

DEPARTMENT OF JUSTICE**28 CFR Part 31**

[Docket No.: OJP (OJJDP) 1782]

RIN 1121-AA83

Juvenile Justice and Delinquency Prevention Act Formula Grants Program**AGENCY:** Office of Justice Programs, Department of Justice.**ACTION:** Final rule.

SUMMARY: The Department of Justice, Office of Justice Programs, is amending the Formula Grants Program implementing regulation authorized under title II, part B, of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) and promulgated in 1996, to remove sections and/or provisions that were rendered obsolete by amendments made to the JJDP Act in 2002 or in 2018; are redundant; or are *ultra vires*. Additional technical corrections reflect an editorial reclassification of the United States Code, implemented on September 1, 2017, that reorganized certain existing provisions of the United States Code into a new title, and citations are updated to reflect sections of the Act that were re-numbered by the 2002 amendments. Finally, the definitions in the regulation have been rearranged to be listed in alphabetical order.

DATES: This rule is effective June 11, 2021.

FOR FURTHER INFORMATION CONTACT: Keith Towery, Grants Management Specialist, Office of Juvenile Justice and Delinquency Prevention, at 202-307-0648.

SUPPLEMENTARY INFORMATION:**I. Executive Summary***A. Purpose of the Regulatory Action*

The purpose of this regulatory action is to amend the Formula Grants Program implementing regulation at 28 CFR part 31, subpart A, authorized under title II, part B, of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) and promulgated in 1996, to remove sections and/or provisions that (1) were rendered obsolete by amendments made to the JJDP Act in 2002 by Public Law 107-273 (the “2002 amendments”) or by Public Law 115-385 (the “2018 amendments”); (2) are redundant; or (3) are *ultra vires*. Additional technical corrections reflect an editorial reclassification of the United States Code, implemented on September 1, 2017, that reorganized certain existing provisions of the United States Code

from title 42 into a new title 34, and citations are updated to reflect sections of the Act that were re-numbered by the 2002 amendments. Finally, the definitions in the regulation have been rearranged to be listed in alphabetical order.¹ OJP implements this rule pursuant to the rulemaking authority under 34 U.S.C. 11111.

B. Estimated Costs and Benefits

As noted in the preamble above, this rule removes provisions of the Formula Grants Program regulation that (1) were rendered obsolete by amendments made to the JJDP Act in 2002 by Public Law 107-273 (the “2002 amendments”) or by Public Law 115-385 (the “2018 amendments”); (2) are redundant; or (3) are *ultra vires*. This rule also makes technical corrections to the regulation. These changes, overall, reasonably can be expected to save at least a *de minimis* amount of grantee staff time in understanding program requirements when compared to the current rule, and thus the rule is deregulatory. With respect to the provisions of the Formula Grants Program regulation to be removed as *obsolete*, States have been advised by OJJDP not to follow those provisions, and/or OJJDP has not been enforcing those provisions. Thus, removing those provisions will result in no additional or reduced burden on states. The removal of provisions that are *redundant*, because they simply parrot language in the JJDP Act, do not impose or reduce requirements of state grantees, and accordingly neither increase nor decrease costs or burdens on states. This rule makes *technical corrections* to the Formula Grants Program regulation that reflect the 2002 and 2018 amendments, most of which reflect simple renumbering of sections or provisions of the JJDP Act, but do not make changes that would impose additional requirements on states. Finally, the three provisions in the regulation that are being removed as *ultra vires* have not been enforced by OJJDP in recent years; their removal will not result in any additional costs, and may result in *de minimis* savings in grantee staff time, as noted above.

II. Background

This rule amends the regulation implementing the JJDP Act Formula Grants Program at 28 CFR part 31, subpart A. OJJDP administers the Formula Grants Program, pursuant to

title II, part B, of the JJDP Act, now codified at 34 U.S.C. 11131–11133, which authorizes OJJDP to provide an annual grant to each State to improve its juvenile justice system and to support juvenile delinquency prevention programs. Title II, part B, of the JJDP Act authorizes OJJDP to provide formula grants to states to assist them in planning, establishing, operating, coordinating, and evaluating projects directly or through grants and contracts with public and private agencies for the development of more effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency and programs to improve the juvenile justice system. The JJDP Act was originally enacted in 1974, authorizing the Formula Grants Program under title II, part B, and was reauthorized and/or amended in 1980,² 1984,³ 1988,⁴ 1992,⁵ 2002,⁶ and 2018.⁷ It should be noted that this final rule, which is purely technical in character, does not reflect amendments made by the Juvenile Justice Reform Act of 2018 (Pub. L. 115-385), unless they are purely technical in nature, or reflect provisions that were rendered obsolete. Any substantive changes will be made in a future regulation that will be published for notice and public comment.

OJP’s Formula Grants Program implementing regulation was first published on May 31, 1995, and amended on December 31, 1996. In the 2002 amendments to the JJDP Act, several statutory provisions were repealed, but those statutory amendments were not reflected in the only post-1996 amendment to the implementing regulation (promulgated in January 2017). This final rule, among other things, amends the regulation to reflect the repeal, in 2002, of those statutory provisions, as well as the repeal of statutory provisions based on the 2018 amendments. Finally, it should be noted that many provisions that currently exist in this regulation have been superseded by 28 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), references to which are to be understood as references to part 200 as adopted for the Department of Justice by 28 CFR part 2800. In addition, it should be noted that, among other things, title II

¹ For a redlined version that shows the changes made to the Formula Grants Program regulation by this Final Rule, please visit OJJDP’s website at www.ojjdp.gov. See also Appendix A for a table that indicates, by section, where edits have been made to the regulation.

² Public Law 96-509.

³ Public Law 98-473.

⁴ Public Law 100-690.

⁵ Public Law 102-586.

⁶ Public Law 107-273.

⁷ Public Law 115-385.

of the JJDP Act adopts by reference certain provisions of the Omnibus Crime Control and Safe Streets Act of 1968, making them applicable to the title II Formula Grants Program. See 34 U.S.C. 11182(b) and (c). These referenced provisions include, but are not limited to, the provisions found at 34 U.S.C. 10228(c) (prohibition on discrimination); 34 U.S.C. 10230(a) (recordkeeping requirement); 34 U.S.C. 10230(b) (access to records for audit and examination); 34 U.S.C. 10230(c) (audit and examination period after completion of program or project); 34 U.S.C. 10231(a) (research or statistical information; immunity from process; prohibition against admission as evidence or use in any proceedings).

III. Discussion of Changes Made by This Rule⁸

A. Removal of Sections That Are Obsolete

The current regulation prescribes requirements that were pertinent to Formula Grants Program requirements that were repealed in the 2002 and 2018 amendments. Those provisions of the current regulation that purport to implement requirements that were repealed by the 2002 and 2018 statutory amendments are not valid. See, e.g., *Hadson Gas Sys., Inc. v. FERC*, 316 U.S. App. D.C. 98, 75 F.3d 680, 684 (D.C. Cir. 1996) (where Congress enacts a new statute or amends an existing one, administrative regulations may be rendered unnecessary or obsolete and the prior regulations need not be repealed by notice and comment); *Messick ex rel. Kangas v. United States*, 70 Fed. Cl. 319, 328 (2006) (holding that a regulation that had failed to keep up with statutory changes was to be “disregarded”), *rev’d on other grounds* sub nom. *Amber-Messick ex rel. Kangas v. United States*, 483 F.3d 1316 (Fed. Cir. 2007).

B. Removal of Sections That Merely Repeat Provisions of the JJDP Act or Other Law

Several sections of the Formula Grants Program regulation do no more than parrot existing statutory provisions within the JJDP Act or provisions such as those in the Omnibus Crime Control and Safe Streets Act of 1968 that are noted above, and thus are unnecessarily repeated in the regulation.

C. Removal of Sections That Are Ultra Vires

The following three provisions of the regulation are being removed because they are contrary to specific provisions within the JJDP Act, or are generally outside the scope of the Administrator’s authority, and are, therefore, “*ultra vires*”—“unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law.” Black’s Law Dictionary (10th ed. 2014).

Section 31.301(e)

This provision of the current regulation purports to describe how OJJDP may use funds that were originally allocated to a state that is subsequently determined to be ineligible for a formula grant award (including because it has not met one or more of the 33 eligibility requirements set forth at section 223(a) of the JJDP Act), or has chosen not to submit an application for a formula grant award. Section 223(d) of the JJDP Act, however, requires that OJJDP must “endeavor to make that State’s allocation [excluding the allocation for the state advisory group authorized under 34 U.S.C. 11133(a)(3)] available to local public and private nonprofit agencies” within the state and goes on to provide that, if the Administrator is unable to make such an award, the funds must be made available “on an equitable basis and to those States that have achieved full compliance with the core requirements.” (Emphasis added.) Thus, by the express terms of this statutory provision, those funds may not be reallocated to states that were determined to be out of compliance. The third sentence of section 31.301(e) states that, upon “a request for extension, which demonstrates compelling circumstances” OJJDP may reallocate the formula grant funds “back to the State for which the funds were initially allocated,” and thus purports to provide something manifestly contrary to the plain language of section 223(d) of the JJDP Act (34 U.S.C. 11133(d)). Section 31.301(e) is, therefore, *ultra vires* and must be removed.

Section 31.303(f)(1)(i)(A)

Section 31.303(f)(1)(i)(A) purports to require that a state identify in its monitoring universe “all residential facilities which might hold juveniles pursuant to public authority.” The word “residential” is deleted because, section 223(a)(14) of the JJDP Act (34 U.S.C. 11133 (a)(14)) requires that States monitor all “jails, lock-ups, detention facilities, and correctional facilities,” and, plainly, is not limited in scope to

“residential” facilities. Accordingly, the language in this paragraph that purports to limit the reach of the statutory requirement is *ultra vires*.

Consequently, section 31.303(f)(1)(i)(A) must be amended accordingly.

Section 31.303(f)(3)(vii)

Among other things, section 223(a)(11)(A)(ii) of the JJDP Act provides that “a juvenile shall not be placed in a secure detention facility or a secure correctional facility” if the juvenile is (in common parlance) a “non-offender” who “is an alien[] or is alleged to be dependent, neglected, or abused.” A “non-offender,” pursuant to 28 CFR 31.304(i), is a “juvenile who is subject to the jurisdiction of the juvenile court . . . for reasons *other than legally prohibited conduct of the juvenile*” (emphasis added); and violation of a valid court order is, as a matter of law, “legally prohibited conduct.” Thus, by definition, a juvenile who has violated a valid court order is not, and cannot be, a “non-offender.” Section 31.303(f)(3)(vii) of the current regulation, however, purports to provide that an erstwhile “non-offender . . . cannot [*sic*] be placed in secure detention or correctional facilities [*sic*] for violating a valid court order.” Consequently, section 31.303(f)(3)(vii) of the current regulation, which purports to extend section 223(a)(11)(A)(ii) of the JJDP Act (which relates only to “non-offenders”) to juveniles who are not “non-offenders” is *ultra vires* and must be removed.

D. Technical Corrections

Several amendments to the Formula Grants Program regulation reflect an editorial reclassification of the United States Code, implemented on September 1, 2017, that reorganized certain existing provisions of the United States Code from title 42 into a new title 34. Additionally, other citations in the current regulation are being updated to reflect sections of the JJDP Act that were re-numbered following the 2002 amendments.

IV. Regulatory Requirements

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. As noted in the discussion, below, regarding the applicability of the APA, this rule is exempt from the 553(b) notice and comment requirements. Consequently, the RFA does not apply.

Nevertheless, consistent with the analysis typically required by the

⁸ Please see the table at Appendix A detailing the reasons for specific changes made by this Final Rule.

Regulatory Flexibility Act (5 U.S.C. 605(b)), the Office of Juvenile Justice and Delinquency Prevention has reviewed this regulation and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. The Formula Grants Program provides funding to States pursuant to a statutory provision, which is not affected by this regulation. Because States have complete discretion as to which local governments and other entities will receive formula grant funds through subgrants, as well as the amount of any subgrants, this rule will have no direct effect on any particular local governments or entities.

Executive Order 12866, Regulatory Planning and Review, 13563 and Improving Regulation and Regulatory Review

This final rule was developed in accordance with the principles of E.O. 12866 and 13563. E.O. 12866, section 1(b), 58 FR 51, 735 (Sept. 30, 1993), which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866.

OJP has determined that this regulation is not a “significant regulatory action” under Executive Order No. 12866. As set forth above, this final rule will not have the economic effects described in E.O. 12866, sec. 3(f) (e.g., annual effect on the economy of \$100 million or more). It will not create any serious inconsistency or otherwise interference with an action taken or planned by another agency because this rule merely updates an OJJDP program rule. It does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof because it merely updates the program rule to conform to existing statutory law and makes technical corrections. For the same reasons, it does not raise novel legal or policy issues. Consequently, in accordance with the general principles of Executive Order No. 12866, the Office of Management and Budget has declined review.

This final rule is not a significant regulatory action under E.O. 12866, and it does not impose a cost greater than zero.

Administrative Procedure Act

This rule issued by the Office of Justice Programs changes the regulations for the OJJDP Formula Grant Program, and thus concerns matters relating to “grants, benefits, or contracts,” 5 U.S.C. 553(a)(2). This rule is therefore exempt from the requirement of notice and comment and a 30-day delay in the effective date.

Moreover, the purpose of this final rule is (a) to remove provisions of the current regulation that are contrary to the statute upon which they purport to have been predicated when originally promulgated, or that merely parrot or repeat language in the JJDP Act or the Omnibus Crime Control and Safe Streets Act of 1968; and (b) to make technical corrections. Public comments on this final rule would have no effect on the legal necessity of removing the regulatory provisions that are contrary to statute, no effect on the legal redundancy of the parroting or repeating language, and no effect on the making of technical corrections. Finally, the rule would not adversely affect any segment of the public whatsoever, as it does not impose any burdens or requirements on any entities, including Formula Grants Program recipients, and therefore advance notice and public comment are unnecessary.

In addition, these rule amendments remove provisions of the regulation that were rendered null and void by subsequent amendments to the JJDP Act, (which repealed the predicate statutory provisions upon which the regulatory provisions were based), and “parroting” regulations that unnecessarily repeat other provisions of law, and otherwise make only technical corrections to U.S. Code citations in cross-references. Where provisions of the regulation are predicated on defunct or amended statutory provisions, it causes confusion as to the requirements that Formula Grants Program grantees must meet.

For these reasons, it is contrary to the public interest to delay implementation of this rule.

Executive Order 13132—Federalism

The Formula Grants Program does not impose any mandates on States; nor does it interfere with States’ sovereignty, authorities, or rights. States, rather, participate in the Program voluntarily and, as a condition of receipt of funding to improve their juvenile justice systems and to operate juvenile delinquency prevention programs, agree to comply with the Program’s requirements.

This rule will not have substantial direct effects on the States, on the

relationship between the federal government and the States, or on distribution of power and responsibilities among the various levels of government. The rule will not impose substantial direct compliance costs on State and local governments, or preempt any State laws. Therefore, in accordance with Executive Order No. 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and (b)(2) of Executive Order No. 12988. Pursuant to section 3(b)(1)(I) of the Executive Order, nothing in this or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this rule is intended to create any legal or procedural rights enforceable against the United States, except as the same may be contained within subpart A of part 31 of title 28 of the Code of Federal Regulations.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. The Formula Grants Program provides funds to States to improve their juvenile justice systems and to support juvenile delinquency prevention programs. As a condition of funding, States agree to comply with the Formula Grants Program requirements. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This rule does not propose any new, or changes to existing, “collection[s] of information” as defined by the Paperwork Reduction Act of 1995 (44

U.S.C. 3501, *et seq.*) and its implementing regulations at 5 CFR part 1320. **Appendix A**

TABLE OF AMENDMENTS TO OJJDP FORMULA GRANTS PROGRAM REGULATION—28 CFR PART 31

Regulatory provision	Reason(s) for removal or technical correction
31.1(a)	TECHNICAL CORRECTION: The text of this paragraph is simplified for clarity.
31.1(b)	TECHNICAL CORRECTION: As many current provisions that parrot regulations found outside this subpart are removed by this rule, this paragraph is added to provide notice that regulations found outside this subpart may be applicable.
31.1(c)	TECHNICAL CORRECTION: This paragraph is added to clarify that the myriad references in this subpart to provisions of Federal law outside this subpart are general (not specific) references and thus include any subsequent amendment to the provision.
31.2	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect the 2017 reorganization of title 42 of the U.S. Code into a new title 34.
31.3	OBSOLETE: The first sentence, which indicates the submission deadline for applications for years prior to 1995, is removed as obsolete. TECHNICAL CORRECTION: The second sentence is removed because the application deadline in any given year will depend upon the date that the solicitation is posted in that year.
31.100	REDUNDANT: This section is removed because the eligibility requirements are set forth at sections 103(7) and 221 of the Juvenile Justice and Delinquency Prevention Act (the Act) (34 U.S.C. 11103(7) and 11131).
31.101	REDUNDANT: This section is removed because it restates state agency designation requirements found at sections 223(a)(1) and (2) of the Act (34 U.S.C. 11133(a)(1) and (2)). OBSOLETE: The second sentence of this section was authorized by, and refers to, a section of the Act (section 299(c)) that was repealed in amendments made to the Act by Public Law 107–273 in 2002 (the 2002 amendments).
31.102	OBSOLETE: The statutory provision authorizing the Administrator to establish requirements for, and approve, the state agency designated by the governor or chief executive of the state, was repealed by Public Law 115–385 in 2018 (the 2018 amendments).
31.103	OBSOLETE: This section was made obsolete by the 2002 amendments which added section 223(e) (see 34 U.S.C. 11133(e)).
31.200	REDUNDANT: This section is removed because it references general requirements, established elsewhere, that are not specific to the Formula Grants Program and need not be included in this regulation.
31.201	REDUNDANT: This section is removed because it references several audit requirements, established elsewhere, that are not specific to the Formula Grants Program and need not be included in this regulation.
31.202(a)(1)	REDUNDANT: This paragraph is removed because the requirement is found elsewhere (see 28 CFR 42.505(d)).
31.202(a)(2)	TECHNICAL CORRECTION: This section is removed because the reference to “Council” is a remnant of earlier versions of the regulation, which referred to the “State Criminal Justice Council” that was required under 402(b)(1) of title I of Public Law 90–351, which section was repealed in 1984 by section 606 of title II of Public Law 98–473. Prior versions of the JJDP Act adopted that requirement by reference, but the JJDP Act was amended to remove those references. (See Pub. L. 98–473, title II, sec. 626.)
31.202(b)(1)	REDUNDANT: This paragraph is removed because the requirement is found elsewhere (see 28 CFR 42.204(a)).
31.202(b)(2)	REDUNDANT: This paragraph is removed because the requirement is found elsewhere (see 28 CFR 42.204(b)).
31.202(b)(3)	REDUNDANT: This paragraph is removed because the requirement is found elsewhere (see 28 CFR 42.405).
31.202(b)(4)	REDUNDANT: This paragraph is removed because its substance is covered elsewhere (see 34 U.S.C. 10230 and 2 CFR 200.337(a)).
31.202(b)(5)	REDUNDANT: This paragraph is removed as redundant because it repeats a requirement found at 28 CFR 42.204(c).
31.203	OBSOLETE: The first part of the first sentence is removed because it references a section of the Act (section 299(c)) that was repealed in the 2002 amendments.
31.300	REDUNDANT: This section is removed because it is redundant; see section 31.1 of this regulation.

TABLE OF AMENDMENTS TO OJJDP FORMULA GRANTS PROGRAM REGULATION—28 CFR PART 31—Continued

Regulatory provision	Reason(s) for removal or technical correction
31.301(a)	REDUNDANT: This paragraph, regarding state funding allocations, is removed because it is redundant; see section 222 of the Act (34 U.S.C. 11132).
31.301(b)	TECHNICAL CORRECTION: In the first sentence of this paragraph, “application” is replaced with “allocation” because it is not consistent with the language in section 222 of the JJDP Act (34 U.S.C. 11132). TECHNICAL CORRECTION: The last sentence of this paragraph is removed because it references a section of the regulation that is removed as redundant (section 31.301(b)(1)).
31.301(b)(1)	REDUNDANT: This paragraph, regarding tribal eligibility and use of funds, is removed because it is redundant; see section 223(a)(5)(C) of the Act (34 U.S.C. 11133(a)(5)(C)) and section 103(18) of the Act (34 U.S.C. 11103(18)).
31.301(b)(4)	TECHNICAL CORRECTION: This reference to paragraphs (b)(1)(i)–(iii) of this section is removed because paragraphs (b)(1)(i)–(iii) are removed as redundant.
31.301(b)(5)	REDUNDANT: This paragraph, requiring consultation with Indian tribes, is removed because it is redundant; see section 223(a)(4) of the Act (34 U.S.C. 11133(a)(4)).
31.301(c)	REDUNDANT: This paragraph, describing the match requirement, is removed because it is redundant; see section 222(c) of the Act (34 U.S.C. 11132(c)).
31.301(e)	REDUNDANT: The first sentence, describing how unallocated funds from nonparticipating states may be used by OJJDP, is removed as redundant; see section 223(d) of the Act (34 U.S.C. 11133(d)). REDUNDANT: The second sentence, regarding the allowable use of funds awarded to a recipient within a nonparticipating state, is removed as redundant; see section 223(d) of the Act (34 U.S.C. 11133(d)). ULTRA VIRES: The third sentence, allowing the reallocation of funds to states initially deemed ineligible, is removed as <i>ultra vires</i> because section 223(d) of the Act (34 U.S.C. 11133(d)) requires that funds withheld from nonparticipating states be made available to a local public or private nonprofit entity within the state. OBSOLETE: The reference to the date after which the unallocated funding from nonparticipating states will be made available to another entity within the state is obsolete because the date has passed and is no longer meaningful. OBSOLETE: This reference to publication of program announcements in the Federal Register is removed as obsolete because program announcements (i.e., solicitations) are no longer published in the Federal Register .
31.302(a)	REDUNDANT: This paragraph, regarding the designation of the state agency responsible for administration of the Formula Grants Program, is redundant; see sections 223(a)(1) and (2) of the Act (34 U.S.C. 11133(a)(1) and (2)). OBSOLETE: This paragraph also refers to a section of the Act (section 299(c)) that was repealed in the 2002 amendments.
31.302(b)(1)	REDUNDANT: The first sentence, describing the state advisory group and membership requirements, is redundant; see section 223(a)(3) of the Act (34 U.S.C. 11133(a)(3)).
31.302(b)(2)	OBSOLETE: Section 223(a)(3)(A) and (B) of the Act (34 U.S.C. 11133(a)(3)(A) and (B)) prescribe membership requirements for the state advisory groups (SAGs). This paragraph simply makes <i>recommendations</i> for SAG membership based on a statutory provision that was repealed in the 2002 amendments.
31.302(c)	REDUNDANT: This paragraph is removed because it simply provides that states must comply with cited sections of the Act that, of their own force, require compliance by formula grant recipients.
31.303(a)	REDUNDANT: This paragraph is removed because all Office of Justice Programs (OJP) grant recipients are subject to a requirement, established elsewhere, that they submit assurances that they have complied with applicable statutory, regulatory, and other program requirements when they submit their application, and thus need not be included in this regulation.
31.303(b)	OBSOLETE: This paragraph simply makes a <i>recommendation</i> for the use of formula grant funds based on a finding that was deleted in the 2002 amendments and a statutory provision that does not specifically describe efforts to address serious and violent offenders in the permissible programs delineated in section 223(a)(9) of the Act (34 U.S.C. 11133(a)(9)).

TABLE OF AMENDMENTS TO OJJDP FORMULA GRANTS PROGRAM REGULATION—28 CFR PART 31—Continued

Regulatory provision	Reason(s) for removal or technical correction
31.303(c)	TECHNICAL CORRECTION: The statutory citation referenced in the paragraph is updated to reflect renumbering in the 2002 and 2018 amendments.
31.303(c)(1)	TECHNICAL CORRECTION: This citation is amended to conform to proper Code of Federal Regulations citation form.
31.303(c)(4)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 and 2018 amendments.
31.303(c)(5)	OBSOLETE: This paragraph is removed as obsolete because it references a report required by a provision in the Act (section 223(a)(12)(B)) that was repealed by the 2002 amendments.
31.303(d)	TECHNICAL CORRECTION: The term “contact,” for the purposes of the separation requirement, is replaced with “sight or sound contact” each place it appears in this paragraph, to reflect a change to the separation requirement in section 223(a)(12) of the Act (34 U.S.C. 11133(a)(12)), made by the 2018 amendments.
	TECHNICAL CORRECTION: The term “incarcerated adults” is replaced with “adult inmates” each place it appears in this paragraph, to reflect a change to the separation requirement in section 223(a)(12) of the Act (34 U.S.C. 11133(a)(12)), made by the 2002 amendments.
31.303(d)(1)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is changed to reflect that the separation provision is found in section 223(a)(12) of the Act (34 U.S.C. 11133(a)(12)).
31.303(d)(1)(i)	TECHNICAL CORRECTION: The term “juvenile offenders” is not consistent with the separation requirement in section 223(a)(12) and is replaced with the word “juveniles” each place it appears in this paragraph.
	OBSOLETE: The term “contact,” for the purposes of the separation requirement, has been replaced with the term “sight or sound contact” by the 2018 amendments, at 34 U.S.C. 11133(a)(12), and the definition of “contact” has been replaced with a definition of “sight or sound contact” at 34 U.S.C. 11103(25).
	OBSOLETE: The term “contact,” defined in this regulatory provision, was replaced with the term “sight or sound contact” by the 2018 amendments at 34 U.S.C. 11133(a)(12). “Sight or sound contact” is defined at 34 U.S.C. 11103(25), and expressly excludes contact that is “brief and inadvertent,” but not contact that is “accidental.”
	TECHNICAL CORRECTION: The separation requirement prohibits 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)]” and adult inmates.
31.303(d)(2)	OBSOLETE: This provision is removed as obsolete because it required immediate implementation at the time this regulation was promulgated in 1996 and thus is no longer meaningful.
31.303(e)(1)	OBSOLETE: The reference to the date after which states must describe their plan, procedure, and timetable for complying with the jail removal requirement is deleted because it has passed and is no longer meaningful.
	OBSOLETE: The second sentence is deleted because it refers to section 31.303(f)(4) of this regulation, which is removed.
31.303(e)(2)	REDUNDANT: The second sentence is removed because section 223(a)(13) of the Act (34 U.S.C. 11133(a)(13)) sets forth the exceptions to the jail removal requirement.
31.303(e)(3)(i)	TECHNICAL CORRECTION: The reference to “(e)(3)(i)(C)(1) through (4)” is changed to “(e)(3)(i)(C)(1), (2), and (4)” because (e)(3)(i)(C)(3), requiring separate staff in collocated facilities, is removed.
31.303(e)(3)(i)(A)	TECHNICAL CORRECTION: The reference to (e)(3)(i)(C)(3) is deleted because that subparagraph is removed.
31.303(e)(3)(i)(B)	TECHNICAL CORRECTION: The reference to “four” criteria is deleted, because (e)(3)(i)(C)(3) is removed and there are now only three criteria.
	TECHNICAL CORRECTION: The reference to “(e)(3)(i)(C)(1) through (4)” is changed to “(e)(3)(i)(C)(1), (2), and (4)” because (e)(3)(i)(C)(3), requiring separate staff in collocated facilities, is removed.
31.303(e)(3)(i)(C)	TECHNICAL CORRECTION: The reference to “four” criteria is deleted, because (e)(3)(i)(C)(3) is removed and there are now only three criteria.

TABLE OF AMENDMENTS TO OJJDP FORMULA GRANTS PROGRAM REGULATION—28 CFR PART 31—Continued

Regulatory provision	Reason(s) for removal or technical correction
31.303(e)(3)(i)(C)(1) and (2)	TECHNICAL CORRECTION: The terms “adults” and “incarcerated adults” are replaced with “adult inmates” each place they appear in subparagraphs (C)(1) and (2) to reflect a change to the separation requirement in section 223(a)(12) of the Act (34 U.S.C. 11133(a)(12)), made by the 2002 amendments.
31.303(e)(3)(i)(C)(3)	OBSOLETE: This provision is removed as obsolete because it is based on a statutory provision within the separation requirement (requiring separate staff) that was repealed by the 2002 amendments.
31.303(e)(3)(ii)	TECHNICAL CORRECTION: The reference to “four” criteria is deleted, because (e)(3)(i)(C)(3) is removed and there are now only three criteria. Two words are added for clarity.
31.303(e)(3)(iii)	TECHNICAL CORRECTION: The reference to “(e)(3)(i)(C)(1) through (4)” is changed to “(e)(3)(i)(C)(1), (2), and (4)” because (e)(3)(i)(C)(3), requiring separate staff in collocated facilities, is removed.
31.303(e)(3)(iv)	OBSOLETE: This provision is removed as obsolete because it is based on a statutory provision within the separation requirement (requiring separate staff) that was repealed by the 2002 amendments.
31.303(e)(4)	TECHNICAL CORRECTION: The reference to “(e)(3)(i)(C)(1) through (4)” is changed to “(e)(3)(i)(C)(1), (2), and (4)” because (e)(3)(i)(C)(3), requiring separate staff in collocated facilities, is removed.
31.303(e)(4)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(1)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(1)(i)(A)	ULTRA VIRES: The word “residential” is deleted because, section 223(a)(14) of the Act (34 U.S.C. 11133 (a)(14)) requires that States monitor all “jails, lock-ups, detention facilities, and correctional facilities,” and, plainly, is not limited in scope to “residential” facilities. Accordingly, the language in this paragraph that purports to limit the reach of the statutory requirement is <i>ultra vires</i> .
31.303(f)(1)(i)(B)	OBSOLETE: In this paragraph the words “or nonsecure” are deleted because the requirement at section 223(a)(14) (34 U.S.C. 11133(a)(14)) that states monitor nonsecure facilities was repealed by the 2018 amendments.
31.303(f)(1)(i)(C)(2)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments.
31.303(f)(1)(i)(D)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments.
31.303(f)(1)(ii)	TECHNICAL CORRECTION: The second clause in the second sentence is deleted because the reporting period was changed to 12 months in the 2017 amendments to the regulation, at section 31.303(f)(5).
31.303(f)(1)(iii)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments.
31.303(f)(1)(iii)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments.
31.303(f)(2)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(3)(i)	TECHNICAL CORRECTION: The term “juvenile” is replaced with “status offender” in each place that it appears in this paragraph to reflect a change in section 223(a)(23) of the Act (34 U.S.C. 11133(a)(23)), made by the 2018 amendments.
31.303(f)(3)(iii)	REDUNDANT: This paragraph, describing a requirement related to the valid court order exception, is removed because it is redundant; see section 31.303(f)(3)(v).
31.303(f)(3)(iv)	OBSOLETE: This paragraph, describing requirements that must be met in order to use the valid court order (VCO) exception, is removed as obsolete because the VCO requirements are set forth in section 223(a)(23) of the Act, as amended in 2002.
31.303(f)(3)(v)(A)	TECHNICAL CORRECTION: The term “juvenile” is replaced with “status offender” to reflect a change in section 223(a)(23) of the Act (34 U.S.C. 11133(a)(23)), made by the 2018 amendments.

TABLE OF AMENDMENTS TO OJJDP FORMULA GRANTS PROGRAM REGULATION—28 CFR PART 31—Continued

Regulatory provision	Reason(s) for removal or technical correction
31.303(f)(3)(vi)	OBSOLETE: This paragraph, describing requirements that must be met in order to use the valid court order (VCO) exception, is removed as obsolete because the VCO requirements are set forth in section 223(a)(23) of the Act, as amended in 2002.
31.303(f)(3)(vii)	ULTRA VIRES: This paragraph is <i>ultra vires</i> because a juvenile who has violated a valid court order is not a non-offender and therefore the provisions of section 223(a)(11)(A)(ii) of the Act (relating to non-offenders) do not apply to such a juvenile.
31.303(f)(4)	OBSOLETE: This paragraph is removed as obsolete because the jail removal requirement in section 223(a)(13) of the Act (34 U.S.C. 11133(a)(13)) was amended in 2002 to provide exceptions to the requirement.
31.303(f)(5)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect the 2017 reorganization of title 42 of the U.S. Code into a new title 34.
31.303(f)(5)(i)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(5)(i)(D)	TECHNICAL CORRECTION: The word “Title” has been changed to lower case to match the formatting in the rest of the part.
31.303(f)(5)(ii)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(5)(iii)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(5)(iv)	TECHNICAL CORRECTION: The term “criminal offenders” is replaced with “inmates” each place it appears in this paragraph to reflect a change to the separation requirement in section 223(a)(12) of the Act (34 U.S.C. 11133(a)(12)), made by the 2002 amendments.
31.303(f)(5)(iv)(F)	TECHNICAL CORRECTION: The statutory citation referenced in this paragraph is updated to reflect renumbering in the 2002 amendments.
31.303(f)(5)(iv)(J)	TECHNICAL CORRECTION: The reference to “paragraph (f)(4)” (jail removal exceptions) in this paragraph is deleted because that paragraph (section 31.303(f)(4)) is removed.
31.303(f)(5)(iv)(K)	TECHNICAL CORRECTION: The reference to “paragraph (f)(4)” (jail removal exceptions) in this paragraph is deleted because that paragraph (section 31.303(f)(4)) is removed.
31.303(f)(5)(iv)(L)	TECHNICAL CORRECTION: The reference to “paragraph (f)(4)” (jail removal exceptions) in this paragraph is deleted because that paragraph (section 31.303(f)(4)) is removed.
31.303(f)(5)(iv)(M)	TECHNICAL CORRECTION: The reference to “paragraph (f)(4)” (jail removal exceptions) in this paragraph is deleted because that paragraph (section 31.303(f)(4)) is removed.
31.303(f)(6)(i)	OBSOLETE: The numerical standard used to determine states’ compliance with the DSO, separation, and jail removal requirements, based on their 2016 compliance data, is no longer meaningful.
31.303(f)(6)(ii)	OBSOLETE: The numerical standard used to determine states’ compliance with the DSO, separation, and jail removal requirements, based on their 2017 compliance data, is no longer meaningful.
31.303(f)(6)(iii)	OBSOLETE: The numerical standard used to determine states’ compliance with the DSO, separation, and jail removal requirements, based on their 2018 data, is no longer meaningful. With the removal of the reference to “FY 2018,” the phrase “and subsequent years” is no longer necessary.
31.303(f)(7)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments, and the word “Act” is added after “JJDP” to match the phrasing in the rest of the part.
31.303(f)(7)(i)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments.
31.303(f)(7)(ii)	TECHNICAL CORRECTION: The statutory citations referenced in this paragraph are updated to reflect renumbering in the 2002 amendments, and the word “Sections” is changed to lowercase to match the formatting in the rest of the part.

TABLE OF AMENDMENTS TO OJJDP FORMULA GRANTS PROGRAM REGULATION—28 CFR PART 31—Continued

Regulatory provision	Reason(s) for removal or technical correction
31.303(g)	REDUNDANT: This provision is removed as redundant because section 223(a)(7) of the Act sets forth the requirements of the juvenile crime analysis.
31.303(h)	TECHNICAL CORRECTION: The citation to section 223(a) is deleted because the correct reference to the statutory provision requiring the annual performance report is provided immediately following this deleted text. Additionally, the correct reference is to a statutory provision that was renumbered by the 2002 amendments. TECHNICAL CORRECTION: The correct citation to the juvenile crime analysis requirement is found at section 223(a)(7) of the Act (34 U.S.C. 11133(a)(7)).
31.303(j)	OBSOLETE: This provision is removed because the disproportionate minority <i>confinement</i> provision was repealed and replaced with section 223(a)(22) of the Act (the disproportionate minority <i>contact</i> provision) (34 U.S.C. 11133(a)(22)) by the 2002 amendments, which in turn, was repealed by the 2018 amendments and replaced with the requirement to reduce racial and ethnic disparities in section 233(a)(15) of the Act (34 U.S.C. 11133(a)(15)).
31.303(k)	OBSOLETE: This provision is removed as obsolete because the statutory basis for the provision was repealed by the 2002 amendments.
31.304	REDUNDANT: Four definitions have been deleted (section 31.304(h), (m), (n), and (o)) as redundant, because definitions for these terms are provided in the Act.
31.304(h)	TECHNICAL CORRECTION: The remaining definitions have been rearranged in alphabetical order.
31.304(m)	REDUNDANT: The term “status offender” is defined in section 103(42) of the Act (34 U.S.C. 11103(42)).
31.304(n)	REDUNDANT: The term “jail or lockup for adults” is defined in section 103(22) of the Act (34 U.S.C. 11103(22)).
31.304(o)	REDUNDANT: The term “jail or lockup for adults” is defined in section 103(22) of the Act (34 U.S.C. 11103(22)).
31.400	REDUNDANT: The term “valid court order” is defined in section 103(16) of the Act (34 U.S.C. 11103(16)).
31.401	REDUNDANT: This section is removed as redundant because it merely references general requirements, established elsewhere, with which states must comply (without citation to those requirements). When accepting a grant award, states must provide assurances that they will comply with all statutory, regulatory, and other applicable requirements.
31.403	REDUNDANT: This section is removed as redundant because it merely references general requirements, established elsewhere, with which states must comply (without citation to those requirements). When accepting a grant award, states must provide assurances that they will comply with all statutory, regulatory, and other applicable requirements.
31.404	REDUNDANT: This section is removed because it references general requirements, established elsewhere, that are not specific to the Formula Grants Program and need not be included in this regulation.
31.404	REDUNDANT: This section merely references a requirement prescribed in 28 CFR part 38.

List of Subjects in 28 CFR Part 31

Administrative practice and procedure, juvenile delinquency prevention, juvenile justice, Formula Grants Program, Juvenile Justice and Delinquency Prevention Act (JJDP Act).

Accordingly, for the reasons set forth in the preamble, part 31 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

■ 1. The general authority citation for part 31 continues to read as follows:

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

■ 2. Subpart A is revised to read as follows:

Subpart A—Formula Grants

General Provisions

Sec.

- 31.1 General.
- 31.2 Statutory authority.
- 31.3 [Reserved]

Eligible Applicants

- 31.100 [Reserved]
- 31.101 [Reserved]
- 31.102 [Reserved]
- 31.103 [Reserved]

General Requirements

- 31.200 [Reserved]
- 31.201 [Reserved]
- 31.202 [Reserved]

31.203 Open meetings and public access to records.

Juvenile Justice Act Requirements

- 31.300 [Reserved]
- 31.301 Funding.
- 31.302 Applicant State agency.
- 31.303 Substantive requirements.
- 31.304 Definitions.

General Conditions and Assurances

- 31.400 [Reserved]
- 31.401 [Reserved]
- 31.402 Application on file.
- 31.403 [Reserved]
- 31.404 [Reserved]

Authority: 34 U.S.C. 11111(b); 34 U.S.C. 11131.

Subpart A—Formula Grants**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 programs 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 [Reserved]****§ 31.101 [Reserved]****§ 31.102 [Reserved]****§ 31.103 [Reserved]****General Requirements****§ 31.200 [Reserved]****§ 31.201 [Reserved]****§ 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.

(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 nonapproved collocated facility for any length of time;

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

(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 nonoffenders 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 requirements 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.".

(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 criminal offense in court exercising criminal jurisdiction.

(l) *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 [Reserved]

§ 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 [Reserved]

§ 31.404 [Reserved]

Dated: May 12, 2021.

Maureen A. Henneberg,

Acting Assistant Attorney General, Office of Justice Programs.

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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2204

Rules Implementing the Equal Access to Justice Act; Correction

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Correcting amendment.

SUMMARY: This document corrects the final rule published by the Occupational Safety and Health Review Commission in the **Federal Register** on May 17, 2021. That rule revised the Occupational Safety and Health Review Commission's rules implementing the Equal Access to Justice Act.

DATES: Effective June 11, 2021

FOR FURTHER INFORMATION CONTACT:

Carter Tellinghuisen, Attorney-Advisor, Office of the General Counsel, by telephone at (202) 606-5410 ext. 211, by email at ctellinghuisen@oshrc.gov, or by mail at 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457.

SUPPLEMENTARY INFORMATION: OSHRC

published revisions to its rules implementing the Equal Access to Justice Act on May 17, 2021 (86 FR 26658). This document makes a correction to the final rule.

List of Subjects in 29 CFR Part 2204

Administrative practice and procedure, Equal access to justice.

Accordingly, 29 CFR part 2204 is amended by making the following correcting amendments: