discretionary factors.

iv. Do these concerns of subjectivity warrant “not out of compliance” notifications to be sent to all states with respect to the other core requirements as well?

Fortunately, the degree of subjectivity present in the three other core requirements is not as severe as with the DMC requirement, such that “not out of compliance” notifications were not deemed necessary.

v. In practice, are there any core requirements for which OJJDP is less likely to reduce a state’s funding for noncompliance?

Because of problems with DMC compliance review discussed above, DMC is currently the core requirement for which OJJDP is less likely to reduce a state’s funding.

3. Regulations

At the April 21st hearing, Senator Whitehouse correctly stated to you that “developing administrative regulations is something that is 100% within the purview of the executive branch of government. That is something that you control absolutely.”¹³

Senator Whitehouse also stated to you his preference that OJJDP begin revising and updating regulations now to match the current statute, independent of the timing of the next reauthorization of the JJDP.¹⁴

I agree.

Questions

a. Since April 21, 2015, what actions has OJJDP taken to update the JJDP regulations?

Personnel across OJP have been actively working on draft regulations for several months. Since the April 21, 2015 hearing, OJP has redoubled its efforts and is working diligently to prepare the regulations for final review within the Department before they will be submitted to OMB and published in the Federal Register as a Notice of Proposed Rule-Making for public comment.

b. When were the JJDP regulations – pursuant to the 2002 reauthorization – first drafted and by whom?

Drafting on revised JJDP regulations began in 2003 and several versions have followed through the years, including drafts in 2006/2007, 2010/2011, and most recently in 2015. We are informed that numerous OJP staff members have been involved in the drafting efforts, including senior OJJDP management and staff and OGC.

c. According to one whistleblower, JJDP regulations were drafted and have been ready to go since at least 2007 – with multiple iterations produced and multiple consultations occurring with national leaders. Reportedly, a viable draft of these regulations is currently “sitting on the OJP shared computer drive, waiting to be issued.” Is this true?

As indicated above, for the last several years, personnel across OJP have worked on numerous drafts of the Formula Grant Program regulation, addressing a number of

¹³ U.S. Senate Committee on the Judiciary, *Improving Accountability and Oversight of Juvenile Justice Grants*, (Apr. 21, 2015), <http://www.judiciary.senate.gov/meetings/improving-accountability-and-oversight-of-juvenilejustice-grants/>.

¹⁴ *Id.*

substantive legal and policy issues. As you know, this process has been complicated by the fact that the regulations have not been updated since 1996. Additionally, from 2008 to 2011, OJJDP paused the regulatory drafting process and instead focused its efforts on affecting statutory changes through either the JJDP reauthorization or the annual appropriations process, which would allow OJJDP to continue to administer the Formula Grant Program as it had been previously run.

We understand the importance of clear and consistent regulations and we are now moving as quickly as possible to update the regulations. While this process is a priority for OJJDP and OJP leadership, any draft regulations will have to be cleared through Office of Information and Regulatory Affairs, and will go through the usual notice and comment process.

- d. **OJJDP's 24-hour exception is embodied in 28 C.F.R. 31.303(f)(2), promulgated in 1996. What is the legal authority for this exception to the Act's ban on secure detention for status offenders stated in Section 223(a)(12) of the JJDP?**

The Act's Deinstitutionalization of Status Offenders (DSO) requirement related to status offenders is found at 223(a)(11), so we assume that the reference to 223(a)(12) (the separation requirement) in the question was in error. For that reason, we note that Section 223(a)(11) is not technically a "ban" on secure detention of status offenders. Unlike sections 223(a)(12) and 223(a)(13), which provide that states shall not "detain or confine" juveniles under certain circumstances, the DSO requirement does not speak to detention. In sharp contrast, section 223(a)(11) provides that states shall not "place[]" status offenders in secure correctional or secure detention facilities. We presume that Congress used different words to mean different things in the JJDP and that "place[ment]" in a secure facility reflects a formal arrangement or a more deliberate action as opposed to mere factual detention in such a facility. The 24-hour exception to the DSO requirement was created to prevent states from circumventing the DSO requirement by never taking a formal or deliberate action.

- e. **If the 24 hour exception is deemed to be valid, why is its use by courts not a detailed part of OJJDP's monitoring, like the Valid Court Order (VCO) exception?**

Federal Regulations prior to, and since the issuance of, the OJJDP Policy Statement 89-1201, dated April 1989, have always contained language in the Reporting Requirement section, currently Section 31.303(f)(5)(i), which implies the allowable use of the 24-hour exception. Since the use of the 24-hour exception only applies to *accused* status offenders, those being held for less than 24 hours do not need to be reported to OJJDP. The VCO reporting requirement is necessary because it applies to *adjudicated* status offenders, who are not allowed to be placed in a detention or correction facility for any length of time, unless each of the requirements of the VCO are followed; and once documented and verified, the VCO exception would apply.

4. OJJDP's Core Protections Division

According to your written statement for the hearing:

Last month, we created a new "Core Protections Division" within OJJDP, which will be responsible for ensuring adherence to the Act. We appointed an experienced auditor and one of my trusted advisors to serve as the Division's first Acting Associate Administrator. With the assistance of OJP leadership, the new Acting Associate Administrator will be working with OJJDP to develop consistent compliance guidelines for states, to streamline the process for submitting compliance data, and to establish an objective and data-driven process to assess compliance.

Questions

- a. **How does the new Core Protections Division differ from the Audit and Compliance Team established in 2013 – the latter of which was explained in detail in the Department's October 28, 2014 letter?**

As detailed in our October 28, 2014 letter, OJJDP established the Audit and Compliance Team (ACT) to strengthen states' compliance with the JJDP, to increase the level of objectivity and independence in compliance determinations, and to conduct audits of state compliance systems. While this was a positive step, OJJDP has made additional significant commitments to achieve these goals. The ACT consisted of only five analysts and was only one part of the Budget and Administration Division, a separate Division in OJJDP. The new Core Protections Division will replace ACT and will be a standalone Division within OJJDP dedicated to enforcement of the JJDP core requirements, rather than a team within the Budget and Administration Division (which has other responsibilities). The new Core Protections Division will be staffed by the previous ACT staff, as well as by several additional analysts (estimated hires will be 4 to 6 full time employees), contract support data technicians, and support staff. This elevation to an OJJDP Division underscores the Department's commitment to the JJDP core requirements. The Core Protections Division will be led by an Associate Administrator dedicated to oversight of the Division. These important structural changes will facilitate the necessary substantive changes to ensure consistent compliance guidelines for states, streamline the process for submitting compliance data, and establish an objective and data-driven process to assess compliance.

- b. **Have any employees in the Audit and Compliance Team been assigned to the Core Protections Division? If so, who, and how many have not been so assigned?**

As detailed above, all of the former ACT employees are now part of the Core Protections Division.

c. What role will Ms. Andrea Coleman play in the Core Protections Division?

While we cannot provide personnel information regarding specific employees, as detailed above, all of the former ACT employees are now part of the Core Protections Division.

d. What role will Ms. Elissa Rumsey play in the Core Protections Division?

While we cannot provide personnel information regarding specific employees, as detailed above, all of the former ACT employees are now part of the Core Protections Division.

e. At a September 29, 2014 briefing provided to Committee staff, the Justice Department made available two subject matter experts from OJJDP – Ms. Janet Chiancone and Mr. Greg Thompson – to answer questions raised in my September 5, 2014 letter. Ms. Chiancone was the only one who spoke up when Committee staff asked questions that other briefers refused to answer. According to multiple whistleblowers, OJP and OJJDP leadership subsequently removed Ms. Janet Chiancone from leading OJJDP’s compliance monitoring efforts, despite her eminent qualifications and experience in this area. What role will Ms. Janet Chiancone play in the Core Protections Division?

At the September 29, 2014 briefing, both Ms. Chiancone and Mr. Thompson provided detailed, extensive answers in response to the questions posed by the Committee staff. As explained at the briefing, because our review of specific practices is ongoing, we did not at that time have many of the details requested. Since that time we have provided the Committee with significant additional information regarding our efforts to ensure compliance with the core requirements of the JJDP. Although we cannot provide personnel information regarding specific employees, we can tell you Ms. Chiancone remains an integral part of the inter-Divisional team that is working to strengthen core compliance controls and develop policies, procedures, and guidance. She routinely participates in a number of weekly team meetings, including those hosted by the Assistant Attorney General, and she has primary responsibility for various key tasks.

f. Will OJJDP be selecting a permanent Associate Administrator of the Core Protections Division? Will the Acting Associate Administrator be allowed to apply for this position on a permanent basis?

OJJDP plans to select a permanent Associate Administrator for the Core Protections Division. The position vacancy was open to interested applicants internal and external to the government. The hiring process is ongoing.

g. Why is this position Acting? Is the Core Protections Division temporary?

As Assistant Attorney General Mason testified, we are committed to institutionalizing the needed reform to ensure consistent, objective enforcement of the JJDP core

requirements. Accordingly, the Core Protections Division is a permanent Division within OJJDP. In order to minimize delay in establishing the unit, Ms. LeToya Johnson was detailed from the Assistant Attorney General's staff in an Acting capacity as we seek to hire a permanent Associate Administrator.

- h. Whistleblowers allege that the Acting Associate Administrator lacks background or experience in conducting audits and determining the adequacy of states' system for compliance monitoring pursuant to Section 204(b)(6) and Section 223(a)(14) or with addressing Disproportionate Minority Contact Section 223(a)(22) pursuant to the JJDP. Whistleblowers also claim that the Acting Associate Administrator lacks experience monitoring facilities covered by the JJDP, such as adult jails and lockups.**

- a. Please describe the Acting Associate Administrator's background or experience in these areas.**

Acting Associate Administrator LeToya Johnson is a Senior Advisor in the Office of the Assistant Attorney General. Ms. Johnson has a distinguished career in government service and extensive audit and oversight expertise. She is a Certified Public Accountant with over 20 years of audit experience. Prior to joining OJP, Ms. Johnson was an auditor with the Department of Justice's Office of the Inspector General, where she conducted audits of DOJ components and DOJ grant recipients, including police departments. She was routinely called upon to quickly learn an organization's system and then assess its adequacy and compliance with complex statutory and regulatory requirements. Since joining OJP, Ms. Johnson has served in several key auditing and system oversight roles, including Deputy Director of the Audit and Review Division with the Office of Audit, Assessment, and Management (where she established audit and internal control functions for all of the Bureaus within OJP) and Director of the Office of the Chief Financial Officer's Financial Monitoring Division (where she led a staff of accountants responsible for overseeing the fidelity of grantees' activities to ensure that millions of dollars of federal grants were properly used). Ms. Johnson's auditing and system oversight expertise is well-suited to stand up the Core Protections Division.

- b. Was the Acting Associate Administrator competitively selected for the position?**

As detailed above, to minimize delay in establishing the Core Protections Division (and to underscore the importance of this issue to Assistant Attorney General Mason), Ms. Johnson (a member of the current staff in the AAG's office) was designated as the Acting Associate Administrator. A competitive process was not required for this temporary position pursuant to OJP Merit Promotion policy. *See* OJP I 1552.1 - OJP Instruction: Merit Promotion Policy, dated 12/20/2004. The permanent Associate

Administrator will be selected in accordance with federal personnel regulations and requirements.

5. OJJDP's Failure to Hold Wisconsin Accountable

According to your testimony, OJJDP has frozen all of Wisconsin's unspent formula grant funds and notified the State of its plan to conduct an audit within the next 60 days. The Justice Department's October 28, 2014 letter indicates that OJJDP froze these funds in October 2014. However, according to the Inspector General, the Report of Investigation detailing Wisconsin's violations referenced above was provided to OJJDP in January 2014.

Question

a. Why did OJJDP wait until October 2014 to place a special condition on Wisconsin's FY 2013 and 2014 funds?

When the Office of Inspector General's (OIG) January 2014 report was provided to OJP, it was reviewed by OGC for the sole purpose of checking to see whether either criminal action or civil enforcement action (with which OJP would cooperate) would be pursued as a result of the findings in the report. The report indicated that the U.S. Attorney for the Northern District of Iowa had declined criminal prosecution on the matter, and the U.S. Attorney for the Northern District of Iowa, in coordination with the Civil Division, had declined civil enforcement under the False Claims Act. Once those determinations were made, the report was filed with other similar OIG reports concerning closed grant awards where no enforcement or collection action had already been undertaken by the DOJ or OIG. In a subsequent periodic review of those files, it was determined that further agency administrative action may nevertheless be warranted. OJJDP did not receive the Inspector General's Report of Investigation for agency follow-up until September 2014. Since that time, OJP's internal document filing and review process has been modified to ensure that all such reports will be reviewed and discussed with the OAAG at least monthly. Although the OIG report did not specifically address any open OJJDP grants to Wisconsin, the allegations of the state's ongoing failure to have an adequate system of monitoring were of such importance that OJJDP froze Wisconsin's remaining FY 2013 and FY 2014 funds (an amount exceeding \$1M) shortly after receiving and assessing the report, in consultation with the OJP's Office of the General Counsel.

6. Whistleblower Allegations of Misconduct by OJP Office of General Counsel

As I noted at the hearing, whistleblowers allege that officials within your Office of General Counsel engaged in various forms of misconduct.

Multiple whistleblowers have named Rafael Madan and Charlie Moses as officials in your General Counsel's office who allegedly engaged in misconduct and whistleblower retaliation.

In my January 14, 2015 letter, I asked several questions concerning this misconduct, but those questions remain unanswered, to date.

Questions

- a. **According to the OIG Special Agent who notified Deputy General Counsel Charlie Moses about the OIG investigation of Wisconsin, Mr. Moses responded by asking “Who is the whistleblower?” In your view, is this an acceptable method of responding to a DOJ employee’s effort to report concerns of mismanagement internally?**

OJP has consistently cooperated with the OIG in the conduct of its investigations. OJP’s Office of General Counsel frequently serves as the liaison between the OIG and the particular OJP Bureau under investigation. Deputy General Counsel Charlie Moses, who is one of the Department’s ethics attorneys, routinely interacts with the OIG and whistleblowers in the agency. We are unaware of the full context for the reported question attributed to Mr. Moses, but in either his capacity as Deputy General Counsel on the ethics team, or in his current role as the Department Designated Deputy Agency Ethics Official for OJP, it would be entirely appropriate for him to have knowledge of and to interact with whistleblowers.

- b. **Do you believe OJP’s General Counsel Rafael Madan is able to be objective in his dealings with OJJDP Compliance Staff? Multiple present and past employees of OJJDP have answered this question in the negative in communications with my staff.**

OJP’s General Counsel, Rafael Madan, has a duty to provide legal advice and counsel to OJP on what the law requires, permits, or forbids, to the best of his ability. He has served as General Counsel for nearly 14 years. He has executed, and remains fully able to execute, his duties with objectivity, professionalism and integrity with OJJDP Compliance Staff and all other OJP staff. We are unaware of information indicating anything to the contrary.

- c. **Has OGC ever issued a legal opinion or memorandum relating to the JJDP or Title II, Formula B grants that was not published? If so, why does OGC not make all of its guidance public so that this process is uniform and transparent?**

By order of the Assistant Attorney General for OJP, the OJP Office of the General Counsel is charged with providing legal advice to OJP and each of its component parts. OJP Order 1001.5D. The Office of the General Counsel does not provide legal advice to entities (including state and local governments) outside of OJP. For that reason, all opinions of the General Counsel, including those regarding OJJDP matters, are provided

to OGC's client offices within OJP, but are not made publicly available unless done so by the client office in accordance with Department policy.

d. Has OGC ever issued a legal opinion or memorandum that applied either contemporaneously or retroactively to the compliance determination of Wisconsin or any other state or territory for funding under the JJDP?

Advice that the Office of the General Counsel has provided to OJP or any of its components, including OJJDP, has been understood, in general, to apply prospectively and not retroactively, unless that opinion specifies otherwise. OJJDP issues compliance determinations based upon its review and analysis of the materials provided by the states and is informed by any relevant OGC advice and guidance.

e. What is OGC's current interpretation of the VCO exception?

The JJDP was enacted in 1974. Over the course of various administrations, OJP has sought and received – and continues to seek and receive – opinions from the Office of the General Counsel in response to particular questions as they arise. Thus, rather than provide an overall interpretation of section 223(a)(11)(A)(ii) of the JJDP (the VCO exception), the Office of the General Counsel has opined on the exception only in connection with specific questions posed by OJJDP as far back as 1981. Consistent with advice from the Office of the General Counsel, OJP's understanding of the Valid Court Order (VCO) exception has been as follows:

- 1) A juvenile described in what is now codified in section 223(a)(11)(B) of the JJDP may not be placed in a secure detention or secure correctional facility without violating section 223(a)(11).
- 2) A juvenile described in what is now codified in section 223(a)(11)(B) of the JJDP who violates the terms of his supervision may, when appropriate, be placed in a secure detention or secure correctional facility without a resulting DSO violation.
- 3) A juvenile who has been charged with violating a VCO that relates to his status as a juvenile may be placed in a secure detention or secure correctional facility, pursuant to the VCO exception.
- 4) Finally, because contempt of court is not itself a status offense, a juvenile who has committed such an offense may be securely detained without violating the DSO requirement. It is important to note, however, that, for a court order to be a "valid court order," under section 223(a)(11) of the JJDP, various statutory prerequisites must be established, including a showing that the order was issued to a juvenile who received the full due process rights guaranteed to the juvenile by the U.S. Constitution.

f. What was OGC's previous interpretation of the VCO exception?

We are unaware of any change in OGC's legal interpretation of the VCO exception. Our understanding is that any interpretation different from the interpretation in response 6 (e) was never based on an opinion of the OJP General Counsel.

g. How long did OJJDP operate under the previous interpretation?

Please see above response.

h. When and why did OGC change its interpretation of the VCO exception?

OGC is unaware of any change in the legal interpretation of the applicability of the VCO exception. It should be noted, however, that OJJDP's current regulation implementing the Formula Grant Program (28 C.F.R. Part 31), is not consistent with OGC's opinions in that the regulation provides that "[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." 28 C.F.R. § 31.303(f)(3)(vii). As was noted above, (see question 3(c)) we are working to update OJJDP's current regulations to ensure that they are consistent with the JJDPA.

i. Did OGC seek public comment in making this change? If not, why not?

As indicated above, OGC is unaware of any change in OGC's legal interpretation of the VCO exception. However, it should also be noted that this is a legal interpretation of the language in a statute, not a policy decision based on the statutory language. While public comment may be appropriate in making policy choices, such public comment is neither necessary nor appropriate in provision of legal advice by an agency General Counsel to his client concerning the meaning of an existing statute.

j. Did OGC notify all participating states and territories of this change in interpretation? If so, when and how? If not, why not?

As indicated above, OGC is unaware of any change in OGC's legal interpretation of the VCO exception. Further, as noted above, the General Counsel provides direct advice to OJP, and not to states and territories that participate in OJP grant programs. See above response 6 (c).

k. Did OGC's change in interpretation affect the compliance determination for Wisconsin for data reported for calendar years 2001-2010? If so, how?

As indicated above, OGC is unaware of any change in OGC's legal interpretation of the VCO exception.

l. Who drafted this legal opinion in 2007?

See response 6 (e) above. OGC is unaware of any “legal opinion in 2007” related to the VCO exception within the DSO requirement. However, all legal opinions from the Office of the General Counsel reflect advice from the General Counsel.

m. Is the 2007 opinion still in effect? Does OJP OGC still allow states like Wisconsin to be in compliance with the DSO requirement despite detaining non-offenders?

OGC’s legal opinions described above regarding the VCO exception to the DSO remain in effect. OGC did provide an opinion in 2008, not in 2007, that offered guidance regarding the VCO exception and that guidance was consistent with prior opinions. See response 6 (e) above. However, OGC is not responsible for, nor has the authority to make, compliance determinations. That authority rests solely with the Administrator of OJJDP. Pursuant to the JJDP, and applicable regulations, states are required to report any violations of Section 223(a)(11), which includes any non-offenders placed in secure detention facilities or secure correctional facilities.

7. Andrea Coleman

At the hearing, Ms. Coleman testified that many of her job duties as DMC Coordinator at OJJDP were reassigned to other staff after she made recommendations of DMC noncompliance in 2013 and after she voiced similar concerns in 2014 and 2015. According to Ms. Coleman, prior to Administrator Listenbee’s tenure, she was allowed to voice such concerns and recommend non-compliance when necessary, without having her job duties subsequently reassigned for doing so.

a. What were Ms. Coleman’s job duties prior to Administrator Listenbee’s tenure?

As explained above, we cannot provide personnel information regarding specific OJJDP employees. That being said, Ms. Coleman, like other members of the ACT team, provides valuable input to both the Administrator and the Assistant Attorney General regarding our efforts to ensure compliance with the JJDP’s core requirements. Thus, as OJJDP works to develop new policies and procedures to ensure consistent and objective enforcement of the JJDP, Ms. Coleman (along with other staff members) is continually asked for her input, concerns and recommendations.

b. What were Ms. Coleman’s job duties at the start of Administrator Listenbee’s tenure?

Please see above response.

c. What are Ms. Coleman’s current job duties?

Please see above response.

- d. If Ms. Coleman's allegations are true, will you consider reinstating her previous job duties as DMC Coordinator? Why or why not?**

Please see above response.

8. OJJDP's Compliance Monitoring of Tennessee

At the hearing, Professor Dean Rivkin testified that OJJDP refused to meet with him before or during OJJDP's 2013 Audit of Tennessee.

Questions

- a. Why did OJJDP refuse to meet with Professor Rivkin before or during the Audit?**

OJJDP has consistently taken seriously the allegations raised by Professor Dean Hill Rivkin and made considerable efforts to investigate his concerns about the detention of status offenders in Knox County. In July and August 2013, senior members of OJJDP, at the instruction of OJJDP Administrator Robert Listenbee, spoke to Professor Rivkin. In response to Professor Rivkin's allegations, OJJDP arranged for a September 2013 on-site compliance audit. Administrator Listenbee also met with Professor Rivkin in October 2013, after which Professor Rivkin in a November 6, 2013 letter, thanked Mr. Listenbee. On February 28, 2014, OJJDP provided a written response to Professor Rivkin explaining the results of the audit. In particular, OJJDP told Professor Rivkin that while there were findings related to the compliance audit, none supported his allegations in Knox County. OJJDP also informed Professor Rivkin that his concerns about status offenders' right to counsel had been referred to the Civil Rights Division of the Department of Justice.

- b. Is DOJ willing to meet with Professor Rivkin now?**

OJJDP welcomes further meetings with Professor Rivkin to discuss any additional information he may wish to offer.

- c. Will DOJ now review Professor Rivkin's raw detention data concerning Knox County and reconcile this data with the information reported by TCCY?**

As discussed above, OJJDP is currently developing a new policy and procedures to ensure objective enforcement of the JJDP core requirements. The new procedures will delineate the process to be followed in assessing data from sources external to the state. OJJDP must balance information from outside sources against the information provided by states, and must determine which information is verifiable. Importantly, as detailed

above, we previously considered the information provided by Professor Rivkin and attempted to verify the information he provided.

- d. Will DOJ now reconcile the under-reporting and monitoring of VCO violation hearings in Tennessee? According to Professor Rivkin, OJJDP's 2013 Audit reported 227 VCO violation hearings in Tennessee in 2012, but his state court statistics show that there were in fact 889 such hearings in 2012.**

As part of the audit conducted in September 2013, OJJDP examined compliance information and juvenile detention data from around the state, including Knox County, the source of Professor Rivkin's concerns. OJJDP identified nine audit findings that required a formal response from the state, but did not identify any data omissions or inconsistencies that would support Professor Rivkin's Knox County allegations.

In addition, Tennessee has submitted data indicating compliance with the JJDP Act since 2006. Moreover, data has shown that Tennessee has reduced the use of the VCO by more than 50% since 2007, going from 487 instances in FY 2007 to 242 instances in FY 2013.

- e. Why was there an eight year period between the 2005 Audit and the 2013 Audit?**

While OJJDP endeavored to conduct onsite audits in each state at least every five years, OJJDP was unable to meet this goal due to resource constraints. Subject to the availability of funds, the new Core Protections Division will ensure that both routine as well as risk-based audits are consistently conducted.

- f. Why was it necessary for Professor Rivkin to file a FOIA request to obtain a copy of the 2013 Audit?**

The audit report is considered an agency document maintained by OJP. The FOIA process ensures transparency of government activities, while also ensuring that any sensitive, private, or proprietary information can be protected, as appropriate.

- g. Why the 2013 Audit was not publicly posted on the OJJDP website?**

Audit reports contain sensitive, private, financial, or proprietary information that is not appropriate for public dissemination. While it is possible to redact that information, OJJDP current resources only enable such redaction in response to FOIA requests.

- h. Will you provide this Committee with a non-redacted copy of this 2013 Audit?**

Yes. We will follow up with the Committee separately to provide this document.

9. Enforcement of 42 U.S.C. § 5633 (c)(2)(A)

- a. **If a state is out of compliance with one or more core requirement, and the state has received a funding reduction for this noncompliance, how does OJJDP ensure that a state is truly spending 50% of its formula grant funding to come back into compliance with a given core requirement?**

OJJDP staff reviews budgets submitted by the states in conjunction with formula grant applications, grant adjustment and extension requests, and review of financial and progress reports. When states have been found out of compliance for one or more of the core requirements, OJJDP staff reviews the budget submissions specifically for compliance with the 50% requirement. Additionally, through fiscal and programmatic monitoring, OJJDP staff examines states' efforts to come into compliance and obtains information from the technical assistance providers designated to assist states found out of compliance.

10. Definition of Juveniles

The federal government considers individuals under age eighteen to be juveniles. Similarly, 41 states make a similar delineation where the "maximum age of juvenile court jurisdiction is age 17."¹³ Nine states, however, draw the line between adults and juveniles at either age 16 or 15. For purposes of receiving formula grant funding under the JJDP, the act specifies that "funds shall be allocated annually among the States on the basis of relative population of people under age eighteen."¹⁴

- a. **If nine states set the maximum age of juvenile court jurisdiction below seventeen—and as such, are not necessarily treating all individuals under age eighteen as juveniles for court purposes—may these states be using their formula grant funding to serve a lower number of "juveniles" than might be assumed by the formula as laid out by the JJDP?**

Yes. For states that have a criminal age of full responsibility lower than age 18, it can be presumed that formula grant funds are being targeted toward fewer individuals than the number upon which the states' formula grant allocations are based. Therefore these states could receive a larger proportion of money per juvenile based on the formula grant allocation required by the JJDP, as dictated by the provisions of the JJDP (Section 222(a)(1)).

- b. **As such, might these states be receiving a larger proportion of money per juvenile (as defined by the state justice systems) through the formula grant program?**

Yes, as noted above, these states could receive a larger proportion of money per juvenile based on the formula grant allocation required by the JJDP.

- c. Does OJJDP expect that states are serving *all* eligible individuals under age 18 with formula grant funding, or does OJJDP leave the age of individuals served with juvenile justice funding up to the discretion of the states?

Each state may use formula grant funding for programs designed to address juvenile delinquency and to improve the juvenile justice system, using the definition of “juvenile” within the state.

¹³ National Conference of State Legislatures, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, October 1, 2014. Seven states draw the line between juveniles and adults at age 16, and two states draw the line at 15.

¹⁴ 42 U.S.C. § 5632.

RESPONSES OF PROF. DEAN HILL RIVKIN TO QUESTIONS SUBMITTED
BY SENATOR GRASSLEY

QUESTIONS FOR THE RECORD

from Senator Charles E. Grassley to Professor Dean Rivkin
U.S. Senate Committee on the Judiciary
Hearing on "Improving Accountability and Oversight of Juvenile Justice Grants"
Submitted on April 28, 2015

1. OJJDP AUDIT OF TENNESSEE

- a. At the hearing, you testified that you attempted to inform OJJDP of compliance monitoring issues in Tennessee prior to the 2013 Audit. Who did you speak to at OJJDP and who refused to accept your data?

On July 19, 2013, I spoke by phone with Gregory Thompson of OJJDP. In this conversation, he informed me of OJJDP's planned Audit of Tennessee. I related to him that our Education Law Practicum had extensive experience representing status offenders in the Knox County Juvenile Court and informed him that we possessed nearly two years of Knox County Juvenile Detention Center data showing a significant number of incarcerations of children and youth in secure juvenile detention for status offenses such as truancy. I stated that this data appeared to conflict with the much lower number of incarcerations reported by the Tennessee Commission on Children and Youth ("TCCY"), the State monitoring agency. I offered to share this local data with him and the Auditors and to meet with the Auditors when they were in Tennessee to relate to them other JJDP-related issues that our representation of status offenders revealed. I never heard back from him or from the Auditors.

In September, 2013, before the Tennessee Audit, my colleague in the Practicum, attorney Brenda McGee, also spoke by phone to Willie Bronson of OJJDP and related the same information to him that I had related to Gregory Thompson. Again, we heard nothing back from either Mr. Bronson or the Auditors. I recounted these experiences in my letter to Robert Listenbee dated November 13, 2013, which is part of the record of this Hearing.

- b. How did you obtain a copy of OJJDP's 2013 Audit of Tennessee?

In his February 28, 2014, response to my November 13, 2013, letter, Robert Listenbee stated that I could obtain a copy of the September, 2013, Tennessee Compliance Monitoring Audit by filing an FOIA request with OJJDP. I made this request by email on March 12, 2014, asking for the Audit and "underlying documents, data, and records that formed the basis of the Audit." In early April,

2014, I received a redacted copy of the Tennessee Audit. To date, I have not received the underlying documents, data, and records that I requested.

c. What discrepancies or deficiencies did you observe in the 2013 Audit?

In our review the 2013 Tennessee Audit, we observed the following discrepancies and deficiencies. With due respect, the Audit is not as accurate or nearly as robust as it could have been had we been given the opportunity to share with OJJDP the local detention data that is referred to in answer to Question 1(a). above and the information that we gleaned from our cases about Tennessee's status offense system. The Audit contains deeply troubling findings about Tennessee's compliance system that, we believe, should have been uncovered and corrected in the last Audit of Tennessee in 2005, or well before. Several of these findings implicate long-standing deficiencies in Tennessee's DSO compliance monitoring system. Below are observations about the Audit:

1. In 2009, TCCY attributed 23 DSO violations to Knox County. This made Knox County the highest DSO violator in the State for the second year in a row (Knox County was also the highest in the State in 1999). The local juvenile detention data that we possessed for 2009 showed numerous – many more than 23 – secure detentions for truancy and other status offenses during that year.

In 2010 and 2011, TCCY found no DSO violations in Knox County. The data that we possessed showed significant numbers of post-adjudication incarcerations for status offenses. As far as we know, the Auditors did not look at this data. Based on information reported in the Audit, the Auditors only looked at four months of TCCY data from 2012. In two of the months that the Auditors did not review, there were two 14-day lock-ups for status offenses.

2. Had the Auditors consulted with us, we would have stressed to them that TCCY failed to take effective enforcement action against Knox County in the years when it showed numerous DSO violations. Instead, the Audit blandly noted that, under Tennessee law, TCCY did not have specific authority to sanction those facilities with repeated violations, and violation letters were not utilized (Audit, pp. 8-9). This lack of authority has existed in Tennessee for decades, yet OJJDP did not compel the State to correct this major deficiency until 2013.

3. Similarly, the Audit notes that Tennessee's Compliance Manual was out of date and not organized effectively to ensure accuracy in monitoring (Audit, p. 7). To our knowledge, OJJDP took no action before the 2013 Audit to compel Tennessee to produce a manual that would ensure the integrity of its data—the keystone to an effective monitoring system. Our information would have added important context to this deficiency.
4. The Audit finds that at least two regional monitors did not know that they were required to verify “all usages” of the VCO exception (Audit, p. 13), a glaring defect in the critical process of ensuring that those status offenders who are incarcerated pursuant to a VCO violation are accorded the “full due process” rights to which they are entitled under both federal and Tennessee law.

We would have been able to apprise the Auditors of at least one client of ours who was not appointed an attorney prior to his incarceration for an alleged violation of a VCO and our grounded belief that other status offenders were not appointed counsel in VCO violation hearings.

5. The Audit also finds: “OJJDP reviewed 2012 Compliance Monitoring Report where information indicated that the VCO was used 212 times” (Audit, p. 13). Inexplicably, the statistics compiled by the Tennessee Administrative Office of the Courts show 889 referrals for violation of a VCO in 2012. (2012 Annual Report of the Tennessee Council of Juvenile and Family Court Judges, p. 35).
6. The Audit acknowledges that Tennessee law “exceeds” JJDP requirements for incarcerating status offenders (Audit, p. 10). Had OJJDP consulted with us, we would have analyzed for them other provisions of Tennessee law that arguably prohibit any incarceration of status offenders. Nevertheless, the Audit proceeds to admonish the State that it should be careful about “over-reporting” JJDP DSO violations because federal law is more “lenient” than State law (Audit, p. 14).
7. The Audit also fails to confront the large number of lock-ups under OJJDP's so-called 24-hour exception. This exception, which finds no grounding in the absolute ban on secure detention in the JJDP, allows courts to confine status offenders – especially vulnerable runaways – for 24 hours before a court hearing and 24 hours after, excluding weekends and holidays. In Knox County alone, 237 non-DSO lock-ups were reported in 2012.

Had we had the opportunity to meet with the OJJDP Auditors, we would have demonstrated to them that Knox County is abusing the 24-hour exception (Juvenile Justice Amendments of 1977, Report of the Committee on the Judiciary United States Senate on S. 1021, May 14, 1977, pp. 60-61) (the 24 hour pre-adjudication exception should rarely be used) and that the exception itself has dubious legal origins. We would have made the case that the exception is arbitrary and capricious because it conflicts with the plain language and intent of the statute.

RESPONSES OF ELISSA RUMSEY TO QUESTIONS SUBMITTED BY SENATOR GRASSLEY

RESPONSES

to

**Questions for the Record from Senator Charles E. Grassley for
Elissa Rumsey
U.S. Senate Committee on the Judiciary
Hearing on “Improving Accountability and Oversight of Juvenile Justice Grants”
Submitted on April 28, 2015**

Question 1 (Wisconsin)

- a. What led you to believe that Wisconsin submitted fraudulent compliance data?
- b. Who from OJP made the strongest effort to ensure that Wisconsin received grants to which it was not entitled?

Response:

- a. There were a number of indicators that Wisconsin submitted fraudulent compliance data. For example, as I indicated in my testimony on April 21, 2015, Wisconsin submitted compliance data that showed detention rates as much as nearly ten times higher than allowed by OJP regulations. Then, suddenly, those data dropped to legally acceptable levels, and in my professional experience in dealing with the justice system, such a precipitous drop in the previously unacceptable detention rates was not credible and warranted review. After significant resistance from Wisconsin State officials about back-up data, I received data from an official, who stated in substance – as he handed me the purported data – that “If I were you, I would not believe these data either.” There were many other indications of that State’s submission of fraudulent data, noted both contemporaneously and subsequently found in the DOJ’s OIG investigation.

b. I am not privy to all communications within my agency about efforts to ensure that Wisconsin received grants to which, in my opinion, it was not entitled, but it is my belief and impression that the strongest efforts were by the following people, with their job titles in the 2007-08 period in parentheses:

- J. Robert Flores (OJJDP Administrator)
- Gregory C. Thompson (Associate Administrator for SRAD)
- Nancy Ayers (Deputy Administrator for Policy)
- Rafael Madan, Esq. (OJP General Counsel)
- Charles Moses, Esq. (OJP Deputy General Counsel)
- Chyrl Penn Jones (Deputy Associate Administrator for SRAD)
- Julie Herr (State Representative)

Question 2 (Virginia)

What led you to believe that Virginia was out of compliance, despite data submissions that indicated compliance?

Response:

There were a number of strong suggestions that Virginia was out of compliance even though data submissions indicated otherwise. For example, the data simply did not make sense when fewer lockups were reported statewide than I believe exist in northern Virginia, where I reside. And rather than explaining and/or correcting these data, I got substantial objections and lack of cooperation from State officials when I questioned them. And, as I testified before the Committee on April 21, 2015, I have seen adult inmates walking freely in juvenile facilities among children, something that is neither permitted by the statute nor reflected in that State's reports to my agency.

I also note that in recent months that I have personally heard a former Virginia State compliance official say that his State's compliance officials know that DOJ accepts false data yet still finds compliance.

Question 3 (Puerto Rico)

What led you to believe that Puerto Rico was out of compliance?

Response:

As with my comments about other jurisdictions, there was a complex of reasons for believing that Puerto Rico was out of compliance. For example, that jurisdiction was reviewed in 2000, and multiple statutory violations were found *although not reported*. That Commonwealth subsequently reported no statutory violations (a small, perhaps *de minimus*, number are permitted), a claim that is simply not believable in my professional experience.

Question 4 (Other Jurisdictions)

Can you give me some examples of other jurisdictions that you believe have been out of compliance?

Response:

There are a number of such jurisdictions. Idaho, Arkansas, South Carolina and the Virgin Islands immediately come to mind. For example, when I questioned a report from Idaho, the data provided was changed, but when I enquired about the backup for that data change, I was told by an Idaho State official that there was none, that the data had been fabricated.

Question 5 (Compliance Monitoring Practices in General)

- a. Do you have suggestions about how your agency could better monitor states' compliance with the statutory core protections?
- b. Has compliance improved in recent years – or has it become more problematic?
- c. Have questionable compliance monitoring practices continued? Can you give me examples?

Response:

- a. In my opinion, my agency's monitoring of States' compliance with statutory requirements could be materially improved with the hiring of compliance and grant personnel with a more substantial background in criminal justice system issues and providing them with better training. It would also be helpful that there be follow-through by OJJDP when a State's compliance report is not credible on its face.
- b. I do not have enough of an overview of nationwide compliance to know whether it has improved, although my sense is that statutory compliance continues to be problematic with respect to many jurisdictions. I do want to emphasize, though, that there are a number of jurisdictions that are almost certainly accurately reporting data that show that they are in compliance; not all States and other jurisdictions are acting improperly.
- c. Questionable compliance monitoring practices have, I am sorry to report, continued. For example, I was recently ordered to head the team to go to Wisconsin next month to review its currently asserted statutory compliance. However, the person most knowledgeable about that State's recent compliance history was taken off the team, over my objection, and replaced by a number of people with neither the professional background nor experience necessary to perform such a review. Indeed, I have been told that someone from the OJP's General Counsel's office will be assigned to the team, but even though s/he has already been selected, agency management refuses to tell me who s/he is.

Question 6 (Resistance and Retaliation)

- a. How much money in legal fees have you paid to win your job back?
- b. Did Professor Dean Rivkin give you any data from Knox County, Tennessee? If so, when, and what did you do with it?
- c. Which officials at OJP and OJJDP resisted your efforts to bring compliance issues to light or retaliated against you for such efforts?
- d. Are there any other concerns you wish to inform the Committee regarding how the Department responded to your efforts to do your job in accordance with the law, or how the Department is currently responding to those efforts?

Response:

- a. I am out-of-pocket more than \$250,000 in legal fees and costs in prosecuting my successful Whistleblower Protection Act claims against my agency for its prohibited personnel actions. And that does not include the imputed fees of my present counsel, who is providing professional services on a courtesy, non-fee basis with a promise that any fee award I receive in connection with his services be given to charity, to the extent that I am made financially whole. I am a career federal government employee, currently with a GS-14 salary rating, and the financial impact of legally countering the prohibited personnel actions has had a catastrophic impact on my family and on me.

Having been successfully found the “prevailing party” by the Merit Systems Protection Board (“MSPB”), I commenced an Addendum Proceeding to obtain relief, especially reimbursement of attorneys’ fees and related costs. The DOJ has aggressively opposed any meaningful fee award on technical grounds, and I was awarded only \$7084 by the Administrative Judge in that Addendum Proceeding, even though I have had to expend more than \$250,000 in hard cash – raised by taking out substantial loans and distributing funds from retirement accounts, subject to early distribution income tax penalties. *Rumsey v. Department of Justice*, MSPB Docket

DC-1121-11-0466-A-1 (October 3, 2014). A Petition for Review has been filed before the Board in that matter, and we are awaiting decision.

It should be obvious that a preliminary award of only \$7084 in a matter in which more than \$250,000 has been expended is anything but the award of a “reasonable attorney’s fee” contemplated by the statute, 5 U.S.C. § 1221(g)(2). Moreover, the failure of a protected whistleblower to be properly reimbursed for out-of-pocket fees and costs constitutes as much a chilling effect on constitutionally protected whistleblowing speech as the impact of prohibited personnel practices.

- b. Prof. Dean Rivkin did give me incarceration data from Knox County, Tennessee, in January 2013. I reviewed it and gave to my second line supervisor, Janet Chiancone. She subsequently told me that the data was given to Will Bronson (my first line supervisor and Deputy Associate Administrator – Audit and Compliance) and Gregory C. Thompson, (Senior Policy Advisor), for review and appropriate action. I have no knowledge that they did anything with Prof. Rivkin’s submission.
- c. Nancy Ayers, my first line supervisor in the 2007-09 time period, was found by the Merit Systems Protection Board to have engaged in prohibited personnel practices by retaliating against me. *See Rumsey v. Department of Justice*, MSPB Docket DC-1121-11-0466-W-1, Opinion and Order of October 28, 2013. This decision is formally reported in 120 M.S.P.R. 259 (2013).

It is exceedingly difficult to obtain communications when federal government officials are engaging in prohibited personnel practices, and as a result, I will never know the identity of all of those that resisted my efforts to bring compliance issues to light or else participated in the resulting retaliation. However, it is my belief that,

among others involved with Ms. Ayers, were J. Robert Flores (then OJJDP Administrator), Rafael Madan, Esq. (OJP General Counsel), Charles Moses (OJP Deputy General Counsel), Gregory C. Thompson (then Associate Administrator for SRAD), and Chyrl Penn Jones (then Deputy Associate Administrator for SRAD).

- d. As I discussed in response to Question 5(c), the Department's efforts to ensure statutory compliance continues to be problematic. This is particularly demonstrated by plans to conduct a review of Wisconsin's current compliance next month. While I have been named the team leader, the person most knowledgeable about Wisconsin's historic compliance issues has been taken off the team, notwithstanding my request for her. And on the team are several people with no meaningful background with these incarceration issues or experience in the conduct of reviews, as well as the head of the 2004 Wisconsin review team, which found no compliance issues notwithstanding the subsequent uncovering of many statutory violations and submissions of fraudulent compliance data.

RESPONSES OF MARK SOLER TO QUESTIONS SUBMITTED
BY SENATOR KLOBUCHAR



MEMORANDUM

TO: Senator Amy Klobuchar
FROM: Mark Soler, Executive Director, Center for Children's Law and Policy
SUBJECT: Responses to questions following OJJDP oversight hearing
DATE: May 12, 2015

This memorandum provides responses to your questions following the Judiciary Committee oversight hearing on the Office of Juvenile Justice and Delinquency Prevention (OJJDP) on April 21, 2015.

1. *The Juvenile Justice and Delinquency Prevention Act (JJDP) has been in place since 1974. In your experience, what benefits has this law provided for kids who may interact with the system, as well as for the broader criminal justice system?*

The two reports by the National Research Council on the juvenile justice system and OJJDP provide excellent discussions of the benefits as well as the shortcomings of the JJDP and OJJDP. The two reports are:

National Research Council. (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. ("*A Developmental Approach*").

National Research Council. (2014). *Implementing Juvenile Justice Reform: The Federal Role*. Committee on a Prioritized Plan to Implement a Developmental Approach to Juvenile Justice Reform. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. ("*The Federal Role*").

A Developmental Approach is the most up-to-date comprehensive report on key components of the juvenile justice system in this country, including current practices, research on adolescent development, prevention of recidivism, fairness and accountability, reduction of racial and ethnic disparities, and assessment of the strengths and challenges for the Office of Juvenile Justice and Delinquency Prevention. *The Federal Role* was commissioned by the Administrator of OJJDP, Robert Listenbee, in response to the first report, to provide a roadmap for improvement of OJJDP. Together they represent a thorough assessment of the state of juvenile justice and the role that the JJDP and OJJDP can and should play.

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In my own experience, the JJDPA has provided two types of direct benefits to youth who interact with the juvenile justice system. First, the statute sets some minimum protections for youth in the system through the four “core requirements.” Those requirements say, in essence, “Don’t put children in adult jails and prisons. Don’t lock up children if they are charged with offenses that would not be crimes if committed by adults. And don’t allow the system to disproportionately impact youth of color.” There are financial penalties to states for noncompliance. Thus, through the JJDPA, the federal government has put the weight of its authority behind these core protections. Moreover, after the JJDPA was enacted in 1974, most states passed legislation that mirrored the “sight and sound separation” and “deinstitutionalization of status offenders” (DSO) requirements (the only two in the original Act), and several states have prohibited holding children in adult jails, so the JJDPA has served as a model for state legislatures.

Second, through its Title II formula grants and other provisions of the Act, the JJDPA has provided funding to states for programs and services for youth at risk and in trouble, start-up of new programs, assessments of various components of state and local juvenile justice systems, research, and assistance in complying with the core requirements. The state plan requirements in 42 U.S.C. §5633(a) provide guidance to the states on specific services and programs they should provide in a quality juvenile justice system, such as mental health services, substance abuse treatment, and education of delinquent youth. At the same time, the JJDPA provides sufficient flexibility in funding that states can serve their appropriate roles as laboratories for innovation. This funding directly benefits youth who interact with the system.

The JJDPA has provided at least four types of benefits for the broader juvenile justice and criminal justice systems. First, the JJDPA has enabled OJJDP to support invaluable data collection and analysis. Much of this work has been done by the National Center for Juvenile Justice, and includes online availability of data for all of the states and several excellent periodic reports entitled *Juvenile Offenders and Victims*. Second, the JJDPA has allowed OJJDP to support pioneering research in the juvenile justice field. This research has included groundbreaking research on effective programs for violence prevention, known as Blueprints for Violence Prevention, as well as the only national studies on conditions of juvenile confinement (1992) and access to counsel and quality of representation in juvenile proceedings (1994). Third, the JJDPA has authorized OJJDP to provide training and technical assistance to the field. In the early days of the JJDPA, I and other consultants traveled to many states to assist them in removing children from adult jails and finding alternatives to incarceration for status offenders. In more recent years, OJJDP has provided technical assistance to states on a wide variety of issues. Fourth, the JJDPA has enabled OJJDP to develop partnerships with major charitable foundations to implement lessons learned in foundation initiatives in additional sites. Thus, OJJDP has partnered with the Annie E. Casey Foundation to support juvenile detention reform as part of its Juvenile Detention Alternatives Initiative (JDAI) in Pennsylvania, Tennessee, and Kentucky. OJJDP has also partnered with the John D. and Catherine T. MacArthur Foundation and its Models for Change initiative to support reforms in mental health services, screening and assessment of system-involved youth, dual-system youth (child welfare and juvenile justice), and racial and ethnic disparities in multiple sites around the country.

2. *For kids who may interact with the system, what would be the impact of a formal reauthorization of the program, rather than annual appropriations?*

The lack of formal reauthorization of the JJDP Act has significantly weakened OJJDP. As noted in *A Developmental Approach* (p. 308-318), OJJDP's authorizing legislation expired in 2007 and 2008. The very fact that the statute has not been reauthorized for years indicates a lack of support for the goals of the Act in Congress. Funding has continued as annual appropriations, but funding for OJJDP for juvenile justice system improvements declined by 83 percent between 1999 and 2010. Moreover, the Obama Administration failed to appoint a permanent Administrator of OJJDP during its entire first term.

These circumstances have hampered OJJDP's ability to accomplish its mission. The lack of an appointed Administrator hampered OJJDP's ability to negotiate and argue its position on many issues with its oversight agency, the Office of Justice Programs (OJP), and the Assistant Attorney General who runs OJP. The lack of an Administrator also left OJJDP without a strong advocate before Congressional committees, including the Appropriations committees. Research and statistical functions have been taken away from OJJDP and transferred to other Department of Justice agencies. OJJDP has also been hampered by rulings by the Office of General Counsel that have appeared to be at odds with the goals and mission of the JJDP Act.

Formal reauthorization would strengthen OJJDP by re-committing the federal government to the goals of protecting both the public and youth who interact with the juvenile justice system. Annual appropriations make it very difficult for OJJDP to make long-range plans and to support innovations that require nurturing for more than twelve months at a time. Formal reauthorization would enable OJJDP to strengthen its operations and retrieve its place as an equal alongside other agencies within OJP, including the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime.

3. *What changes do you believe are necessary in any reauthorization of the program?*

I have listed several of the beneficial provisions of the JJDP Act above. Some of those provisions have been extremely successful, such as the core requirement designed to keep children out of adult jails. Others have had only qualified success. The Deinstitutionalization of Status Offenders requirement, for example, has been severely compromised by the Valid Court Order exception, which allows judges to lock up children who commit status offenses after being ordered by a court not to do so. In many jurisdictions, unfortunately, the exception has swallowed the rule. The "disproportionate minority contact" (DMC) requirement has also had only limited success because it only requires states to "address" racial disparities, without providing further guidance and without requiring states to actually decrease disproportionality.

Any reauthorization of the JJDP Act should address these and other known shortcomings of the Act. Accordingly, I support the recommendations endorsed by Act4JJ, representing more than 350 national, international, state, and local organizations:

- Extend the Jail Removal and Sight and Sound separation core protections to all youth under the age of 18 held pretrial, whether charged in juvenile or adult court.
- Codify current state flexibility for housing youth convicted in adult court in juvenile facilities rather than adult prisons by modifying the definition of "adult inmate."

- Strengthen the Deinstitutionalization of Status Offenders (DSO) core protection, which prohibits the locked detention of status offenders, by removing the valid court order (VCO) and Interstate Compact exceptions.
- Strengthen the Disproportionate Minority Contact (DMC) core protection by requiring States to take concrete, measurable steps to reduce racial and ethnic disparities in the juvenile justice system.
- Provide safe and humane conditions of confinement for youth in state or local custody by prohibiting use of JJDP funds for dangerous practices, encouraging states to adopt best practices and standards to eliminate dangerous practices, and clarifying that isolation of longer than a few hours is a dangerous practice.
- Provide a research-based continuum of mental health and substance abuse services to meet unmet needs of court-involved youth and their families, including diversion and re-entry services.
- Ensure that programs and practices designed to address the needs of system-involved youth are both evidence-based and trauma-informed and reflect adolescent development principles.
- Ensure that confined youth receive high quality education aligned with state and local curricula, and that they receive supports for successful re-entry to school.
- Assist states in compliance with the JJDP by establishing incentive grants to encourage states to adopt evidence-based and/or promising practices that improve outcomes for youth and their communities. For states that are deemed to be out of compliance with any of the core protections, Congress should require any JJDP funds withheld for non-compliance to be set aside and made available to those states as improvement grants to help them with those particular protections.
- Enhance the partnership between states and OJJDP by expanding training, technical assistance, research and evaluation. Of particular importance is training to enhance the capacity of state and local courts, judges, and related judicial personnel to more effectively improve the lives of system-involved children and those at risk of becoming involved in the juvenile court system.
- Enhance the partnership between OJJDP and Congress by encouraging transparency, timeliness, public notice, and communication.
- Incentivize juvenile justice systems to ensure that all policies, practices, and programs recognize the unique needs and vulnerabilities of girls.
- Incentivize states to reduce the number of child welfare involved youth who cross over into the juvenile justice system by implementing best practices for cross-system

communication and collaboration between child welfare agencies and juvenile justice systems.

- Update provisions to ensure that all policies and practices protect youth from discrimination based on actual or perceived sexual orientation, gender identity, and gender expression, and incentivize juvenile justice systems to increase cultural competency to serve LGBT youth.

RESPONSES OF HON. STEVEN C. TESKE TO QUESTIONS SUBMITTED
BY SENATOR KLOBUCHAR

- **In your experience, what benefits has this law provided for kids who may interact with the system, as well as for the broader criminal justice system?**

Although *In re Gault*, secured for juveniles the same due process rights accorded to adults (with some exceptions such as jury trials), it did not modify the harsh practices employed by adults in their attempt to change behavior. These practices included the detention of youth within the sight and sound of adult inmates resulting in sexual and physical abuse of juveniles in custody, detention of status youth (minors charged with an act that would not be a crime if committed by an adult e.g. runaway, unruly, smoking tobacco, truancy), commitment of kids under the age of majority in adult facilities, and the over arresting of youth of color (what the JJDPa refers to as “disproportionate minority contact” or DMC).

Since the introduction of the JJDPa, we have witnessed considerable changes in how States respond to youth, including States enacting legislation to promote the four core protections of the JJDPa.

Specifically, the JJDPa has incentivized States to change the way they interact with kids in ways that have benefitted kids. For example, many States, such my State of Georgia, have enacted legislation prohibiting a juvenile to be housed in the same facility as an adult inmate and for good reason. Historically, youth confined alongside adults have been subjected to horrible victimization including physical and sexual assaults and sometimes resulting in death. The emotional and physical damage to these kids were devastating to their future and cost this nation substantial cost in economic value and health associated costs. Incidents of this nature in Georgia now occur only .00005 times a year thanks to the JJDPa.

The JJDPa core protection on the institutionalization of status offenders has been instrumental in helping States change their paradigm on how status youth should be handled. The primary function of this core protection is the prohibition of incarceration, which exacerbates the child’s already existing issues by increasing their risk of becoming delinquent.

States and local communities have sought out evidence based programs and practices to comply with the core protections. For example, many states have opted into the Annie E. Casey Juvenile Detention Alternatives Initiative (JDAI) which utilizes eight (8) core strategies to assist local communities to separate the sheep from the wolves that ensures the sheep are not shepherd into a harsh detention setting that aggravates their situation and makes them worse. These strategies have proven to reduce disproportionate minority contact (DMC) and promote the de-institutionalization of status offenders.

The incentives of the JJDPa having inspired States and local communities to develop best practices as resulted in improving public safety. How goes kids, so goes adults. The

more we focus on the front end to avoid making kids worse, the fewer adults we see in the criminal justice system later in life.

- **What would the impact be of a formal reauthorization of the program, rather than annual appropriations?**

It would provide a solid framework for system reform that can only occur if the framework is fiscally sustainable. A formal re-authorization expressly provides sustainability that is required if long-term reform is to occur. Since the expiration of the last re-authorization, States have difficulty developing a framework for reforms that promote the four core protections because States cannot plan beyond a year. Seeking the best outcomes around the four core protections requires as an essential element that of long-term planning, which cannot occur if States are forced to make immediate decisions on how to spend money they know they have now, but not sure if they will have it a year from now.

- **What changes do you believe are necessary in any reauthorization of the program?**

Congress must remove the Valid Court Order (VCO) exception. This exception did not exist in the original JJDP, but was subsequently removed after judges complained through the National Council of Juvenile and Family Court Judges (NCJFCJ). Ironically, NCJFCJ have changed their tune and passed a resolution supporting the removal of this exception. What we know today that we didn't know then is that incarcerating status offenders converts them to delinquents and increases the odds they will end up in the adult criminal justice system.

In anticipation of NCJFCJ vote on this resolution, I co-authored an article in the *Juvenile & Family Law Journal* directed at judges to reconsider their thoughts on the VCO. This article was distributed to the Board of Trustees of NCJFCJ prior to their vote. I am no on that Board of Trustees and have been told by my veteran colleagues on the Board that the article was helpful in their decision to pass the resolution. I have attached the article hereto for your reading. I believe it will provide more detail about this proposed change in the JJDP.

I am in agreement with the proposed amendments that include oversight and accountability of OJJDP. I do want to caution Congress not to let the recent whistleblower claims of a few States manipulating data to ensure receipt of federal funding overshadow the excellent outcomes of most States who have worked diligently to comply with the core protections.

I also want to take this opportunity to point out that the whistleblower statements that OJJDP for years has failed to penalize those States who were found out of compliance by removing 20% of their funding and forcing them to re-direct the remaining 80% to remedy the problem is not anything new to the world of juvenile justice. In other words,

there was no secrecy about this by OJJDP. I have been a juvenile court judge since 1999 and after 9/11 and funding was reduced, OJJDP changed its approach on how to handle States with compliance issues. Instead of taking the 20% immediately, OJJDP would place States on probation with conditions to fix the problem. This was viewed as a common sense approach in a world of dwindling funds that had OJJDP followed the letter of the law, it would have created more problems not beneficial to the best interest of juveniles around the core protections. In other words, the reduction in funding was so significant that removing 20% was no longer punitive—it was overkill.

Although he whistleblowers testified that the States ignored the core protections because they (States) knew that OJJDP would not take 20% of their funding, the reality was that States began to voice their concerns that diminished funding coupled with the expanded compliance universe caused the States to question whether it was worth the effort for so little funding. I know because I was president of the Georgia Council of Juvenile Court Judges in 2008-09 when the judges of my State questioned why we should comply with JJDP if the funds continue to dwindle.

Notwithstanding this historical framework, the amendments for oversight and accountability are necessary to ensure the JJDP is followed.

Also, I must stress the importance of including OJJDP to give States notice and an opportunity to comment before they expand the compliance universe. In the past, the compliance coordinator has issued rules expanding what will be inspected without any notice for comment from the States. This has created tremendous friction between the States and OJJDP—particularly their compliance coordinator.

MISCELLANEOUS SUBMISSIONS FOR THE RECORD



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 28 2014

The Honorable Charles E. Grassley
 Ranking Member
 Committee on Judiciary
 United States Senate
 Washington, DC 20510

Dear Senator Grassley:

This responds to your letter to Robert L. Listenbee, the Administrator for the Office of Juvenile Justice and Delinquency Prevention (OJJDP), dated September 5, 2014, regarding grants provided under the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP Act). The Department of Justice (the Department or DOJ), and the Office of Justice Programs (OJP) specifically, take the concerns raised in your letter very seriously. We appreciate the opportunity to provide more information on these issues at this time.

Section I – Part B Formula Grant Program

OJJDP is committed to ensuring that the nation's children and youth are protected from harmful conditions of correctional confinement. In fulfilling this charge, OJJDP awards to states¹ the grant funds specified in your letter pursuant to Title II, Part B of the JJDP Act, commonly referred to as the "Part B Formula Grant" program. In the past 40 years, OJJDP has disbursed more than \$2 billion in Part B grant funds to support state and local efforts to comply with the JJDP Act's core requirements,² protect youth who come into contact with the justice system, and improve the outcomes of those who enter the system. States may also use Part B Formula Grant funds to support alternatives to detention, address and prevent youth violence and children exposed to violence, and to develop more effective education, training, and research to improve the juvenile justice system.

Section II – OJJDP Compliance Monitoring Practices

As discussed in greater detail below, you will see that OJJDP has several policies and procedures in place to ensure that it disburses funds only to those states in compliance with the JJDP Act. First, to receive Part B grant funding, states must prepare and administer a comprehensive three-year Juvenile Justice and Delinquency Prevention plan to achieve and

¹ Pursuant to section 103(7) of the JJDP Act, "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

² The JJDP Act has four core requirements: (1) deinstitutionalization of status offenders (DSO); (2) separation of juveniles from adults in institutions; (3) removal of juveniles from adult jails and lockups; and (4) reduction of disproportionate minority contact (DMC).

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maintain compliance with the JJDP Act's four core requirements. The state's plan must provide a detailed description of the state's annual monitoring activities during the three-year plan, including the identification of the specific agency or agencies responsible for each of the following tasks: (a) identification of the monitoring universe; (b) classification of the monitoring universe; (c) inspection of facilities; and (d) data collection and verification.

Second, states also must submit detailed annual compliance monitoring reports.³ If a state fails to demonstrate compliance with any of the core requirements in a given year, OJJDP reduces its formula grant for the subsequent fiscal year by 20 percent for each requirement where the state is noncompliant, as required by the JJDP Act.⁴ We note that between fiscal years 2006 and 2014, OJJDP reduced funding to states by over \$12 million due to noncompliance with one or more of the core requirements.⁵

The *OJJDP Guideline Manual: Audit of Compliance Monitoring Systems* sets forth policies and procedures governing the audits of state compliance monitoring systems.⁶ Under these policies, OJJDP is required to assess the monitoring systems and review the adequacy of such systems by: (1) reviewing the state's compliance monitoring plan, and (2) conducting a site visit or field audit within the stated period. OJJDP's goal is to conduct a field audit of each state's compliance monitoring system for the purpose of determining its adequacy every five years, resources permitting. Part of the field audit process includes on-site data verification of a sample of facilities within the state. In the event that the audit process reveals significant inadequacies in a state's monitoring system, OJJDP has the authority to freeze the state's access to Part B funding until such time as the state clarifies or resolves potential deficiencies. The OJJDP Administrator also has the discretion to conditionally award funding to a state for the purpose of bringing the state's programs into compliance with the JJDP Act.⁷

In addition, OJP's Office of Audit, Assessment, and Management works closely with grantees, OJP Bureaus and Offices, and the OIG to successfully resolve findings identified in audits. In 2014, OJP's Office of the Chief Financial Officer (OCFO) worked diligently to ensure that OJP received its eighth straight unqualified audit (*i.e.*, clean audit) opinion by independent auditors on its annual financial statements. OCFO also ensured that 2014 financial statement reporting deadlines were met in compliance with OMB, the U.S. Department of the Treasury (Treasury), Departmental and internal requirements, indicating that financial management and budgetary activities at OJP are carried out consistent with applicable laws, regulations, and policies to ensure the credibility of OJP's and the Department's financial and budgetary data.

³ Section 223(a)(14) of the JJDP Act (42 U.S.C. 5633(14)).

⁴ Section 223(a)(28)(c) of the JJDP Act (42 U.S.C. 5633(28)(c)).

⁵ Specifically: FY 2006 – 5 states; FY 2007 – 8 states; FY 2008 – 6 states; FY 2009 – 8 states; FY 2010 – 10 states; FY 2011 – 9 states; FY 2012 – 8 states; FY 2013 – 5 states; and, FY 2014 – 5 states.

⁶ See *OJJDP Guideline Manual: Audit of Compliance Monitoring Systems* (August 21, 2000).

⁷ <http://ojdp.gov/compliance/OJP171407A.pdf>

⁸ Additionally, on February 7, 1990, the then-OJP Acting General Counsel opined that the OJJDP Administrator had the discretion to conditionally award formula grant funds for the express purpose of assuring the state's continuing compliance with the requirements of the JJDP Act.

When it is determined that grantees must return funds, OJP follows its established process to recoup the funds from the recipient. Specifically, OJP issues a maximum of three letters to the grant recipient. Each of the three letters allows 15 days for the grantee to submit a response addressing the open debt. If OJP does not receive a response from the grant recipient, the third letter serves as the final OJP notice to the grantee. If the grantee does not respond within 15 days from the date of the final notice (which is 45 days after the first notice to the grantee) and the debt remains unresolved, OJP refers the grantee to the Treasury for collection as stipulated in the Debt Collection Improvement Act of 1996. The collection may include administrative offsets pursuant to 28 C.F.R. Part II. In addition to the debt owed to OJP, Treasury may also assess interest, fees, and fines, which will be added to the amount of the debt. If the grantee satisfies the debt before being referred to Treasury, OJP withdraws the debt referral request from Treasury.

OJJDP takes very seriously its responsibility to determine a state's eligibility to receive Part B grant funding and understands the significant impact on states and the services delivered to juveniles if it reduces funds. Accordingly, OJJDP also provides states with the necessary guidance through compliance monitoring training, targeted training and technical assistance, and use of the following resources: *The JJDP Act*; *The Formula Grants Consolidated Regulation*; *OJJDP's Guidance Manual for Monitoring Facilities Under the JJDP Act*; *The Disproportionate Minority Contact Technical Assistance Manual*; and *OJJDP's Core Requirement Monitoring resource website*.

A. The Audit and Compliance Team (ACT)

To strengthen compliance with statutory requirements for Part B grants, in early 2013 OJJDP established the Audit and Compliance Team (ACT). The ACT is made up of five compliance analysts who make determination recommendations regarding compliance for all four core requirements. OJJDP established the ACT to strengthen the level of objectivity and independence in compliance determinations and conduct audits of state compliance systems. The ACT also provides compliance-related training and technical assistance to the states, and assists states in achieving compliance with the JJDP Act's four core requirements.

The following is a more detailed description of the process utilized by OJJDP's ACT staff in the annual review of state compliance reports and Disproportionate Minority Contact (DMC) plans, and the subsequent development of state compliance determinations. Please note that the first three core requirements—Deinstitutionalization of Status Offenders (DSO), Jail Removal, and Separation—have a different process than the fourth requirement, DMC.

⁵ See Compliance with the Core Requirements of the Juvenile Justice and Delinquency Prevention Act. <http://www.ojjdp.gov/compliance/index.html>.

i. Deinstitutionalization of Status Offenders, Jail Removal and Separation Determination Process

As noted above, the JJDP Act and corresponding regulations require states to submit annual compliance monitoring reports to the OJJDP Administrator to receive Part B grants funding.⁹ These reports, prepared by each state's designated state agency, detail annual rates of compliance with the Act's first three core requirements. Upon receipt, ACT reviews the reports to make a compliance determination recommendation for each of the first three core requirements. Required elements of a full and complete compliance monitoring report include:

- A data monitoring spreadsheet that states may use to report aggregate violation numbers and rates for each of the first three core requirements in various facility types;
- A narrative that indicates how the state meets—or does not meet—criteria for compliance with *de minimis* exceptions¹⁰ (including references to state statutes) for any requirement where the state's violation tally/rate exceeds established regulatory limits;
- A list of all co-located facilities in the state;
- A list of all non-reporting facilities, along with a plan for obtaining information from these facilities in future years;
- An explanation of how the state verifies that criteria for using the Valid Court Order (VCO) exception have been satisfied (where applicable); and
- A copy of the state's full compliance monitoring universe (e.g., the complete list of adult and juvenile facilities within the state that must be monitored for compliance with DSO, jail removal and separation).

ACT staff communicate routinely with the state's designated official point of contact to gather these materials. Once the state completes its report, ACT staff review for compliance with the three requirements as follows:

- DSO criteria, as detailed in the policy and criteria for *de minimis* exceptions published in the Federal Register (January 9, 1981);¹¹
- Separation criteria, as detailed in the OJJDP Formula Grants Regulation;¹² and
- Jail removal criteria as published in the OJJDP Formula Grants Regulation.¹³

ACT staff review all reports for accuracy and completeness. In those instances where they find that required information is insufficient, inconsistent, unclear, or absent, ACT staff

⁹ See section 223(a)(14) of the Act, and 28 C.F.R. Part 31(f)(5) and (6) (Formula Grants Regulation).

¹⁰ 28 CFR 31.303(f)(6)(i). See also 46 FR 2566 (Federal Register, January 9, 1981, Policy and Criteria for *de minimis* Exceptions to Full Compliance With Deinstitutionalization Requirement of Juvenile Justice and Delinquency Prevention Act. <http://ojjdp.gov/compliance/01-09-81FedReg.pdf>).

¹¹ Ibid.

¹² 28 CFR 31.303(f)(6)(ii).

¹³ 28 CFR 31.303(f)(6)(iii).

contact the state's designated point of contact for clarification or submission of the missing information.

After this initial review, ACT staff examine the report and supporting materials to recommend a determination of compliance or noncompliance based on the above criteria for the three core requirements. As part of the review of these materials, staff conducts a review for "facial validity," *i.e.*, whether the information submitted—on its face—appears to measure what it is supposed to measure. If staff identify obvious outliers or unusual items during the annual review of each state's application (*e.g.*, a populous state reporting a very small number of jails or lockups or a state reporting zero violations in all categories), staff follow up with the state for further explanation and submission of revised and updated data, if available. This includes allowing a state to correct clerical errors and/or provide more recent data (data for the last six months) to demonstrate whether the state has come into compliance since the time of its initial submission to OJJDP. This step of reviewing updated data is important because it may reflect a recent change in state policy or practice, or a change in a reporting facility's procedures which ensures, moving forward, that the state will be in compliance. This affords states a full opportunity to comply with the requirements of the JJDP Act and, most importantly, furthers the goal of bringing about the needed reforms in each state's juvenile justice system.

Following review of these materials, OJJDP staff recommend a finding of the state's compliance or non-compliance. If staff recommend a finding of noncompliance with any of the three requirements, they prepare a document that summarizes the rationale for this finding. This rationale then goes to OJP's Office of General Counsel (OGC) for review to ensure that the finding is in accordance with the law.¹⁴

ii. Disproportionate Minority Contact Determination Process

Unlike Section 223(a) (11), (12), and (13) of the JJDP Act, Section 223(a) (22)—the DMC requirement—does not have the numerical *de minimis* rates to assist in making annual compliance determinations. For many years, OJJDP's DMC work has centered on state participation in the five-phase OJJDP DMC Reduction Model. To make the DMC determination, ACT staff thoroughly review the state's prior year DMC Compliance Plan and OJJDP's DMC web-based data entry system to ensure that the state has completed and submitted statewide relative rate index data, as well as data for at least three local jurisdictions. During their review, staff may contact a state for additional information. The ACT staff then complete the process by providing written notes on how the determination and recommendation was made and any necessary justifications, as appropriate. To refine the process, OJJDP is developing a tool to assist in making DMC determinations and anticipates releasing the tool in 2015. Pending implementation of the tool, OJJDP has notified states that they are not out of compliance with the DMC core requirement and has offered training and technical assistance to ensure each state continues to address DMC with the juvenile justice system.¹⁵

¹⁴ OGC review of "out of compliance" determinations is a practice that has been in place since September 2010.

¹⁵ The "not out of compliance" notifications began in 2013 and will continue each year until the tool is implemented. Each state will be offered training and technical assistance during this period.

Section III – State of Wisconsin’s Compliance with the DSO Requirement

In May 2008, the Department’s Office of the Inspector General (OIG) initiated an investigation into an allegation that the Wisconsin Office of Justice Assistance (OJA) provided false information in its annual compliance monitoring reports. We understand that the OIG provided its report to your office on September 30, 2014.

The investigation found that from 2001 to 2004, an OJA compliance monitor submitted annual reports that he admitted were “made up” so that the OJA would continue to receive Part B formula grant funds. The OIG also found that from 2001 to 2006, OJA submitted inaccurate reports about the number of facilities that were physically inspected. For Fiscal Year 2005, Wisconsin submitted documentation that showed that OJA was out of compliance with the Part B statutory requirements. As a result, OJJDP reduced Wisconsin’s grant funding in 2007. As discussed during the meeting with your staff, the Wisconsin OJA initially submitted calendar year 2006 compliance data, which OJJDP used in making a funding determination for the state’s FY 2008 Title II, formula grant allocation. While this data showed that Wisconsin was technically out of compliance with the DSO core requirement, consistent with the practice detailed above, OJJDP issued a finding of compliant “contingent upon further information received” and required receipt and approval of further supporting information.¹⁶ It was only after receipt and review of six months of supplemental data that showed that the Wisconsin OJA was compliant with the DSO core requirement that OJJDP determined that Wisconsin was in compliance.¹⁷

In response to the OIG report, OJJDP placed a special condition on Wisconsin’s grant awards for 2013 and 2014 that effectively freezes the grant funds. OJJDP understands that the state is working on a plan to address the deficiencies with its compliance monitoring system that led to the problems identified in the report. Wisconsin will not be able to spend any additional grant funds until it submits information to OJJDP demonstrating that the state’s compliance monitoring system is sufficient to ensure compliance with the JJDP Act.

As discussed above, in early 2013 OJJDP established the Audit and Compliance Team (ACT) to improve oversight of OJJDP grant funds. To protect against similar fraudulent submissions, the ACT independently reviews compliance determinations and conducts regular audits of state compliance systems. While we are always working to improve compliance with the requirements of the JJDP Act, we believe that this process has significantly improved our ability to ensure that Part B formula grants are used to further the goals of the JJDP Act.

¹⁶ For the FY 2008 funding year, approximately 5 other states were issued a finding of compliant, contingent upon further information received, and approximately 3 states were issued this finding as well for the FY 2009 funding year.

¹⁷ OJJDP is developing written policies and procedures to ensure consistent compliance determinations. Once the policies have been implemented, states will be required to certify the accuracy of the data provided. The data will not only be reviewed for facial validity, as the current process requires, but will also undergo rigorous audit.

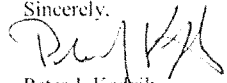
The Honorable Charles E. Grassley
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Section IV – U.S. Merit Systems Protection Board Claims

Turning to the whistleblower concerns raised in your letter, please be assured that the Department recognizes the important role played by whistleblowers in our law enforcement efforts. We take very seriously our responsibilities with regard to employees who make protected disclosures. As you may know, OJJDP Administrator Listenbee was appointed after the alleged conduct in OJJDP's whistleblower's complaint. Administrator Listenbee is working to update OJJDP's policies and procedures related to compliance. In addition to the mandatory No FEAR Act training all OJP employees are required to complete, Administrator Listenbee will also be requiring that all OJJDP employees undergo an additional ethics training course this year. In the specific case of retaliation that you mentioned in your letter, that case has now been addressed by the U.S. Merit Systems Protection Board (MSPB).¹⁸ We enclose a copy of that decision, and the MSPB's decision regarding the motion for attorneys' fees in that matter to this letter for your reference.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman

¹⁸ See MSPB Docket No. DC-1221-11-0466-W-1, dated October 28, 2013.
<http://www.mspb.gov/netssearch/viewdocs.aspx?docnumber=924039&version=926722&application=ACROBAT>.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Charles E. Grassley
Chairman
Committee on Judiciary
United States Senate
Washington, DC 20510

APR 14 2015

Dear Mr. Chairman:

This letter responds to your letter of January 15, 2015, requesting information regarding grants provided under the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP Act or the Act). We were pleased that on March 27, 2015, Theron Pride, Chief of Staff to the Assistant Attorney General (AAG) for the Office of Justice Programs (OJP), and LeToya Johnson, Acting Associate Administrator for the Office of Juvenile Justice and Delinquency Prevention (OJJDP), provided a preliminary briefing on these matters. As stated at the briefing, the Department of Justice (the Department or DOJ) takes this matter seriously, and we appreciate the opportunity to work with you as we seek to improve implementation of the JJDP Act.

For over 40 years, OJJDP has awarded grant funds (known as the “Part B Formula Grant” program funds) to support state and local efforts to comply with the JJDP Act’s requirements. To ensure that these funds were disbursed only as permitted by law, OJJDP established a compliance monitoring program, as described in our letter on October 28, 2014. In recent months, the Department began reviewing this compliance monitoring program—in part due to concerns raised by your Committee—and we have discovered a number of flaws and systemic errors in its operations. Although the review is ongoing, we wanted to share some of our preliminary findings and our efforts to resolve these issues.

The problems with OJJDP’s compliance monitoring program can be grouped into three categories: (1) the regulations governing the program are outdated and do not reflect the current version of the JJDP Act; (2) the standards used to make compliance determinations are vague, thus injecting substantial subjectivity into the monitoring process; and (3) the extended timeline between a state’s filing of a compliance report and OJJDP’s compliance determination is inconsistent with the statute.

Before describing these problems in detail, it is helpful to define several key concepts. Under the Act, states must comply with twenty-eight requirements in order to receive Part B Formula Grant funds; of the twenty-eight, four are deemed “core” requirements: (1) “deinstitutionalization of status offenders” (DSO); (2) “jail removal”; (3) “sight and sound separation”; and (4) addressing “disproportionate minority contact” where it exists (DMC). The Act directs that, when a state fails to comply with a core requirement, OJJDP must reduce that

state's funding by twenty percent in the following fiscal year. In addition, the noncompliant state must agree to expend fifty percent of that year's allocation to achieve compliance in the deficient core requirement.

Our preliminary review indicates that, between FY 2007 and FY 2014, OJJDP imposed funding reductions in approximately sixty instances of noncompliance, totaling approximately \$12 million in cuts across seventeen states. It appears, however, that there were other instances where a state was permitted to "cure" its noncompliance and avert a funding cut by demonstrating compliance by other means—a process that, as described below, is not permitted under the statute.

1. Outdated, and Inconsistent Regulations

During our review, we discovered that OJJDP's compliance monitoring program relied on regulations that were outdated and inconsistent with the current version of the JJDP Act. As you know, the Act was first passed in 1974 and has been reauthorized several times since, most recently in 2002. In some instances, OJJDP failed to update the regulations to reflect these statutory revisions, and many of the current regulations remain unchanged from their initial publication in 1981. No new regulations have been released since 1996.

However, since at least the 1990s, OJJDP has provided states with written guidance for complying with the JJDP Act. During the 2000s, this assistance took the form of published "Guidance Manuals," which OJJDP released in December 2001, September 2003, January 2007, and October 2010.¹ In some ways, these Guidance Manuals were more up-to-date than the regulations, in that they reflected some of the statutory changes that the regulations did not; in other ways, these Manuals incorporated and repeated many of the practices that were inconsistent with the Act itself.

In 2002, for example, Congress amended the "sight and sound separation" core requirement to mandate that individuals working with detained juveniles and adult inmates be trained and certified to work with juveniles. Although the 1996 regulations make no reference to this training requirement, the requirement is included in the September 2003 Guidance Manual and repeated in subsequent versions. *See* SEPTEMBER 2003 GUIDANCE MANUAL, at 3; JANUARY 2007 GUIDANCE MANUAL, at 3; OCTOBER 2010 GUIDANCE MANUAL, at 7. However, the Guidance Manuals simply quote the statute, and do not explain or define the training requirement.

¹ *See enclosed:* GUIDANCE MANUAL FOR MONITORING FACILITIES UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, AS AMENDED: DECEMBER 2001 (hereinafter, "DECEMBER 2001 GUIDANCE MANUAL"); GUIDANCE MANUAL FOR MONITORING FACILITIES UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, AS AMENDED: SEPTEMBER 2003 (hereinafter, "SEPTEMBER 2003 GUIDANCE MANUAL"); GUIDANCE MANUAL FOR MONITORING FACILITIES UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 2002: JANUARY 2007 (hereinafter, "JANUARY 2007 GUIDANCE MANUAL"); GUIDANCE MANUAL FOR MONITORING FACILITIES UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 2002: OCTOBER 2010 (hereinafter, "OCTOBER 2010 GUIDANCE MANUAL").

Similarly, the 2002 reauthorization expanded the scope of what is required to fulfill the DMC core requirement to address disproportionate minority *contact*, instead of the more limited scope of disproportionate minority *confinement* that the regulations address. The 1996 regulations do not account for the broader scope of the DMC requirement established in the 2002 reauthorization.

Some of the clearest illustrations of these outdated regulations are the “*de minimis*” exceptions to certain core requirements. The *de minimis* exception to the DSO requirement, for example, was first conceived thirty-five years ago as a way to allow a state to demonstrate substantial compliance with a core requirement—and avoid a funding reduction—by proving to OJJDP that the extent of the noncompliance was “insignificant” or otherwise insubstantial. In regulations published in 1981, OJJDP created a complicated rubric that incorporated both numerical and substantive standards and which relied on statistics regarding institutionalization of status offenders in 1979. These calculations, based on three-decade-old compliance statistics, have never been updated, and they were repeated in all four Guidance Manuals described above.

We recognize that it has taken far too long for OJJDP to develop new regulations. We understand that the Committee is considering reauthorizing or otherwise amending the JJDP Act, and so as we undertake reforms at OJJDP, we will look to the Committee for guidance whether we should expedite new regulations or wait for Congress to pass new legislation.

2. Vague Standards for Compliance Determinations

Another problem uncovered during our review is the vagueness of the standards used to make compliance determinations. A number of key terms used in OJJDP regulations and policies are unclear or ill-defined, which has required individual reviewers to make their own subjective decisions about their meaning and thus injected substantial subjectivity into the monitoring process.

The *de minimis* exception to the DSO requirement illustrates this problem. As noted above, a state that fell short of full compliance (as defined in the statute) could nonetheless be found in substantial compliance (for the purposes of avoiding a funding cut) by meeting certain criteria under the *de minimis* exception. For example, a state with a DSO violation rate between 5.8 and 17.6 per 100,000 could achieve OJJDP compliance with the DSO requirement if they “adequately met” two criteria. Similarly, states with a violation rate between 17.6 and 29.4 could achieve compliance if they “fully satisfied” those same two criteria. See DECEMBER 2001 GUIDANCE MANUAL, at 45-46; SEPTEMBER 2003 GUIDANCE MANUAL, at 46; JANUARY 2007 GUIDANCE MANUAL, at 48; OCTOBER 2010 GUIDANCE MANUAL, at 43. But the Guidance Manual never defined the terms “adequately meet” or “fully satisfied,” leaving individual OJJDP reviewers to rely on their own judgment when attempting to determine compliance.

Compounding the problem were the criteria used to establish *de minimis* compliance. A state satisfied one of the DSO-related criteria, for example, by establishing that an “acceptable plan has been developed which is designed to eliminate the noncompliant incidents within a reasonable time, where the instances of noncompliance either (1) indicate a pattern or practice, or

The Honorable Charles E. Grassley
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(2) appear to be consistent with state law or established executive or judicial policy, or both.” In addition to being vague, it appears that this standard allowed states to achieve compliance based not simply on whether they *actually complied* with the JJDP Act, but whether they intended to do so in the future—a concern raised in your January 15, 2015 letter to AAG Karol Mason.

These vague standards contributed to the failure of process we have discovered at OJJDP. Going forward, OJJDP is revising its policies and guidance documents to bring greater clarity to the process and to provide reviewers with more objective standards for evaluating compliance.

3. Extended Timeline Between Compliance Reporting and Compliance Determinations

A third problem relates to the extended timeline between a state’s filing of a compliance report and OJJDP’s compliance determination. The JJDP Act requires that OJJDP’s grant funding determinations (including whether to reduce funding for noncompliance) be based on data submitted by the states for the prior year. In practice, however, there has been a two- to three-year lag between the states’ data submission and the fiscal year affected by the compliance determination. OJJDP has used this extended timeline to provide assistance to states that are not in compliance with the core requirements based on their initial data submissions, and to allow states to provide additional data (or “supplemental data”) from a subsequent time period to demonstrate compliance.

Based on our review, it appears that this practice extends back to at least 1997, and the use of extended timelines and supplemental data is reflected in all four Guidance Manuals between 2001 and 2010. A January 17, 2001, memo from the OJJDP Acting Administrator to State Agency Directors described this policy:

Eligibility for annual formula grant awards is based on data contained in the Compliance Monitoring Reports submitted 2 years prior to the fiscal year for which funds are being requested. In most cases, eligibility for FY 2000 Formula Grants was based on States’ 1998 compliance monitoring reports. This 2-year “buffer” provides a State that has identified a compliance problem with sufficient time to request technical assistance, develop a corrective action plan, and take the necessary steps to provide OJJDP with more current data demonstrating compliance, thereby maximizing the state’s opportunity to receive its full fiscal year allocation.

See Memorandum from John J. Wilson, Acting Administrator, OJJDP, to State Agency Directors, et al., regarding Deadline for Submitting Annual Compliance Monitoring Report, January 17, 2001, at 1-2; *see also* DECEMBER 2001 GUIDANCE MANUAL, at 37; SEPTEMBER 2003 GUIDANCE MANUAL, at 37; JANUARY 2007 GUIDANCE MANUAL, at 39 (reflecting lag of three years, rather than two); OCTOBER 2010 GUIDANCE MANUAL, at 35.

The Honorable Charles E. Grassley
Page 5 of 6

We recognize that these practices are not in keeping with the statute. We will no longer accept supplemental data and we are working to shorten the gap between the submission of a state's data and OJJDP's compliance determination based on that data. As part of our ongoing review, we are attempting to determine what portion of OJJDP's annual compliance determinations involved the use of supplemental data or conditional awards, and we intend to update the Committee as we gather more details about this practice.

Ongoing Efforts to Resolve Problems and Improve Process

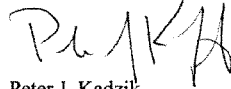
As noted during the March 27, 2015 briefing, OJJDP's systemic errors are partly due to a lack of clear and objective guidance and weak internal controls over the internal processes used to interpret, implement, and issue regulations pursuant to the Act. Although our review remains ongoing, we are already developing new policies to improve compliance with the statute and establish better internal controls within OJJDP.

To address these issues, OJP AAG Karol Mason has directed the creation of a new "Core Protections Division" within OJJDP, which will be responsible for ensuring better compliance with the Act. To serve as the Acting Associate Administrator of this new Division, AAG Mason has appointed LeToya Johnson, an experienced auditor who previously led OJP's grant financial monitoring program and assisted with the creation of OJP's internal control program. With the assistance of OJP leadership, Ms. Johnson will be working with OJJDP to develop consistent compliance guidelines for states, to streamline the process for submitting compliance data, and to establish an objective and data-driven process to assess compliance.

In addition, we are reviewing all available options to determine whether OJJDP can recover any of the funds that were improperly awarded to states because of failures in the compliance monitoring process. We anticipate, however, that recovery could be difficult, in part because these compliance failures make it challenging for OJJDP to determine objectively which states received funds to which they were not entitled. In Wisconsin, where an OIG investigation has revealed systemic failures, OJJDP has frozen all unspent funds and notified the State of its plan to conduct an audit within the next 60 days.

We appreciate you bringing your concerns regarding OJJDP to our attention, and we look forward to collaborating with you as we try to resolve these longstanding issues within this important grant program. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik
Assistant Attorney General

Enclosures

The Honorable Charles E. Grassley
Page 6 of 6

cc: The Honorable Patrick J. Leahy
Ranking Member

The Honorable Sheldon Whitehouse
Committee Member



U.S. Department of Justice

Office of Justice Programs

*Office of Juvenile Justice and Delinquency Prevention**Office of the Administrator**Washington, D.C. 20531*

SEP 30 2014

Tammy B. Paz-Combs
 Acting Director
 Governor's Office of Children, Youth and Families
 1700 W. Washington, Suite 230
 Phoenix, AZ 85007

Dear Ms. Paz-Combs:

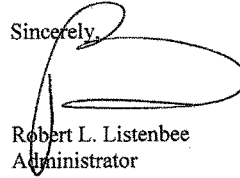
The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of Arizona's annual Compliance Monitoring Report to determine the extent of compliance with Section 223(a)(11), (12), (13), and (22) of the Juvenile Justice and Delinquency Prevention Act (JJDP). This review resulted in the following findings:

- Arizona is in full compliance with Section 223(a)(11) of the JJDP (the "deinstitutionalization of status offenders" or "DSO" requirement).
- Arizona is in full compliance with Section 223(a)(12) of the JJDP (the "separation" requirement), which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates.
- Arizona is in compliance with Section 223(a)(13) of the JJDP (the "jail and lockup removal" requirement).
- Arizona is not out of compliance with Section 223(a)(22) of the JJDP (the "disproportionate minority contact" or "DMC" requirement).

Each State receives 20 percent of its total fiscal year allocation for participating in the Title II Formula Grant Program of the JJDP (42 U.S.C. 5631-5633) and an additional 20 percent for each of the four core requirements with which they have demonstrated compliance. Therefore, based on the above findings, it is determined that Arizona is eligible to receive 100 percent of the Fiscal Year 2015 allocation related to participation in the Title II Formula Grant Program and compliance with Sections 223(a)(11), (12), (13), and (22) of the JJDP. Attached is the status of compliance with each core requirement of the JJDP and any noted deficiencies with the annual Compliance Monitoring Report.

We are available to help Arizona achieve and maintain compliance with all of the requirements of the Title II Formula Grant Program. If you have any questions, please contact Lawrence Fiedler in OJJDP's Audit and Compliance Division, at 202-514-8822.

Sincerely,

A handwritten signature in black ink, appearing to read "Listenbee", with a large, stylized loop at the end.

Robert L. Listenbee
Administrator

cc: Judge Cecil B. Patterson, Jr, State Advisory Group Chairperson
John Raeder, Juvenile Justice Specialist
Steve Selover Compliance Monitoring Coordinator

Enclosure

STATUS OF COMPLIANCE
Juvenile Justice and Delinquency Prevention Act

Section 223(a)(11)

A determination has been made that Arizona has an institutionalization rate of 4.49 status offenders and nonoffenders held per 100,000 persons under age 18. Arizona is in full compliance with the requirements of Section 223(a)(11) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the January 9, 1981, Federal Register (46 FR 2567), which provides that a state has demonstrated full compliance with *de minimis* exceptions with a rate per 100,000 juveniles of 0.1 to 5.7. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(12)

OJJDP has determined that Arizona is in full compliance with Section 223(a)(12) of the JJDP, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. This finding is based on the 2012 Monitoring Report data which indicated that during a 12-month period, no juveniles were detained or confined in any institution in which they had contact with adult inmates.

Section 223(a)(13)

Pursuant to the requirements of Section 223(a)(13), OJJDP has determined that Arizona has an annual rate of 8.44 incidents of juveniles detained or confined in adult jails and lockups per 100,000 juvenile population and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. Such rate is not in excess of nine per 100,000 juvenile population. In addition, an acceptable plan has been developed by Arizona to eliminate the noncompliant incidents. Arizona is in compliance with the requirements of Section 223(a)(13) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the November 2, 1988, Federal Register (28 CFR 31), which provides that with a rate per 100,000 juveniles of 0.1 to 9.0, the state is eligible for the numerical *de minimis* exception if a state has developed an acceptable plan 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. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(22)

Pursuant to the requirements of Section 223(a)(22), OJJDP has determined Arizona will not be found out of compliance with the Disproportionate Minority contact requirement of the JJDPa. The summary of programmatic activities undertaken in your state to address racial and ethnic disparities in the state's juvenile justice system and the statewide Relative Rate Index (RRI) Spreadsheet data submitted indicates action in your state towards addressing minority overrepresentation at the various system contact points. OJJDP recognizes the efforts taken by Arizona to address this issue and the Office stands ready to continue to work collaboratively with your state to achieve and maintain full compliance with this JJDPa core requirement.

Although Arizona has identified strategies aimed at DMC reduction, OJJDP strongly encourages the state to prioritize and increase these efforts aimed at eliminating systemic racial and ethnic disparities. Historically, OJJDP has worked with states to implement the five phase OJJDP DMC Reduction Model with fidelity. To date, efforts have greatly focused on the initial identification and assessment phases of the DMC Reduction Model. As OJJDP continues to further DMC reduction efforts at the Federal, state, and local levels, the Office will place an increasing emphasis on assisting states to implement strategies aimed at moving through the full OJJDP DMC Reduction model, with specific emphasis being placed on the areas of assessment/diagnosis, intervention, evaluation, and monitoring.

Moving forward with this DMC reduction work, OJJDP will engage with states to increase efforts aimed at eliminating systemic racial and ethnic disparities in juvenile justice across the nation and more specifically, DMC reduction efforts in your state of Arizona. To this end, the Office will continue to take steps to refine our approach to this work, and encourage each state to closely examine the activities and the impact of your DMC reduction efforts. DMC reduction strategies and objectives should have a demonstrable and measurable impact on reducing racial and ethnic disparities. Thus, OJJDP encourages Arizona to submit a training and technical assistance request to assist the state with fully implementing the full OJJDP DMC Reduction Model with specific focus on assessment, intervention, evaluation, and monitoring.


U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention
Office of the Administrator

Washington, D.C. 20531

SEP 30 2014

Patricia Mazzilli
 Executive Director
 Department of Correction & Rehabilitation
 Board of State and Community Corrections
 Sacramento, CA 95814

Dear Ms. Mazzilli:

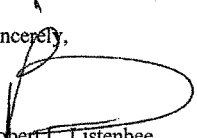
The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of California's annual Compliance Monitoring Report to determine the extent of compliance with Section 223(a)(11), (12), (13), and (22) of the Juvenile Justice and Delinquency Prevention Act (JJDP). This review resulted in the following findings:

- California is in compliance with Section 223(a)(11) of the JJDP (the "deinstitutionalization of status offenders" or "DSO" requirement).
- California is in full compliance with Section 223(a)(12) of the JJDP (the "separation" requirement), which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates.
- California is in compliance with Section 223(a)(13) of the JJDP (the "jail and lockup removal" requirement).
- California is not out of compliance with Section 223(a)(22) of the JJDP (the "disproportionate minority contact" or "DMC" requirement).

Each State receives 20 percent of its total fiscal year allocation for participating in the Title II Formula Grant Program of the JJDP (42 U.S.C. 5631-5633) and an additional 20 percent for each of the four core requirements with which they have demonstrated compliance. Therefore, based on the above findings, it is determined that California is eligible to receive 100 percent of the Fiscal Year 2015 allocation related to participation in the Title II Formula Grant Program and compliance with Sections 223(a)(11), (12), (13), and (22) of the JJDP. Attached is the status of compliance with each core requirement of the JJDP and any noted deficiencies with the annual Compliance Monitoring Report.

We are available to help California achieve and maintain compliance with all of the requirements of the Title II Formula Grant Program. If you have any questions, please contact Elissa Rumsey in OJJDP's Audit and Compliance Division, at 202-616-9279.

Sincerely,



Robert L. Listenbee
Administrator

cc: Sandra L. McBrayer, State Advisory Group Chairperson
Shalinee Hunter, Juvenile Justice Specialist
Allison Ganter, Compliance Monitoring Coordinator

Enclosure

STATUS OF COMPLIANCE
Juvenile Justice and Delinquency Prevention Act

Section 223(a)(11)

A determination has been made that California has an institutionalization rate of 1.34 status offenders and nonoffenders held per 100,000 persons under age 18. California is in compliance with the requirements of Section 223(a)(11) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the January 9, 1981, Federal Register (46 FR 2567), which provides that a state has demonstrated full compliance with *de minimis* exceptions with a rate per 100,000 juveniles of 0.1 to 5.7. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(12)

OJJDP has determined that California is in compliance with Section 223(a)(12) of the JJDP, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. This finding is based on the 2012 Monitoring Report data which indicated that during a 12-month period, while two juveniles were detained or confined in any institution in which they had contact with adult inmates, both incidents violate state law, do not amount to a pattern or practice, and the CDCR has an acceptable plan to address and eliminate the potential for further violations.

Section 223(a)(13)

Pursuant to the requirements of Section 223(a)(13), OJJDP has determined that California has an annual rate of 1.68 incidents of juveniles detained or confined in adult jails and lockups per 100,000 juvenile population and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. Such rate is not in excess of nine per 100,000 juvenile population. In addition, an acceptable plan has been developed by California to eliminate the noncompliant incidents. California is in compliance with the requirements of Section 223(a)(13) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the November 2, 1988, Federal Register (28 CFR 31), which provides that with a rate per 100,000 juveniles of 0.1 to 9.0, the state is eligible for the numerical *de minimis* exception if a state has developed an acceptable plan 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. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(22)

Pursuant to the requirements of Section 223(a)(22), OJJDP has determined California will not be found out of compliance with the Disproportionate Minority contact requirement of the JJDPa. The summary of programmatic activities undertaken in your state to address racial and ethnic disparities in the state's juvenile justice system and the statewide Relative Rate Index (RRI) Spreadsheet data submitted indicates action in your state towards addressing minority overrepresentation at the various system contact points. OJJDP recognizes the efforts taken by California to address this issue and the Office stands ready to continue to work collaboratively with California to achieve and maintain full compliance with this JJDPa core requirement.

Although California has identified strategies aimed at DMC reduction, OJJDP strongly encourages California to prioritize and increase these efforts aimed at eliminating systemic racial and ethnic disparities. Historically, OJJDP has worked with states to implement the five phase OJJDP DMC Reduction Model with fidelity. To date, efforts have greatly focused on the initial identification and assessment phases of the DMC Reduction Model. As OJJDP continues to further DMC reduction efforts at the Federal, state, and local levels, the Office will place an increasing emphasis on assisting states to implement strategies aimed at moving through the full OJJDP DMC Reduction model, with specific emphasis being placed on the areas of assessment/diagnosis, intervention, evaluation, and monitoring.

Moving forward with this DMC reduction work, OJJDP will engage with states to increase efforts aimed at eliminating systemic racial and ethnic disparities in juvenile justice across the nation and more specifically, DMC reduction efforts in your state of California. To this end, the Office will continue to take steps to refine our approach to this work, and encourage each state to closely examine the activities and the impact of your DMC reduction efforts. DMC reduction strategies and objectives should have a demonstrable and measurable impact on reducing racial and ethnic disparities. Thus, OJJDP encourages California to submit a training and technical assistance request to assist the state with fully implementing the full OJJDP DMC Reduction Model with specific focus on assessment, intervention, evaluation, and monitoring.



U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

Washington, D.C. 20531

SEP 30 2014

Christian Kervick
Executive Director
Criminal Justice Council
820 North French Street
10th Floor
Wilmington, DE 19801

Dear Mr. Kervick:

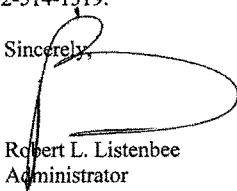
The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of Delaware's annual 2012 Compliance Monitoring Report to determine the extent of compliance with Section 223(a)(11), (12), (13), and (22) of the Juvenile Justice and Delinquency Prevention Act (JJDP). This review resulted in the following findings:

- Delaware is in compliance with Section 223(a)(11) of the JJDP (the "deinstitutionalization of status offenders" or "DSO" requirement).
- Delaware is in full compliance with Section 223(a)(12) of the JJDP (the "separation" requirement), which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates.
- Delaware is in compliance with Section 223(a)(13) of the JJDP (the "jail and lockup removal" requirement).
- Delaware is not out of compliance with Section 223(a)(22) of the JJDP (the "disproportionate minority contact" or "DMC" requirement).

Each State receives 20 percent of its total fiscal year allocation for participating in the Title II Formula Grant Program of the JJDP (42 U.S.C. 5631-5633) and an additional 20 percent for each of the four core requirements with which they have demonstrated compliance. Therefore, based on the above findings, it is determined that Delaware is eligible to receive 100 percent of the Fiscal Year 2015 allocation related to participation in the Title II Formula Grant Program and compliance with Sections 223(a)(11), (12), (13), and (22) of the JJDP. Attached is the status of compliance with each core requirement of the JJDP and any noted deficiencies with the annual Compliance Monitoring Report.

We are available to help Delaware achieve and maintain compliance with all of the requirements of the Title II Formula Grant Program. If you have any questions, please contact Andrea R. Coleman in OJJDP's Audit and Compliance Division, at 202-514-1319.

Sincerely,



Robert L. Listenbee
Administrator

cc: Michael W. Arrington, Esq, State Advisory Group Chairperson
Terica Jones, Juvenile Justice Specialist
Andrew Spruill, Compliance Monitoring Coordinator
Ronald T. Keen, DMC Coordinator

Enclosure

STATUS OF COMPLIANCE
Juvenile Justice and Delinquency Prevention Act

Section 223(a)(11)

A determination has been made that Delaware has an institutionalization rate of 3.40 status offenders and nonoffenders held per 100,000 persons under age 18. Delaware is in compliance with the requirements of Section 223(a)(11) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the January 9, 1981, Federal Register (46 FR 2567), which provides that a state has demonstrated full compliance with *de minimis* exceptions with a rate per 100,000 juveniles of 0.1 to 5.7. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(12)

OJJDP has determined that Delaware is in full compliance with Section 223(a)(12) of the JJDP, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. This finding is based on the 2012 Monitoring Report data which indicated that during a 12-month period, no juveniles were detained or confined in any institution in which they had contact with adult inmates.

Section 223(a)(13)

Pursuant to the requirements of Section 223(a)(13), OJJDP has determined that Delaware has an annual rate of 6.80 incidents of juveniles detained or confined in adult jails and lockups per 100,000 juvenile population and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. Such rate is not in excess of nine per 100,000 juvenile population. In addition, an acceptable plan has been developed by Delaware to eliminate the noncompliant incidents. Delaware is in compliance with the requirements of Section 223(a)(13) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the November 2, 1988, Federal Register (28 CFR 31), which provides that with a rate per 100,000 juveniles of 0.1 to 9.0, the state is eligible for the numerical *de minimis* exception if a state has developed an acceptable plan 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. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(22)

Pursuant to the requirements of Section 223(a)(22), OJJDP has determined Delaware will not be found out of compliance with the Disproportionate Minority contact requirement of the JJDP. The summary of programmatic activities undertaken in your state to address racial and

ethnic disparities in the state's juvenile justice system and the statewide Relative Rate Index (RRI) Spreadsheet data submitted indicates action in your state towards addressing minority overrepresentation at the various system contact points. OJJDP recognizes the efforts taken by Delaware to address this issue and the Office stands ready to continue to work collaboratively with Delaware to achieve and maintain full compliance with this JJDP core requirement.

Although Delaware has identified strategies aimed at DMC reduction, OJJDP strongly encourages Delaware to prioritize and increase these efforts aimed at eliminating systemic racial and ethnic disparities. Historically, OJJDP has worked with states to implement the five phase OJJDP DMC Reduction Model with fidelity. To date, efforts have greatly focused on the initial identification and assessment phases of the DMC Reduction Model. As OJJDP continues to further DMC reduction efforts at the Federal, state, and local levels, the Office will place an increasing emphasis on assisting states to implement strategies aimed at moving through the full OJJDP DMC Reduction model, with specific emphasis being placed on the areas of assessment/diagnosis, intervention, evaluation, and monitoring.

Moving forward with this DMC reduction work, OJJDP will engage with states to increase efforts aimed at eliminating systemic racial and ethnic disparities in juvenile justice across the nation and more specifically, DMC reduction efforts in your state of Delaware. To this end, the Office will continue to take steps to refine our approach to this work, and encourage each state to closely examine the activities and the impact of your DMC reduction efforts. DMC reduction strategies and objectives should have a demonstrable and measurable impact on reducing racial and ethnic disparities. Thus, OJJDP encourages Delaware to submit a training and technical assistance request to assist the state with fully implementing the full OJJDP DMC Reduction Model with specific focus on assessment, intervention, evaluation, and monitoring.

FW: Compliance in the context of DMC

From: Coleman, Andrea <Andrea.Coleman@usdoj.gov>
To: Coleman0200 <Coleman0200@aol.com>
Subject: FW: Compliance in the context of DMC
Date: Mon, Dec 8, 2014 11:55 am
Attachments: JJDP_A_Compliance_in_the_Context_of_DMC.docx (17K), DMC_CDAI_Background_Next_Steps_Timeline_FINAL_Jun_25-Andrea's_Additions-6-26-13.docx (36K), DMC_CDAI_Focus_Group_Report_FINAL_10-21-11.pdf (195K), CDAI_tool_PDF_Version_June_11_2013.pdf (723K)

From: Bronson, Willie
Sent: Thursday, March 27, 2014 3:01 PM
To: Listenbee, Robert L.; Ayers, Nancy; Jones, Chyrl
Cc: Chiancone, Janet; Coleman, Andrea; Cutlar, Shanetta
Subject: Compliance in the context of DMC

Good Day,

As a follow-up to info requested by bob in today's meeting, please see the attached documents, to include:

Brief document that speaks to how states are found in or out of compliance with DMC

Background document on the CDAI

DMC CDAI focus group report

CDAI tool

Will D. Bronson
Deputy Associate Administrator Budget
and Administration Division
202-305-2427 phone

202-353-9093 fax

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FW: Discussion Follow-Up

From: Coleman, Andrea <Andrea.Coleman@usdoj.gov>
To: Coleman0200 <Coleman0200@aol.com>
Subject: FW: Discussion Follow-Up
Date: Mon, Dec 8, 2014 12:08 pm
Attachments: PA_2012_DMC_Determination.pdf (94K), AR_2012_DMC_Letter.pdf (100K), GA_2013_DMC_Letter-Final-9-25-13.docx (22K), GA_FY_2013_Determination.pdf (91K), PA_FY15_Determination_Letter.pdf (159K), AR-FY15_CM_Determination_Letter.pdf (158K), 2014_DMC_CDAI_Docs.zip (269K)

From: Coleman, Andrea
Sent: Wednesday, November 26, 2014 2:19 PM
To: Listenbee, Robert L.
Cc: Cutlar, Shanetta
Subject: RE: Discussion Follow-Up

Bob,

Good afternoon, hope all is well. My doctors have advised that I may respond to this email. Prior to 2013 OJJDP staff reviewed DMC Compliance Plans to determine whether states were in compliance with Section 223(a)(22) (Disproportionate Minority Contact) of the JJDP Act. States with major deficiencies in their DMC Compliance Plans were placed on quarterly reporting which began in 2009. In 2013 the Audit and Compliance Division completed the determination letters and recommended thirteen states be placed on quarterly reporting. It is my understanding, based on your assessment, the quarterly reporting language was removed from these states' letters, and therefore they were not required to provide information regarding how they would address the deficiencies in their FY 2013 DMC Compliance Plans.

Further, OJJDP developed the CDAI in 2011 as an internal tool to ensure determinations of compliance with DMC were consistently made based on Section 223(a)(22) of the JJDP Act, Formula Grant Regulation 28 CFR 31.303(j), and the Government Performance and Results Act (GPRA) Public Law 103-62. The CDAI timeline was submitted to you and your leadership team on June 27, 2013 (see attached email with CDAI information). The Audit and Compliance Division staff was advised the CDAI could not be used to assist with making determinations of compliance with DMC until you approved it which has not occurred.

The FY 2014 compliance determination letters, which also included DMC, was an unprecedented departure from previous letters as they stated that each state "will not be found out of compliance". Additionally, the DMC portion of the letters was a general template that did not discuss how states would address DMC or what they anticipated addressing in FY 2015. For your reference attached are also the following:

- FY 2012 DMC determination letters (Pennsylvania-found in compliance and Arkansas placed on quarterly reporting)
- FY 2013 DMC determination letters(Georgia recommendation letter with quarterly reporting and the final letter sent to Georgia without quarterly reporting)
- FY 2014 compliance determination letters (Pennsylvania and Arkansas showing unprecedented language regarding DMC compliance)

It has been said often the dial has not been moved on addressing DMC and racial and ethnic disparities. Although there is much to be done, there has been progress that often goes unrecognized (e.g. the DMC FIRE study that shows sharp reductions in DMC for all races and ethnicities, the Community and Strategic Planning Project (CASP), better data collection and analysis which includes

[https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx\[12/8/2014 3:27:54 PM\]](https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx[12/8/2014 3:27:54 PM])

FW: Discussion Follow-Up

Hispanic/Latino youth, increased training and technical assistance, etc.). Per our discussion on October 14th, one way OJJDP specifically could have and can move the dial is finding states out of compliance that do not meet the minimum requirements of Section 223(a)(22) of the JJDP Act and Formula Grant Regulation CFR 28 31.303(j). As long as this procedure continues, regardless of how the message is communicated to the Audit and Compliance Division, youth in these states will continually be on the receiving end of unequitable treatment when they come into contact with the juvenile justice system.

Please let me know if you have questions or need additional information.

Sincerely,

Andrea

Andrea R. Coleman, M.S.

Disproportionate Minority Contact
Coordinator

Audit and Compliance Division

810 7th Street NW

Washington, DC 20531

Phone: (202) 514-1319

Fax: (202) 307-2819

Email: Andrea.Coleman@usdoj.gov

Subscribe to OJJDP's [e-news](#) for the latest juvenile justice information.



From: Listenbee, Robert L.
Sent: Wednesday, October 22, 2014 6:08 AM
To: Coleman, Andrea
Cc: Cutlar, Shanetta
Subject: Re: Discussion Follow-Up

[https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx\[12/8/2014 3:27:54 PM\]](https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx[12/8/2014 3:27:54 PM])

FW: Discussion Follow-Up

Andrea,

Thank you very much for calling in to talk to me and Ellen. As noted in your email, please contact Shanetta on all Shelby County matters and as per my request, please feel free to contact Shanetta on any matters related to DMC/racial and ethnic disparities at any time. She is my designated lead on these issues and has at my request been convening listening sessions and meetings and assisting me with coordinating OJJD's efforts to address these issues since November 2013.

When we talked you indicated that there were several states that were out of compliance with the DMC core requirement during the last fiscal year which ended on September 30th. You also indicated that you were told by your supervisors that you could not find them out of compliance because I had directed that no states could be found out of compliance. As I told you, there is no way that I would ever issue such a directive. And as you are aware, I have given many speeches across the country encouraging juvenile justice practitioners to improve their compliance with the core requirements and to especially enhance their efforts to remove status offenders from the juvenile justice system and reduce DMC.

I would like to learn more about the circumstance where your supervisors indicated that I directed them to not find any states out of compliance with the DMC core requirement and about the documentation and analysis that led you to conclude that the states were out of compliance. Would you please provide Shanetta with information on both issues at your earliest convenience? As regards the states, can you please provide us with the standards used to make this determination and the underlying data?

I am aware that you are currently out on sick leave. Please provide the information at your earliest convenience consistent with guidance from your medical professionals. I wish you a speedy recovery. If you have any questions, please do not hesitate to contact me or Shanetta.

Bob

Robert L. Listenbee

Administrator

Office of Juvenile Justice and Delinquency Prevention

810 7th Street NW

Washington DC 20531

Phone: 202.307.5911

On Oct 15, 2014, at 1:44 PM, "Coleman, Andrea" <Andrea.R.Coleman@ojp.usdoj.gov> wrote:

Bob,

Good afternoon, hope all is well. As a follow-up to yesterday's discussion I will contact Shanetta directly regarding training and technical assistance related to the Civil Rights Division's investigation and litigation of juvenile justice systems, with the current focus on the DOJ Settlement Agreement with the Shelby County Government and the Juvenile Court of Memphis and Shelby County (JCMSJ). I will forward a summary of technical assistance for Shelby County to date.

Additionally, it is also my understanding that I may contact Shanetta directly for other DMC/Racial and Ethnic Disparities issues/activities when the Team does not meet on its regularly scheduled date and that you will send an email to all applicable staff as notification.

Thanks again for your time and let me know if I can be of further assistance.

Sincerely,

[https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx\[12/8/2014 3:27:54 PM\]](https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx[12/8/2014 3:27:54 PM])

FW: Discussion Follow-Up

Andrea

Andrea R. Coleman, M.S.

Disproportionate Minority Contact
Coordinator

Audit and Compliance Division

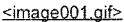
810 7th Street NW

Washington, DC 20531

Phone: (202) 514-1319

Fax: (202) 307-2819

Email:

Andrea.Coleman@usdoj.gov 

Subscribe to OJJDP's [e-news](#) for the latest juvenile justice information.

Attached Message

From: Coleman, Andrea <Andrea.R.Coleman@ojp.usdoj.gov>
To: Cutlar, Shanetta <Shanetta.Cutlar@ojp.usdoj.gov>; Burke, Marie <Marie.Burke@ojp.usdoj.gov>; Jones, Chyrl <Chyrl.Jones@ojp.usdoj.gov>; Chiancone, Janet <Janet.Chiancone@ojp.usdoj.gov>; Bronson, Willie <Willie.Bronson@ojp.usdoj.gov>; Borner, Tina <Tina.Borner@ojp.usdoj.gov>; Herr, Julie <Julie.Herr@ojp.usdoj.gov>; Rumsey, Elissa <Elissa.Rumsey@ojp.usdoj.gov>; Delany-Shabazz, Robin <Robin.Delany-Shabazz@ojp.usdoj.gov>; Yeh, Jennifer <Jennifer.Yeh@ojp.usdoj.gov>
Cc: Pride, Theron <Theron.Pride@ojp.usdoj.gov>; Thompson, Gregory <Gregory.Thompson@ojp.usdoj.gov>
Subject: DMC Compliance Determination Assessment Instrument (CDAI) Information
Date: Tue, 18 Nov 2014 16:33:34 +0000

Hello everyone:

Good morning. OJJDP developed the DMC Compliance Determination Assessment Instrument (CDAI) in 2011 as an internal tool to ensure determinations of compliance with DMC were consistently made based on:

Section 223(a)(22) of the Juvenile Justice and Delinquency Prevention (JJDP) Act;

Formula Grants Consolidated Regulation 28 CFR §31.303(j); and

Government Performance and Results Act (GPRA) Public Law 103-62

Per discussion at last Thursday's R&ED meeting, attached for your review are the most recent documents regarding the DMC

[https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx\[12/8/2014 3:27:54 PM\]](https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx[12/8/2014 3:27:54 PM])

FW: Discussion Follow-Up

CDAI cited in OJJDP's draft Compliance Policy which includes:

2013 DMC CDAI (pilot version without points)

CDAI Timeline and Next Steps (submitted to OJJDP leadership 6-27-13)

DMC CDAI draft per OGC's comments as of May 13, 2013

DMC CDAI draft per Dr. Howard Snyder's comments as of July 17, 2012

Memorandum dated October 3, 2012: Response to OGC Request: DMC Compliance Determination Assessment Instrument (CDAI)

Please let me know if you have questions or need additional information.

Sincerely,

Andrea

Andrea R. Coleman, M.S.

Disproportionate Minority Contact
Coordinator

Audit and Compliance Division

810 7th Street NW

Washington, DC 20531

Phone: (202) 514-1319

Fax: (202) 307-2819

Email: Andrea.Coleman@usdoj.gov

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FW: DMC Compliance Determination Assessment Instrument (CDAI) Information

From: Coleman, Andrea <Andrea.Coleman@usdoj.gov>
To: Coleman0200 <Coleman0200@aol.com>
Subject: FW: DMC Compliance Determination Assessment Instrument (CDAI) Information
Date: Mon, Dec 8, 2014 11:43 am
Attachments: 2014_DMC_CDAI_Docs.zip (359K)

From: Coleman, Andrea
Sent: Tuesday, November 18, 2014 11:34 AM
To: Cutlar, Shanetta; Burke, Marie; Jones, Chyrt; Chiancone, Janet; Bronson, Willie; Borner, Tina; Herr, Julie; Rumsey, Elissa; Delany-Shabazz, Robin; Yeh, Jennifer
Cc: Pride, Theron; Thompson, Gregory
Subject: DMC Compliance Determination Assessment Instrument (CDAI) Information

Hello everyone:

Good morning. OJJDP developed the DMC Compliance Determination Assessment Instrument (CDAI) in 2011 as an internal tool to ensure determinations of compliance with DMC were consistently made based on:

Section 223(a)(22) of the Juvenile Justice and Delinquency Prevention (JJDP) Act;
 Formula Grants Consolidated Regulation 28 CFR §31.303(j); and
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Per discussion at last Thursday's R&ED meeting, attached for your review are the most recent documents regarding the DMC CDAI cited in OJJDP's draft Compliance Policy which includes:

2013 DMC CDAI (pilot version without points)
 CDAI Timeline and Next Steps (submitted to OJJDP leadership 6-27-13)
 DMC CDAI draft per OGC's comments as of May 13, 2013
 DMC CDAI draft per Dr. Howard Snyder's comments as of July 17, 2012
 Memorandum dated October 3, 2012: Response to OGC Request: DMC Compliance Determination Assessment Instrument (CDAI)

Please let me know if you have questions or need additional information.

Sincerely,
 Andrea

[https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx\[12/8/2014 3:29:59 PM\]](https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx[12/8/2014 3:29:59 PM])

FW: DMC Compliance Determination Assessment Instrument (CDAI) Information

Andrea R. Coleman, M.S.

Disproportionate Minority Contact
Coordinator

Audit and Compliance Division

810 7th Street NW

Washington, DC 20531

Phone: (202) 514-1319

Fax: (202) 307-2819

Email: Andrea.Coleman@usdoj.gov



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FW: Oklahoma DMC Compliance

From: Coleman, Andrea <Andrea.Coleman@usdoj.gov>
To: Coleman0200 <Coleman0200@aol.com>
Subject: FW: Oklahoma DMC Compliance
Date: Tue, Oct 14, 2014 11:59 am

From: Bronson, Willie
Sent: Tuesday, October 14, 2014 6:55 AM
To: Coleman, Andrea; Chiancone, Janet
Cc: Borner, Tina
Subject: RE: Oklahoma DMC Compliance

Ok thx. While I can appreciate your view...until full achievement is reached, and parity is reached at every contact point, all states can do more. This is part of what has got to change....we have to be steadfast and work until there are NO disparities...as unimaginable as that might be. So, I want to respond to each state and let them know, regardless of their efforts, what more can be done. The language gives me no heartburn at all, and these responses are indicative of how much more work we and they have to do. Thx

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Coleman, Andrea"
Date: 10/13/2014 9:26 PM (GMT-05:00)
To: "Bronson, Willie", "Chiancone, Janet"
Cc: "Borner, Tina"
Subject: RE: Oklahoma DMC Compliance

Will and Janet,

Good evening. Although OK still has DMC/R&ED like all states, it has been identified as one of the case studies in the DMC FIRE study for reductions in arrests and detention for at least three consecutive years. As Anna mentioned OK has worked tremendously hard implementing the CASP curriculum to fidelity, completing a DMC assessment and implementation plan, continuing to enhance its data collection and analysis, implementing the CT police curriculum, and other initiatives. The only phase of the DMC Reduction Model OK hasn't implemented is Phase IV (conducting a methodological evaluation of its DMC strategies).

My concern is that more states will contact OJJDP because the FY 2015 language is such a departure from the typical DMC compliance determination and there was no outreach beforehand. Additionally, for the states that have made measurable progress

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FW: Oklahoma DMC Compliance

the letter may generate more questions and some backlash. I will forward Arizona's email and you already have the one from Texas.

Just my two cents@.

Sincerely,

Andrea

From: Bronson, Willie
Sent: Friday, October 10, 2014 4:02 PM
To: Chiancone, Janet
Cc: Coleman, Andrea; Borner, Tina
Subject: RE: Oklahoma DMC Compliance

Great! I will work with Andrea and Tina on this.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Chiancone, Janet"
Date: 10/10/2014 4:00 PM (GMT-05:00)
To: "Bronson, Willie"
Cc: "Coleman, Andrea"
Subject: RE: Oklahoma DMC Compliance

Totally agree!!

From: Bronson, Willie
Sent: Friday, October 10, 2014 4:00 PM
To: Chiancone, Janet
Cc: Coleman, Andrea
Subject: RE: Oklahoma DMC Compliance

Yep!! I was inclined to develop some standard response. ...ut their tone is troubleling....I think we should now develop pointed responses back to Tx, Ok, and any other state to show them exactly how they could

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FW: Oklahoma DMC Compliance

improve and do better, regardless of their efforts.....its laughable coming from these two states where I k ow disproportionate still exists in some regard.....

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Chiancone, Janet"
Date: 10/10/2014 3:51 PM (GMT-05:00)
To: "Bronson, Willie"
Cc: "Coleman, Andrea"
Subject: RE: Oklahoma DMC Compliance

I know. I can't believe I'm saying this but I think this language may actually be a good thing, cause it is giving them a heads up that things are changing and they are getting worried. So they aren't out of compliance, but they aren't in either! ☺ Now we just need to follow through !

From: Bronson, Willie
Sent: Friday, October 10, 2014 3:49 PM
To: Chiancone, Janet
Cc: Coleman, Andrea
Subject: Fwd: Oklahoma DMC Compliance

While I do appreciate their efforts, some of these states act like they have solved all dmc....seems strange to take this tact to me.....

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Bronson, Willie"
Date: 10/10/2014 3:46 PM (GMT-05:00)
To: "Kelly, Anna" , "Coleman, Andrea"
Cc: "Neylan, Carol" , "Broyles, Laura" , "Chiancone, Janet"

[https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx\[12/8/2014 3:32:47 PM\]](https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx[12/8/2014 3:32:47 PM])

FW: Oklahoma DMC Compliance

Subject: RE: Oklahoma DMC Compliance

Good day. We will be glad to provide information that would assist your state to continue to work to achieve full compliance. While we appreciate your efforts, all states and territories can take additional steps to continue to work towards fully eliminating all racial and ethnic disparities. And, we believe all states could benefit from continued strategic engagement in this area. The Office will work to provide you with the guidance you request in the coming days, however, given that there was not a finding of noncompliance, there is nothing to officially resolve.

We will provide the requested guidance in the next few weeks. Thanks and have a good weekend.

Will

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Kelly, Anna"

Date: 10/10/2014 3:26 PM (GMT-05:00)

To: "Coleman, Andrea"

Cc: "Neylan, Carol", "Broyles, Laura", "Bronson, Willie"

Subject: Oklahoma DMC Compliance

Ms. Andrea Coleman

Oklahoma has received our compliance finding letter. I must say we are surprised and dismayed by the DMC compliance wording. I know Laura Broyles has a call into you, and is awaiting a return call to discuss this. But I cannot allow the language in the finding to stand unaddressed or challenged. It does not reflect DMC compliance efforts in Oklahoma. I am shocked that any issues or concerns OJJDP may have had were not discussed with Oklahoma prior to the compliance finding language being written. Past practice with OJJDP has been requests to the State for any clarification or additional information to address any concerns with a compliance plan. Joint resolution was sought to resolve issues prior to any finding language being written.

Considering we have had recent requests from OJJDP to 1. teach the model to other states, 2. present at DMC conferences, and 3. requests for our permission to post our DMC plan as an example of an excellent plan on the DMC website, you can imagine the shock and dismay we felt upon reading the compliance language. We have been highlighted in the FIRE study and in the CASP process evaluation as examples of excellent progress in addressing DMC.

Finally, we have achieved actual reduction in the RRI numbers at contact points where we have focused intervention efforts. Arrest in particular has significantly decreased, as has detention rates. We have also reached parity at many of the other contact points. I request specific written guidance from OJJDP as to the areas Oklahoma should address to be in "full" compliance with DMC. We do NOT need additional "training and technical assistance" in implementing the model. We have fully implemented the DMC Reduction

[https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx\[12/8/2014 3:32:47 PM\]](https://mail.aol.com/38865-318/aol-6/en-us/mail/PrintMessage.aspx[12/8/2014 3:32:47 PM])

FW: Oklahoma DMC Compliance

Model and our efforts are ongoing in Identification, Assessment, Intervention, Monitoring and Evaluation.

Again, I am requesting written clarification of OJJDP specific concerns regarding Oklahoma's compliance with DMC Reduction and I thank you in advance for your assistance,

Anna Kelly, JJ Specialist

State of Oklahoma

Office of Juvenile Affairs

o. 405 530-2804

c. 405 409-6922

FW: Question...has any state ever been found out on DMC?? If so what state and when??

From: Coleman, Andrea <Andrea.Coleman@usdoj.gov>
To: Coleman0200 <Coleman0200@aol.com>
Subject: FW: Question...has any state ever been found out on DMC?? If so what state and when??
Date: Thu, Oct 23, 2014 10:21 am

From: Coleman, Andrea
Sent: Wednesday, October 22, 2014 7:16 PM
To: Bronson, Willie; Borner, Tina
Subject: RE: Question...has any state ever been found out on DMC?? If so what state and when??

Will,

Below is the list from 2002-2013 based on my recollection. There were more states however all of them were given an opportunity (sometimes several opportunities) to submit supplemental information to make a final determination of compliance; this includes some of the states listed below.

Let me know if you need anything else.

A.C.

FY 2008

American Samoa
West Virginia

FY 2006

Mississippi

FY 2005

Mississippi

FY 2004

Arkansas
Mississippi

FW: Question...has any state ever been found out on DMC?? If so what state and when??

FY 2003

Kentucky-(FYI-I wasn't the state DMC Coordinator yet☺)

Louisiana-(Partial compliance)

Mississippi

Rhode Island

Virgin Islands

FY 2002

Rhode Island

From: Bronson, Willie

Sent: Wednesday, October 22, 2014 5:32 PM

To: Coleman, Andrea; Borner, Tina

Subject: Question...has any state ever been found out on DMC?? If so what state and when??

Thx...I know we tried last year with the 3 states...I thought we found a state out before though

Sent from my Verizon Wireless 4G LTE smartphone



U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

Washington, D.C. 20531

SEP 30 2014

Katie Jo Ballard
Executive Director
Justice Programs
Governor's Office for Children and Families
7 Martin Luther King Jr. Drive SW, Suite 351
Atlanta, GA 30334

Dear Ms. Ballard:

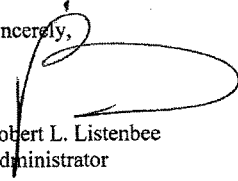
The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of Georgia's annual Compliance Monitoring Report to determine compliance with Sections 223(a)(11), (12), (13), and (22) of the Juvenile Justice and Delinquency Prevention Act (JJDP). This review resulted in the following findings:

- Georgia is in compliance with Section 223(a)(11) of the JJDP (the "deinstitutionalization of status offenders" or "DSO" requirement).
- Georgia is in compliance with Section 223(a)(12) of the JJDP (the "separation" requirement) which requires that juveniles not be detained or confined in any institution in which they have contact with incarcerated adults.
- Georgia is in compliance with Section 223(a)(13) of the JJDP (the "jail and lock up removal" requirement).
- Georgia is not out of compliance with Section 223(a)(22) of the JJDP (the "disproportionate minority contact" or "DMC" requirement).

Each State receives 20 percent of its total fiscal year (FY) allocation for participating in the JJDP and an additional 20 percent for each of the four core requirements with which they have demonstrated compliance. Therefore, based on the above findings, it is determined that Georgia is eligible to receive 100 percent of its Fiscal Year 2015 Title II Formula Grant allocation related to compliance with Section 223(a)(11), (12), (13), and (22) of the JJDP. Attached is the status of compliance with each core requirement of the JJDP and any noted deficiencies with the annual Compliance Monitoring Report.

We are available to help Georgia achieve and maintain compliance with all of the requirements of the Title II Formula Grant Program. If you have any questions, please contact Andrea R. Coleman in OJJDP's Audit and Compliance Division, at 202-514-1319.

Sincerely,



Robert L. Listenbee
Administrator

cc: Mr. Matthew Pitts, Juvenile Justice Specialist
Ms. Kathy Schrader, State Advisory Group Chair
Mr. Keith Parkhouse, Compliance Monitor

Enclosure

STATUS OF COMPLIANCE
Juvenile Justice and Delinquency Prevention Act

Section 223(a)(11)

A determination has been made that Georgia has an institutionalization rate of 14.29 status offenders and nonoffenders held per 100,000 persons under age 17. Georgia is in compliance with the requirements of Section 223(a)(11) of the JJDP Act pursuant to the policy and criteria for *de minimis* exceptions published in the January 9, 1981, Federal Register (46 FR 2567), which provides that with a rate per 100,000 juveniles of 5.8 to 17.6, the state is eligible for a finding of compliance with *de minimis* exceptions if it adequately meets two criteria: (a) noncompliant incidents violated state law, and (b) an acceptable plan has been developed that is designed to eliminate the noncompliant incidents. Specifically, Georgia has demonstrated that, pursuant to Criterion A of the OJJDP policy, all or substantially all of the incidents of noncompliance were in violation of State law. In addition, Georgia's submission of an acceptable plan to eliminate the noncompliant incidents satisfies Criterion B of the OJJDP *de minimis* policy.

Section 223(a)(12)

OJJDP has determined that Georgia is in full compliance with Section 223(a)(12) of the JJDP Act, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. This finding is based on the 2012 Monitoring Report data which indicated that during a 12-month period, no juveniles were detained or confined in any institution in which they had contact with adult inmates.

Section 223(a)(13)

Pursuant to the requirements of Section 223(a)(13), OJJDP has determined that Georgia has an annual rate of 0.17 incidents of juveniles detained or confined in adult jails and lockups per 100,000 juvenile population and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. Such rate is not in excess of nine per 100,000 juvenile population. In addition, an acceptable plan has been developed by Georgia to eliminate the noncompliant incidents. Georgia is in compliance with the requirements of Section 223(a)(13) of the JJDP Act, pursuant to the policy and criteria for *de minimis* exceptions published in the November 2, 1988, Federal Register (28 CFR 31), which provides that with a rate per 100,000 juveniles of 0.1 to 9.0, the state is eligible for the numerical *de minimis* exception if a state has developed an acceptable plan 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. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(22)

Pursuant to the requirements of Section 223(a)(22), OJJDP has determined Georgia will not be found out of compliance with the Disproportionate Minority contact requirement of the JJDP. The summary of programmatic activities undertaken in your state to address racial and ethnic disparities in the state's juvenile justice system and the statewide Relative Rate Index (RRI) Spreadsheet data submitted indicates action in your state towards addressing minority overrepresentation at the various system contact points. OJJDP recognizes the efforts taken by Georgia to address this issue and the Office stands ready to continue to work collaboratively with (insert state) to achieve and maintain full compliance with this JJDP core requirement.

Although Georgia has identified strategies aimed at DMC reduction, OJJDP strongly encourages Georgia to prioritize and increase these efforts aimed at eliminating systemic racial and ethnic disparities as a result of disproportionate minority contact. Historically, OJJDP has worked with states to implement the five phase OJJDP DMC Reduction Model with fidelity. To date, efforts have greatly focused on the initial identification and assessment phases of the DMC Reduction Model. As OJJDP continues to further DMC reduction efforts at the Federal, state, and local levels, the Office will place an increasing emphasis on assisting states to implement strategies aimed at moving through the full OJJDP DMC Reduction model, with specific emphasis being placed on the areas of assessment/diagnosis, intervention, evaluation, and monitoring.

Moving forward with this DMC reduction work, OJJDP will engage with states to increase efforts aimed at eliminating systemic racial and ethnic disparities in juvenile justice across the nation and more specifically, DMC reduction efforts in your state of Georgia. To this end, the Office will continue to take steps to refine our approach to this work, and encourage each state to closely examine the activities and the impact of your DMC reduction efforts. DMC reduction strategies and objectives should have a demonstrable and measurable impact on reducing racial and ethnic disparities. Thus, OJJDP encourages Georgia to submit a training and technical assistance request to assist the state with fully implementing the full OJJDP DMC Reduction Model with specific focus on assessment, intervention, evaluation, and monitoring.”



U.S. Department of Justice

Office of Justice Programs

*Office of Juvenile Justice and Delinquency Prevention**Office of the Administrator**Washington, D.C. 20531*

AUG 14 2012

Paul Stageberg, Ph.D.
 Administrator
 Division of Criminal Justice Planning
 Department of Human Rights
 Lucas State Office Bldg, 1st Floor
 Des Moines, IA 50319

Dear Dr. Stageberg:

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of the Disproportionate Minority Contact (DMC) component of Iowa's Fiscal Year (FY) 2012 Title II Formula Three-Year Plan. This review and analysis was conducted to determine the extent of compliance with Section 223(a)(22) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, which requires States to address juvenile delinquency prevention efforts and system improvement efforts designed to reduce the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system. As a result of the analysis, it has been determined that Iowa is eligible to receive the 20 percent portion of the FY 2013 Formula Grant allocation related to compliance with Section 223(a)(22).

Thank you for your continuing efforts in addressing DMC. We are available to help Iowa maintain compliance with all of the JJDP Act provisions. If you have any questions, please contact Linda Rosen, your OJJDP State Representative, at (202) 353-9222.

Sincerely,

Melodee Hanes
 Acting Administrator

cc: Dave Kuker, Juvenile Justice Specialist
 Jim Morris, State Advisory Group Chair
 Wayne Clinton, DMC Subcommittee Chair

Enclosure: Status of Compliance

STATUS OF COMPLIANCE

Juvenile Justice and Delinquency Prevention Act of 1974, as amended

Section 223(a)(22)

A determination has been made that Iowa is in compliance with Section 223(a)(22) of the Juvenile Justice Delinquency Prevention (JJDP) Act of 1974, as amended, due to completing and/or adequately addressing the activities in the FY 2011 DMC Compliance Plan and others. This included: completing additional statewide DMC assessment and other studies; improving data collection at the diversion contact point by partnering with the State Juvenile Court Officers; continuing to implement recommendations from the recently completed and previous DMC assessment studies; working to develop an assessment tool aimed at reducing school based referrals for minority youth; funding the DMC Resource Center; continuing to support the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) local sites; funding the state DMC annual conference; allocating Title II Formula Grant funds and providing technical assistance to Blackhawk, Johnson, Polk, and Woodbury Counties; supporting cultural sensitivity training; and continuing to support the State Advisory Group's DMC Committee. Iowa submitted Relative Rate Index (RRI) Spreadsheets statewide from calendar year 2011 and for Blackhawk, Johnson, Polk, and Woodbury Counties as the state updates its data annually.

Additionally, Iowa's FY 2012 DMC Plan has identified the following activities it will address:

- Continue to support the State Advisory Group's DMC subcommittee activities that include but are not limited to implementing findings from the recently completed and previous DMC assessment studies, working to ensure DMC is included in other state and local conferences, and collaborating to facilitate the School to Court training;
- Work with state and local officials to standardize reports for school to court referrals;
- Continue to pilot and expand the automated detention screening tool and track whether it is impacting DMC;
- Support data collection and analysis and releasing data for the local school to court initiative;
- Work to validate the Iowa Delinquency Assessment; and
- Continue to support local DMC initiatives in Blackhawk, Johnson, Polk, and Woodbury Counties through funding, training, and technical assistance.


U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention
Office of the Administrator

Washington, D.C. 20531

SEP 30 2014

Paul Stageberg, Ph.D
 Administrator
 Iowa Division of Criminal & Juvenile Justice Planning
 Lucas State Office Building, 2nd Floor
 Des Moines, Iowa 50319

Dear Dr. Stageberg:

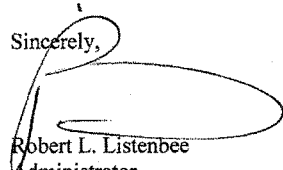
The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of Iowa's annual Compliance Monitoring Report to determine the extent of compliance with Section 223(a)(11), (12), (13), and (22) of the Juvenile Justice and Delinquency Prevention Act (JJDP). This review resulted in the following findings:

- Iowa is in compliance with Section 223(a)(11) of the JJDP (the "deinstitutionalization of status offenders" or "DSO" requirement).
- Iowa is in full compliance with Section 223(a)(12) of the JJDP (the "separation" requirement), which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates.
- Iowa is in compliance with Section 223(a)(13) of the JJDP (the "jail and lockup removal" requirement).
- Iowa is not out of compliance with Section 223(a)(22) of the JJDP (the "disproportionate minority contact" or "DMC" requirement).

Each State receives 20 percent of its total fiscal year allocation for participating in the Title II Formula Grant Program of the JJDP (42 U.S.C. 5631-5633) and an additional 20 percent for each of the four core requirements with which they have demonstrated compliance. Therefore, based on the above findings, it is determined that Iowa is eligible to receive 100 percent of the Fiscal Year 2015 allocation related to participation in the Title II Formula Grant Program and compliance with Sections 223(a)(11), (12), (13), and (22) of the JJDP. Attached is the status of compliance with each core requirement of the JJDP and any noted deficiencies with the annual Compliance Monitoring Report.

We are available to help Iowa achieve and maintain compliance with all of the requirements of the Title II Formula Grant Program. If you have any questions, please contact Tina Borner in OJJDP's Audit and Compliance Division, at 202-616-3722.

Sincerely,



Robert L. Listenbee
Administrator

cc: Rita Ferneau, State Advisory Group Chairperson
Dave Kuker, Juvenile Justice Specialist/DMC Coordinator
Scott Musel, Compliance Monitoring Coordinator

Enclosure

STATUS OF COMPLIANCE

Juvenile Justice and Delinquency Prevention Act

Section 223(a)(11)

A determination has been made that Iowa has an institutionalization rate of .55 status offenders and nonoffenders held per 100,000 persons under age 18. Iowa is in compliance with the requirements of Section 223(a)(11) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the January 9, 1981, *Federal Register* (46 FR 2567), which provides that a state has demonstrated full compliance with *de minimis* exceptions with a rate per 100,000 juveniles of 0.1 to 5.7. This finding is based on the CY 2012 Monitoring Report data.

Section 223(a)(12)

OJJDP has determined that Iowa is in full compliance with Section 223(a)(12) of the JJDP, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. This finding is based on the CY 2012 Monitoring Report data which indicated that during a 12-month period, no juveniles were detained or confined in any institution in which they had contact with adult inmates.

Section 223(a)(13)

Pursuant to the requirements of Section 223(a)(13), OJJDP has determined that Iowa has an annual rate of 1.10 incidents of juveniles detained or confined in adult jails and lockups per 100,000 juvenile population and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. Such rate is not in excess of nine per 100,000 juvenile population. In addition, an acceptable plan has been developed by Iowa to eliminate the noncompliant incidents. Iowa is in compliance with the requirements of Section 223(a)(13) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the November 2, 1988, *Federal Register* (28 CFR 31), which provides that with a rate per 100,000 juveniles of 0.1 to 9.0, the state is eligible for the numerical *de minimis* exception if a state has developed an acceptable plan 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. This finding is based on the CY 2012 Monitoring Report data.

Section 223(a)(22)

Pursuant to the requirements of Section 223(a)(22), OJJDP has determined Iowa will not be found out of compliance with the Disproportionate Minority contact requirement of the JJDP. The summary of programmatic activities undertaken in your state to address racial and ethnic disparities in the state's juvenile justice system and the statewide Relative Rate Index

(RRI) Spreadsheet data submitted indicates action in your state towards addressing minority overrepresentation at the various system contact points. OJJDP recognizes the efforts taken by Iowa to address this issue and the Office stands ready to continue to work collaboratively with Iowa to achieve and maintain full compliance with this JJDP core requirement.

Although Iowa has identified strategies aimed at DMC reduction, OJJDP strongly encourages Iowa to prioritize and increase these efforts aimed at eliminating systemic racial and ethnic disparities. Historically, OJJDP has worked with states to implement the five phase OJJDP DMC Reduction Model with fidelity. To date, efforts have greatly focused on the initial identification and assessment phases of the DMC Reduction Model. As OJJDP continues to further DMC reduction efforts at the Federal, state, and local levels, the Office will place an increasing emphasis on assisting states to implement strategies aimed at moving through the full OJJDP DMC Reduction model, with specific emphasis being placed on the areas of assessment/diagnosis, intervention, evaluation, and monitoring.

Moving forward with this DMC reduction work, OJJDP will engage with states to increase efforts aimed at eliminating systemic racial and ethnic disparities in juvenile justice across the nation and more specifically, DMC reduction efforts in your state of Iowa. To this end, the Office will continue to take steps to refine our approach to this work, and encourage each state to closely examine the activities and the impact of your DMC reduction efforts. DMC reduction strategies and objectives should have a demonstrable and measurable impact on reducing racial and ethnic disparities. Thus, OJJDP encourages Iowa to submit a training and technical assistance request to assist the state with fully implementing the full OJJDP DMC Reduction Model with specific focus on assessment, intervention, evaluation, and monitoring.

**U.S. Department of Justice**

Office of Justice Programs

*Office of Juvenile Justice and Delinquency Prevention**Office of the Administrator**Washington, D.C. 20531*

SEP 28 2012

Linda Saterfield, Director
Illinois Department of Human Services
Division of Family & Community Services
100 South Grand Avenue East
3rd Floor
Springfield, IL 62762-0001

Dear Ms. Saterfield:

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of the Disproportionate Minority Contact (DMC) component of Illinois' Fiscal Year (FY) 2012 Title II Formula Grant Three-Year Plan. This review and analysis was conducted to determine the extent of compliance with Section 223(a)(22) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, which requires States to address juvenile delinquency prevention efforts and system improvement efforts designed to reduce the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system. This review resulted in the following finding:

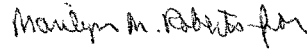
- Illinois is not in compliance with Section 223(a)(22) of the JJDP Act of 1974, as amended.

Each State receives 20 percent of its total fiscal year allocation for participating in the JJDP Act; and an additional 20 percent for each of the four core requirements which they have demonstrated compliance. Please be advised that you have the right to appeal this finding of noncompliance within 30 days of receipt of this letter pursuant to 28 CFR Part 18. Notification of Illinois' compliance with Section 223(a)(11), (12), and (13) was mailed to you under separate cover.

In accordance with OJJDP policy regarding deadlines for establishing eligibility for Formula Grant funds, Illinois submitted supplemental information on the Identification Phase of OJJDP's DMC Reduction Model specifically regarding data collection and analysis. The supplemental information did not demonstrate how the state will implement the Identification Phase pursuant to 28 CFR Part 31.

We are available to help Illinois achieve and maintain compliance with all of the JJDP Act provisions. If you have any questions, please contact Tina Borner, your OJJDP State Representative, at (202) 616-3722.

Sincerely,

A handwritten signature in dark ink, appearing to read "Melodee Hanes".

Melodee Hanes
Acting Administrator

cc: Karrie Reuter, Juvenile Justice Specialist
George Timberlake, State Advisory Group Chair

Enclosure: Status of Compliance

STATUS OF COMPLIANCE

Juvenile Justice and Delinquency Prevention Act of 1974, as amended

Section 223(a)(22)

A determination has been made that Illinois is not in compliance with Section 223(a)(22) of the Juvenile Justice Delinquency Prevention (JJDP) Act of 1974, as amended, due to not completing and/or adequately addressing the activities in the FY 2011 DMC Compliance Plan.

Section 223(c)(3)

As per Section 223(c)(3)(A) of the JJDP Act, a State which is out of compliance with one or more of the JJDP Act requirements agrees to expend 50% of the amount allocated to the State for such fiscal year to achieve compliance with any such paragraph with respect to which the State is in noncompliance. The OJJDP Administrator is, however, granted the discretion to waive the spending requirement if the State has met two criteria:

1. Achieved substantial compliance with each paragraph with respect to which the State was not in compliance; and
2. Made, thorough executive or legislative action an unequivocal commitment to achieving full compliance within a reasonable time.

If Illinois wishes to submit a request for waiver of the requirements of Sections 223(c)(3), the request must be submitted in writing. Each such request must clearly address the criteria delineated above.



U.S. Department of Justice

Office of Justice Programs

*Office of Juvenile Justice and Delinquency Prevention**Office of the Administrator**Washington, D.C. 20531*

SEP 30 2014

Heide Mueller
 Executive Director
 Illinois Department of Human Services
 401 S. Clifton
 Chicago, IL 60607

Dear Ms. Mueller:

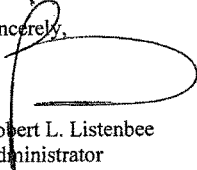
The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of Illinois' annual Compliance Monitoring Report to determine the extent of compliance with Section 223(a)(11), (12), (13), and (22) of the Juvenile Justice and Delinquency Prevention Act (JJDP). This review resulted in the following findings:

- Illinois is in compliance with Section 223(a)(11) of the JJDP (the "deinstitutionalization of status offenders" or "DSO" requirement).
- Illinois is in full compliance with Section 223(a)(12) of the JJDP (the "separation" requirement), which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates.
- Illinois is in compliance with Section 223(a)(13) of the JJDP (the "jail and lockup removal" requirement).
- Illinois is not out of compliance with Section 223(a)(22) of the JJDP (the "disproportionate minority contact" or "DMC" requirement).

Each State receives 20 percent of its total fiscal year allocation for participating in the Title II Formula Grant Program of the JJDP (42 U.S.C. 5631-5633) and an additional 20 percent for each of the four core requirements with which they have demonstrated compliance. Therefore, based on the above findings, it is determined that Illinois is eligible to receive 100 percent of the Fiscal Year 2015 allocation related to participation in the Title II Formula Grant Program and compliance with Sections 223(a)(11), (12), (13), and (22) of the JJDP. Attached is the status of compliance with each core requirement of the JJDP and any noted deficiencies with the annual Compliance Monitoring Report.

We are available to help Illinois achieve and maintain compliance with all of the requirements of the Title II Formula Grant Program. If you have any questions, please contact Elissa Rumsey in OJJDP's Audit and Compliance Division, at 202-616-9279.

Sincerely,



Robert L. Listenbee
Administrator

cc: George Timberlake, State Advisory Group Chairperson
Robert Vickery, Juvenile Justice Specialist
Ron Smith, Compliance Monitoring Coordinator
Karima Douglas, DMC Coordinator

Enclosure

STATUS OF COMPLIANCE

Juvenile Justice and Delinquency Prevention Act

Section 223(a)(11)

A determination has been made that Illinois has an institutionalization rate of 2.27 status offenders and nonoffenders held per 100,000 persons under age 18. Illinois is in compliance with the requirements of Section 223(a)(11) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the January 9, 1981, Federal Register (46 FR 2567), which provides that a state has demonstrated full compliance with *de minimis* exceptions with a rate per 100,000 juveniles of 0.1 to 5.7. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(12)

OJJDP has determined that Illinois is in full compliance with Section 223(a)(12) of the JJDP, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. This finding is based on the 2012 Monitoring Report data which indicated that during a 12-month period, no juveniles were detained or confined in any institution in which they had contact with adult inmates.

Section 223(a)(13)

Pursuant to the requirements of Section 223(a)(13), OJJDP has determined that Illinois has an annual rate of 6.58 incidents of juveniles detained or confined in adult jails and lockups per 100,000 juvenile population and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. Such rate is not in excess of nine per 100,000 juvenile population. In addition, an acceptable plan has been developed by Illinois to eliminate the noncompliant incidents. Illinois is in compliance with the requirements of Section 223(a)(13) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the November 2, 1988, Federal Register (28 CFR 31), which provides that with a rate per 100,000 juveniles of 0.1 to 9.0, the state is eligible for the numerical *de minimis* exception if a state has developed an acceptable plan 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. This finding is based on the Illinois Monitoring Report data.

Section 223(a)(22)

Pursuant to the requirements of Section 223(a)(22), OJJDP has determined Illinois will not be found out of compliance with the Disproportionate Minority contact requirement of the JJDP. The summary of programmatic activities undertaken in your state to address racial and ethnic disparities in the state's juvenile justice system and the statewide Relative Rate Index (RRI)

Spreadsheet data submitted indicates action in your state towards addressing minority overrepresentation at the various system contact points. OJJDP recognizes the efforts taken by Illinois to address this issue and the Office stands ready to continue to work collaboratively with Illinois to achieve and maintain full compliance with this JJDP core requirement.

Although Illinois has identified strategies aimed at DMC reduction, OJJDP strongly encourages Illinois to prioritize and increase these efforts aimed at eliminating systemic racial and ethnic disparities. Historically, OJJDP has worked with states to implement the five phase OJJDP DMC Reduction Model with fidelity. To date, efforts have greatly focused on the initial identification and assessment phases of the DMC Reduction Model. As OJJDP continues to further DMC reduction efforts at the Federal, state, and local levels, the Office will place an increasing emphasis on assisting states to implement strategies aimed at moving through the full OJJDP DMC Reduction model, with specific emphasis being placed on the areas of assessment/diagnosis, intervention, evaluation, and monitoring.

Moving forward with this DMC reduction work, OJJDP will engage with states to increase efforts aimed at eliminating systemic racial and ethnic disparities in juvenile justice across the nation and more specifically, DMC reduction efforts in your state of Illinois. To this end, the Office will continue to take steps to refine our approach to this work, and encourage each state to closely examine the activities and the impact of your DMC reduction efforts. DMC reduction strategies and objectives should have a demonstrable and measurable impact on reducing racial and ethnic disparities. Thus, OJJDP encourages Illinois to submit a training and technical assistance request to assist the state with fully implementing the full OJJDP DMC Reduction Model with specific focus on assessment, intervention, evaluation, and monitoring.

**Department of Justice
EXECUTIVE SECRETARIAT
CONTROL SHEET**

DATE OF DOCUMENT: 01/13/2015 **WORKFLOW ID:** 2960045
DATE RECEIVED: 01/14/2015 **DUE DATE:** 4/14/2015

FROM: Carolyn N. Lerner*
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, DC 20036-4542

TO: AG (cc indicated for OIG)

MAIL TYPE: Sensitive

SUBJECT: (OSC File No. DJ-15-0965) Advising of a whistleblower disclosure that officials at the Department of Justice, Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP) may have engaged in actions that constitute a violation of law, rule, or regulations; gross mismanagement; a gross waste of funds; and an abuse of authority. Requesting a report of DOJ's findings within 60 days after the date on which the information is transmitted. Encls. See WF 2895454.

DATE ASSIGNED
01/16/2015

ACTION COMPONENT & ACTION REQUESTED
ODAG
For appropriate handling. Advise ES of any action taken.

INFO COMPONENT: OAG, OAG (Richardson), OASG, JMD, OJP, OIG

COMMENTS: 01/16/2015: Per ODAG, assign to ODAG (Uriarte) for handling.
ExecSec date/time stamp 01/14/2014 4:14PM

FILE CODE:

EXECSEC POC: Miriam Wallace: 202-514-2018



U.S. OFFICE OF SPECIAL COUNSEL
 1730 M Street, N.W., Suite 300
 Washington, D.C. 20036-4505

The Special Counsel

January 13, 2015

The Honorable Eric H. Holder, Jr.
 Attorney General
 Department of Justice
 950 Pennsylvania Avenue, N.W.
 Washington, D.C. 20530-0001

Re: OSC File No. DI-15-0965

Dear Mr. Attorney General:

Pursuant to my responsibilities as Special Counsel, I am sending to you a whistleblower disclosure that officials at the Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), may have engaged in actions that constitute a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; and an abuse of authority.

The whistleblower, who chose to remain anonymous, disclosed that agency officials routinely approved funding under the Juvenile Justice and Delinquency Prevention Act (JJDP) for states and territories not in compliance with § 223(a)(22) of the Act. The allegations to be investigated are as follows:

- During fiscal years 2009-2014, agency managers approved full funding for numerous states that were out of compliance with regulations implementing the JJDP;
- In May 2014, agency managers advised compliance officials that every state would be approved for JJDP funding in 2015, regardless of compliance with the statutory requirements.

OSC recently referred another set of allegations concerning the administration of the JJDP. See OSC File No. DI-11-2607. Of particular relevance to this matter, the whistleblower in our prior referral, Ms. Jill Semmerling, disclosed that employees in the OJJDP failed to enforce provisions of the JJDP requiring assurance of compliance with the JJDP core protections and failed to investigate allegations that Wisconsin improperly received federal funding under this law. We note that in the present case, the allegations suggest a systemic and widespread mismanagement of agency programs extending beyond the incidents Ms. Semmerling reported.

The Special Counsel

The Honorable Eric H. Holder Jr.
January 13, 2015
Page 2 of 5

Background

The JJDP is the primary vehicle through which the federal government sets standards for state and local juvenile justice systems and provides direct funding for states, research, training and technical assistance, and evaluation. Under the JJDP, states are eligible to receive grants to address juvenile delinquency and improve the juvenile justice system if they abide by four “core protections” of the JJDP restricting the incarceration of juveniles. These core protections are mandated in § 223(a) of the JJDP. At issue is § 223(a)(22), a core protection intended to address and reduce the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

Formula Grant Regulations in 28 C.F.R. § 31.303(j) provide specific guidance for determining a state’s compliance with § 223(a)(22). Under these regulations, states must demonstrate specific efforts to reduce the proportion of minority juveniles detained or confined in a variety of detention facilities. States must provide OJJDP with quantifiable documentation addressing whether minority youth are disproportionately detained, and OJJDP must assess these statistics to determine if corrective action, intervention, or reductions in funding are appropriate. Within OJJDP, decisions are referred to as Disproportionate Minority Contact (DMC) determinations.

DMC determinations are guided by the DMC Technical Assistance Manual, Fourth Edition (the manual). The manual notes that OJJDP uses what is referred to as a Relative Rate Index (RRI), for rating state DMC performance. The RRI involves comparing the relative volume of activity for each major stage of the juvenile justice system for minority youth, contrasted to the volume of contact for white youth, and takes into account a variety of elements and inputs. Chapter five of the manual establishes compliance benchmarks and possible areas of concern based on state performance. Notably, the JJDP stipulates that OJJDP will reduce a state’s grant allocation by at least twenty percent if states are not in compliance with § 223(a)(22). *See* § 223(c).

The whistleblower explained that with the exception of Wyoming, every U.S. state and territory participates in this program. Based on a formula taking into account factors such as population, a state receives between \$400,000 and \$2.5 million dollars per year for the duration of a three-year grant cycle. In the first year of the program, states are not required to produce compliance reports. However, in years two and three, states submit compliance reports, which OJJDP compliance officials review. Depending on their performance, program money should be altered accordingly, as mandated by § 223(c). The whistleblower noted that OJJDP employs compliance analysts who are responsible for reviewing state compliance plans, reviewing data and information, and making recommendations consistent with 28 C.F.R. § 31.303(j) and the manual, based on the processes and criteria noted above.

Widespread Non-Compliance

The whistleblower alleged that since 2008, only one state or territory has been found out of compliance during a DMC assessment. According to the whistleblower, states

The Special Counsel

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January 13, 2015
Page 3 of 5

routinely submit DMC plans that do not meet program requirements established by agency regulations. The whistleblower explained that when states submit these inadequate plans, OJJDP does not find them noncompliant and curtail or restrict their funding as required. The whistleblower noted that decisions made by compliance analysts recommending a finding of noncompliance and reduced funding are often overruled by Robert L. Listenbee, the administrator of OJJDP. The whistleblower estimated that this occurs in approximately twenty percent of states annually. Pursuant to the JJDP, it is mandatory that noncompliant states have their funding reduced.

The whistleblower noted that when compliance officials determine that a state is not in compliance, under OJJDP procedures, the determination is reviewed by the OJJDP Office of General Counsel (OGC). When OGC completes its legal review, the determination is then forwarded to Mr. Listenbee. The whistleblower alleged that Mr. Listenbee frequently disregards compliance determinations and approves grant payments to states that are not in compliance.

The whistleblower provided an illustrative example concerning the state of Illinois. The whistleblower asserted that since 2008, Illinois has not complied with § 223(a)(22). In August 2013, OJJDP staff identified a serious programmatic deficiency, and OGC concurred with the determination to limit their funding as a result. When this decision was sent to Mr. Listenbee for review and approval, he rejected these determinations and, in a meeting with compliance staff and OGC representatives, claimed that the DMC technical review was legally compromised by the use of an algorithm to generate compliance benchmarks. According to the whistleblower, Mr. Listenbee's assertions constituted a pretextual justification for disregarding the determination of OJJDP staff and OGC. The whistleblower explained that this was not an isolated incident and that Mr. Listenbee frequently overrides the determination of compliance officials and OGC.

Management Directives Regarding 2015 Compliance Reviews

The whistleblower further alleged that Mr. Listenbee conveyed verbal directions to employees in OJJDP that all states and territories would be approved for full grant funding under § 223(a)(22) for fiscal year 2015, regardless of actual performance or compliance. To support this assertion, the whistleblower provided email correspondence in which Janet Chiancone, the associate administrator of OJJDP's Budget and Administration Division, informed compliance staff that OJJDP was preparing to issue a notice to states explaining why they would "get a pass" for 2015 DMC compliance requirements. See Enclosure A.

According to the whistleblower, Ms. Chiancone also met with compliance staff in person, and reported that she sent the email referenced in the preceding paragraph at the direction of Mr. Listenbee. The whistleblower alleged that in this same meeting, Ms. Chiancone further urged compliance staff to work with OGC to develop appropriate language indicating that states would receive money regardless of their FY2015 JJDP compliance. According to the whistleblower, Ms. Chiancone verbally indicated to compliance staff on several occasions that she did not agree with Mr. Listenbee's direction and voiced her

The Special Counsel

The Honorable Eric H. Holder Jr.
January 13, 2015
Page 4 of 5

concerns to him, chief of staff Ms. Shanetta Cutler, and deputy administrator for programs, Chyrl Jones.

The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if I determine that there is a substantial likelihood that one of the aforementioned conditions exists, I am required to advise the appropriate agency head of my determination, and the agency head is required to conduct an investigation of the allegations and submit a written report within 60 days after the date on which the information is transmitted. 5 U.S.C. § 1213(c).

Upon receipt, I will review the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). I will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

In this case, I have determined that there is a substantial likelihood that the information the whistleblower provided constitutes a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, and an abuse of authority. I am referring this information to you for an investigation of these allegations and a report of your findings within 60 days after the date on which the information is transmitted. OSC will not routinely grant an extension of time to an agency in conducting a whistleblower disclosure investigation. However, OSC will consider an extension request where an agency concretely evidences that it is conducting a good faith investigation that will require more time to successfully complete. By law, this report should be reviewed and signed by you personally. Nevertheless, should you delegate your authority to review and sign the report to the Inspector General, or other agency official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5). The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). A summary of section 1213(d) is enclosed. Please note that where specific violations of law, rule, or regulation are identified, these references are not intended to be exclusive. As you conduct your review of these disclosures and prepare your report, OSC requests that you include information reflecting any dollar savings, or projected savings, and any management initiatives related to these cost savings, that may result from your review.

Further, in some cases, even anonymous whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their claims. I urge you to take all appropriate measures to ensure that employees are protected from such retaliation and from

The Special Counsel

The Honorable Eric H. Holder Jr.
January 13, 2015
Page 5 of 5

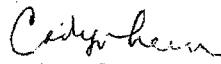
other prohibited personnel practices, including informing those charged with investigating the whistleblowers allegations that retaliation is unlawful and will not be tolerated.

At the outset, or during the course of your investigation, your investigative team may have questions regarding the statutorily mandated report you will deliver to OSC under 5 U.S.C. § 1213. OSC attorneys are available at any time in person or by telephone to discuss OSC's statutory process, expectations for credible, consistent, and complete reports, and for general assistance. Please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 254-3604 to initiate this process.

As required by 5 U.S.C. § 1213(e)(3), I will send copies of the report, along with any comments on the report from the whistleblower and any comments or recommendations from me, to the President and the appropriate oversight committees in the Senate and House of Representatives. Unless the report is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, OSC will place a copy of the report in a public file in accordance with 5 U.S.C. § 1219(a). To prevent public disclosure of personally identifiable information (PII), OSC requests that you ensure that the report does not contain any sensitive PII, such as Social Security numbers, home addresses and phone numbers, personal e-mail addresses, dates and places of birth, and personal financial information. OSC does not consider names and titles to be sensitive PII requiring redaction. Agencies are requested not to redact such information in reports provided to OSC for the public file.

Please refer to our file number in any correspondence on this matter. If you need further information, please contact Ms. McMullen. I am also available for any questions you may have.

Sincerely,



Carolyn N. Lerner

Enclosures

cc: The Honorable Michael E. Horowitz, Inspector General

W: Other stuff we discussed this morning Enclosure A: DI-15-0965

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Chiancone, Janet
Sent: Wednesday, May 07, 2014 12:02 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Other stuff we discussed this morning
Importance: High

Hi again,

Here's what we also talked about this morning:

Following up with Pete Brien about the appropriate verbage to use for our DMC determinations in 2015. Ideally, we want to issue a notice to the states (ahead of time) which explains why they will "get a pass" (not the language we will use). Julie recommended we look at the documentation from 2004/5 after reauthorization as it may have some good language (I will follow up w/Pete about verbage and track down the letter from back then).

Developing our own checklist for the ACT determinations process (using a lot of what is in the SCD checklist). I will ask Jen to send us a copy so we can create our own – perhaps someone would be willing to take a first stab? ☺

The process for how we will be gathering materials related to state policy requiring individuals who work with both youth and adult inmates to be trained and certified to work with youth. (I will send a draft of that that separately—just spoke with Jen about it again, and need to chat with Elizabeth).

Submission of spreadsheets and large documents that won't make it through the email address. Elizabeth is following up with STTAC about the timing on when the "dropbox" site will be available.

Upcoming meeting between SCD and ACT on out of compliance states. We agreed to add our "at risk" DMC states to these discussions (those that would have been found out in past and/or were doing quarterly reporting). Andrea will send a list of the states.

Am I missing anything? My brain is a sieve sometimes!

Thanks,
Janet

[REDACTED]

Enclosure

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency¹ and shall include:

- (1) a summary of the information with respect to which the investigation was initiated;
- (2) a description of the conduct of the investigation;
- (3) a summary of any evidence obtained from the investigation;
- (4) a listing of any violation or apparent violation of law, rule, or regulation; and
- (5) a description of any action taken or planned as a result of the investigation, such as:
 - (A) changes in agency rules, regulations or practices;
 - (B) the restoration of any aggrieved employee;
 - (C) disciplinary action against any employee; and
 - (D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

To prevent public disclosure of personally identifiable information (PII), OSC requests that you ensure that the report does not contain any sensitive PII, such as Social Security numbers, home addresses and phone numbers, personal e-mail addresses, dates and places of birth, and personal financial information. With the exception of patient names, OSC does not consider names and titles to be sensitive PII requiring redaction. Agencies are requested not to redact such information in reports provided to OSC for inclusion in the public file.

¹ Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.



U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

Washington, D.C. 20531

SEP 30 2014

Joey Watson
Executive Director
Louisiana Commission on Law Enforcement and
Administration of Criminal Justice
1885 Wooddale Blvd., Room 708
Baton Rouge, LA 70806-1511

Dear Mr. Watson:

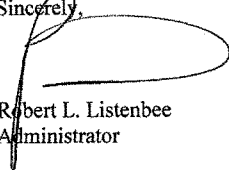
The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of Louisiana's annual Compliance Monitoring Report to determine the extent of compliance with Sections 223(a)(11), (12), (13), and (22) of the Juvenile Justice and Delinquency Prevention Act (JJDP). This review resulted in the following findings:

- Louisiana is in compliance with Section 223(a)(11) of the JJDP (the "deinstitutionalization of status offenders" or "DSO" requirement).
- Louisiana is in full compliance with Section 223(a)(12) of the JJDP which requires that juveniles not be detained or confined in any institution in which they have contact with incarcerated adults.
- Louisiana is in compliance with Section 223(a)(13) of the JJDP (the "jail and lockup removal" requirement).
- Louisiana is not out of compliance with Section 223(a)(22) of the JJDP (the "disproportionate minority contact" or "DMC" requirement).

Each State receives 20 percent of its total fiscal year (FY) allocation for participating in the JJDP and an additional 20 percent for each of the four core requirements with which they have demonstrated compliance. Therefore, based on the above findings, it is determined that Louisiana is eligible to receive 100 percent of its Fiscal Year 2015 Title II Formula Grant allocation related to compliance with Section 223(a)(11), (12), (13), and (22) of the JJDP. Attached is the status of compliance with each core requirement of the JJDP and any noted deficiencies with the annual Compliance Monitoring Report.

We are available to help Louisiana achieve and maintain compliance with all of the requirements of the Title II Formula Grant Program. If you have any questions, please contact Andrea R. Coleman in OJJDP's Audit and Compliance Division, at 202-514-1319.

Sincerely,



Robert L. Listenbee
Administrator

cc: Kathy Guidry, Juvenile Justice Specialist
William Landry, State Advisory Group Chair
Demetrius Joubert, Compliance Monitor

Enclosure

STATUS OF COMPLIANCE
Juvenile Justice and Delinquency Prevention Act

Section 223(a)(11)

A determination has been made that Louisiana has an institutionalization rate of 8.44 status offenders and nonoffenders held per 100,000 persons under age 17. Louisiana is in compliance with the requirements of Section 223(a)(11) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the January 9, 1981, Federal Register (46 FR 2567), which provides that with a rate per 100,000 juveniles of 5.8 to 17.6, the state is eligible for a finding of compliance with *de minimis* exceptions if it adequately meets two criteria: (a) noncompliant incidents violated state law, and (b) an acceptable plan has been developed that is designed to eliminate the noncompliant incidents. The state has provided information indicating these incidents of noncompliance were violations of state law as required under Criterion A. In addition, the state has provided a plan to eliminate these incidents of noncompliance, satisfying Criterion B. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(12)

OJJDP has determined that Louisiana is in full compliance with Section 223(a)(12) of the JJDP, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in collocated facilities, have been trained and certified to work with juveniles. This finding is based on the 2012 Monitoring Report data which indicated that during a 12-month period, no juveniles were detained or confined in any institution in which they had contact with adult inmates.

Section 223(a)(13)

Pursuant to the requirements of Section 223(a)(13), OJJDP has determined that Louisiana has an annual rate of 20.68 incidents of juveniles detained or confined in adult jails and lockups per 100,000 juvenile population and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in collocated facilities, have been trained and certified to work with juveniles. In addition, an acceptable plan has been developed by Louisiana to eliminate the noncompliant incidents. Louisiana is in compliance with the requirements of Section 223(a)(13) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the November 2, 1988, Federal Register (28 CFR 31), which provides that with a rate of 9.1 or greater, the state is eligible for the substantive *de minimis* exception if the state meets five criteria: (a) there are recently enacted changes in state law that are expected to have a significant impact on the state's achieving full compliance; (b) all instances of noncompliance were in violation of state law; (c) the instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances; (d) there are existing mechanisms to effectively enforce state law; and (e) an acceptable plan has been developed to eliminate the noncompliant incidents. The state has provided information satisfying all noted

criteria, to include an acceptable plan to eliminate instances of noncompliance. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(22)

Pursuant to the requirements of Section 223(a)(22), OJJDP has determined Louisiana will not be found out of compliance with the Disproportionate Minority contact requirement of the JJDPa. The summary of programmatic activities undertaken in your state to address racial and ethnic disparities in the state's juvenile justice system and the statewide Relative Rate Index (RRI) Spreadsheet data submitted indicates action in your state towards addressing minority overrepresentation at the various system contact points. OJJDP recognizes the efforts taken by Louisiana to address this issue and the Office stands ready to continue to work collaboratively with your state to achieve and maintain full compliance with this JJDPa core requirement.

Although Louisiana has identified strategies aimed at DMC reduction, OJJDP strongly encourages your state to prioritize and increase these efforts aimed at eliminating systemic racial and ethnic disparities. Historically, OJJDP has worked with states to implement the five phase OJJDP DMC Reduction Model with fidelity. To date, efforts have greatly focused on the initial identification and assessment phases of the DMC Reduction Model. As OJJDP continues to further DMC reduction efforts at the Federal, state, and local levels, the Office will place an increasing emphasis on assisting states to implement strategies aimed at moving through the full OJJDP DMC Reduction model, with specific emphasis being placed on the areas of assessment/diagnosis, intervention, evaluation, and monitoring.

Moving forward with this DMC reduction work, OJJDP will engage with states to increase efforts aimed at eliminating systemic racial and ethnic disparities in juvenile justice across the nation and more specifically, DMC reduction efforts in your state of Louisiana. To this end, the Office will continue to take steps to refine our approach to this work, and encourage each state to closely examine the activities and the impact of your DMC reduction efforts. DMC reduction strategies and objectives should have a demonstrable and measurable impact on reducing racial and ethnic disparities. Thus, OJJDP encourages Louisiana to submit a training and technical assistance request to assist the state with fully implementing the full OJJDP DMC Reduction Model with specific focus on assessment, intervention, evaluation, and monitoring.



U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

Washington, D.C. 20531

SEP 30 2014

Raeone Magnuson
Director
Office of Justice Programs
Minnesota Department of Public Safety
444 Cedar Street, Suite 100
St. Paul, MN 55101

Dear Ms. Magnuson:

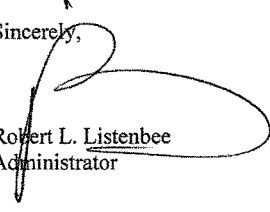
The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of Minnesota's annual Compliance Monitoring Report to determine the extent of compliance with Section 223(a)(11), (12), (13), and (22) of the Juvenile Justice and Delinquency Prevention Act (JJDP). This review resulted in the following findings:

- Minnesota is in compliance with Section 223(a)(11) of the JJDP (the "deinstitutionalization of status offenders" or "DSO" requirement).
- Minnesota is in full compliance with Section 223(a)(12) of the JJDP (the "separation" requirement) which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates.
- Minnesota is in compliance with Section 223(a)(13) of the JJDP (the "jail and lockup removal" requirement).
- Minnesota is not out of compliance with Section 223(a)(22) of the JJDP (the "disproportionate minority contact" or "DMC" requirement).

Each State receives 20 percent of its total fiscal year allocation for participating in the Title II Formula Grant Program of the JJDP (42 U.S.C. 5631-5633) and an additional 20 percent for each of the four core requirements with which they have demonstrated compliance. It is therefore determined that Minnesota is eligible to receive 100 percent of the Fiscal Year 2015 allocation related to participation in the Title II Formula Grant Program and compliance with Sections 223(a)(11), (12), (13), and (22) of the JJDP. Attached is the status of compliance with each core requirement of the JJDP and any noted deficiencies with the annual Compliance Monitoring Report.

We are available to help Minnesota achieve and maintain compliance with all of the requirements of the Title II Formula Grant Program. If you have any questions, please contact Julie Herr, OJJDP Audit and Compliance Division, at 202-353-9260.

Sincerely,



Robert L. Listenbee
Administrator

cc: Richard Gardell, State Advisory Group Chair
Carrie Wasley, Juvenile Justice Specialist/Compliance Monitor

Enclosure

STATUS OF COMPLIANCE
Juvenile Justice and Delinquency Prevention Act

Section 223(a)(11)

A determination has been made that Minnesota has an institutionalization rate of 4.38 status offenders and non-offenders held per 100,000 persons under age 18. Minnesota is in compliance with the requirements of Section 223(a)(11) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the January 9, 1981, Federal Register (46 FR 2567), which provides that a state has demonstrated full compliance with *de minimis* exceptions with a rate per 100,000 juveniles of 0.1 to 5.7. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(12)

OJJDP has determined that Minnesota is in full compliance with Section 223(a)(12) of the JJDP, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates, and that there is in effect in the State a policy requiring individuals who work with both such juveniles and such adult inmates, including in colocated facilities, to have been trained and certified to work with juveniles. This finding is based on the 2012 Monitoring Report data which indicated that during a 12-month period, no juveniles were detained or confined in any institution in which they had contact with adult inmates.

Section 223(a)(13)

Pursuant to the requirements of Section 223(a)(13), OJJDP has determined that Minnesota has an annual rate of 1.43 incidents of juveniles detained or confined in adult jails and lockups per 100,000 juvenile population and that there is in effect in the State a policy requiring individuals who work with both such juveniles and such adult inmates, including in colocated facilities, to have been trained and certified to work with juveniles. Such rate is not in excess of nine per 100,000 juvenile population. In addition, an acceptable plan has been developed by Minnesota to eliminate the noncompliant incidents. Minnesota is in compliance with the requirements of Section 223(a)(13) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the November 2, 1988, Federal Register (28 CFR 31), which provides that with a rate per 100,000 juveniles of 0.1 to 9.0, the state is eligible for the numerical *de minimis* exception if a state has developed an acceptable plan 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. This finding is based on 2012 Monitoring Report data.

Section 223(a)(22)

Pursuant to the requirements of Section 223(a)(22), OJJDP has determined Minnesota will not be found out of compliance with the Disproportionate Minority contact requirement of the JJDP. The summary of programmatic activities undertaken in your state to address racial and

ethnic disparities in the state's juvenile justice system and the statewide Relative Rate Index (RRI) Spreadsheet data submitted indicates action in your state towards addressing minority overrepresentation at the various system contact points. OJJDP recognizes the efforts taken by Minnesota to address this issue and the Office stands ready to continue to work collaboratively with Minnesota to achieve and maintain full compliance with this JJDP core requirement.

Although Minnesota has identified strategies aimed at DMC reduction, OJJDP strongly encourages Minnesota to prioritize and increase these efforts aimed at eliminating systemic racial and ethnic disparities. Historically, OJJDP has worked with states to implement the five phase OJJDP DMC Reduction Model with fidelity. To date, efforts have greatly focused on the initial identification and assessment phases of the DMC Reduction Model. As OJJDP continues to further DMC reduction efforts at the Federal, state, and local levels, the Office will place an increasing emphasis on assisting states to implement strategies aimed at moving through the full OJJDP DMC Reduction model, with specific emphasis being placed on the areas of assessment/diagnosis, intervention, evaluation, and monitoring.

Moving forward with this DMC reduction work, OJJDP will engage with states to increase efforts aimed at eliminating systemic racial and ethnic disparities in juvenile justice across the nation and more specifically, DMC reduction efforts in your state of Minnesota. To this end, the Office will continue to take steps to refine our approach to this work, and encourage each state to closely examine the activities and the impact of your DMC reduction efforts. DMC reduction strategies and objectives should have a demonstrable and measurable impact on reducing racial and ethnic disparities. Thus, OJJDP encourages Minnesota to submit a training and technical assistance request to assist the state with fully implementing the full OJJDP DMC Reduction Model with specific focus on assessment, intervention, evaluation, and monitoring.



U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

Washington, D.C. 20531

SEP 30 2014

L. David Huffman
Executive Director
NC Department of Public Safety
NC Governor's Crime Commission
1201 Front Street
Raleigh, NC 27609

Dear Mr. Huffman:

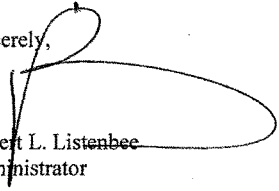
The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of North Carolina's annual Compliance Monitoring Report to determine the extent of compliance with Section 223(a)(11), (12), (13), and (22) of the Juvenile Justice and Delinquency Prevention Act (JJDP). This review resulted in the following findings:

- North Carolina is in full compliance with Section 223(a)(11) of the JJDP (the "deinstitutionalization of status offenders" or "DSO" requirement).
- North Carolina is in full compliance with Section 223(a)(12) of the JJDP (the "separation" requirement), which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates.
- North Carolina is in compliance with Section 223(a)(13) of the JJDP (the "jail and lockup removal" requirement).
- North Carolina is not out of compliance with Section 223(a)(22) of the JJDP (the "disproportionate minority contact" or "DMC" requirement).

Each State receives 20 percent of its total fiscal year allocation for participating in the Title II Formula Grant Program of the JJDP (42 U.S.C. 5631-5633) and an additional 20 percent for each of the four core requirements with which they have demonstrated compliance. Therefore, based on the above findings, it is determined that North Carolina is eligible to receive 100 percent of the Fiscal Year 2015 allocation related to participation in the Title II Formula Grant Program and compliance with Sections 223(a)(11), (12), (13), and (22) of the JJDP. Attached is the status of compliance with each core requirement of the JJDP and any noted deficiencies with the annual Compliance Monitoring Report.

We are available to help North Carolina achieve and maintain compliance with all of the requirements of the Title II Formula Grant Program. If you have any questions, please contact Lawrence Fiedler in OJJDP's Audit and Compliance Division, at 202-514-8822.

Sincerely,



Robert L. Listenbee
Administrator

cc: James Blanton, Esq., State Advisory Group Chairperson
Garrietta Proutey, Juvenile Justice Specialist
Toni Lockley, DMC Coordinator

Enclosure

STATUS OF COMPLIANCE
Juvenile Justice and Delinquency Prevention Act

Section 223(a)(11)

A determination has been made that North Carolina has an institutionalization rate of 4.04 status offenders and nonoffenders held per 100,000 persons under age 18. North Carolina is in full compliance with the requirements of Section 223(a)(11) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the January 9, 1981, Federal Register (46 FR 2567), which provides that a state has demonstrated full compliance with *de minimis* exceptions with a rate per 100,000 juveniles of 0.1 to 5.7. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(12)

The review determined that North Carolina is in compliance with Section 223(a)(12) of the JJDP, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates. This finding is based on the State's demonstration that instances of noncompliance do not indicate a pattern or practice and is coupled with North Carolina's submission of an acceptable plan to eliminate the noncompliance incidents. This finding is made pursuant to the criteria contained in the OJJDP Formula Grants Regulation, 28 CFR 31.303(f)(6)(ii)(B).

Section 223(a)(13)

Pursuant to the requirements of Section 223(a)(13), OJJDP has determined that North Carolina has an annual rate of 0.35 incidents of juveniles detained or confined in adult jails and lockups per 100,000 juvenile population and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in collocated facilities, have been trained and certified to work with juveniles. Such rate is not in excess of nine per 100,000 juvenile population. In addition, an acceptable plan has been developed by North Carolina to eliminate the noncompliant incidents. North Carolina is in compliance with the requirements of Section 223(a)(13) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the November 2, 1988, Federal Register (28 CFR 31), which provides that with a rate per 100,000 juveniles of 0.1 to 9.0, the state is eligible for the numerical *de minimis* exception if a state has developed an acceptable plan 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. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(22)

Pursuant to the requirements of Section 223(a)(22), OJJDP has determined North Carolina will not be found out of compliance with the Disproportionate Minority contact requirement of the JJDP. The summary of programmatic activities undertaken in your state to address racial and

ethnic disparities in the state's juvenile justice system and the statewide Relative Rate Index (RRI) Spreadsheet data submitted indicates action in your state towards addressing minority overrepresentation at the various system contact points. OJJDP recognizes the efforts taken by North Carolina to address this issue and the Office stands ready to continue to work collaboratively with North Carolina to achieve and maintain full compliance with this JJDP core requirement.

Although North Carolina has identified strategies aimed at DMC reduction, OJJDP strongly encourages North Carolina to prioritize and increase these efforts aimed at eliminating systemic racial and ethnic disparities. Historically, OJJDP has worked with states to implement the five phase OJJDP DMC Reduction Model with fidelity. To date, efforts have greatly focused on the initial identification and assessment phases of the DMC Reduction Model. As OJJDP continues to further DMC reduction efforts at the Federal, state, and local levels, the Office will place an increasing emphasis on assisting states to implement strategies aimed at moving through the full OJJDP DMC Reduction model, with specific emphasis being placed on the areas of assessment/diagnosis, intervention, evaluation, and monitoring.

Moving forward with this DMC reduction work, OJJDP will engage with states to increase efforts aimed at eliminating systemic racial and ethnic disparities in juvenile justice across the nation and more specifically, DMC reduction efforts in your state of North Carolina. To this end, the Office will continue to take steps to refine our approach to this work, and encourage each state to closely examine the activities and the impact of your DMC reduction efforts. DMC reduction strategies and objectives should have a demonstrable and measurable impact on reducing racial and ethnic disparities. Thus, OJJDP encourages North Carolina to submit a training and technical assistance request to assist the state with fully implementing the full OJJDP DMC Reduction Model with specific focus on assessment, intervention, evaluation, and monitoring.



U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

Washington, D.C. 20531

SEP 30 2014

Thomas P. Mongeau
Executive Director
Rhode Island Justice Commission
One Capitol Hill
Providence, RI 02908

Dear Mr. Mongeau:

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of Rhode Island's annual Compliance Monitoring Report to determine the extent of compliance with Section 223(a)(11), (12), (13), and (22) of the Juvenile Justice and Delinquency Prevention Act (JJDP). This review resulted in the following findings:

- Rhode Island is in compliance with Section 223(a)(11) of the JJDP (the "deinstitutionalization of status offenders" or "DSO" requirement).
- Rhode Island is in compliance with Section 223(a)(12) of the JJDP (the "separation" requirement), which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates.
- Rhode Island is in compliance with Section 223(a)(13) of the JJDP (the "jail and lockup removal" requirement).
- Rhode Island is not out of compliance with Section 223(a)(22) of the JJDP (the "disproportionate minority contact" or "DMC" requirement).

Each State receives 20 percent of its total fiscal year allocation for participating in the Title II Formula Grant Program of the JJDP (42 U.S.C. 5631-5633) and an additional 20 percent for each of the four core requirements with which they have demonstrated compliance. Therefore, based on the above findings, it is determined that Rhode Island is eligible to receive 100 percent of the Fiscal Year 2015 allocation related to participation in the Title II Formula Grant Program and compliance with Sections 223(a)(11), (12), (13), and (22) of the JJDP. Attached is the status of compliance with each core requirement of the JJDP and any noted deficiencies with the annual Compliance Monitoring Report.

We are available to help Rhode Island achieve and maintain compliance with all of the requirements of the Title II Formula Grant Program. If you have any questions, please contact Lawrence Fiedler in OJJDP's Audit and Compliance Division, at 202-514-8822.

Sincerely,



Robert L. Listenbee
Administrator

cc: Br. Brendon Garrity State Advisory Group Chairperson
Gina Tocco, Juvenile Justice Specialist
Bobby Pohlman-Rogers Compliance Monitoring Coordinator
Gina Tocco, DMC Coordinator

Enclosure

STATUS OF COMPLIANCE
Juvenile Justice and Delinquency Prevention Act

Section 223(a)(11)

A determination has been made that Rhode Island has an institutionalization rate of 3.57 status offenders and nonoffenders held per 100,000 persons under age 18. Rhode Island is in compliance with the requirements of Section 223(a)(11) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the January 9, 1981, Federal Register (46 FR 2567), which provides that a state has demonstrated full compliance with *de minimis* exceptions with a rate per 100,000 juveniles of 0.1 to 5.7. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(12)

The review determined that Rhode Island is in compliance with Section 223(a)(12) of the JJDP, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates. This finding is based on the 2012 Monitoring Report in which juveniles were not found to be held with adult inmates. In addition, any instances of noncompliance do not indicate a pattern or practice and all instances of noncompliance are in violation of Rhode Island General Law Section 14-1-26, which expressly prohibits the incarceration of juvenile offenders in circumstances that would violate Section 223(a)(12). In addition, the State has demonstrated that existing enforcement mechanisms are such that the instances of noncompliance are unlikely to recur in the future.

Section 223(a)(13)

Pursuant to the requirements of Section 223(a)(13), OJJDP has determined that Rhode Island has an annual rate of 4.91 incidents of juveniles detained or confined in adult jails and lockups per 100,000 juvenile population and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. Such rate is not in excess of nine per 100,000 juvenile population. In addition, an acceptable plan has been developed by Rhode Island to eliminate the noncompliant incidents. Rhode Island is in compliance with the requirements of Section 223(a)(13) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the November 2, 1988, Federal Register (28 CFR 31), which provides that with a rate per 100,000 juveniles of 0.1 to 9.0, the state is eligible for the numerical *de minimis* exception if a state has developed an acceptable plan 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. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(22)

Pursuant to the requirements of Section 223(a)(22), OJJDP has determined Rhode Island will not be found out of compliance with the Disproportionate Minority contact requirement of the JJDP. The summary of programmatic activities undertaken in your state to address racial and ethnic disparities in the state's juvenile justice system and the statewide Relative Rate Index (RRI) Spreadsheet data submitted indicates action in your state towards addressing minority overrepresentation at the various system contact points. OJJDP recognizes the efforts taken by Rhode Island to address this issue and the Office stands ready to continue to work collaboratively with your state to achieve and maintain full compliance with this JJDP core requirement.

Although Rhode Island has identified strategies aimed at DMC reduction, OJJDP strongly encourages your state to prioritize and increase these efforts aimed at eliminating systemic racial and ethnic disparities. Historically, OJJDP has worked with states to implement the five phase OJJDP DMC Reduction Model with fidelity. To date, efforts have greatly focused on the initial identification and assessment phases of the DMC Reduction Model. As OJJDP continues to further DMC reduction efforts at the Federal, state, and local levels, the Office will place an increasing emphasis on assisting states to implement strategies aimed at moving through the full OJJDP DMC Reduction model, with specific emphasis being placed on the areas of assessment/diagnosis, intervention, evaluation, and monitoring.

Moving forward with this DMC reduction work, OJJDP will engage with states to increase efforts aimed at eliminating systemic racial and ethnic disparities in juvenile justice across the nation and more specifically, DMC reduction efforts in your state of Rhode Island. To this end, the Office will continue to take steps to refine our approach to this work, and encourage each state to closely examine the activities and the impact of your DMC reduction efforts. DMC reduction strategies and objectives should have a demonstrable and measurable impact on reducing racial and ethnic disparities. Thus, OJJDP encourages Rhode Island to submit a training and technical assistance request to assist the state with fully implementing the full OJJDP DMC Reduction Model with specific focus on assessment, intervention, evaluation, and monitoring.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

September 16, 2014

Ms. Jill Semmerling
c/o Tom Devine, Esquire
Legal Director
Government Accountability Project
1612 K Street, N.W., Suite 1100
Washington, D.C. 20006

Re: OSC File No. DI-11-2607

Dear Ms. Semmerling:

The Office of Special Counsel (OSC) has completed its review of the information you referred to the Disclosure Unit. You disclosed that employees at the Department of Justice, (DOJ) in Washington, D.C., may have engaged in actions that constitute a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, and a substantial and specific danger to public health. The specific components at issue are the Office of Inspector General (OIG); the Office of Justice Programs (OJP); OJP's Office of General Counsel (OGC); and the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c).

Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

Ms. Jill Semmerling
Page 2

The allegations referred for investigation are as follows:

- Employees at the OJJDP failed to assure compliance with the core protections of the Juvenile Justice and Delinquency Prevention Act;
- Employees at the OJJDP failed to investigate allegations that Wisconsin's OJA was falsifying detention data in order to receive federal funding;
- Employees at OJJDP and OJP issued legal opinions altering long-standing policy and in contravention of law, in order to enable Wisconsin's OJA to circumvent JJDP requirements;
- DOJ OIG employees obstructed fact finding in an investigation of the Wisconsin OJA for concealment of non-compliance; and
- Juveniles who have run away from state-ordered placements are being illegally detained in secure facilities, in contravention of statutory grant conditions.

We have concluded that there is a substantial likelihood that the information that you provided to OSC discloses a possible violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, and a substantial and specific danger to public health. Thus, we have transmitted these allegations to the Attorney General for a report within 60 days pursuant to 5 U.S.C. § 1213(c).

With your consent, we identified you as the source of the information, so that a representative of the Attorney General's office may speak with you directly. We have requested that the agency interview you at the beginning of the agency investigation when, as in this case, you consent to the disclosure of your name. As the originator of the complaint, you can provide additional information and an explanation of your allegations, thereby streamlining the agency investigation.

You should be aware, however, that these matters may take longer and the agency may request an extension of the reporting date. After we have reviewed the report, unless it is classified or otherwise not releasable by law, we will send you a copy and give you an opportunity to comment. The report and your comments will be transmitted to the President and the appropriate congressional oversight committees, and will be maintained by OSC in a public file available at our website, www.osc.gov. We emphasize that until the agency's final report is forwarded to the President and Congress, this remains an open matter under investigation. We will notify you when the report is available for public release.

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Ms. Jill Semmerling
Page 3

Please contact me at (202) 254-3677, if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Gorman", with a long horizontal flourish extending to the right.

Karen Gorman
Deputy Chief, Disclosure Unit

KPG/kpg

Statement by: Andrea R. Coleman

Re: Smart on Juvenile Justice: Technical Assistance to End Racial and Ethnic Disparities in the Juvenile Justice System Solicitation Peer Review

I am a member of OJJDP's Audit and Compliance Team (ACT). My co-workers include Elissa Rumsey (GS-14), Tina Borner (GS-13), Larry Fielder (GS-13) and Julie Herr (GS-13). My first-line supervisor is Will Bronson (GS-14) and second-line supervisor is Janet Chiancone (GS-15).

On Tuesday, June 17, 2014, I, along with Amy Callaghan OJJDP Solicitation Program Manager, were notified via email by Laura Craig Mason, OJJDP Team Lead for OJP Peer Review, with Lockheed Martin. Ms. Craig Mason stated the *Smart on Juvenile Justice: Technical Assistance to End Racial and Ethnic Disparities in the Juvenile Justice System* grant solicitation was posted on grants.gov Thursday, June 12, 2014. Ms. Craig Mason also asked Ms. Callaghan and me to inform her if OJJDP would be conducting the peer reviewer search in the database or if we would like her to conduct the search. She also informed us that she would forward the appropriate peer reviewer forms to sign prior to the kick-off meeting. The meeting to discuss the peer review process had to occur within two weeks of a solicitation posting. I, along with Ms. Callaghan, provided several dates within the two week timeframe. The kick-off meeting occurred Thursday, June 26, 2014 at 3:00 PM (EST) via conference call. Per the meeting, I agreed to return the applicable signed peer review forms to Ms. Craig Mason and Ms. Callaghan by Friday, June 27, 2014 COB.

On Wednesday, July 2, 2014 I was carbon copied on an email sent by first-line supervisor Will Bronson to Laura Craig Mason asking questions about the peer review process that included the timeline for review; several emails were exchanged to answer Mr. Bronson's questions. On Thursday, July 3, 2014 Mr. Bronson sent an email to me directly stating that he would manage the solicitation and would like me to be on the peer review panel and to manage the grant once awarded. Mr. Bronson also asked me for recommendations for the peer review panel, which would be internal to OJP/OJJDP staff per the June 26th kick-off meeting. On Wednesday, July 9, 2014 I forwarded my recommendations for the peer review panel to Mr. Bronson and after several email exchanges on that day we came to a consensus. On July 16, 2014 I, along with the other selected peer reviewers, received an email from Mr. Bronson stating "I have been informed by the front office that this review will use external reviewers. Thx anyway for your willingness to review. I really appreciate it. thx." I also received an email chain with discussion from OJJDP senior leadership (Administrator Bob Listenbee, Chief of Staff Shanetta Cutlar, and Deputy Administrator for Programs Chyrl Jones) stating this was the direction they were going.

During my regularly scheduled biweekly meeting with Mr. Bronson on July 16th I asked why I would no longer be a part of the grant review process. I was told this was another attempt by OJJDP senior leadership to "marginalize me" like other OJJDP staff. I was also informed that the peer review would be external and that the OJJDP Subject Matter Experts (SMEs) would be Tina Borner, a fellow member of the ACT, and Greg Thompson, Senior Policy Advisor and former Associate Administrator of the State Relations and Assistance Division (SRAD) where DMC was previously administered. The three external reviewers are two local DMC Coordinators from Maryland (one of which Ms. Borner has a personal relationship with) and Montana's state DMC Coordinator. I met with Janet Chiancone, second-line supervisor around 5:00 pm to discuss my concerns. Specifically, this was the third time I have been prevented carrying out my job duties and responsibilities or excluded from any discussions for activities directly related to my position as OJJDP's DMC Coordinator. Per my discussion with Mr. Bronson earlier that day I agreed this was an attempt to marginalize me and to diminish my role in DMC activities. To substantiate my statement I told Ms. Chiancone about a lunch meeting I had with Ms. Cutlar on Monday

April 21, 2014. The purpose of the lunch meeting was to seek advice as to why OJJDP Administrator Bob Listenbee criticized my work as the Disproportionate Minority Contact Coordinator (DMC). Ms. Cutlar said "Bob thinks you are really smart and committed to DMC, but he doesn't understand why you won't accept his vision for DMC...all he hears from you is no." She then asked me how she should respond to Mr. Listenbee when he makes those statements about me. I told Ms. Cutlar that I would gladly accept his vision for DMC if he had clearly articulated it. I also apologized for the perceived undermining of authority however most of my objections to his suggestions were in direct violation of Section 223(a)(22) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended and/or Formula Grant Consolidated Regulation CFR Part 28 Part 31.303(j).

As stated above, this is the third time I have been unable to carry out work directly related to my job duties and responsibilities. The first occurred in February 2014 when I was told that Ms. Cutlar would be conducting a DMC presentation at George Washington University; I was instructed to prepare her for the presentation. Ms. Cutlar declined to conduct the presentation because she stated she was unqualified to do so. I conducted the presentation, however Ms. Cutlar accompanied me and was instructed by Mr. Listenbee to "keep a lid on Andrea." Once I was made aware of this comment I immediately reported it to Mr. Bronson and Ms. Chiancone. The second duty that has been revoked is that I am unable to make recommendations of non-compliance for states that do not meet the requirements of Section 223(a)(22) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended and Formula Grant Consolidated Regulation CFR Part 28 Part 31.303(j) for FY 2015 Title II Formula Grant funding. Ms. Chiancone sent an email to ACT members Wednesday, May 7, 2014 which, in part, stated "...Following up with Pete Brien about the appropriate verbage to use for our DMC determinations in 2015. Ideally, we want to issue a notice to the states (ahead of time) which explains why they will "get a pass"..." Again, this is in direct violation of Section 223(a)(22) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended and Formula Grant Consolidated Regulation CFR Part 28 Part 31.303(j) and there is no precedent for this action. Mr. Listenbee also conducted a DMC keynote speech June 2014 in Wyoming without consulting me.

Based on the above actions of OJJDP Administrator Bob Listenbee, Chief of Staff Shanetta Cutlar, and Deputy Administrator for Programs Chyrl Jones, I am requesting to be consulted regarding any DMC activities which include but are not limited to: reviewing applicable solicitations and managing grant awards, conducting DMC trainings and/or speeches, reviewing publications, and developing new projects and initiatives. If I am not selected to carry out these tasks, I am requesting written notification as to why I was not selected and justification for other staff selected within OJJDP who do not have direct responsibility for the overall administration of Section 223(a)(22) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

Andrea R. Coleman

Date



U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

Washington, D.C. 20531

SEP 30 2014

Christopher Burnett
Governor's Criminal Justice Division
1100 San Jacinto Blvd.
P.O. Box 12428
Austin, TX 78701

Dear Mr. Burnett:

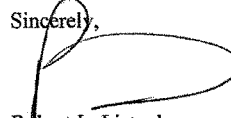
The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of Texas's annual Compliance Monitoring Report to determine the extent of compliance with Section 223(a)(11), (12), (13), and (22) of the Juvenile Justice and Delinquency Prevention Act (JJDP). This review resulted in the following findings:

- Texas is in compliance with Section 223(a)(11) of the JJDP (the "deinstitutionalization of status offenders" or "DSO" requirement).
- Texas is in full compliance with Section 223(a)(12) of the JJDP (the "separation" requirement), which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates.
- Texas is in compliance with Section 223(a)(13) of the JJDP (the "jail and lockup removal" requirement).
- Texas is not out of compliance with Section 223(a)(22) of the JJDP (the "disproportionate minority contact" or "DMC" requirement).

Each State receives 20 percent of its total fiscal year allocation for participating in the Title II Formula Grant Program of the JJDP (42 U.S.C. 5631-5633) and an additional 20 percent for each of the four core requirements with which they have demonstrated compliance. Therefore, based on the above findings, it is determined that Texas is eligible to receive 100 percent of the Fiscal Year 2015 allocation related to participation in the Title II Formula Grant Program and compliance with Sections 223(a)(11), (12), (13), and (22) of the JJDP. Attached is the status of compliance with each core requirement of the JJDP and any noted deficiencies with the annual Compliance Monitoring Report.

We are available to help Texas achieve and maintain compliance with all of the requirements of the Title II Formula Grant Program. If you have any questions, please contact Andrea R. Coleman in OJJDP's Audit and Compliance Division, at 202-514-1319.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Listenbee", with a large, sweeping loop at the end.

Robert L. Listenbee
Administrator

cc Lance White, Juvenile Justice Specialist
Glenn Brooks, State Advisory Group Chair

Enclosure

STATUS OF COMPLIANCE
Juvenile Justice and Delinquency Prevention Act

Section 223(a)(11)

A determination has been made that Texas has an institutionalization rate of 5.39 status offenders and nonoffenders held per 100,000 persons under age 17. Texas is in compliance with the requirements of Section 223(a)(11) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the January 9, 1981, Federal Register (46 FR 2567), which provides that a state has demonstrated full compliance with *de minimis* exceptions with a rate per 100,000 juveniles of 0.1 to 5.7. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(12)

OJJDP has determined that Texas is in full compliance with Section 223(a)(12) of the JJDP, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. This finding is based on the 2012 Monitoring Report data which indicated that during a 12-month period, no juveniles were detained or confined in any institution in which they had contact with adult inmates.

Section 223(a)(13)

Pursuant to the requirements of Section 223(a)(13), OJJDP has determined that Texas has an annual rate of 0.83 incidents of juveniles detained or confined in adult jails and lockups per 100,000 juvenile population and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. Such rate is not in excess of nine per 100,000 juvenile population. In addition, an acceptable plan has been developed by Texas to eliminate the noncompliant incidents. Texas is in compliance with the requirements of Section 223(a)(13) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the November 2, 1988, Federal Register (28 CFR 31), which provides that with a rate per 100,000 juveniles of 0.1 to 9.0, the state is eligible for the numerical *de minimis* exception if a state has developed an acceptable plan 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. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(22)

Pursuant to the requirements of Section 223(a)(22), OJJDP has determined Texas will not be found out of compliance with the Disproportionate Minority contact requirement of the JJDP. The summary of programmatic activities undertaken in your state to address racial and ethnic disparities in the state's juvenile justice system and the statewide Relative Rate Index (RRI) Spreadsheet data submitted indicates action in your state towards addressing minority

overrepresentation at the various system contact points. OJJDP recognizes the efforts taken by Texas to address this issue and the Office stands ready to continue to work collaboratively with your state to achieve and maintain full compliance with this JJDP core requirement.

Although Texas has identified strategies aimed at DMC reduction, OJJDP strongly encourages your state to prioritize and increase these efforts aimed at eliminating systemic racial and ethnic disparities. Historically, OJJDP has worked with states to implement the five phase OJJDP DMC Reduction Model with fidelity. To date, efforts have greatly focused on the initial identification and assessment phases of the DMC Reduction Model. As OJJDP continues to further DMC reduction efforts at the Federal, state, and local levels, the Office will place an increasing emphasis on assisting states to implement strategies aimed at moving through the full OJJDP DMC Reduction model, with specific emphasis being placed on the areas of assessment/diagnosis, intervention, evaluation, and monitoring.

Moving forward with this DMC reduction work, OJJDP will engage with states to increase efforts aimed at eliminating systemic racial and ethnic disparities in juvenile justice across the nation and more specifically, DMC reduction efforts in your state of Texas. To this end, the Office will continue to take steps to refine our approach to this work, and encourage each state to closely examine the activities and the impact of your DMC reduction efforts. DMC reduction strategies and objectives should have a demonstrable and measurable impact on reducing racial and ethnic disparities. Thus, OJJDP encourages Texas to submit a training and technical assistance request to assist the state with fully implementing the full OJJDP DMC Reduction Model with specific focus on assessment, intervention, evaluation, and monitoring.

THE EDUCATION LAW PRACTICUM

THE UNIVERSITY OF TENNESSEE
KNOXVILLE
COLLEGE OF LAW

November 6, 2013

Robert L. Listenbee
Office of Juvenile Justice and Delinquency Prevention
U.S. Department of Justice
810 7th Street, N.W.
Washington, DC 20531

Dear Administrator Listenbee:

Thank you for meeting with us and the Memphis group at the NJDC Summit on Saturday. We have been communicating with Sandra Simpkins about the state of juvenile justice in Tennessee and we have very much appreciated her efforts to understand and to improve the situation. Last spring, we recounted to Sandra our concerns about the continuing secure detention of status ("unruly" in Tennessee) offenders in our county (Knox, the third largest in the state). From anecdotal accounts from lawyers and others around the state, we believe that such incarcerations are also occurring in other counties around the state.

The majority of these lock-ups are post-adjudication, and not pursuant to Valid Court Orders (VCOs). In 2012 alone, there were 26,247 status/unruly offense petitions filed in Tennessee - 9,634 of which were for truancy. These statistics are taken from the website of the Tennessee Administrative Office of the Courts. In Tennessee, status/unruly offenders do not have a right to counsel.

For the last four years, our Education Law Practicum has represented select clients in truancy cases in Knox County. We took on these cases after our clients had pleaded guilty and had been in the juvenile truancy system for years. In reviewing their juvenile court files, we learned that several of them had been incarcerated in the local juvenile detention facility following their adjudications. Their incarceration was not pursuant to the VCO exception, which Tennessee has adopted in its Rules of Juvenile Procedure.

In investigating our clients' cases, we learned (from several juvenile court staff members) that unruly offenders were routinely being incarcerated in Knox County. We also received statistical compilations, going back to 2007, which reflected the number of such detentions. We took this documentation to the Tennessee Commission on Children and Youth (TCCY) and urged the agency to amend its annual reporting to OJJDP, which we obtained, to reflect the true numbers of unruly incarcerations in Knox County.

In conversations and written communications with the Director of TCCY and her staff, we concluded that TCCY did not fully comprehend their monitoring responsibilities under the JJDP. TCCY also was not adhering to its three-year plan to remediate DSO violations. TCCY did not provide satisfactory explanations of their practices, and we knew that lock-ups of unruly offenders continued in Knox County.

Letter to Robert L. Liston, Jr., Office of Juvenile Justice and Delinquency Prevention re TCCY Data
Page 2

In January, 2013, we learned that OJJDP had conducted training for TCCY. We also learned that Tennessee would be audited sometime in the near future. In the spring of 2013, we expressed our concerns about this issue to Sandra Simpkins and conveyed our desire to contribute to the audit. We sent Sandra the attached newspaper story about unruly offenders being locked up in Knox County, and she said that she would convey our concerns to you.

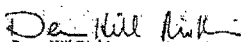
In July, 2013, I received a call from Gregory Thompson, who said that he was responding to our concerns on your behalf. I offered to send him the data that we had accumulated and to brief him on the problem. He said that two OJJDP staff members would be assigned to the audit and would conduct their own review. In September, 2013, we also spoke to Will Bronson, whom we understood was over the audit. He said he would communicate the substance of our phone conversation to his team, but he did not take us up on our offer to send him the data that we had provided to TCCY nor our offer to meet with the team while they were in Tennessee. He also said that we could file a FOIA request in several months (no earlier than November, 2013) to obtain the results of the audit. Recently, we learned that the data that we gave to TCCY - which we believe should be an integral part of the audit - was no longer in TCCY's possession. We assume that this data was not made a part of the audit.

We ask you to investigate the integrity of the data, supplied by TCCY to your auditors, and to ascertain why OJJDP was not interested in receiving the data and information that we possessed. At bottom, we want to see the incarceration of unruly offenders stopped for all the reasons that were so well-articulated at the NJDC Summit. We believe that Tennessee is ripe for: (1) intensive judicial and juvenile staff training on this issue; (2) corrective actions that should promptly be undertaken; (3) the appointment of an independent monitor to devise a system of data collection to assure transparency to interested parties; and (4) a system of meaningful monitoring and oversight.

We shall look forward to your response. Please let us know if we can provide you with further documentation of our communications with TCCY and your agency. Thank you very much.

Sincerely,

FOR THE PRACTICUM:


Dean Hill Rivkin
College of Law Distinguished Professor of Law
Supervising Attorney, THE UT EDUCATION LAW PRACTICUM


U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention
Office of the Administrator

Washington, D.C. 20531

SEP 30 2014

Ron Gordon
 Executive Director
 Utah Commission on Criminal & Juvenile Justice
 State Capitol Complex
 PO Box 142330
 Salt Lake City, Utah 84114-2330

Dear Mr. Gordon:

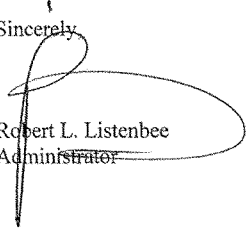
The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of Utah's annual Compliance Monitoring Report to determine the extent of compliance with Section 223(a)(11), (12), (13), and (22) of the Juvenile Justice and Delinquency Prevention Act (JJDP). This review resulted in the following findings:

- Utah is in compliance with Section 223(a)(11) of the JJDP (the "deinstitutionalization of status offenders" or "DSO" requirement).
- Utah is in full compliance with Section 223(a)(12) of the JJDP (the "separation" requirement) which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates.
- Utah is in compliance with Section 223(a)(13) of the JJDP (the "jail and lockup removal" requirement).
- Utah is not out of compliance with Section 223(a)(22) of the JJDP (the "disproportionate minority contact" or "DMC" requirement).

Each State receives 20 percent of its total fiscal year allocation for participating in the Title II Formula Grant Program of the JJDP (42 U.S.C. 5631-5633) and an additional 20 percent for each of the four core requirements with which they have demonstrated compliance. It is therefore determined that Utah is eligible to receive 100 percent of the Fiscal Year 2015 allocation related to participation in the Title II Formula Grant Program and compliance with Sections 223(a)(11), (12), (13), and (22) of the JJDP. Attached is the status of compliance with each core requirement of the JJDP and any noted deficiencies with the annual Compliance Monitoring Report.

We are available to help Utah achieve and maintain compliance with all of the requirements of the Title II Formula Grant Program. If you have any questions, please contact Julie Herr, OJJDP Audit and Compliance Division, at 202-353-9260.

Sincerely,



Robert L. Listenbee
Administrator

cc: Reg Garff, Juvenile Justice Specialist
Karen Crompton, State Advisory Group Chair
Cuong Nguyen, DMC Coordinator
Treva Bell, Compliance Monitor

Enclosure

STATUS OF COMPLIANCE
Juvenile Justice and Delinquency Prevention Act

Section 223(a)(11)

A determination has been made that Utah has an institutionalization rate of 1.38 status offenders and non-offenders held per 100,000 persons under age 18. Utah is in compliance with the requirements of Section 223(a)(11) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the January 9, 1981, Federal Register (46 FR 2567), which provides that a state has demonstrated full compliance with *de minimis* exceptions with a rate per 100,000 juveniles of 0.1 to 5.7. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(12)

OJJDP has determined that Utah is in full compliance with Section 223(a)(12) of the JJDP, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates, and that there is in effect in the State a policy requiring individuals who work with both such juveniles and such adult inmates, including in collocated facilities, to have been trained and certified to work with juveniles. This finding is based on the 2012 Monitoring Report data which indicated that during a 12-month period, no juveniles were detained or confined in any institution in which they had contact with adult inmates.

Section 223(a)(13)

The review determined that Utah is in compliance with Section 223(a)(12) of the JJDP, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates. This finding is based on the 2012 Monitoring Report data which indicated that during a 12-month period, no juveniles were incarcerated in circumstances that violated Section 223(a)(12).

Section 223(a)(22)

Pursuant to the requirements of Section 223(a)(22), OJJDP has determined Utah will not be found out of compliance with the Disproportionate Minority contact requirement of the JJDP. The summary of programmatic activities undertaken in your state to address racial and ethnic disparities in the state's juvenile justice system and the statewide Relative Rate Index (RRI) Spreadsheet data submitted indicates action in your state towards addressing minority overrepresentation at the various system contact points. OJJDP recognizes the efforts taken by Utah to address this issue and the Office stands ready to continue to work collaboratively with Utah to achieve and maintain full compliance with this JJDP core requirement.

Although Utah has identified strategies aimed at DMC reduction, OJJDP strongly encourages Utah to prioritize and increase these efforts aimed at eliminating systemic racial and ethnic disparities. Historically, OJJDP has worked with states to implement the five phase OJJDP DMC Reduction Model with fidelity. To date, efforts have greatly focused on the initial

identification and assessment phases of the DMC Reduction Model. As OJJDP continues to further DMC reduction efforts at the Federal, state, and local levels, the Office will place an increasing emphasis on assisting states to implement strategies aimed at moving through the full OJJDP DMC Reduction model, with specific emphasis being placed on the areas of assessment/diagnosis, intervention, evaluation, and monitoring.

Moving forward with this DMC reduction work, OJJDP will engage with states to increase efforts aimed at eliminating systemic racial and ethnic disparities in juvenile justice across the nation and more specifically, DMC reduction efforts in your state of Utah. To this end, the Office will continue to take steps to refine our approach to this work, and encourage each state to closely examine the activities and the impact of your DMC reduction efforts. DMC reduction strategies and objectives should have a demonstrable and measurable impact on reducing racial and ethnic disparities. Thus, OJJDP encourages Utah to submit a training and technical assistance request to assist the state with fully implementing the full OJJDP DMC Reduction Model with specific focus on assessment, intervention, evaluation, and monitoring.



U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

Washington, D.C. 20531

SEP 30 2014

Cindy Walcott
Deputy Commissioner
Agency of Human Services
103 S. Main Street, 3rd Floor Osgood
Waterbury, VT 05671

Dear Ms. Walcott:

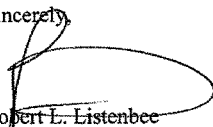
The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has completed its review and analysis of Vermont's annual Compliance Monitoring Report to determine the extent of compliance with Section 223(a)(11), (12), (13), and (22) of the Juvenile Justice and Delinquency Prevention Act (JJDP). This review resulted in the following findings:

- Vermont is in compliance with Section 223(a)(11) of the JJDP (the "deinstitutionalization of status offenders" or "DSO" requirement).
- Vermont is in full compliance with Section 223(a)(12) of the JJDP (the "separation" requirement), which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates.
- Vermont is in compliance with Section 223(a)(13) of the JJDP (the "jail and lockup removal" requirement).
- Vermont is not out of compliance with Section 223(a)(22) of the JJDP (the "disproportionate minority contact" or "DMC" requirement).

Each State receives 20 percent of its total fiscal year allocation for participating in the Title II Formula Grant Program of the JJDP (42 U.S.C. 5631-5633) and an additional 20 percent for each of the four core requirements with which they have demonstrated compliance. Therefore, based on the above findings, it is determined that Vermont is eligible to receive 100 percent of the Fiscal Year 2015 allocation related to participation in the Title II Formula Grant Program and compliance with Sections 223(a)(11), (12), (13), and (22) of the JJDP. Attached is the status of compliance with each core requirement of the JJDP and any noted deficiencies with the annual Compliance Monitoring Report.

We are available to help Vermont achieve and maintain compliance with all of the requirements of the Title II Formula Grant Program. If you have any questions, please contact Elissa Rumsey in OJJDP's Audit and Compliance Division, at 202-616-9279.

Sincerely,



Robert L. Listenbee
Administrator

cc: Kreig Pinkham, State Advisory Group Chairperson
Theresa Lay-Sleeper Juvenile Justice Specialist and DMC Contact
Tom Krug, Compliance Monitoring Coordinator

Enclosure

STATUS OF COMPLIANCE

Juvenile Justice and Delinquency Prevention Act

Section 223(a)(11)

A determination has been made that Vermont has an institutionalization rate of 3.10 status offenders and nonoffenders held per 100,000 persons under age 18. Vermont is in compliance with the requirements of Section 223(a)(11) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the January 9, 1981, Federal Register (46 FR 2567), which provides that a state has demonstrated full compliance with *de minimis* exceptions with a rate per 100,000 juveniles of 0.1 to 5.7. This finding is based on the 2012 Monitoring Report data.

Section 223(a)(12)

OJJDP has determined that Vermont is in full compliance with Section 223(a)(12) of the JJDP, which requires that juveniles not be detained or confined in any institution in which they have contact with adult inmates and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. This finding is based on the 2012 Monitoring Report data which indicated that during a 12-month period, no juveniles were detained or confined in any institution in which they had contact with adult inmates.

Section 223(a)(13)

Pursuant to the requirements of Section 223(a)(13), OJJDP has determined that Vermont has an annual rate of 1.55 incidents of juveniles detained or confined in adult jails and lockups per 100,000 juvenile population and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, have been trained and certified to work with juveniles. Such rate is not in excess of nine per 100,000 juvenile population. In addition, an acceptable plan has been developed by Vermont to eliminate the noncompliant incidents. Vermont is in compliance with the requirements of Section 223(a)(13) of the JJDP, pursuant to the policy and criteria for *de minimis* exceptions published in the November 2, 1988, Federal Register (28 CFR 31), which provides that with a rate per 100,000 juveniles of 0.1 to 9.0, the state is eligible for the numerical *de minimis* exception if a state has developed an acceptable plan 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. This finding is based on the 2012 Vermont Monitoring Report data.

Section 223(a)(22)

Pursuant to the requirements of Section 223(a)(22), OJJDP has determined Vermont will not be found out of compliance with the Disproportionate Minority contact requirement of the JJDP. The summary of programmatic activities undertaken in your state to address racial and ethnic

disparities in the state's juvenile justice system and the statewide Relative Rate Index (RRI) Spreadsheet data submitted indicates action in your state towards addressing minority overrepresentation at the various system contact points. OJJDP recognizes the efforts taken by Vermont to address this issue and the Office stands ready to continue to work collaboratively with Vermont to achieve and maintain full compliance with this JJDP core requirement.

Although Vermont has identified strategies aimed at DMC reduction, OJJDP strongly encourages Vermont to prioritize and increase these efforts aimed at eliminating systemic racial and ethnic disparities. Historically, OJJDP has worked with states to implement the five phase OJJDP DMC Reduction Model with fidelity. To date, efforts have greatly focused on the initial identification and assessment phases of the DMC Reduction Model. As OJJDP continues to further DMC reduction efforts at the Federal, state, and local levels, the Office will place an increasing emphasis on assisting states to implement strategies aimed at moving through the full OJJDP DMC Reduction model, with specific emphasis being placed on the areas of assessment/diagnosis, intervention, evaluation, and monitoring.

Moving forward with this DMC reduction work, OJJDP will engage with states to increase efforts aimed at eliminating systemic racial and ethnic disparities in juvenile justice across the nation and more specifically, DMC reduction efforts in your state of Vermont. To this end, the Office will continue to take steps to refine our approach to this work, and encourage each state to closely examine the activities and the impact of your DMC reduction efforts. DMC reduction strategies and objectives should have a demonstrable and measurable impact on reducing racial and ethnic disparities. Thus, OJJDP encourages Vermont to submit a training and technical assistance request to assist the state with fully implementing the full OJJDP DMC Reduction Model with specific focus on assessment, intervention, evaluation, and monitoring.



April 28, 2015

Abdul L. Mann, Jr. PhD
Mississippi
State Representative

Geoffrey A. Braden
Massachusetts
State Representative

Susan Kamp, MS
Vermont
State Representative

Caprice Hoover
Vermont
State Representative

John and Palmer
Kentucky
State Representative

Suzanne Sanders
Nebraska
State Representative

David Schmidt
New Mexico
State Representative

Beck Rosenburg
Utah
State Representative

The Honorable Michael Mayer
Minnesota
State Representative

Tom N. Fran
Missouri
State Representative

Deirdre Garton
Wisconsin
State Representative

Dr. David Kenner
New Hampshire
State Representative

Glenn Reinhold
New York
State Representative

Benjamin Oxton
Kentucky
State Representative

The Honorable Juan Perez
Kentucky
State Representative

John Dewey, PhD
South Carolina
State Representative

Lee Thomas
Colorado
State Representative

Martha Doris
Oregon
State Representative

Greg Williams, MBA
Colorado
State Representative

Shalene Hunter
California
State Representative

Al Carlisle
Maine
State Representative

April 28, 2015

The Honorable Charles Grassley
135 Hart Senate Office Building
Washington, DC 20510

The Honorable Sheldon Whitehouse
530 Hart Senate Office Building
Washington, DC, 20510

Re: Senate Judiciary Hearing on April 21, 2015

Dear Sen. Grassley and Sen. Whitehouse,

I write to thank you for your continued commitment to ensuring that the Juvenile Justice and Delinquency Prevention Act (JJDP) is reauthorized, and that our most vulnerable children continue to receive the vital protections this legislation affords them.

The Coalition for Juvenile Justice is a membership organization with a network of nearly 7,000 youth advocates across the country. At the heart of our membership are the State Advisory Groups (SAGs) that were created as part of the JJDP. These governor-appointed bodies oversee the administration of funds that their states receive in exchange for voluntary compliance with the JJDP's core protections.

Our members are committed to ensuring that young people are given the chance to have safe and successful futures. Many have worked to lead innovation in the field of juvenile justice, even in times of financial belt tightening. Judge George Timberlake, who chairs the Illinois SAG, for example, spearheaded a program to address truancy. Nationally, truancy accounted for 40 percent of the 116,200 status offenses cases that were petitioned to the courts in 2011. Judge Timberlake recognized that many of the children who came before him were missing school because of problems at home, bullying in the classroom, and undiagnosed learning disabilities. In response, he created a separate, non-judicial process to address the needs of youth who were not attending school and to help get them back in the classroom and out of the courtroom.

Illinois has also partnered with private foundations to help drive innovation in juvenile justice. Communities from Texas to Iowa and locations in between have leveraged funding from the Annie E. Casey and the MacArthur Foundations to help drive change in juvenile justice in recent years. Much of this funding, however, will soon be put towards other programmatic goals and will no longer be available for juvenile justice.

The time is now for the federal government to provide strong leadership to further juvenile justice reform. We saw during last Tuesday's hearing that there is a need for guidance and regulations to help states better implement the JJDP. This need has existed for quite some time, and was the impetus for the National Research Council's 2014 report *Implementing Juvenile Justice Reform: The Federal Role*.

At the center of this leadership must be new guidance and regulations to help states effectively comply with the JJDP's protections. Reauthorization of the JJDP is also long overdue and vitally needed.

Reauthorization, however, must be done in a way that does not hinder our children's safety. Already, federal funding for juvenile justice has declined precipitously from \$546.9 million in FY2002 to \$251.5 million in FY2015. Funding under Title II of the JJDP has dropped by 37 percent since the Act was last reauthorized. Title V funding, meanwhile, has declined by nearly 84 percent during that same time.

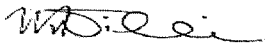
States use these dwindling dollars to provide children with programming and supports that serve as alternatives to court and incarceration. Many states have used these dollars to finance efforts to help address disproportionate minority contact (DMC) within the juvenile justice system, and to help end the tide of children who are sent to court for minor, school-based offenses.

A portion of these funds, however, must also be used to monitor compliance with the JJDP. Texas, for example, must monitor nearly 3,000 facilities across the state's 254 counties. This work comes at a cost of more than \$200,000. Illinois, meanwhile, monitors 16 juvenile detention facilities, 839 municipal lockups, 94 county jails, and 8 sheriff's departments. This work - including related salaries, travel, technical assistance, and training - costs nearly \$339,000 per year. That accounts for 24 percent of the state's \$1.39 million budget, though that same sum only consumed 13 percent of Illinois FY2010 federal allocation.

In light of decreasing federal allocations some states have been forced to reduce the funding they put towards compliance monitoring, though they have been hesitant to do so. Compliance monitoring is an important component of JJDP funding and enables states to ensure that their children are receiving the protections the Act was meant to provide. Without these funds, states lack resources to visit and monitor facilities to ensure that youth are not once again being housed alongside adult inmates. If these funds are further reduced, or eliminated, in an attempt to force compliance with the Act, the end result will be serious danger for our children. As witnesses testified Tuesday, this Act saves lives.

We are grateful for your continued leadership on JJDP reauthorization and urge you to ensure that the Act continues to provide the resources needed to keep our children and our communities are safe.

Sincerely,



Marie Williams

Attachments:

Tennessee Commission on Children and Youth
Open Letter From the Resource Partnership
The YMCA of Metropolitan Chicago
Connecticut Juvenile Justice Alliance
California Alliance
Family and Friends of Louisiana's Incarcerated Children
Resolutions



STATE OF TENNESSEE
TENNESSEE COMMISSION ON CHILDREN AND YOUTH

Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, Tennessee 37243-0800
(615) 741-2633 (FAX) 741-5956
1-800-264-0904

Senator Charles Grassley
135 Hart Senate Office Building
Washington, D.C. 20510

April 22, 2015

Senator Sheldon Whitehouse
135 Hart Senate Office Bldg., Rm. 530
Washington, D.C. 20510

RE: Improving Accountability and Oversight of Juvenile Justice Grants Hearing

Dear Senators Grassley and Whitehouse,

The Tennessee Commission on Children and Youth (TCCY) is grateful to you for your support of the Juvenile Justice and Delinquency Prevention Act (JJDP), and your commitment to reauthorizing and strengthening the JJDP to better protect youth in the juvenile justice system and youth at risk of coming into the juvenile justice system. Over the years, the JJDP has played an integral part in protecting youth in the juvenile justice system in Tennessee. TCCY believes a strengthened and adequately funded JJDP is necessary to support states' efforts to protect youth in the juvenile justice system and improve that system.

TCCY members serve as the State Advisory Group, and the agency is designated by the Governor to apply for and administer Title II Formula Grant funds. TCCY is committed to properly managing the Title II Formula Grant funds received from the Office of Juvenile Justice and Delinquency Prevention. Furthermore, TCCY is committed to accurately monitoring compliance with the JJDP in Tennessee.

Thank you for all you do to protect our nation's children.

Sincerely,

A handwritten signature in black ink that reads "Linda O'Neal".

Linda O'Neal

Executive Director

**OPEN LETTER FROM THE RESOURCE CENTER PARTNERSHIP
REGARDING**

**S. 2999 To reauthorize and improve the Juvenile Justice and Delinquency
Prevention Act of 1974**

The Resource Center Partnership's four national resource centers – the Mental Health and Juvenile Justice Collaborative for Change, the National Juvenile Defender Center, the Robert F. Kennedy National Resource Center for Juvenile Justice, and the Status Offense Reform Center – applaud the efforts of Senators Chuck Grassley and Sheldon Whitehouse to improve and strengthen the federal role in juvenile justice through the reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974.

The Bill S. 2999 embraces the latest science and evidence-based practices that have emerged from the field, consistent with the groundbreaking reports by the National Academies of Sciences' National Research Council's *Juvenile Justice: A Developmental Approach and Implementing Juvenile Justice Reform: The Federal Role*. The developmental approach to juvenile justice has been fundamental to the work of reform initiatives like the John D. and Catherine T. MacArthur Foundation's Models for Change. The Resource Centers submitting this open letter of support for this Bill have been involved with Models for Change and continue to carry those lessons and approaches forward. S. 2999 only enhances and strengthens our work and the great practices that have and are emerging in the field.

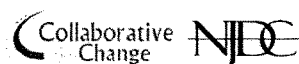
Specifically, we would like to highlight some of the proposed amendments in the Bill that we believe are significant advances in juvenile justice:

- Shifting the paradigm of the federal role and specifically that of the Office of Juvenile Justice and Delinquency Prevention from one of compliance monitoring to one of promoting and supporting evidence-based practice, thoughtful evaluation and continuous improvement, and innovation.
- Focusing explicitly on the essential role of families as partners in the positive development of youth and of community-based alternatives as more effective tools than adjudication and detention for most juveniles.
- Calling for meaningful coordination of efforts at the Federal and state levels, inviting a broader spectrum of interested voices, such as child welfare and schools.
- Recognizing and promoting better practice to support the large numbers of youth in contact with the juvenile justice system who have serious mental health, substance abuse, and trauma problems. The Bill incorporates several significant revisions including: the call for behavioral health screening, assessment and services; requirement for greater participation of mental health experts on the Coordinating Council on Juvenile Justice Delinquency Prevention and the State Advisory Groups; and recognition of the importance of early diversion of these youth to community-based services.

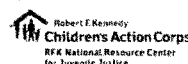
- Supporting the expansion and strengthening of access to legal counsel for juveniles and the enhancement of competent and zealous representation for every child.
- Prioritizing the expungement of juvenile records to afford youth the best opportunities as they transition to adulthood.
- Strengthening the separation of adult inmates and detained juveniles by requiring “interest of justice” hearings, setting a high bar for the detention of youth with adults.
- Eliminating the Valid Court Order (VCO) exception, which allows judges to detain non-delinquent status offenders in juvenile detention facilities. Both of these provisions appropriately set the tone for minimizing the inappropriate use of detention of youth.
- Redefining Disproportionate Minority Contact with the more accurate and more encompassing term, “reducing racial and ethnic disparity.” The Bill is commendable in requiring that states do more than collect data, but also act on it. It mandates analyzing data and implementing a work plan with measurable objectives for reducing racial and ethnic disparities.
- Calling for a National Recidivism Measure and the overall focus on comprehensive and transparent data collection that are instrumental to the federal government, the states, and counties holding themselves and each other accountable for making progress.

We would also offer some additional areas for consideration by the Senate Judiciary Committee to further strengthen and support the Federal role in juvenile justice:

- Given what appears to be the growing concentration of youth with mental health and substance abuse problems in the juvenile justice system, we would suggest the addition of language in Section 203 to require the reporting of the number of juveniles in need of mental health, substance abuse or co-occurring disorders services at the different points of contact within the juvenile justice system. This would result in a better understanding of the changing need confronting the juvenile justice system, as well as allow for the monitoring of the problem and progress of the system’s response.
- We applaud the bill’s insertion of requirements to collect data on isolation and restraint, and to require that state plans include efforts to eliminate unnecessary restraint and isolation. We are concerned, however, that the definition of isolation will render the data incomplete because it omits some types of isolation. The bill will fail to capture important sectors of isolation activity in locked facilities, by eliminating from the definition isolation under an hour, isolation for protective custody, and separation based on an approved treatment program.
- We suggest that the definition include all isolation more than 15 minutes, because it is not generally necessary to leave youth in their rooms for an hour without activity. Such use of isolation should be tracked because it represents unstructured “dead time” for youth. “Separation based on an approved treatment program” is too malleable of a term that can be used by officials to justify extended isolation. Additionally, most youth facilities are able to



STATUS REFORM
CHARTER CENTER

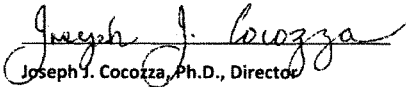


protect youth without resort to isolation in order to achieve those goals, and we believe that any use of isolation for protective custody should be tracked as well.

The requirement that youth held in isolation receive an examination from a physician or licensed psychologist is a critical component ensuring their health and safety are not jeopardized. However, waiting 24 hours before assessing the physical and mental health of youth held in isolation is too long. Medical and mental health staff should be a part of treating and assessing youth as soon as they enter isolation.

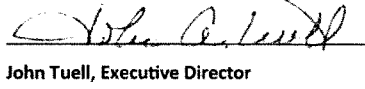
Overall, our four organizations are encouraged by the bold amendments to the JJDPA outlined by this Bill. As advocates, technical assistance providers, and researchers who have worked vigorously for years to shift the paradigm in juvenile justice to a developmental approach, we are pleased to find the thoughtful and deliberate inclusion of practices that are informed by the research and that are developmentally appropriate.

On April 21st, 2015, we respectfully submit this open letter to Senate Judiciary Committee:



Joseph J. Cocozza, Ph.D., Director

The National Center for Mental Health and
Juvenile Justice, sponsor of The Mental Health
and Juvenile Justice Collaborative for Change



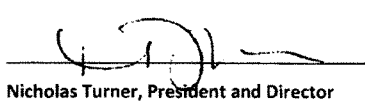
John Tuell, Executive Director

The Robert F. Kennedy National Resource
Center for Juvenile Justice at the Robert F.
Kennedy Children's Action Corps



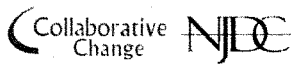
Patricia Puritz, Executive Director

The National Juvenile Defender Center

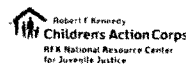


Nicholas Turner, President and Director

The Vera Institute of Justice, sponsor of the
Status Offense Reform Center



STATUS REFORM
OFFENSE CENTER



About the Resource Center Partnership

The Models for Change Resource Center Partnership works to advance juvenile justice systems reform across the country by supporting state and local leaders, practitioners, and policymakers. The Partnership provides technical assistance, training, and the proven tools, resources, and lessons developed through the work of its member organizations and dozens of others in 35 states and over 120 cities, counties, and parishes. Over a decade of work in the field built on yet another decade of cutting-edge research of adolescent development and brain science, the Models for Change: Systems Reform in Juvenile Justice initiative, supported by the John D. and Catherine T. MacArthur Foundation, has been a keystone effort in juvenile justice reform. Today, the Resource Center Partnership continues that legacy, anchored by four complementary, connected national Resource Centers that address four major issues in juvenile justice:

Mental health	The Mental Health and Juvenile Justice Collaborative for Change , led by the National Center for Mental Health and Juvenile Justice. For more information, visit: cfc.ncmhjj.com
Stronger legal defense for indigent youth	National Juvenile Defender Center . For more information, visit: njdc.info/resourcecenterpartnership.php
Appropriate interventions for youth charged with non-delinquent (or status) offenses	The Status Offense Reform Center , led by the Vera Institute of Justice. For more information, visit: www.statusoffensereform.org
Coordinated systems of care for young people involved in both the juvenile justice and child	The Robert F. Kennedy National Resource Center for Juvenile Justice , led by the RFK Children's Action Corps. For more information, visit: www.rfknrcjj.org

The Partnership also includes a strategic alliance of national experts and organizations representing state leaders, mayors, judges, law enforcement, prosecutors, corrections professionals, court personnel, and justice reform advocates. These partners further enrich the tools, best practices, and training offered by the Centers and provide direct connections to professionals working in juvenile justice.





FOR YOUTH DEVELOPMENT
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

Senator Chuck Grassley, Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Patrick Leahy, Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Chairman Grassley and Ranking Member Leahy,

The YMCA of Metropolitan Chicago's Youth Safety and Violence Prevention program (YSVP) is a comprehensive, trauma-informed approach to violence prevention that looks at past exposure to trauma as a main driver of future dangerous behaviors. By working directly with youth to resolve these issues, we are able to keep our communities safe and help reduce juvenile incarceration.

In 2014, with a grant from the Illinois Juvenile Justice Commission, the YMCA of Metropolitan Chicago worked with the Chicago Police Department to develop the Bridging the Divide Initiative, which offers a safe, effective model for improving youth-police relationships. This grant was made possible from funds provided under Title II of the Juvenile Justice and Delinquency Prevention Act (JJDPa).

By supporting the larger effort to revitalize community policing strategies in Chicago, Bridging the Divide has increased the police department's capacity to have authentic dialogues with even the most marginalized Chicago youth. In this capacity building work, the Y developed a dynamic curriculum for improving youth-police relationships that will be used in police districts across Chicago. We also supported the training of over 90 police officers in decreasing excessive minority contact and creative community dialogue methods.

Though we have worked with staff leaders from every district in Chicago, our efforts have focused primarily on the 4th, 8th and 10th Police Districts. At each step in this pilot we were also building out the 'Bridging the Divide' toolkit. Recording more than two dozen stories from Chicago youth and police officers, we created a story album that is designed to generate mutual understanding among these two targeted audiences. We also developed a deck of questions that any interested organization can use to facilitate safe, effective youth-police conversations once appropriately trained. Additionally, we made and disseminated a poster series that expands basic ideas about community safety.

Given that misunderstandings between police and young people are deep and sometimes lethal for both sides, we believe that bridging this divide is an essential step in creating safe neighborhoods. Because of the grant programs provided by the JJDPa, we are actively



FOR YOUTH DEVELOPMENT
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

working towards a world where youth and police officers see one another as allies in community peacemaking, and we are committed to working towards this vision.

Moving forward, the Bridging the Divide initiative has four primary goals: 1) foster positive youth leadership around the issue of community safety; 2) create more trauma-informed practitioners in the police force who can respond to illegal youth behaviors safely, responsibly, equitably, and compassionately; 3) educate family and community residents on adolescent brain development, the impacts of trauma, and trauma-informed policing strategies; and 4) use creative methods and positive messages to strengthen local community relationships.

Together these goals lay the groundwork for implementing restorative models of community accountability for youth crime and wrongdoing. As we expand the program this year and beyond, Bridging the Divide is being launched in multiple Chicago police districts, with participating sites being helped to support reliable Disproportionate Minority Contact (DMC) reduction models through programs like station adjustments, thereby building the neighborhood capacity needed to reduce system dependence on juvenile confinement.

The JJDPa empowers community based organizations like the YMCA of Metropolitan Chicago that service Latino and black youth who have been disproportionately incarcerated in juvenile courts to peacefully resolve conflicts and receive support. We thank the Committee for the opportunity to share how the JJDPa has helped in our efforts. Should you have any questions about the Bridging the Divide program or other programs by the Y's Youth Safety and Violence Prevention initiative, I can be reached at rhollon@ymcachicago.org.

Sincerely,

Ryan Lugalia-Hollon

Ryan Lugalia-Hollon
Co-Executive Director
Youth Safety & Violence Prevention
YMCA of Metropolitan Chicago



April 27, 2015

Senator Charles Grassley
135 Hart Senate Office Building
Washington, CT 20510

Senator Sheldon Whitehouse
135 Hart Senate Office Building
Washington, DC 20510

RE: Improving Accountability and Oversight of Juvenile Justice Grants Hearing

Dear Senators Grassley and Whitehouse,

Thank you for your interest and effort in ensuring the efficacy of the Federal oversight and funding of juvenile justice initiatives in the states. The Connecticut Juvenile Justice Alliance is a statewide, nonprofit public policy and advocacy organization working to reduce the criminalization of children. We are a coalition of stakeholders who experience the juvenile justice system in a variety of ways. We applaud your commitment to a reauthorized and strengthened Juvenile Justice Delinquency and Prevention Act.

Stronger guidelines and a reauthorized Act will provide tremendous leverage to state-based advocates like us who push our systems to be safer, fairer and more effective at reducing and addressing juvenile crime. Providing states with meaningful funding opportunities to implement transformative, evidence and trauma based services will ensure better outcomes for youth, public safety and the public coffers.

Through Federal funding, the Alliance partnered with Connecticut's State Advisory Group, the Juvenile Justice Advisory Committee, to facilitate community forums around a film they funded through CPTV called *Color of Justice*. This film looks at racial and ethnic disparities in Connecticut's juvenile justice system and the role implicit biases play creating institutional and individual disparities. Over the last 18 months, the Alliance has held more than 40 forums reaching over 2,500 individuals, including forums specifically for those working within the juvenile justice system. This has been an invaluable vehicle to advance open and honest conversations about race and ethnicity and what we can do at every level to ensure a more equitable system. Intensifying JJJPA mandates and funding to more meaningfully address Disproportionate Minority Contact could have a significant societal and system impact.

Connecticut Juvenile Justice Alliance 2470 Fairfield Ave. Bridgeport, CT 06605 203-579-2727
www.ctjja.org

Thank you again for your leadership on juvenile justice matters. Please do not hesitate to contact me for further information. I can be reached at 203-579-2727 or abby@ctjja.org.

Sincerely,

A handwritten signature in cursive script, appearing to read "Abby Anderson".

Abby Anderson
Executive Director



Youth &
Community
Justice

April 25, 2015

To the United States Senate Committee on the Judiciary: Support for JJDPA Reauthorization

The California Alliance for Youth and Community Justice (CAYCJ) supports the reauthorization and strengthening of the Juvenile Justice and Delinquency Prevention Act (JJDP Act).

CAYCJ is a statewide alliance of more than thirty-five policy, legal and community organizations in California with the mission to drastically reduce incarceration and improve outcomes for system-involved youth in California. Below is a list of our members and Advisory Board. Our website is: www.caycj.org

The JJDP Act plays an important role in protecting our children. Reauthorization can ensure that children are not housed with adults while awaiting trial. It will help strengthen community responses to combat disproportionate minority contact (DMC). And reauthorization will help reduce the use of unnecessary and harmful detention by phasing out the valid court order (VCO) exception, which was used to incarcerate youth in more 8,800 cases across the country in FY 2014. JJDP Act federal grant programs also play an important role in juvenile justice by supporting state efforts to achieve the important goals of the Act.

We applaud the bipartisan efforts to reauthorize the JJDP Act.

Sincerely,

David Muhammad (510.746.6111) and Pat Arthur (206.409.0027), CAYCJ Co-Coordination

CAYCJ Organization Members

Advancement Project
 All of Us or None
 Alliance for Boys and Men of Color
 Anti-Recidivism Coalition
 California Conference for Equality and Justice
 Center for Juvenile Law and Policy
 Center on Juvenile and Criminal Justice
 Center for Young Women's Development
 Children's Defense Fund -- California
 Children Now
 Communities United for Restorative Youth Justice
 Contra Costa County Public Defender
 East Bay Community Law Center
 Ella Baker Center
 Fathers & Families of San Joaquin
 Focus Forward
 Haywood Burns Institute
 Homeboy Industries
 Homies Unidos
 Human Rights Watch
 Immigrant Legal Resource Center
 InsideOUT Writers
 Justice for Families
 Lawyers' Committee for Civil Rights of the San Francisco Bay Area
 National Center for Lesbian Rights
 National Center for Youth Law
 National Council on Crime and Delinquency

New Roads for New Visions
 Oakland Private Industry Council, Inc.
 Office of Restorative Justice, Archdiocese of LA
 PICO California
 Policy Link
 Prison Law Office
 Public Counsel Law Center
 Santa Cruz Barrios Unidos
 The Mentoring Center
 Violence Prevention Coalition of Greater LA
 Youth Justice Coalition
 Youth Law Center

Individual Members

Raquel Mariscal
 Sheila Jordan
 Jorja Leap
 Miriam Krinsky
 Arnold Chandler
 Jonathan Laba
 Patricia Lee
 Carol Biondi
 Carol Chodroff
 Pat Arthur
 Maureen Pacheco
 Dr. Vajra Watson
 Jacqueline Caster
 Neelum Ayra
 Nancy Gannon Hornberger, CEO SAY San Diego

Advisory Board Members

George Galvis, Communities United for Restorative Youth Justice

Samuel Nunez, Fathers & Families of San Joaquin

Javier Stauring, Office of Restorative Justice, Archdiocese of LA

James Anderson, Anti-Recidivism Coalition

Jorja Leap, UCLA

Angela Irvine, Impact Justice

Arnold Chandler

Kim McGill, Youth Justice Coalition

Brian Goldstein, Center on Juvenile and Criminal Justice

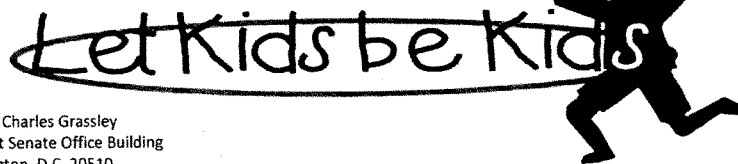
Zachery Norris, Ella Baker Center

James Bell, Burns Institute

Families and Friends of Louisiana's Incarcerated Children
1307 Oretha C. Haley Blvd. New Orleans, LA 70113
504.708.8376
855.50.FFLIC
www.ffclic.org



April 27, 2015



Senator Charles Grassley
135 Hart Senate Office Building
Washington, D.C. 20510

Senator Sheldon Whitehouse
135 Hart Senate Office Building, Room 530
Washington, D.C. 20510

Re: Improving Accountability and Oversight of Juvenile Justice Grants Hearing

Dear Senators Grassley and Whitehouse:

Families and Friends of Louisiana's Incarcerated Children (FFLIC) is thankful for your bi-partisan leadership for juvenile justice during Tuesday's hearing on oversight and accountability of juvenile justice grant programs, to ensure our children's safety. In Louisiana, FFLIC has been working for the last 10 years to ensure that evidence-based and trauma-informed practices are used to support youth and our struggle continues.

FFLIC believes that updated regulations and guidance is imperative and are hopeful that federal grant programs are not altered in such a way that makes compliance prohibitive. By doing so, accountability can be provided in a way that ensures our children receives the services they need.

On behalf of the children in Louisiana and across this nation, we appreciate your continued leadership.

Sincerely,

Gina B. Womack
Executive Director

JUVENILE JUSTICE

The Juvenile Justice and Delinquency Prevention Act (JJDP) was first authorized by Congress in 1974 with broad bi-partisan support. The law establishes four core protections¹ for youth and establishes the Office of Juvenile Justice and Delinquency Prevention (OJJDP). This office, among other things, administers grant funds to states that chose to participate in the Act and comply with its provisions.

The following includes resolutions, press releases, and formal positions related to the JJDP that have been adopted by various organizations.

Conference of Chief Justices

“WHEREAS, because children are not fully imbued with the developmental or legal capacity of adults, juvenile justice systems were created; and

WHEREAS, the Juvenile Justice Delinquency Prevention Act (JJDP) is the main law governing federal efforts to support effective juvenile justice and delinquency prevention activities; and

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators support the current four core mandates in the JJDP that require: (1) the deinstitutionalization of status offenders; (2) separation of juveniles from adult inmates in secure facilities; (3) removal of juveniles from adult jails or lockups; and (4) reduction of disproportionate minority contact with the juvenile justice system; and

WHEREAS, in recent years Congress has focused on more punitive efforts to deal with offending youth, such as harsher penalties and reduced protections; and

WHEREAS, advances in medical technology and the social sciences have provided a better understanding of adolescent development; and

WHEREAS, research² has shown that areas of the brain associated with decision-making develop at different rates, that adolescents are more susceptible to environmental influences, and that these

¹ These protections include: (1) deinstitutionalization of youth who are charged with behaviors that are illegal only because they are not yet adults; (2) ensuring that youth and adults are not placed in the same jails; (3) requiring that youth are separated by sight and sound from their adult counterparts; (4) requiring that states address disproportionate minority contact (DMC) within their juvenile justice systems.

² National Research Council. *Reforming Juvenile Justice: A Developmental Approach*. Washington, DC: The National Academies Press, 2013.

aspects of evolving maturity highlight the need to carefully consider the impact of juvenile justice interventions and programs; and

WHEREAS, the authorization for the JJDPa expired at the end of FY 2007 and, while Congress has continued to fund juvenile justice grant programs, the amounts appropriated to support these programs have been declining;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators support the reauthorization of this important Act which should include the following:

- Ensure Judicial Participation in Planning: It is critical that the judiciary be viewed at all levels as a full participant in the juvenile justice system and have a meaningful role in funding decisions and in developing and implementing state plans for improvements; and
- Maintain Flexibility in Administering the Juvenile Delinquency Programs: Administrators of juvenile justice programs, including those involved in the adjudication of juveniles, need flexibility to carry out their responsibilities and to tailor appropriate responses that will be effective for each youth in each set of circumstances. Federal lawmakers should respect the institutional knowledge that state and local practitioners have achieved in this area and recognize the variations in juvenile justice systems; and
- Eliminate the Valid Court Order (VCO) Exception for Detaining Status Offenders, and Provide for Resources to Assist State Courts to Develop and Implement Alternatives: The VCO exception should be phased out over a period of time and federal resources should be provided to courts to allow states and territories time to develop and implement alternatives for dealing with runaway youth and other status offenders for violations of court orders that prohibit the child from engaging in specified status offense behaviors; and
- Eliminate Solitary Confinement for Juveniles: Solitary confinement should be eliminated because social interaction and sensory stimulation are basic human needs and research has shown that isolation, particularly for juveniles, can result in trauma and, in some instances, suicide; and
- Strengthen the Disproportionate Minority Contact Core Mandate and Provide Resources to Assist State Courts to Clearly Define and Articulate Data that Should be Collected: To reduce racial and ethnic disparity, the key decision points in the juvenile justice system and the criteria by which decisions are made must be identified and data must be collected at every point of contact that juveniles have with the juvenile justice system to identify where disparities exist, the causes of those disparities, and corrective actions needed."

Resolution 10, adopted as part of the CCJ's 2014 Annual Meeting.

Fight Crime: Invest in Kids

"For nearly four decades, the Juvenile Justice and Delinquency Prevention Act (JJDPa) has reminded us that our treatment of juveniles has a lasting impact on public safety. From its very beginnings, JJDPa has supported-- and continues to support-- state and local efforts to prevent juvenile delinquency. Through the establishment of the Title V Local Delinquency Prevention Grants program in 1992, JJDPa became home to the first and only federal funding source dedicated solely to the prevention of youth crime and

violence— a distinction that it still holds today. For years, JJDPa has provided an avenue of support for evidence-based prevention and intervention programs like MST, FFT, and MTFC.

JJDPa matters to law enforcement for many reasons. For the thousands of law enforcement leaders who are members of Fight Crime: Invest in Kids, it matters because of its vast potential to support evidence-based programs that can keep at-risk youth away from crime and help make our neighborhoods safer.”

From A Look at the Importance of Evidence-Based Prevention, Nov. 12, 2013.

International Association of Chiefs of Police

“The IACP supports the passage of legislation that builds upon, funds, and implements recommendations provided by the association’s national summit report: Law Enforcement’s Leadership Role in Juvenile Justice Reform. The IACP urges Congress to enact legislation and increase federal funding to enable states and localities to:

- Promote public safety by holding young people accountable in developmentally appropriate ways that prioritize effective interventions, promote rehabilitation, and minimize justice system involvement;
- Support early identification and effective, multidisciplinary interventions by law enforcement with children and youth;
- Utilize the confinement of youth only when necessary for public safety;
- Incorporate a developmental approach to juvenile justice specifically to enhance law enforcement responses to, and interaction with, youth;
- Build collaboration and trust among law enforcement, youth, families, and communities;
- Implement effective youth and gang violence prevention and intervention policies and practices, including based early intervention with children and youth; and
- Promote collaboration among law enforcement, schools, families, and justice system and community partners to develop appropriate responses to school discipline, truancy, and other status offenses that support school completion and address the needs of young people and families within their communities.

The IACP supports the reauthorization and full funding of the Juvenile Justice and Delinquency Prevention Act (JJDPa) and updates to the Act consistent with these values.

The IACP strongly urges Congress to support the continuation and enhancement of training and technical assistance to strengthen law enforcement’s capacity to effectively respond to children and youth, in collaboration with justice system and community partners.

In addition, the IACP urges Congress to fully fund programs that promote safe and healthy communities, to include but not limited to: afterschool programs; mentoring programs; quality educational, child care, and parenting programs; quality healthcare, mental health, and substance abuse programs; as well as programs designed to prevent and combat child abuse, exploitation, and neglect and address children exposed to violence.”

Legislative Agenda for the 114th Congress International Association of Chiefs of Police.

National Association of Counties

“NACo urges federal, state and local government adoption of a presumption against the use of unnecessary restraints of juveniles in court and to only allow restraints after an in-person opportunity to be heard and a finding that restraints are the least restrictive means necessary to prevent flight or harm to the juvenile or others.”

“NACo urges Congress to support the reauthorization of the Juvenile Justice and Delinquency Prevention Act.”

Adopted Interim Policy Resolutions, February 23, 2015

National Council of Juvenile and Family Court Judges

“The Board of Trustees of the National Council of Juvenile and Family Court Judges voted at their March 14, 2010 meeting to support the Reauthorization of the Juvenile Justice and Delinquency Prevention Act, including the repeal of the valid court order exception, as the legislation currently exists. It was noted during the meeting that this version of the legislation is not the same as that which was voted on by NCJFCJ Members during their meeting in July 2009. According to NCJFCJ President Judge Douglas Johnson, “The Board’s decision to support the elimination of the VCO exception, as well as the ratification of the CRC, came after careful consideration, debate, and reflection. The NCJFCJ continues our commitment to improve the lives of children and parents in our juvenile and family courts.”

Resolution Supporting Reauthorization of JJDP Act and Elimination of the VCO Exception, 2010.

