

DEPARTMENT OF JUSTICE**Office of Justice Programs****Office of Juvenile Justice and
Delinquency Prevention****28 CFR Part 31**

[OJP No. 1045]

RIN 1121-AA28

Formula Grants

AGENCY: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Final regulation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing the final revision of the existing Formula Grants Regulation, which implements part B of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1992.

The 1992 Amendments reauthorize and modify the Federal assistance program to State and local governments, and private not-for-profit agencies for juvenile justice and delinquency prevention improvements. The final revision to the existing Regulation provides clarification and guidance to States in the formulation, submission and implementation of State Formula Grant plans and determinations of State compliance with plan requirements. It provides additional flexibility and guidance to participating States while strengthening several key provisions related to the mandates of the JJDP Act.

EFFECTIVE DATE: This regulation is effective March 10, 1995.

FOR FURTHER INFORMATION CONTACT: Roberta Dorn, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 543, Washington, DC 20531; (202) 307-5924.

SUPPLEMENTARY INFORMATION:**Statutory Amendments**

The 1992 reauthorization of the JJDP Act resulted in statutory amendments that impact the Formula Grants Program (28 CFR part 31). These statutory changes include: a formula grant fund allocation minimum base for participating States and territories; elimination of the "substantial compliance criteria" with respect to the Deinstitutionalization of Status Offenders (DSO) and Jail and Lockup

Removal requirements because full compliance is required; a requirement that there be separate juvenile and adult staff with respect to management, security and direct care in juvenile detention facilities that are collocated with an adult jail or lockup; and a provision that a status offender alleged or found in a judicial hearing to have violated a valid court order (VCO) may be held in a secure juvenile detention or correctional facility only if enhanced due process and procedural protections have been provided.

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322, September 13, 1994) amended the DSO provision of the JJDP Act to exclude juveniles charged with or adjudicated for possessing a handgun from coverage under the DSO requirement.

The final regulation details revised procedures and requirements for States participating in the Formula Grants Program resulting from the 1992 Amendments to the JJDP Act (Pub. L. 102-586, November 18, 1992).

Description of Major Changes*Formula Grant Allocations*

Section 222(a) of the JJDP Act, provides for a "floating minimum" for the allocation of formula grants to States and Territories that is tied to the total appropriation level for Title II in a given fiscal year (FY). For FY's 1994 and 1995, the total appropriation for Title II exceeded \$75 million and Congress appropriated sufficient funds to maintain each State at least at its FY 1992 funding level and raise the minimum allocation for each State and Territory to \$600,000 and \$100,000 respectively.

Application Deadline

The submission requirement for formula grant applications is changed to require that FY 1995 applications and all subsequent applications be submitted to OJJDP no later than March 31 of the fiscal year for which the funds were allocated.

State Agency Structure—Staffing

The regulation is revised to require the assignment of one full-time Juvenile Justice Specialist to manage the Formula Grants Program.

Collocated Juvenile and Adult Facilities

The regulation clarifies the existing four criteria for a juvenile detention facility that is collocated with an adult jail or lockup by providing for: (1) Total separation in spatial areas of juvenile and adult facilities can be achieved by providing for no common use areas,

including time-phasing; (2) total separation in juvenile and adult program activities requires the formulation of an independent and comprehensive operational plan for the juvenile facility which provides a full range of separate program activities for juveniles; (3) separate juvenile and adult staff includes all management, security and direct care personnel; and (4) in States that have standards or licensing requirements for secure juvenile detention facilities, a collocated facility must meet the standards on the same basis as separate facilities and be licensed as appropriate.

OJJDP intends these clarifications to enhance and strengthen the four separate facility requirements for States completing final steps to achieve and maintain full compliance with the jail and lockup removal requirement. State certification and oversight responsibilities are strengthened by requiring annual on-site review. The 1992 Amendments require States to review and ensure compliance with the separate staff criterion in all collocated facilities, including those classified as such by the State and concurred with by OJJDP prior to the effective date of this regulation.

OJJDP believes the ideal or most optimal setting for a juvenile detention facility is one in which the facility is not collocated with an adult jail or lockup. Further, OJJDP believes that jurisdictions and States should not rely upon collocated facilities as a primary or long-term strategy for achieving and maintaining compliance with the jail and lockup removal mandate. However, OJJDP believes that where there is a demonstrated need for an existing or planned collocated facility, jurisdictions should have the flexibility to use such a facility, but only where the enhanced requirements, critical to ensuring an appropriate environment for detained youth, are met. Collocated juvenile detention facilities approved by the State and concurred with by OJJDP prior to March 31, 1995 are to be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence, except that all collocated facilities are subject to the separate staff requirement established by the 1992 Amendments.

OJJDP's concurrence on all collocated facilities submitted for OJJDP review after March 31, 1995 is limited to one year and, thereafter, would be reviewed on an annual basis. An on-site review of the facility must be conducted by the compliance monitoring staff for the State agency administering the JJDP Act Formula Grants Program. OJJDP's concurrence may also require on-site

review by OJJDP staff. Additionally, in order to receive OJJDP's initial and subsequent concurrence, a juvenile detention facility approved after March 31, 1995 must, pursuant to a written policy and procedure, only provide secure custody for: juvenile criminal-type offenders; status offenders accused of violating a VCO; and adjudicated delinquents and VCO order violators who are awaiting disposition hearings or transfer to a long-term juvenile correctional facility.

Criteria for Compliance with DSO, Adult Jail and Lockup Removal, Separation, and Minority Over-representation

The regulation deletes the "substantial compliance" criteria from Section 31.303(c)(3) and (e)(4). Pursuant to the 1992 Amendments, participating States are required to be in full compliance with the DSO and Jail and Lockup Removal mandates and demonstrate compliance with the Separation and Enhanced Disproportionate Minority Confinement (DMC) in order to be eligible for FY 1994 and subsequent year Formula Grant funds. Therefore, the regulatory provision recognizing "progress" toward compliance with the Separation mandate is being deleted. Also, enhanced criteria and specific time lines are established for the DMC Mandate.

Deinstitutionalization of Status Offenders

The regulation brings the DSO requirement in line with the Section 223(a)(14) Jail and Lockup Removal requirement by eliminating the monitoring report exclusion for status offenders and nonoffenders securely detained or confined in an adult jail or lockup for less than twenty four hours exclusive of weekends and holidays. This reflects OJJDP's determination that there are no longer any circumstances in which the secure custody of noncriminal juveniles in adult jails and lockups can be justified or sanctioned. To the extent that inadvertent or isolated violations occur, or where violations result from emergency situations, the de minimis criteria for full compliance should continue to provide sufficient latitude to permit States to maintain full compliance with the DSO requirement. Monitoring information to reflect this change must be included in the State Monitoring Report due by December 31, 1995, and subsequent monitoring reports.

Discussion of Comments

The proposed revisions to the existing Formula Grants Regulation were published in the **Federal Register** on

July 25, 1994 (59 FR 37866), for public comment. Written comments were received on ten issues addressed by the proposed regulation. All comments have been considered by OJJDP in the issuance of this final regulation.

The following is a summary of the comments and the responses by OJJDP:

1. Comment: One respondent felt that States should be allowed to submit their Annual Performance Reports ninety days after the end of their reporting period, but no later than June 30th.

Response: States are allowed under the final formula grants regulation to submit their Annual Performance Report, ninety days after the end of their reporting period, but no later than June 30th. The regulation merely formalizes the existing policy of States submitting their required Performance Reports by June 30th of each year.

2. Comment: Another respondent was of the opinion that a person who routinely provides legal representation to youth in juvenile court should be added to the State Advisory Group membership requirement.

Response: Section 223(a)(3) already requires representation of "law enforcement and juvenile justice agencies" including "counsel for children and youth" on the State Advisory Group.

3. Comment: With respect to DMC, States need more time to achieve compliance because the issue is too complex. States were given more time to achieve compliance with DSO, Separation, and Jail Removal. Several respondents indicated that more research is needed before effective interventions can be designed and implemented. Respondents expressed concern that the problem of DMC goes beyond the juvenile justice system and other systems need to be addressed. One respondent suggested that States should be required to review and address the effects of legislation on minority over-representation. A recommendation was also made that States' multi-year formula grant plans and annual plan updates should identify and explain any anticipated action steps from a previous formula grant plan that have not been carried out.

Response: States had five years to reach full compliance on DSO, and eight to reach full compliance on Jail and Lockup Removal. Congress initially addressed DMC in 1988. Congressional action on the 1992 Reauthorization of the JJD Act makes it clear that States are expected to move forward on DMC. The OJJDP regulation reflects the additional priority Congress has attached to DMC.

The experience of OJJDP and most States supports the public comment about the complexity of DMC. OJJDP recognizes that successful approaches to DMC include lessons learned from DSO, Separation, and Jail Removal. For instance, addressing the relationship between attitudes and behavior, and ensuring local ownership of program initiatives, contributed significantly to progress on the earlier mandates. Ultimate success on DMC will, however, require a concerted and comprehensive approach that goes beyond the earlier mandates. Accordingly, the implementation phase activities set forth in the regulation acknowledge the need to look beyond a narrow focus on police, probation, courts, and corrections. Meaningful prevention (including health, mental health, education and vocational) and intervention resources must be available on an equitable basis, and States need to assess the impact of executive, legislative, and judicial policies on DMC.

The final regulation establishes an expectation that States will examine legislative initiatives which may inadvertently contribute to DMC. Also, the final regulation includes a modification that has States explain in their formula grant plans, any previously slated DMC activities that were not carried out.

4. Comment: One respondent stated that there is no difference between a court intake agency preparing the advisory report required prior to a dispositional commitment to a secure facility for violation of a VCO, and an intake unit operated by a human service agency completing the report. Another respondent questioned whether an advisory report would be allowable if it was prepared by a multidisciplinary review team comprised entirely of court and law enforcement agency workers. Other respondents expressed concern that the report could not be completed between apprehension and an initial hearing; that the report would allow a third party to influence the court's decision making process; and, that the new advisory report requirement makes the VCO violation process too restrictive. One commentator was uncertain about the difference between a VCO violation and contempt of court. A question was raised about whether an advisory report would be required for an adjudicated delinquent who absconds from a court-ordered secure treatment facility. One person recommended that the regulation contain an explicit requirement for legal representation of youth during the VCO violation process.

Response: The statute requires that the advisory report be prepared by an appropriate public agency (other than a court or law enforcement agency). A review team composed only of court and law enforcement officials is probably not amenable to the term "multidisciplinary." Nonetheless, if the team were operating under the auspices of, and answerable to, an agency other than a court or law enforcement agency, preparation of the report by this review team would be permissible.

The advisory report does not have to be completed between apprehension and the initial court hearing. The advisory report is only required prior to commitment to a secure facility as a disposition, viz., post adjudication. While the report is not binding on the court, it is intended as an additional, objective source of information upon which the court can base its case planning and decision making. As such, Congress intended the report to "influence" judicial actions with respect to status offenders adjudicated for violating a VCO.

OJJDP disagrees with the comment that the VCO process is so restrictive that it is impossible to securely detain accused or adjudicated VCO violators. Those portions of the existing regulation that specifically address the detention of VCO violators have not been changed. The changes being made implement amendments to the JJDP Act that require due process protections from the very beginning of the VCO process, and an advisory report prior to a dispositional commitment to a secure facility. The 1992 Amendments to the JJDP Act reflect Congressional concern about the possible overuse of the VCO exception in order to incarcerate status offenders and circumvent the deinstitutionalization of status offenders provision of the JJDP Act.

Regarding status offenders charged with contempt of court for behavior that would result in the same charge for an adult, OJJDP agrees that this is not a status offense. If, however, the court is using a contempt process in place of the VCO violation process, OJJDP and the State would look to see that all of the VCO requirements had been met before allowing the VCO exception.

Where allowable under State law, adjudicated delinquents that abscond from secure treatment facilities could be held in a juvenile detention center without new charges, and without violating the JJDP Act. In response to the comment about legal counsel, it is noted that the current formula grants regulation requires legal counsel for youth in VCO cases.

5. Comment: Status offenders in jails and lockups already violate jail and lockup removal, and therefore, this should not be counted as a violation of DSO. The respondent also assumed that this did not effect VCO detentions.

Response: Under current regulations, a status offender or nonoffender securely detained in a jail or lockup for less than twenty four hours would violate the jail and lockup removal provision of the JJDP Act, but not the DSO provision. This conflict in the regulations (issued at different points in time) is not acceptable. It is the position of Congress and OJJDP, that there is no excusable reason for securely detaining juveniles in a jail or lockup, who are not being charged with a criminal offense.

Status offenders accused of, or adjudicated for violating a VCO, remain status offenders under OJJDP regulations, and therefore can not be securely detained in jails and lockups.

6. Comment: A respondent expressed concern over the sound separation standard. Specifically, the "no conversation possible" standard was criticized as being too vague. Respondent suggested that sound separation be expanded to mean "any communication from incarcerated adults." Further, it was recommended that the regulation should explicitly indicate that haphazard and accidental contact are no longer permissible.

Response: The final regulation will indicate that sound contact means any oral communication between incarcerated adults and juveniles. In response to the 1992 Amendments of the JJDP Act, "haphazard and accidental" contact were deleted from the proposed formula grants regulation. OJJDP believes this deletion to be sufficient.

7. Comment: Two respondents questioned the total amount of time allowed for the new distance/lack of ground transportation portion of the rural area (non-MSA) exception to jail and lockup removal. Specifically, one respondent recommended that "distance" be defined as three hours by automobile, and that the total period of incarceration be limited to seventy two hours. This recommendation allows for the original twenty four hours grace period plus the new forty eight hours period provided by Congress, but would not then recognize weekends and holidays as currently allowed for in the statute. The other respondent asserted that the total period of incarceration under the distance/lack of ground transportation provision should not exceed forty eight hours. A recommendation was also made that the regulation require youth specific

admissions screening in connection with use of the non-MSA exception, and that continuous visual supervision be provided by a trained person.

Response: OJJDP stands by its interpretation of the statute to mean forty eight hours *in addition* to the first twenty four hours "grace period." Because the statute excludes weekends and holidays, the total time may exceed seventy two hours. States are reminded, however, that each use of the expanded rural area exception must be carefully documented. OJJDP concurs with the comment on youth-specific admissions screening, but this will be added to the final regulation as a recommended practice, not a requirement. The existing regulation addresses continuous visual supervision as a recommended practice.

8. Comment: Respondents questioned the proposal to increase the number of waivers from three to four, for failure to achieve full compliance with jail and lockup removal. Opposition was also expressed toward revising the existing criteria used by OJJDP to assess waiver requests. Specifically, respondents disagreed with the proposal to modify the waiver criterion related to the removal of status and nonoffenders from adult jails and lockups.

Response: There is only one State that is possibly in need of another (fourth) waiver in order to access FY 1993 formula grant funds. Starting with FY 1994 formula grant funds, there is no longer a waiver provision for failure to achieve full compliance with jail and lockup removal.

A preliminary review of the subject State's situation suggests that, if a fourth waiver is needed, the waiver criteria could be complied with. If a fourth waiver is needed and justified for this State, it will be granted in the discretion of the Administrator. The waiver provision of the criteria in the existing regulation are being deleted, as they are no longer applicable.

9. Comment: The 1992 Amendments to the JJDP Act restructure State's eligibility for formula grant funds, such that each of the four major mandates is associated with twenty five percent of the grant. As amended, the Act also requires States receiving reduced allocations for noncompliance to expend all remaining funds to achieve compliance, absent a waiver of this requirement from the Administrator. One respondent questioned the ability of States to adequately address the mandates if all funds must be expended on one noncompliant mandate. Another respondent asked OJJDP to clearly delineate the criteria to be used in assessing States' requests for a waiver from the requirement to expend all

funds to achieve compliance with the noncompliant mandate(s), viz., how will OJJDP determine if a State has achieved substantial compliance.

Response: The concern about States' ability to maintain compliance with all of the major mandates when funds must be focused on one noncompliant mandate, is contemplated by the statutory scheme established by Section 223(c)(3)(B)(ii) of the JJDP Act. A waiver of the dedicated funding provision can be granted if the State has achieved substantial compliance with the mandate(s) for which funding was reduced. In addition, the State must have an unequivocal commitment to achieving full compliance with the noncompliant mandate. The final regulation sets forth specific criteria for determining whether a State has achieved substantial compliance want OJJDP to continue the practice.

10. Comments: The proposed regulation reflected the statutory amendment requiring totally separate staff for juvenile detention facilities collocated with adult jails and lockups. In addition, OJJDP proposed eventually ending the practice of concurring with State classifications and approval of juvenile detention facilities located in the same building as adult jails and lockups. Several national organizations responded in support of the proposed regulation's position on collocated facilities. The basis for this support is that the existing criteria for collocated facilities, even when fully implemented, do not ensure adequate protection and services for juveniles. In the opinion of these organizations, the existing criteria do not result in jail and lockup removal.

A number of States on the other hand, argued that the existing criteria are adequate, the burgeoning juvenile detention populations necessitate that as many options as possible be available, and that it is essential for States and local units of government to retain their discretion in juvenile detention planning and operations.

Response: The final regulation attempts to balance the interests presented on the collocated facility issue during the public comment period. Specifically, OJJDP will work with the States to implement a three-prong approach to collocated facilities that is consistent with Section 223(a), Paragraphs (13) and (14) of the JJDP Act. The first prong involves a formal assessment of detention needs in a particular jurisdiction or region prior to moving ahead with the approval process for a collocated facility.

OJJDP's technical assistance provider will work with jurisdictions interested in a collocated facility to collect and

analyze the necessary information for sound juvenile detention services planning. The second prong involves strengthened regulatory criteria for States and OJJDP to use in the approval and concurrence processes, respectively. Specifically, OJJDP will return to its original (1984) standard of not permitting time-phased use of spatial areas in collocated juvenile and adult facilities and will fully implement the 1992 Amendment to the JJDP Act requiring totally separate staff for juvenile detainees. The third prong consists of a requirement that approved collocated facilities receive an annual on-site visit by the State Formula Grant Agency. The purpose of the visit is to reassess the facility's compliance with the collocated criteria, and to revisit the need to collocate facilities in the jurisdiction or region.

Issues Not Addressed by Public Comments

1. Deadline for Monitoring Reports—The current regulation says December 31st of each year. Timely submission of State monitoring reports will be tied to State eligibility for reverted funds, as is the case with formula grant plans and performance reports.

2. The JJDP Act says the State advisory group "shall" consist of * * * and the proposed regulation says "should consider." The final regulation will reflect this correction.

3. Youth Handgun Safety Act—The Violent Crime Control and Law Enforcement Act of 1994 amended the DSO provision of the JJDP Act to exclude juveniles charged with handgun possession. This occurred after publication of the proposed regulation. The final regulation will reflect this change in the definition of status offender.

Executive Order 12866

This final regulation is not a "significant regulatory action" for purposes of Executive Order 12866 because it does not result in: (1) an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) does not raise novel legal or policy issues arising out of legal

mandates, the President's priorities or the principles of Executive Order 12866.

Regulatory Flexibility Act

This final regulation, does not have a "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96-354).

Paperwork Reduction Act

No collection of information requirements are contained in or effected by this regulation (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR Part 31, States must submit formula grant applications to the State "Single Point of Contact," if one exists. The State may take up to sixty days from the application date to comment on the application.

List of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the OJJDP Formula Grants Regulation, 28 CFR Part 31, is amended as follows:

PART 31—[AMENDED]

1. The authority citation for Part 31 is revised to read as follows:

Authority: 42 U.S.C. 5601 *et seq.*

2. Section 31.3 is revised to read as follows:

§ 31.3 Formula Grant Plans and Applications.

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

3. Section 31.101 is revised to read as follows:

§ 31.101 Designation of State agency.

The Chief Executive of each State which chooses to apply for a formula grant shall establish or designate a State agency as the sole agency for supervising the preparation and

administration of the plan. The plan must demonstrate compliance with administrative and supervisory board membership requirements established by the OJJDP Administrator pursuant to Section 299(c) of the JJDP Act. States must have available for review a copy of the State law or executive order establishing the State agency and its authority

4. Section 31.102 is amended by adding two sentences at the end of paragraph (c) to read as follows:

§ 31.102 State agency structure.

* * * * *

(c) * * * At a minimum, one full-time Juvenile Justice Specialist must be assigned to the Formula Grants Program by the State agency. Where the State does not currently provide or maintain a full-time Juvenile Justice Specialist, the plan must clearly establish and document that the program and administrative support staff resources currently assigned to the program will temporarily meet the adequate staff requirement, and provide an assurance that at least one full-time Juvenile Justice Specialist will be assigned to the Formula Grants Program by the end of FY 1995 (September 30, 1995).

5. Section 31.203 is revised to read as follows:

§ 31.203 Open meetings and public access to records.

The State must assure that the State agency, its supervisory board established pursuant to Section 299(c) and the State advisory group established pursuant to Section 223(a)(3) will follow applicable State open meeting and public access laws and regulations in the conduct of meetings and maintenance of records relating to their functions.

6. Section 31.301 is amended by revising paragraphs (a), (c), (d), and (e) to read as follows:

§ 31.301 Funding.

(a) *Allocation to States.* Funds shall be allocated annually among the States on the basis of relative population of persons under age eighteen. If the amount allocated for Title II (other than Parts D and E) of the JJDP Act is less than \$75 million, the amount allocated to each State will not be less than \$325,000, nor more than \$400,000, provided that no State receives less than its allocation for FY 1992. The territories will receive not less than \$75,000 or more than \$100,000. If the amount appropriated for Title II (other than Parts D and E) is \$75 million or more, the amount allocated for each State will be not less than \$400,000, nor

more than \$600,000, provided that Parts D and E have been funded in the full amounts authorized. For the Territories, the amount is fixed at \$100,000. For each of FY's 1994 and 1995, the minimum allocation is established at \$600,000 for States and \$100,000 for Territories.

* * * * *

(c) *Match.* Formula Grants under the JJDP Act shall be 100% of approved costs, with the exception of planning and administration funds, which require a 100 percent cash match (dollar for dollar), and construction projects funded under Section 299C(a)(2) of the JJDP Act which also require a 100 percent cash match.

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

(e) *Nonparticipating States.* Pursuant to Section 223(d), the OJJDP Administrator shall endeavor to make the fund allotment under Section 222(a), of a State which chooses not to participate or loses its eligibility to participate in the formula grant program, directly available to local public and private nonprofit agencies within the nonparticipating State. The funds may be used only for the purpose(s) of achieving deinstitutionalization of status offenders and nonoffenders, separation of juveniles from incarcerated adults, removal of juveniles from adult jails and lockups, and/or reducing the disproportionate confinement of minority youth in secure facilities. Absent a request for extension which demonstrates compelling circumstances justifying the reallocation of formula grant funds back to the State to which the funds were initially allocated, or the proceedings under Section 223(d), formula grant funds allocated to a State which has failed to submit an application, plan, or monitoring data establishing its eligibility for the funds will, beginning with FY 1994, be reallocated to the nonparticipating State program on September 30 of the fiscal year for which the funds were appropriated. Reallocated funds will be awarded to eligible recipients pursuant to program announcements published in the **Federal Register**.

7. Section 31.302 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 31.302 Applicant State agency.

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

(b) * * *

(2) Shall consider in meeting the statutory membership requirements and responsibilities of Section 223(a)(3) (A)-(E), appointing at least one member who represents each of the following: a locally elected official representing general purpose local government; a law enforcement officer; a juvenile or family court judge; a probation officer; a juvenile corrections official; a prosecutor; a person who routinely provides legal representation to youth in juvenile court; a representative from an organization, such as a parents group, concerned with teenage drug and alcohol abuse; a high school principal; a recreation director; a volunteer who works with delinquent or at risk youth; a person with a special focus on the family; a youth worker experienced with programs that offer alternatives to incarceration; persons with special competence in addressing programs of school violence and vandalism and alternatives to expulsion and suspension; and persons with knowledge concerning learning disabilities, child abuse, neglect and youth violence.

* * * * *

8. Section 31.303 is amended by revising paragraphs (a) and (b) to read as follows:

§ 31.303 Substantive requirements.

(a) *Assurances.* The State must certify through the provision of assurances that it has complied and will comply (as appropriate) with Sections 223(a) (1), (2), (3), (4), (5), (6), (7), (8)(c), (9), (10), (11), (16), (17), (18), (19), (20), (21), (22), and (25), and Sections 229 and 261(d), in formulating and implementing the State plan. The Formula Grant Application kit provides a form and guidance for the provision of assurances. OJJDP interprets the Section 223(a)(16) assurance as satisfied by an affirmation that State law and/or policy clearly require equitable treatment on the required bases; or by providing in the State plan that the State agency will require an assurance of equitable treatment by all Formula Grant subgrant

and contract recipients, and establish as a program goal, in conjunction with the State Advisory Group, the adoption and implementation of a statewide juvenile justice policy that all youth in the juvenile justice system will be treated equitably without regard to gender, race, family income, and mentally, emotionally, or physically handicapping conditions. OJJDP interprets the Section 223(a)(25) assurance as satisfied by a provision in the State plan for the State agency and the State Advisory Group to promulgate policies and budget priorities that require the funding of programs that are part of a comprehensive and coordinated community system of services as set forth in Section 103(19) of the JJDP Act. This requirement is applicable when a State's formula grant for any fiscal year exceeds 105 percent of the State's formula grant for FY 1992.

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

§ 31.303 [Amended]

9. Section 31.303 is amended by revising paragraph (c)(3) to read as follows:

* * * * *

(c) * * *

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

* * * * *

10. Section 31.303 is amended by revising paragraph (c)(4) to read as follows:

* * * * *

(c) * * *

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

adequate plans and resources are available to maintain full compliance.

* * * * *

11. Section 31.303 is amended by revising paragraphs (d)(1) (i) and (ii) to read as follows:

* * * * *

(d) * * *

(1) * * *

(i) *Separation.* Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term "contact" is defined to include any sight and sound contact between juveniles in a secure custody status and incarcerated adults, including inmate trustees. Sound contact is further defined to mean no oral communication between incarcerated adults and juveniles. Separation must be accomplished in all secure areas of the facility which include, but are not limited to: sallyports within the secure perimeter of the facility, other entry areas, all passageways (hallways), admissions, sleeping, toilet and shower, dining, recreational, educational, vocational, health care, and other areas as appropriate.

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

* * * * *

12. Paragraph (d)(2) of § 31.303 is revised to read as follows:

* * * * *

(d) * * *

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

* * * * *

13. Paragraph (e)(3) in § 31.303 is revised to read as follows:

* * * * *

(e) * * *

(3) *Collocated facilities.* (i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups. Juvenile facilities collocated with adult facilities are not considered adult jails or lockups when the criteria set forth in paragraph (e)(3)(i)(D) of this section are complied with.

(A) A collocated facility is a juvenile facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on

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

(B) The State, with OJJDP concurrence must determine whether a collocated facility qualifies as a separate juvenile detention facility under the four criteria set forth in Paragraph (e)(3)(i)(D) of this section for the purpose of monitoring compliance with Section 223(a), Paragraphs 12(A), (13) and (14) of the JJDP Act.

(C) A needs based analysis must precede a jurisdiction's request for State approval, and OJJDP concurrence that a collocated facility qualifies as a juvenile detention facility. Specifically, consideration should be given to such factors as excessive travel time to an existing juvenile detention center; crowding in an existing facility (despite the use of objective detention criteria); and in areas where there are no juvenile detention facilities, a measurable increase in the need for juvenile detention beds. This list is not considered exhaustive. OJJDP's technical assistance provider to the States should be involved in the needs based analysis (without cost to the State or local jurisdiction). The needs based analysis must take into consideration and be coordinated with the State's plans and efforts toward a continuum of detention services for juvenile offenders.

(D) Each of the following four criteria must be met in order to ensure the requisite separateness of the two facilities:

(1) Total separation between juvenile and adult facility spatial areas such that there could be no sight or sound contact between juveniles and incarcerated adults in the facility. Total separation of spatial areas can be achieved architecturally, and must provide for no common use areas (time-phasing is not permissible).

(2) Total separation in all juvenile and adult program areas, including recreation, education, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention center which provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. However, equipment and other resources may be used by both populations subject to security concerns

and the criterion in paragraph (e)(3)(i)(A) of this section.

(3) Separate staff for the juvenile and adult populations, including management, security staff, and direct care staff. Specialized services staff who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations, subject to State standards or licensing requirements. The day to day management, security and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population.

(4) In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no State standards or licensing requirements, then the jurisdiction must cooperate in a preapproval review of its physical plant, staffing patterns, and programs by an organization selected and compensated by OJJDP. This review will be based on prevailing national juvenile detention standards, and will inform the State's approval process and concurrence by OJJDP.

(ii) The State must initially determine that the four criteria are fully met. Upon such determination, the State must submit to OJJDP a request for concurrence with the State finding that a separate juvenile detention facility exists. To enable OJJDP to assess the separateness of the two facilities, sufficient documentation must accompany the request to demonstrate that each criterion has been met. It is incumbent upon the State to make the initial determination through an on-site facility (or full plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile facility is maintained by continuing to fully meet the four criteria set forth in paragraph (e)(3)(i)(D) of this section.

(iii) Collocated juvenile detention facilities approved by the State and concurred with by OJJDP on or before March 31, 1995 are to be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence, except that all collocated facilities are subject to the separate staff requirement established by the 1992 Amendments to the JJD Act, and set forth in paragraph (e)(3)(i)(C) of this section. Unless otherwise indicated, review of previously approved collocated facilities is expected to occur as part of

the State's regularly scheduled monitoring activities.

(iv) OJJDP's concurrence on facilities considered after March 31, 1995 is limited to one year and thereafter, on an annual basis. An on-site review of the facility must be conducted by the compliance monitoring staff person(s) in the State agency administering the JJD Act Formula Grants Program. OJJDP's concurrence is required annually, and may involve on-site review by OJJDP staff. The purpose of the annual review is to determine if compliance with the criteria set forth in paragraphs (e)(3)(i)(A) through (D) of this section is being maintained, and to assess the continuing need for the collocated facility and the jurisdiction's long term plan to move to a free-standing facility (single jurisdiction or regional) or other detention alternatives unless the juvenile detention center is part of a justice center, in which case the annual review will look solely at the four regulatory criteria. An example of a justice center is a building or a set of buildings in which various agencies are housed, such as law enforcement, courts, State's attorneys, public defenders, and probation, in addition to an adult jail or lockup, and a juvenile detention facility.

(v) In order to receive OJJDP's initial and any subsequent concurrences, a juvenile detention facility approved after March 31, 1995 must, pursuant to a written policy and procedure, only provide secure custody for juvenile criminal-type offenders; status offenders accused of violating a VCO; and adjudicated delinquents and VCO violators who are awaiting disposition hearings or transfer to a long term juvenile correctional facility.

14. Paragraph (e)(4) in § 31.303 is removed and paragraph (e)(5) is redesignated as paragraph (e)(4) and revised to read as follows:

* * * * *

(e) * * *

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

* * * * *

15. Paragraph (f)(3)(i) in § 31.303 is amended by adding a sentence to the end of the paragraph to read as follows:

* * * * *

(f) * * *

(3) * * *

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

* * * * *

16. Paragraph (f)(3)(iv) in § 31.303 is amended by revising the last sentence to read as follows:

* * * * *

(f) * * *

(3) * * *

(iv) * * * A juvenile alleged or found in a violation hearing to have violated a Valid Court Order may be held only in a secure juvenile detention or correctional facility, and not in an adult jail or lockup.

* * * * *

17. Paragraph (f)(3)(vi) in § 31.303 is amended by adding three sentences to the end of the paragraph to read as follows:

* * * * *

(f) * * *

(3) * * *

(vi) * * * This determination must be preceded by a written report to the judge that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency). A multidisciplinary review team that operates independently of courts or law enforcement agencies would satisfy this requirement even if some individual members of the team represent court or law enforcement agencies.

* * * * *

18. Paragraph (f)(4)(v) in § 31.303 is amended by revising the last sentence to read as follows:

* * * * *

(f) * * *

(4) * * *

(v) * * * OJJDP strongly recommends that jails and lockups that incarcerate juveniles be required to provide youth specific admissions screening and continuous visual supervision of juveniles incarcerated pursuant to this exception.

* * * * *

19. Paragraph (f)(4)(vi) in § 31.303 is revised to read as follows:

* * * * *

(f) * * *

(4) * * *

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

* * * * *

20. Paragraph (f)(5) in § 31.303 is revised to read as follows:

* * * * *

(f) * * *

(5) *Reporting requirement.* The State shall report annually to the Administrator of OJJDP on the results of monitoring for Section 223(a) (12), (13), and (14) of the JJDP Act. The reporting period should provide 12 months of data, but shall not be less than six months. The report shall be submitted to the Administrator of OJJDP by December 31 of each year.

(i) To demonstrate compliance with Section 223(a)(12)(A) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) dates covered by the current reporting period;

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

(C) the total number of accused status offenders and nonoffenders, including out-of-state runaways and Federal wards, held in any secure detention or correctional facility for longer than twenty four hours (not including weekends or holidays), excluding those held pursuant to the VCO provision as set forth in paragraph (f)(3) of this section or pursuant to Section 922(x) of Title 18 United States Code Section or a similar State law;

(D) the total number of accused status offenders and nonoffenders, including out-of-state runaways and Federal wards, (excluding juveniles held for VCO violations and Title 18 U.S.C. Section 922(x) violators) held in any secure detention or correctional facility for less than twenty four hours for purposes other than identification, investigation, release to parent(s), or transfer to a nonsecure facility;

(E) the total number of accused status offenders (including VCO violators but excluding 922(x) violators) and nonoffenders securely detained in any adult jail, lockup, or nonapproved collocated facility for less than twenty four hours;

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

(G) the total number of status offenders held in any secure detention or correctional facility pursuant to the VCO provision set forth in paragraph (f)(3) of this section or Title 18 U.S.C. Section 922(x) violators; and

(H) the total number of juvenile offenders held pursuant to Title 18 U.S.C. Section 922(x).

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

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

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

(A) Dates covered by the current reporting period;

(B) The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders

during the past twelve months and the number inspected on-site;

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

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

(E) The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have been concurred with by OJJDP, including a list of such facilities;

(F) The total number of juveniles detained in collocated facilities concurred with by OJJDP that were not separated from the security or direct care staff of the adult portion of the facility;

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

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

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

(A) Dates covered by the current reporting period;

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

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

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

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

(F) The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and collocated facilities not concurred with by OJJDP, in excess of six hours (including those held pursuant to the "removal exception" as set forth in paragraph (f)(4) of this Section);

(G) The total number of accused juvenile criminal-type offenders held securely in adult jails and lockups (including collocated facilities not concurred with by OJJDP) for less than six hours for purposes other than

identification, investigation, processing, release to parent(s), or transfer to a juvenile facility;

(H) The total number of adjudicated juvenile criminal-type offenders held securely in adult jails or lockups (including collocated facilities not concurred with by OJJDP) for any length of time;

(I) The total number of accused and adjudicated status offenders (including VCO violators) and nonoffenders held securely in adult jails, lockups and collocated facilities not approved by the State and concurred with by OJJDP, for any length of time;

(J) The total number of adult jails, lockups, and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, including a list of such facilities and the county or jurisdiction in which each is located;

(K) The total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than twenty four hours in adult jails or lockups (including collocated facilities not approved by the State and concurred with by OJJDP) pursuant to the "removal exception" as set forth in paragraph (f)(4) of this section;

(L) The total number of juveniles accused of a criminal-type offense who were held in excess of twenty four hours but no more than an additional forty eight hours in adult jails or lockups (including collocated facilities not approved by the State and concurred with by OJJDP) pursuant to the "removal exception" as noted in paragraph (f)(4) of this section, due to conditions of distance or lack of ground transportation; and

(M) The total number of juveniles accused of a criminal-type offense who were held in excess of twenty four hours, but no more than an additional twenty four hours after the time such conditions allow for reasonably safe travel, in adult jails, lockups and collocated facilities not concurred with by OJJDP, in areas meeting the "removal exception" as noted in paragraph (f)(4) of this section, due to adverse weather conditions.

* * * * *
21. Paragraph (f)(6) introductory text in § 31.303 is revised to read as follows:
* * * * *

(f) * * *
(6) *Compliance.* The State must demonstrate the extent to which the requirements of Sections 223(a)(12)(A), (13), (14), and (23) of the Act are met. If the State fails to demonstrate full compliance with Sections 223(a)(12)(A)

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

* * * * *
22. Paragraph (f)(6)(i) in Section 31.303 is revised to read as follows:
* * * * *

(f) * * *
(6) * * *
(i) Substantial compliance with Section 223(a)(12)(A) can be used to demonstrate eligibility for FY 1993 and prior year formula grant allocations if, within three years of initial plan submission, the State has achieved a seventy five percent reduction in the aggregate number of status offenders and nonoffenders held in secure detention or correctional facilities, or removal of 100 percent of such juveniles from secure correctional facilities only. In addition, the State must make an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance by FY 1994. Full compliance is achieved when a State has removed 100 percent of such juveniles from secure detention

and correctional facilities or can demonstrate full compliance with de minimis exceptions pursuant to the policy criteria published in the **Federal Register** of January 9, 1981. (Available from the Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.)

* * * * *
23. Paragraph (f)(6)(iii)(A) in § 31.303 is removed and paragraphs (f)(6)(iii) (B), (C), (D), and (E) are redesignated as paragraphs (f)(6)(iii) (A), (B), (C), and (D), respectively.

24. Paragraph (f)(7) in Section 31.303 is revised to read as follows:
* * * * *

(f) * * *
(7) *Monitoring report exemptions.* States which have been determined by the OJJDP Administrator to have achieved full compliance with Sections 223 (a)(12)(A), (a)(14), and compliance with Section 223(a)(13) of the JJDP Act and wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

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

(ii) State legislation has been enacted which conforms to the requirements of Sections 223(a) (12)(A), (13), and (14) of the JJDP Act; and

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

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

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

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

* * * * *

25. Paragraph (g) introductory text in Section 31.303 is revised to read as follows:
* * * * *

(g) *Juvenile crime analysis.* Pursuant to Section 223(a)(8), the State must conduct an analysis of juvenile crime problems, including juvenile gangs that commit crimes, and juvenile justice and delinquency prevention needs within the State, including those geographical areas in which an Indian tribe performs law enforcement functions. The analysis and needs assessment must include educational needs, gender specific services, delinquency prevention and

treatment services in rural areas, and mental health services available to juveniles in the juvenile justice system. The analysis should discuss barriers to accessing services and provide a plan to provide such services where needed.

* * * * *

26. Paragraph (h) in § 31.303 is amended by adding a sentence at the end of the paragraph to read as follows:

* * * * *

(h) * * * The annual performance report must be submitted to OJJDP no later than June 30 and address all formula grant activities carried out during the previous complete calendar year, federal fiscal year, or State fiscal year for which information is available, regardless of which year's formula grant funds were used to support the activities being reported on, e.g., during a reporting period, activities may have been funded from two or more formula grant awards.

* * * * *

27. Paragraph (j) in § 31.303 is revised to read as follows:

* * * * *

(j) *Minority detention and confinement.* Pursuant to Section 223(a)(23) of the JJDP Act, States must demonstrate specific efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population, viz., in most States, youth between ages ten-seventeen are subject to secure custody. It is essential that States approach this statutory mandate in a comprehensive manner. Compliance with this provision is achieved when a State meets the requirements set forth in paragraphs (j) (1) through (3) of this section:

(1) *Identification.* Provide quantifiable documentation (State, county and local level) in the State's FY 1994 Formula Grant Plan (and all subsequent Multi-Year Plans) Juvenile Crime Analysis and Needs assessment to determine whether minority juveniles are

disproportionately detained or confined in secure detention and correctional facilities, jails and lockups in relation to their proportion of the State juvenile population. Guidelines are provided in the OJJDP Disproportionate Minority Confinement Technical Assistance Manual (see Phase I Matrix). (Available from the Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.) Where quantifiable documentation is not available to determine if disproportionate minority confinement

exists in secure detention and correctional facilities, jails and lockups, the State must provide a time-limited plan of action, not to exceed six months, for developing and implementing a system for the ongoing collection, analysis and dissemination of information regarding minorities for those facilities where documentation does not exist.

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

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

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

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

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

(iv) *Policies and procedures.* Providing financial and/or technical assistance that addresses necessary

changes in statewide and local, executive, judicial, and legal representation policies and procedures; and

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

(4) The time-limited plans of action set forth in paragraphs (j)(1), (2) and (3) of this section must include a clear indication of current and future barriers; which agencies, organizations, or individual(s) will be responsible for taking what specific actions; when; and what the anticipated outcomes are. The interim and final outcomes from implementation of the time-limited plan of action must be reported in each State's Multi-Year Plans and Annual Plan Updates. Final outcomes for individual project awards are to be included with each State's annual performance report (see paragraph (h) of this section).

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

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

* * * * *

28. Section 31.403 is revised to read as follows:

§ 31.403 Civil Rights Requirements.

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

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

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

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

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

(e) The Age Discrimination Act of 1975;

(f) The Department of Justice NonDiscrimination regulations, 28 CFR Part 42, Subparts C, D, E, and G;

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

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

Office of Juvenile Justice and Delinquency Prevention.

Shay Bilchik,

Administrator.

[FR Doc. 95-5919 Filed 3-9-95; 8:45 am]

BILLING CODE 4410-18-P