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may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Attorney General informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Attorney General has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

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

(a) The Attorney General is responsible for:

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

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

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

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

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

28 CFR Ch. I (7-1-23 Edition)

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

(a) As used in this section:

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

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

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

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

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

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

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

PART 31—OJJDP GRANT PROGRAMS

Subpart A—Formula Grants

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AUTHORITY: 42 U.S.C 5611(b); 42 U.S.C. 5631–5633.

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

Subpart A—Formula Grants

SOURCE: 86 FR 31160, June 11, 2021, unless otherwise noted.

GENERAL PROVISIONS

§ 31.1 General.

(a) This implements subpart I of part B of the Juvenile Justice and Delinquency Prevention Act of 1974, which authorizes a formula grant program.

(b) In addition to this subpart, other rules or regulations may be applicable to the formula grant program described in paragraph (a) of this section; see, e.g., 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted by the Department of Justice through 2 CFR part 2800 or other applicable regulation; and 28 CFR part 42 (Nondiscrimination in Federally Assisted Programs—Implementation of title VI of the Civil Rights Act of 1964).

(c) Unless expressly provided otherwise, any reference in this subpart to any provision of Federal law not in this subpart shall be understood to constitute a general reference and thus to include any subsequent amendments to the provision.

§ 31.2 Statutory authority.

The Statute establishing the Office of Juvenile Justice and Delinquency Prevention and giving authority to make grants for juvenile justice and delinquency prevention improvement pro-

grams is the *Juvenile Justice and Delinquency Prevention Act of 1974*, as amended (34 U.S.C. 11101 *et seq.*)

§ 31.3 [Reserved]

ELIGIBLE APPLICANTS

§§ 31.100–31.103 [Reserved]

GENERAL REQUIREMENTS

§§ 31.200–31.202 [Reserved]

§ 31.203 Open meetings and public access to records.

The State advisory group established pursuant to section 223(a)(3) will follow applicable State open meeting and public access laws and regulations in the conduct of meetings and the maintenance of records relating to their functions.

JUVENILE JUSTICE ACT REQUIREMENTS

§ 31.300 [Reserved]

§ 31.301 Funding.

(a) [Reserved]

(b) *Funds for local use.* At least two-thirds of the formula grant allocation to the state (other than the section 222(d) State Advisory Group set aside) must be used for programs by local government, local private agencies, and eligible Indian tribes, unless the State applies for and is granted a waiver by the OJJDP. The proportion of pass-through funds to be made available to eligible Indian tribes shall be based upon that proportion of the state youth population under 18 years of age who reside in geographical areas where the tribes perform law enforcement functions.

(1) [Reserved]

(2) [Reserved]

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

(4) Pass-through funds available to tribal entities under section 223(a)(5)(C) shall be made available within states

to Indian tribes, combinations of Indian tribes, or to an organization or organizations designated by such tribe(s). Where the relative number of persons under age 18 within a geographic area where an Indian tribe performs law enforcement functions is too small to warrant an individual subgrant or subgrants, the state may, after consultation with the eligible tribe(s), make pass-through funds available to a combination of eligible tribes within the state, or to an organization or organizations designated by and representing a group of qualifying tribes, or target the funds on the larger tribal jurisdictions within the state.

(5) [Reserved]

(c) [Reserved]

(d) [Reserved]

(e) *Nonparticipating States*. 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 be reallocated to the nonparticipating State program on September 30 of the fiscal year for which the funds were appropriated. Reallocated funds will be competitively awarded to eligible recipients pursuant to program announcements.

§ 31.302 Applicant State agency.

(a) [Reserved]

(b) *Advisory group*. Pursuant to section 223(a)(3) of the JJDP Act, the State shall provide a list of all current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in this section of the Act.

(c) [Reserved]

§ 31.303 Substantive requirements.

(a) [Reserved]

(b) [Reserved]

(c) *Deinstitutionalization of status offenders and non-offenders (DSO)*. Pursuant to section 223(a) (11) of the JJDP Act, the State shall:

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

order exception to this Act requirement.

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

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

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(11) may, in lieu of addressing paragraphs (c)(1) and (2) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(5) [Reserved]

(d) *Separation*. (1) Pursuant to section 223(a)(12) of the JJDP Act the State shall:

(i) Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. Separation must be accomplished architecturally or through policies and procedures in all secure areas of the facility which include, but are not limited to, such areas as admissions, sleeping, and shower and toilet areas. Brief and inadvertent sight or sound contact between juveniles alleged to be or found to be delinquent or those within the purview of 34 U.S.C. 11133(a)(11)(A) and adult inmates in secure areas of a facility that are not dedicated to use by juveniles and which are nonresidential, which may include dining, recreational, educational, vocational, health care, Sally ports or other entry areas, and passageways (hallways), would not require a facility or the State to document or report such contact as a violation. However, any contact in a dedicated juvenile area, including any residential area of a secure facility, between juveniles in a secure custody status and adult inmates would be a reportable violation.

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

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

(iv) Those States which, based upon the most recently submitted monitoring report, have been found to be in compliance with section 223(a)(12) may, in lieu of addressing paragraphs (d)(1)(i), (ii), and (iii) of this section, provide an assurance that adequate plans and resources are available to maintain compliance.

(v) Assure that adjudicated delinquents are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of separating juveniles from adult criminals in jails or correctional facilities. A State is not prohibited from placing or transferring an alleged or adjudicated delinquent who reaches the State's age of full criminal responsibility to an adult facility when required or authorized by State law. However, the administrative transfer, without statutory direction or authorization, of a juvenile offender to an adult correctional authority, or a transfer within a mixed juvenile and adult facility for placement with adult criminals, either before or after a juvenile reaches the age of full criminal responsibility, is prohibited. A State is also precluded from transferring adult offenders to a juvenile correctional authority for placement in a juvenile facility. This neither prohibits nor restricts the waiver or transfer of a juvenile to criminal court for prosecution, in accordance with State law, for a criminal felony violation, nor the detention or confinement of a waived or transferred criminal felony violator in an adult facility.

(2) [Reserved]

(e) *Removal of juveniles from adult jails and lockups.* Pursuant to section 223(a)(13) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable for assuring that requirements of this section will be met.

(2) Describe the barriers that a State faces in removing all juveniles from

adult jails and lockups, except as provided in section 223(a)(13).

(3)(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 detention of juveniles in adult jails and lockups, except as otherwise provided under the Act and implementing OJJDP regulations. Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with criteria established in paragraphs (e)(3)(i)(C)(1), (2), and (4) of this section.

(A) A collocated facility is a juvenile facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered "related" when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer).

(B) The State must determine whether a collocated facility qualifies as a separate juvenile detention facility under the criteria set forth in paragraphs (e)(3)(i)(C)(1), (2), and (4) of this section for the purpose of monitoring compliance with section 223(a)(12)(A), (13) and (14) of the JJDP Act.

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

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

(2) Separate juvenile and adult programs, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility which provides for a full range of separate program services. No program activities may be shared by juveniles and adult inmates. Time-phasing of common use nonresidential areas is permissible to

conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and

(3) [Reserved]

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

(ii) The State must determine that all of the criteria are fully met. It is incumbent upon the State to make the determination through an on-site facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the criteria set forth in paragraphs (e)(3)(i)(C)(1), (2), and (4) of this section.

(iii) [Reserved]

(iv) An annual on-site review of the facility must be conducted by the compliance monitoring staff person(s) representing or employed by the State agency administering the JJDP Act Formula Grants Program. The purpose of the annual review is to determine if compliance with the criteria set forth in paragraphs (e)(3)(i)(C)(1), (2), and (4) of this section is being maintained.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with section 223(a)(13) may, in lieu of addressing paragraphs (e)(1) and (2) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(f) *Monitoring of jails, detention facilities and correctional facilities.* (1) *Elements of a compliance monitoring system.* Pursuant to section 223(a)(14) of the JJDP Act, and except as provided by

paragraph (f)(7) of this section, the State shall:

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

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

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

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

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

(2) A review of the record keeping system to determine whether sufficient data are maintained to determine compliance with section 223(a)(11), (12) and/or (13).

(D) *Data collection and data verification:* This is the actual collection and reporting of data to determine whether the facility is in compliance with the applicable requirement(s) of section 223(a)(11), (12) and/or (13). The length of the reporting period should be 12 months of data. If the data is self-reported by the facility or is collected and reported by an agency other than the State agency designated pursuant to section 223(a)(1) of the JJDP Act, the plan must describe a statistically valid procedure used to verify the reported data.

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(ii) Provide a description of the barriers which the State faces in implementing and maintaining a monitoring system to report the level of compliance with section 223(a)(11), (12), and (13) and how it plans to overcome such barriers.

(iii) Describe procedures established for receiving, investigating, and reporting complaints of violation of section 223(a)(11), (12), and (13). This should include both legislative and administrative procedures and sanctions.

(2) *Monitoring for compliance with DSO.* For the purpose of monitoring for compliance with section 223(a)(11)(A) of the Act, a secure detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders, or used for the lawful custody of accused or convicted adult criminal offenders. Accused status offenders or nonoffenders in lawful custody can be held in a secure juvenile detention facility for up to twenty-four hours, exclusive of weekends and holidays, prior to an initial court appearance and for an additional twenty-four hours, exclusive of weekends and holidays, following an initial court appearance.

(3) *Valid court order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions (in addition to the requirements set out in section 223(a)(23) of the Act) must be satisfied prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

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

(iii) [Reserved]

(iv) [Reserved]

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

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

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

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

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

(E) The right to confront witnesses;

(F) The right to present witnesses;

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

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

(vi) [Reserved]

(4) [Reserved]

(5) *Reporting requirement.* The State shall report annually to the Administrator of OJJDP on the results of monitoring for the core requirements in the JJDP Act at 34 U.S.C. 11133(a)(11), (12), and (13). The reporting period should provide 12 months of data for each federal fiscal year, for 85% of facilities within the State that are required to report compliance data, and States must extrapolate and report, in a statistically valid manner, data for the remaining 15% of facilities. The report shall be submitted to the Administrator of OJJDP by February 28 of each year, except that the Administrator may grant an extension of the reporting deadline to March 31st, for good cause, upon request by a State.

(i) To demonstrate the extent of compliance with section 223(a)(11)(A) of the JJDP Act, the report must include, at a minimum, the following information for the current reporting period:

(A) Dates covered by the current reporting period;

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

(C) The total number of accused status offenders and nonoffenders, including out-of-State runaways and Federal wards, held in any secure detention or correctional facility for longer than

twenty-four hours (not including weekends or holidays), excluding those held pursuant to the valid court order provision as set forth in paragraph (f)(3) of this section or pursuant to section 922(x) of title 18, United States Code (which prohibits the possession of a handgun by a juvenile), or a similar State law. A juvenile who violates this statute, or a similar state law, is excepted from the deinstitutionalization of status offenders requirement;

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

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

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

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

(ii) To demonstrate the extent to which the provisions of section 223(a)(11)(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)(12) 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 inmates during the past 12 months and the number inspected on-site;

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

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

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

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

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

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

(iv) 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 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 detained in adult jails, lockups, and unapproved collocated facilities in excess of six hours, including those held pursuant to the "removal exception" as set forth in 34 U.S.C. 11133(a)(13)(B);

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(G) The total number of accused juvenile criminal-type offenders detained in adult jails, lockups and unapproved collocated facilities for less than six hours for purposes other than identification, investigations, processing, release to parent(s), transfer to court, or transfer to a juvenile facility following initial custody;

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

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

(J) The total number of adult jails, lockups, and unapproved collocated facilities in areas meeting the "removal exception" as noted in 34 U.S.C. 11133(a)(13)(B), including a list of such facilities and the county or jurisdiction in which each is located;

(K) The total number of juveniles accused of a criminal-type offense who were held in excess of six hours but less than 24 hours in adult jails, lockups and unapproved collocated facilities pursuant to the "removal exception" as set forth in 34 U.S.C. 11133(a)(13)(B);

(L) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 48 hours, in adult jails, lockups and unapproved collocated facilities pursuant to the "removal exception" as noted in 34 U.S.C. 11133(a)(13)(B), due to conditions of distance or lack of ground transportation; and

(M) The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours, but not more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel, in adult jails, lockups and unapproved collocated facilities, in areas meeting the "removal exception" as noted in 34 U.S.C. 11133(a)(13)(B).

(6) *Compliance.* The State must demonstrate the extent to which the re-

quirements of sections 223(a)(11), (12), and (13) of the Act are met.

(i) [Reserved]

(ii) [Reserved]

(iii) In determining the compliance standards to be applied to States' compliance monitoring data, the Administrator shall take the average of the States' compliance monitoring data from not less than two years prior to the compliance reporting period with respect to which the compliance determination will be made (removing, when applicable, one negative outlier in each data collection period for DSO, separation, and jail removal) and apply a standard deviation of not less than one to establish the compliance standards to be applied, except that the Administrator may make adjustments to the methodology described in this paragraph as he deems necessary and shall post the compliance standards on OJJDP's website by August 31st of each year.

(7) *Monitoring report exemption.* States which have been determined by the OJJDP Administrator to have achieved full compliance with sections 223(a)(11)(A), (a)(13), and compliance with section 223(a)(12) 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 effective system of monitoring jails, law enforcement lockup, detention facilities, to enable an annual determination of State compliance with sections 223(a)(11)(A), (12), and (13) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of sections 223(a)(11)(A), (12), and (13) of the JJDP Act; and

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

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

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

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

(g) [Reserved]

(h) *Annual performance report.* Pursuant to section 223(a)(22)(B), the State plan shall provide for submission of an annual performance report. The State shall report on its progress in the implementation of the approved programs, described in the three-year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals. The annual performance report shall describe progress made in addressing the problem of serious juvenile crime, as documented in the juvenile crime analysis pursuant to section 223(a)(7). The annual performance report must be submitted to OJJDP no later than June 30 and address all formula grant activities carried out during the previous complete calendar year, federal fiscal year, or State fiscal year for which information is available, regardless of which year's formula grant funds were used to support the activities being reported on, *e.g.*, during a reporting period, activities may have been funded from two or more formula grant awards.

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

(j) [Reserved]

(k) [Reserved]

§ 31.304 Definitions.

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

(b) *Detain or confine* means to hold, keep, or restrain a person such that he is not free to leave, or such that a reasonable person would believe that he is not free to leave, except that a juvenile held by law enforcement solely for the purpose of returning him to his parent or guardian or pending his transfer to the custody of a child welfare or social service agency is not detained or confined within the meaning of this definition.

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

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

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

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

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

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

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

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

(k) *Other individual convicted of a criminal offense.* An individual, adult or juvenile, who has been convicted of a

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criminal offense in court exercising criminal jurisdiction.

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

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

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

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

GENERAL CONDITIONS AND ASSURANCES

§§ 31.400–31.401 [Reserved]

§ 31.402 Application on file.

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

§§ 31.403–31.404 [Reserved]

Subpart B—Juvenile Accountability Incentive Block Grants

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

§ 31.500 Program purposes.

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

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

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

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

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

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

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

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

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

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

(j) *Program purpose no. 10:* Establishing and maintaining interagency

§ 31.501

information sharing programs that enable the juvenile and criminal justice system, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts;

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

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

§ 31.501 Eligible applicants.

(a) *Eligible applicants.* Eligible applicants in FY 1998, FY 1999, and each subsequent fiscal year as funds are made available, are States whose Governor (or other Chief Executive Officer for the eligible jurisdictions that are not one of the 50 States but defined as such for purposes of this program) certifies, consistent with guidelines established by the Attorney General in consultation with Congress and incorporated into OJJDP's Program Guidance Manual, that the State is actively considering (or already has in place), or will consider within one year from the date of such certification, legislation, policies, or practices which, if enacted, would qualify the State for a grant. Specific information regarding qualifications can be found in the JAIBG Program Guidance Manual.

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

§ 31.502 Assurances and plan information.

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

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in the JAIBG Program Guidance Manual, that:

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

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

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

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

(c) State coordinated enforcement plans must be developed by a Juvenile Crime Enforcement Coalition consisting of representatives of law enforcement and social service agencies involved in juvenile crime prevention.

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

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

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

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

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

§ 31.503 Notice of proposed use of funds.

The mechanism for a State to report on the proposed use of funds by the State or by a subgrantee unit of local government is by electronic submission of a "Follow Up Information Form" to be provided to each participating State. The purpose of this report is for the State to provide assurances to OJJDP that funds expended by the State and its subgrantee units of local government will be used for authorized program purpose areas. Although no actual program descriptions will be required, information about the distribution of funds among the authorized program purpose areas must be provided. Upon receipt and review of the

"Follow Up Information Form" by OJJDP, States may obligate program funds retained for expenditure at the State level. Similarly, the State shall require that each recipient unit of local government submit its proposed use of non-administrative funds to the State prior to drawdown of subgrant funds to implement local programs and projects. Upon receipt and review of the local unit of government's proposed fund use, the State shall authorize the local unit of government to obligate local subgrant funds. The State shall electronically submit a copy of the local subgrant information to OJJDP, as provided in the award package, within 30 days of the date that the local unit of government is authorized to obligate program funds under its subgrant award.

PART 32—PUBLIC SAFETY OFFICERS' DEATH, DISABILITY, AND EDUCATIONAL ASSISTANCE BENEFIT CLAIMS

Sec.

32.0 Scope of part.

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