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Juvenile Justice Legislation: Overview and the Legislative Debate

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Summary

The Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP Act, P.L. 93-415), as amended, expired on September 30, 1996. The Act established the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the grant programs it administers. Since 1996, Congress has considered several measures that would reauthorize the JJDP Act as well as address more comprehensive juvenile justice legislative proposals. These measures tended to favor a “get tough” approach to violent youth offenses, due in part to data from the early 1990s reflecting a high level of juvenile violent crime.

Among the “get tough” alternatives that previous Congresses have considered as a means to control this problem was the Juvenile Accountability Incentive Block Grants (JAIBG) program, emphasizing accountability-based reforms. On April 20, 2001, the House Judiciary Committee reported, amended, the Consequences for Juvenile Offenders Act of 2001 (H.R. 863). The House passed the measure, amended, on October 16, 2001. This version of H.R. 863, similar to H.R. 1501 as introduced in the previous Congress, would replace the JAIBG Program with the Juvenile Accountability Block Grants (JABG).

Congress is considering legislation to reauthorize the JJDP Act. On September 10, 2001, the House Education and the Workforce Committee reported H.R. 1900, amended (H.Rept. 107-203), which was introduced on May 17, 2001. The House passed the bill, as amended, on September 20, 2001. It would reauthorize the JJDP Act and make significant changes to the grant programs under Title II and V. The JJDP Act has not been reauthorized, but FY2001 Justice appropriations provided funding for JJDP Act grant programs (\$279.8 million) and for the JAIBG program (\$249.5 million). The JAIBG program is authorized in annual appropriations.

The 106th Congress considered three major bills, H.R. 1501, H.R. 1150, and S. 254. Collectively, these bills would have reauthorized the Act, added new penalties, and proposed or reauthorized non-JJDP Act juvenile crime control programs. On June 17, 1999, the House passed, amended, H.R. 1501, a measure reauthorizing the JAIBG program, established in FY1998. (H.R. 1150, a JJDP Act reauthorization bill, was approved by the House as an amendment to H.R. 1501.) On July 28, the Senate passed H.R. 1501, amended to include only the language of S. 254, reauthorizing both the JJDP Act and the JAIBG program. The bill died in conference.

Comprehensive juvenile justice legislation considered in the 106th Congress retained an emphasis on punishment, though these measures appeared to place somewhat less emphasis on “get tough” remedies than bills considered in previous congresses. To “get tough” programs were added new crime prevention programs, designed in some cases to replace many of the JJDP Act programs. This report provides an overview of the continuing debate regarding the appropriate response by the criminal justice system to youth violence. It will be updated as legislative activity occurs. For additional information, see CRS Report RS20576, *Juvenile Justice: Legislative Activity and Funding Trends for Selected Programs*.

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Juvenile Justice Legislation: Overview and the Legislative Debate

Introduction

The 107th Congress is considering legislative proposals in the area of juvenile justice, including legislation that failed to pass in the previous Congress. In addition to the two major juvenile justice bills discussed below, another example of congressional interest in the area of juvenile justice concerns a provision in the House Judiciary Crime Subcommittee's oversight plan that calls for the continued review of the Justice Department's implementation of the juvenile accountability incentive grant program.

Summary of H.R. 863, as Reported

On April 20, the House Judiciary Committee reported, amended, the Consequences for Juvenile Offenders Act of 2001 (H.R. 863, H.Rept. 107-46). The House passed the measure, amended, on October 16, 2001. Similar to H.R. 1501, as introduced in the previous Congress, H.R. 863, as amended, would replace the JAIBG Program with the Juvenile Accountability Block Grants (JABG). The bill would provide that JABG funds be used to strengthen the juvenile justice system. Grantees must meet the requirement concerning the implementation or consideration of graduated sanctions. Unlike existing law, applicants' use of these sanctions may be voluntary, provided that a reporting requirement is met.

H.R. 863 would amend existing law by modifying current purposes and adding new ones for which the funds could be used. New purposes include establishing and maintaining training programs for law enforcement and court personnel to prevent and control juvenile crime; establishing and maintaining records systems designed to promote public safety; establishing and maintaining accountability-based programs that are designed to enhance school safety; providing for risk and needs assessments of juvenile offenders, including mental health screening and substance abuse testing and treatment; establishing and maintaining restorative justice programs; and hiring detention and corrections personnel and to provide them with training.

Under existing law, the JAIBG state grant allocation formula gives each state 0.5% of total JAIBG appropriated funds, with remaining monies allocated proportionally on the basis of juvenile population. Local government monies are to be distributed based on the following formula: two-thirds allocated according to the jurisdiction's law enforcement expenditures over the three most recent calendar years,

and one-third according to the average number of Part 1 violent crimes by juveniles¹ over the 3 most recent calendar years. H.R. 863 would decrease the state base to 0.25% of the total funds for each state, and the Senate version retains the state base under existing law (0.5%). The distribution of local government monies would be amended from two-thirds to three-quarters allocated according to the jurisdiction's law enforcement expenditures over the three most recent calendar years, and one-third to one-quarter according to the average number of Part 1 violent crimes over the 3 most recent calendar years. Also, H.R. 863 would authorize a total of \$1.5 billion, \$500 million for each fiscal year, FY2002-FY2004. (For a discussion of the legislative history of H.R. 1501 during the 106th Congress, see below.)

Reauthorizing the Juvenile Justice Act

The 107th Congress is considering a measure to reauthorize the Juvenile Justice and Delinquency Prevention Act of 1974, that expired on September 30, 1996. On June 21, 2001, the House Education and the Workforce Subcommittee on Select Education ordered to be reported, amended, the Juvenile Crime Control and Delinquency Prevention Act of 2001 (H.R. 1900), introduced by Rep. Greenwood on May 17, 2001. The House Education and the Workforce Committee reported the bill amended (H.Rept. 107-203) on September 10, 2001. It was considered and passed by the House, as amended, on September 20, 2001.

As reported, the bill would change the name of the Office of Juvenile Justice and Delinquency Prevention to the Office of Juvenile Crime Control and Delinquency Prevention. It would amend requirements for formula grant funds, including eliminating the program for positive youth development, replacing it with community-based programs and services to work with juveniles, their parents, and other family members during and after incarceration in order to strengthen families so that juveniles may be retained in their homes; and creating a new requirement for establishing a system of records relating to any adjudication of juveniles less than 18 years of age who are adjudicated delinquent for conduct that would be a violent crime if committed by an adult.

The bill would amend the four mandates (deinstitutionalization of status offenders; separation of juveniles from sight and sound of adult offenders in any correctional institution; removal of juveniles from any jail or lockup for adults; and reduction of the disproportionate confinement of minority juveniles) as follows, respectively: (1) it would retain the current prohibition on detaining status offenders in secure facilities in accordance with rules issued by the Administrator, which currently allow such juveniles to be held up to 24 hours before and 24 hours after their court appearance; (2) it would modify the "sight and sound" separation requirement to prohibit physical contact (defined as any physical contact between a juvenile and an adult inmate; and proximity that provides an opportunity for physical contact between a juvenile and an adult inmate) or sustained oral communication with adult inmates; (3) it would extend the period of time for which juveniles can be held in a facility with adults, prior to an initial court appearance, to 48 hours (excluding

¹ As defined by the FBI's Uniform Crime Reports, Part 1 violent crimes are murder, rape, robbery, and aggravated assault.

weekends and holidays); (4) it would modify the disproportionate confinement of minority juveniles provision to require states to address prevention efforts to reduce the disproportionate number of minorities that come in contact with the juvenile justice system. Also, it would prohibit the establishment of numerical standards or quotas. The measure would require that states failing to comply with these mandates lose 12.5% of Title II, Part B formula grants for each mandate not met.

The bill makes significant changes to the grant programs under Titles II and V. Specifically, it would eliminate under Title II: Part C (National Programs or Discretionary Programs); Part D (Gang-Free Schools and Communities; Community-Based Gang Intervention); Part E (State Challenge Activities); Part F (Treatment for Juvenile Offenders Who Are Victims of Child Abuse or Neglect); Part G (Mentoring); Part H (Boot Camps); Part I (1st part: White House Conference) and under Title V (Incentive Grants for Local Delinquency Prevention Programs). In their place, it would establish a new Part C: Juvenile Delinquency Prevention Block Grant Program, with funds to be used for activities designed to prevent juvenile delinquency. In addition, it would create a new Part D: Research; Evaluation; Technical Assistance; Training; and a new Part E: Developing, Testing, and Demonstrating Promising New Initiatives and Programs. The bill would authorize to be appropriated to carry Title II such sums as may be appropriate for fiscal years 2002, 2003, 2004, and 2005, with the proviso that of the total appropriated for this title, excluding Parts C and E, not more than 5% shall be available to carry out Part A; not less than 80% shall be available to carry out Part B; and not more than 15% shall be available to carry out Part D.

This report provides an overview of the continuing debate on the appropriate response by the criminal justice system to youth violence. Under the JJDP Act provisions, it focuses only on juvenile justice and delinquency prevention, the first of the three major activities authorized by the act. Though not covered in this report, the other two activities are runaway and homeless youth services, and missing children's assistance. In addition, major juvenile justice proposals, not related to JJDP Act reauthorization and gun control, are summarized. (For additional information, see CRS Report RS20275, *Reauthorizing Programs for Runaway & Homeless Youth and Missing & Exploited Children*. For a discussion of gun-related provisions related to the juvenile legislation now under consideration, see CRS Issue Brief IB10014, *Gun Control*.)

Background

The 106th Congress considered, but did not enact comprehensive juvenile justice legislative proposals, including the reauthorization of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, and the Juvenile Accountability Incentive Block Grant (JAIBG) program. The JJDP Act expired on September 30, 1996, though successive congresses have continued to appropriate funds for programs under the act. It provides funding for crime prevention programs, ranging from juvenile justice formula grants to gang-related programs to mentoring grants to local delinquency prevention efforts.

At the same time, other juvenile justice measures were introduced to address the perceived need to “get tough” on violent youth offenders, due in part to crime-related data reported for the early 1990s reflecting a high level of juvenile violent crime. Specifically, Congress considered alternative methods that could be used by the juvenile justice system to control this problem. The 105th Congress established the JAIBG program under the Commerce, Justice, State Appropriations Act of FY1998 (P.L. 105-119). To be eligible to receive funds, states were required to consider laws, policies, or programs that emphasized accountability-based reforms, including graduated sanctions, adult prosecution of juveniles, and changes to open access to juvenile records.

The major issues in the 106th congressional debate concerning the juvenile justice legislation included:

- the call for a more effective administrative apparatus within the Office of Juvenile Justice and Delinquency Prevention Office (OJJDP), established by the JJDP Act to administer grant programs that fund crime prevention efforts and provide assistance to juveniles within state juvenile justice systems;
- the debate over whether several JJDP Act discretionary grant programs should be reorganized to provide a more efficient use of federal crime prevention monies;
- whether to amend the JJDP Act formula grant program, especially the formula itself, and the four core requirements or mandates² with which states must comply to be eligible for formula grant monies. Since the existing formula allocation distributed monies based proportionally on each state’s juvenile population to the total population, some argued that each state should first receive a minimum amount before the monies were allocated by the juvenile population ratio. The mandates, designed to protect juveniles within the juvenile justice system, were the focus of proposals to abolish or loosen their restrictions;
- the possible amendment of the JAIBG program, especially the formula allocations for state and local governments;
- whether the juvenile justice system provides the most effective approach to address youth violent crime, as opposed to those who urge the adjudication of violent juvenile offenders within the adult system when these youth commit crimes that would be felonies if committed by an adult; and

² The four mandates are: deinstitutionalization of “status offenders,” defined as juveniles confined for offenses that would not be punishable if committed by an adult (truancy for example); sight and sound (juveniles may not be within sight or sound of adult inmates in secure facilities); removal of juveniles from adult jails and lockups; and reduction of the disproportionate incarceration of minority juveniles.

- the relative merits of crime prevention and punishment in combating youth crime, and the proper split between funding for crime prevention and punishment, particularly heightened by the language of the Commerce, Justice, State Appropriations Act of FY1998, that placed the JAIBG program outside the JJDP Act, although OJJDP administers it.

In the 106th Congress, both Houses passed bills that would reauthorize the act. The Senate passed an amended version of S. 254 on May 20, 1999. On June 17, 1999, the House passed, amended, H.R. 1501, a measure reauthorizing the Juvenile Accountability Block Grants. H.R. 1150, a JJDP Act reauthorization bill approved by the House Education and Workforce Committee, Subcommittee on Early Childhood, Youth and Families, was approved by the House as an amendment to H.R. 1501. The House-passed version of H.R. 1501 was received in the Senate on June 23. On July 28, the Senate passed H.R. 1501, striking all language after the enacting clause and inserting the language of S. 254. Both chambers insisted on their respective versions and on July 30, agreed to a conference. Under consideration since August 1999, both versions of H.R. 1501 died in conference, allegedly because of unresolved gun control issues. (Those bills are discussed in greater detail in the final section of this report.)

Although recent data reflect a continued drop in juvenile violent crime nationwide since the mid-1990s, comprehensive juvenile justice legislation considered in the 106th Congress retained an emphasis on punishment, though they appeared to place somewhat less emphasis on “get tough” remedies than earlier bills considered since 1996. In addition, these “get tough” programs and penalties shared the stage with new crime prevention programs, often proposed as block grants and designed in some cases to replace many of the JJDP Act crime prevention programs.

Though none of the major juvenile justice measures have been approved since 1996, except for the establishment of the JAIBG grant program in the FY1998 appropriations process, Congress has continued to provide funding for both crime prevention and accountability-based grant programs. Appropriations for DOJ under the Departments of Commerce, Justice, and State Appropriations Act for FY2001 (P.L. 106-553) contained funding for the Office of Juvenile Justice and Delinquency Prevention (\$279.8 million) and for the Juvenile Accountability Incentive Block Grant (\$249.5 million). These totals reflect the 0.22% across-the-board rescission mandated under the Miscellaneous Appropriations Act (H.R. 5666), enacted into law by cross-reference under the Consolidate Appropriations Act for FY2001 (P.L. 106-554).³

Juvenile Violence

Juvenile violent crime experienced tremendous growth from the late 1980s to the early 1990s, then declined thereafter. Professor Alfred Blumstein of the H. John

³ For more information, see CRS Report RS20758, *The 0.22 Percent Across-the-Board Cut in FY2001 Appropriations*.

Heinz School of Public Policy and Management, Carnegie-Mellon University, reports that:

The United States experienced a startling growth of violence during the period from 1985 through 1993, and that occurred while the rate of violence by people over 30 years declined steadily. The growth was attributed to more than a doubling of homicide by young people during that period, and that was sufficient to overcome the decline among the older people.⁴

Professor Blumstein concluded that the decline in homicides among young people after 1993 may be attributed to policing efforts in the larger cities, removal of guns from the hands of juveniles, and the decline in demand for crack among new younger users. Incarceration, he found, did not play a major role in reducing drug offenses, since new recruits were found to replace those who left the drug market during its heyday.⁵

Crime-related data released on October 15, 2000 by the Federal Bureau of Investigation (FBI) in its Uniform Crime Reports (UCR), revealed a continued reduction in juvenile *violent* crime arrests. For example, from 1995 to 1999, the number of juveniles arrested for violent crimes declined 23%, while violent crime arrests for all ages dropped 14%. While violent crime arrests for male juveniles declined 25.8% for this 5-year period, female juvenile arrests for violent crime declined only 6.2%. The *total* number of juveniles under 18 years of age arrested also fell 9.4% between 1995 and 1999. By comparison, the total number of arrests for all ages declined 3% between 1995 and 1999. From 1995 to 1999, juvenile arrests for drug abuse violations rose 1.3%, with male juvenile arrests decreasing by 0.4% and female juvenile arrests increasing by 12.3%.⁶

In its third annual report on school crime and safety, the Department of Justice's Bureau of Justice Statistics (BJS) and the Department of Education's National Center for Educational Statistics (NCES) found that in 1998, "students aged 12 through 18 were victims of more than 2.7 million total crimes at school [and they] were victims of about 253,000 serious violent crimes"⁷ The fourth annual National Youth Gang Survey (1998), contains an estimate that "28,700 gangs and 780,000 gang members were active in the United States in 1998, down from an estimated 30,500 gangs and 816,000 gang members in 1997...."⁸ At the same time, the reported

⁴ Alfred Blumstein, *Violence Certainly is the Problem*, University of Colorado Law Review, v. 69, 1998, p. 965.

⁵ *Ibid.*, p. 965-967.

⁶ U.S. Dept. of Justice, Federal Bureau of Investigation, *Crime in the United States 1999, Uniform Crime Reports* (Washington: 2000), p. 218-219.

⁷ U.S. Dept. of Justice, Bureau of Justice Statistics and U.S. Dept. of Education, National Center for Education Statistics, *Indicators of School Crime and Safety 2000: Executive Summary* (Washington: 2000), p. v.

⁸ U. S. Dept. Of Justice, Office of Juvenile Justice and Delinquency Prevention, *Highlights of the 1998 National Youth Gang Survey*, by John P. Moore and Ivan L. Cook (Washington, (continued...))

number of gang members remained about the same in large cities, increased by 3% in rural counties, and decreased by 3% in small cities, and by 16% in suburban counties.⁹

During the 1990s, the debate among criminologists and policymakers over the direction of juvenile violence was driven by changes in data trends. During the peak in juvenile crime in the early to mid-1990s, some argued that the nation was on the verge of a teenage crime explosion, as the children of the baby boomers reached the ages at which they were most likely to commit crimes. John J. DiIulio, Jr., then a Princeton University professor of politics and public affairs, not only foresaw a teenage crime wave, but also described some youngsters as “superpredators,” lacking in moral values and more violent than previous generations.”¹⁰

Others maintained that such a prediction was overblown. Vincent Schiraldi, director of the Justice Policy Institute, criticized the tendency of experts like Professor DiIulio who foresaw a “rising tide of superpredators,” and those in the media who too willingly exaggerated trends in juvenile crime. He noted that less than one half of one percent of juveniles nationwide were arrested for violent crimes in 1995.¹¹

Although data show that juvenile violent crime decreased in the late 1990s, appearing to counter the predictions of a teenage crime wave, criminologists and policymakers remain concerned about the continued high level of juvenile violence. Shay Bilchik, former Administrator of the Office of Juvenile Justice and Delinquency Prevention, was guardedly optimistic about the current direction of juvenile crime. In the foreword to the latest edition of *Juvenile Offenders and Victims*,¹² published by OJJDP, he stated that “the rate of juvenile violent crime arrests — after peaking in 1994 — has consistently decreased over the past several years.” He cautioned, however, that “it has yet to return to the 1988 level, the year in which dramatic increases in juvenile crime arrests were first seen.”¹³

House- and Senate-passed Juvenile Justice Legislation in the 106th Congress

The 106th Congress considered, but did not enact legislation to reauthorize the Juvenile Justice and Delinquency Prevention Act of 1974 and the JAIBG program.

⁸ (...continued)
December 1999), p. 1.

⁹ *Ibid.*

¹⁰ Quoted in Richard Lacayo, “Law and Order,” *Time*, v. 147, January 15, 1996, p. 52.

¹¹ Vincent Schiraldi, “The Latest Trend in Juvenile Crime: Exaggeration by the News Media,” *Washington Post*, January 11, 1998, sec. C, p. 6.

¹² U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims: 1999 National Report*, by Howard N. Snyder and Melissa Sickmund (Washington: September 1999), p. iii.

¹³ *Ibid.*

Although the JJDP Act expired on September 30, 1996, Congress has continued to approve appropriations for OJJDP programs established under the act.

Legislative History of H.R. 1501. As introduced on April 21, 1999, the Juvenile Justice Reform Act of 1999 (H.R. 1501/McCollum) contained no provisions to reauthorize the 1974 Juvenile Justice Act. Instead, it contained language to replace the existing Juvenile Accountability Incentive Block Grant (JAIBG) program with Juvenile Accountability Block Grant (JABG) program. Also, the measure would amend the JAIBG program in other ways, including the addition of new purposes for which the monies may be used, and the revision of the grant's formula allocations for local governments. When H.R. 1501 was considered on the House floor, several amendments were added, including the language from the juvenile justice reauthorization bill, the Juvenile Crime Control and Delinquency Prevention Act of 1999 (H.R. 1150/Greenwood). The House passed, amended, H.R. 1501 on June 17, 1999.

Senator Orrin Hatch, Chairman of the Senate Judiciary Committee, introduced the Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999 (S. 254) on January 22, 1999. The measure passed the Senate, amended, on May 20, 1999. S. 254 provided comprehensive juvenile justice legislation, including reauthorization of the JJDP Act and language to replace the existing Juvenile Accountability Incentive Block Grant (JAIBG) program with a Juvenile Accountability Block Grant (JABG) program. On July 28, 1999, the Senate insisted on its amendment, struck the language of H.R. 1501, and incorporated the language of S. 254. Since August 1999, both versions of H.R. 1501 have been stalled in conference, reportedly because of unresolved gun control issues.

106th Congress: Juvenile Justice Issues

Under current law, the JJDP Act contains five titles: Title I: Findings and Declaration of Purpose, Title II: Juvenile Justice and Delinquency Prevention, Title III: Runaway and Homeless Youth, Title IV: Missing Children, and Title V: Incentive Grants for Local Delinquency Prevention Programs. The legislative debate in the 106th Congress regarding juvenile justice reauthorization focused only upon Titles II and V of the act. This section provides a brief comparison of the issues in Title II and V related to juvenile justice reauthorization in the two versions of H.R. 1501. Also, comparisons of juvenile justice legislation not related to the JJDP Act, such as the JAIBG program proposals, are presented.

Title II, Part A: Administration of Juvenile Justice Programs

Reorganizing the OJJDP. Under Title II, Part A, current law provides language that established the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Both versions of H.R. 1501 would reorganize the office and change its name. Renamed the Office of Juvenile Crime Control and Prevention (OJCCP) in Senate version of H.R. 1501, the agency's administrator would be required to set measurable goals to reduce juvenile crime and delinquency, establish a process to coordinate agency programs and activities with those of other federal agencies, and

provided for the analysis of data pertaining to juvenile arrest and sentencing trends. In the House version of H.R. 1501, OJJDP would be renamed the Office of Juvenile Crime Control and Delinquency Prevention (OJCCDP). The bill would repeal two requirements that the administrator develop an annual comprehensive plan of agency activities, and that each Federal agency administering a Federal juvenile delinquency program submit annually a juvenile delinquency development statement. It would require that the agency's annual report to Congress must include an evaluation of programs funded and their effectiveness in reducing the incidence of juvenile delinquency, particularly violent crime committed by juveniles.

New Grant Program Established by the Senate Version. Unlike the House version, the Senate version of H.R. 1501 would authorize, under Part A, the Juvenile Delinquency Prevention Challenge (JDPC) Grant Program. The OJCCP Administrator would award grants to states for juvenile delinquency projects, including truancy prevention and reduction, family strengthening activities and adoptive parent recruitment, positive youth development, neighborhood courts or panels, and restorative justice. At least 20% of funds would be used for four purposes (neighborhood courts, restorative justice, expanding the use of probation officers, and initial intake screening), and states would be required to give priority to projects in high crime areas. The JDPC grant allocations would provide 0.5% to each state with the remainder split, 50% proportionally based on juvenile population and 50% proportionally based on the annual number of arrests for serious crimes during the three most recent calendar years. Awards from \$75,000 to \$100,000 would be provided for the five territories of Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Also, the Administrator would award funds to (1) youth organizations, (2) Indian tribes, and (3) Confidential Reporting of Individuals Suspected of Imminent School Violence (CRISIS) grants. Grants for youth organizations would reserve 80% for community-based nonprofits and 20% for national or state nonprofits. From amounts under the JDPC grants and Part B formula grants, the Administrator would be required to reserve 5% of funds for CRISIS grants, to be proportionally awarded on the basis of the juvenile population in each state, and would treat Indian tribal grants as if all tribes were treated collectively as a "state." The measure would authorize a total of \$1.2 billion for JDPC grants, \$200 million for each year, FY1999 through FY2004. House and Senate authorizations for Title II, Part A are shown in Appendix 1.

Title II, Part B: Formula Grants

The Four Core Mandates for the Part B Formula Grants. As enacted and subsequently amended by five reauthorization measures, the JJDP Act contains four core requirements or mandates for states to attain in order to be eligible for formula grant monies. These include: deinstitutionalization of "status offenders," defined as juveniles confined for offenses that would not be punishable if committed by an adult (truancy for example); sight and sound (juveniles may not be within sight or sound of adult inmates in secure facilities); removal of juveniles from adult jails and lockups; and reduction of the disproportionate incarceration of minority juveniles. Under the JJDP act, section 223(c)(3) requires that states failing to comply with these mandates lose 25% of Title II, Part B formula grants for each mandate not met.

Deinstitutionalization of status offenders. Both versions of H.R. 1501 would retain the current prohibition on detaining status offenders in secure facilities in accordance with rules issued by the OJCCDP Administrator, and would allow further detention of runaways in accordance with the Interstate Compact on Juveniles (ICJ). According to an OJJDP-sponsored report, this mandate has been effective.¹⁴ For court data on cases resulting in detention, the use of detention in status offense cases dropped from 40% of all cases in 1975 to less than 10% in 1996.¹⁵ The most serious offenses amongst status offenders in these cases were curfew violation, underage drinking, running away from home, truancy and incorrigibility. The mandate seeks to divert status offenders from correctional facilities to community-based services, ranging from day centers to residential home treatment to alternative education.

Sight and sound separation. According to the Juvenile Court Centennial Initiative (JCCI) fact sheet, the sight and sound provision “seeks to prevent children from psychological abuse and physical assault. ... [by directing that] children cannot be housed next to adult cells, share dining halls, recreation areas or any other common spaces with adults, or be placed in any circumstances that could expose them to threats or abuse from adult offenders.”¹⁶ The House version would modify this requirement to prohibit regular contact but allow for incidental, supervised contact, such as passing in a hallway. The Senate version would loosen only the prohibition of communication that is incidental or accidental, or sounds that cannot reasonably be considered to be speech. Also, the Senate version would mandate that correctional staff who work with juveniles must be trained and certified.

Removal of juveniles from adult jails and lockups. The JCCI factsheet notes that the third mandate “is designed to protect children from psychological abuse, physical assault and isolation.”¹⁷ JCCI reports that children incarcerated with adults in correctional facilities are more likely than children in juvenile facilities to commit suicide, be sexually assaulted, be assaulted by staff, and be attacked with a weapon. The mandate does not apply to children who are tried or convicted as adults and are incarcerated in adult correctional facilities.¹⁸ The House version would extend from 24 hours to 48 hours the period of time for which juveniles could be held in a facility with adults, prior to an initial court appearance. It would allow youths detained outside a standard metropolitan area to be held in an adult facility, with periodic review, if the parents, in consultation with the juvenile's attorney, and the court agree. The Senate version would add the following groups to the exception for removal: those alleged nonstatus juvenile offenders detained in a jail or lockup for up to 6 hours for selected purposes; those awaiting an initial court appearance within 48 hours after being taken into custody; and those confined in jails or lockups located

¹⁴ U.S. Dept. of Justice, *Juvenile Offenders and Victims*, p. 207.

¹⁵ *Ibid.*

¹⁶ See the fact sheet at the Juvenile Court Centennial Initiative website, revised April 21, 2000 and visited on June 8, 2000 at [<http://www.ojjdp.ncjrs.org/jcci/fjjact.html>].

¹⁷ *Ibid.*

¹⁸ *Ibid.*

outside a metropolitan statistical area when (1) no existing acceptable alternative is available, (2) a parental or legal guardian consents to the detention and (3) a juvenile's counsel is able to discuss the situation with the court prior to detention.

Disproportionate minority incarceration. The House version would require states to address prevention efforts to reduce the disproportionate number of minorities who come in contact with the juvenile justice system. The bill would prohibit the establishment of numerical standards or quotas. The Senate version would amend existing language to replace the word "minority" with the phrase "segments of the juvenile population." Also, it would require reduction efforts to be undertaken, provided these efforts would not result in the release of offenders or cause officials to fail to detain them.

According to the *1999 National Report*, data for most jurisdictions nationwide reveal that minority youth, especially blacks, are overrepresented within the juvenile justice system.¹⁹ Congressional debate regarding the fourth mandate has been informed by recent efforts of DOJ and the states concerning this issue. In its 1988 annual report to Congress, the Coalition for Juvenile Justice, then known as the National Coalition of State Juvenile Justice Advisory Groups, brought national attention to the disproportionate confinement of minority juveniles in secure facilities.²⁰ The overrepresentation of minority juveniles occurs not only in secure facilities, but in each of the major decision points in the juvenile justice system process, namely, "arrest, detention, prosecution, adjudication, transfer to adult court, and commitment to secure facilities."²¹ As a result, Congress approved amendments in 1988 to the Juvenile Justice Act requiring that all states address disproportionate minority confinement (DMC) in their state plans. Furthermore, the 1992 amendments to the JJDPJA made addressing the DMC issue a central requirement of the law mandating that future funding eligibility be based on state compliance. States failing to address this problem would lose 25% of their formula grant program funds.

States were required to assess the level of DMC and implement ways to reduce DMC where it was found to exist. Subsequently, 16 states conducted prevalence studies to determine the likelihood of youth under the age of 18 being incarcerated in a juvenile correction facility. It was found that "African-American youth had the highest prevalence rates of all segments of the population in 15 of the 16 States." Other data, the most recent available, reveal that in 1995 minority youth comprised 32% of the youth population in the nation, but accounted for 68% of all youth confined in secure detention and 68% confined in training schools and other secure

¹⁹ U.S. Dept. of Justice, *Juvenile Offenders and Victims*, p. 193.

²⁰ U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Disproportionate Minority Confinement: 1997 Update*, by Heidi M. Hasia and Donna Hamparian (Washington: September 1998), p. 1. In the report, "minority youth" are defined as those juveniles who are African Americans, American Indians, Asians, Pacific Islanders, and Hispanics. It further explains that the American Indian category has been interpreted to include, along with American Indians, Eskimos, Aleutians, and others.

²¹ U.S. Dept. of Justice, *Disproportionate Minority Confinement*, p. 1.

institutional environments.²² This confinement in public facilities showed that minority youth outnumbered non-minority white youth by more than two-to-one. These data indicate a significant increase over 1983 statistics that showed minority youth comprised 53% of the secure juvenile detention population and 56% of the secure juvenile corrections population.²³

In 1991, OJJDP established the DMC Initiative to address the problem and assist states in complying with the JJDP requirement.²⁴ Five states, Arizona, Florida, Iowa, North Carolina, and Oregon, were selected through a competitive process to pilot the DMC Initiative, to be accomplished in two phases. First, each state would assess the extent of DMC. Second, the states would design and implement corrective actions.

During the first phase, the states found that the extent of the problem varied among counties and local jurisdictions. Each state focused on areas that had the highest rates of minority overrepresentation and had the largest minority populations. To locate the underlying causes of DMC, each state surveyed local community representatives, including minority youth and their families, who identified certain potential factors in four interrelated areas: the juvenile justice system, the educational system, the family, and socio-economic conditions. First, the community representatives identified the juvenile justice system as racially and ethnically biased, though they viewed the bias as unintentional rather than overt. Second, they focused on the failure of the educational system to serve minority juveniles adequately, and their lack of full participation in the educational system. Third, the community representatives looked at the family, perhaps the most sensitive and controversial area. In highlighting causes of DMC, they concentrated on family composition, particularly single-parent, low-income households, and family functioning or the lack of strong family support. The majority of community representatives agreed that socio-economic conditions played an important role in contributing to DMC, including a lack of awareness of minority culture by the majority community, a lack of positive role models, low incomes, few job opportunities, and urban density of minority families.²⁵

For the second phase, participant states developed multiple intervention strategies that included: (1) advocacy strategies that sought to improve the abilities of minority youth and their families in navigating the juvenile justice system and improving the ability of the system to assist minority youth; (2) collaboration strategies that stressed cooperation between community-based groups and the juvenile justice system; and (3) alternative resource development strategies that developed diversion programs appropriate for minority youth and prevention programs and

²² *Ibid.*

²³ *Ibid.*

²⁴ U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Disproportionate Minority Confinement: Lessons Learned From Five States*, by Patricia Devine, Kathleen Coolbaugh, and Susan Jenkins (Washington: December 1998), p. 1.

²⁵ *Ibid.*, p. 6-7.

services within the minority community. OJJDP concluded that, “[though] specific DMC outcomes varied by State and community, the DMC initiative had several universal effects, including the development of automated systems for monitoring DMC activities, increased community actions, the institutionalization of DMC awareness, and the improvement of local services.” The benefits of this approach, it found, were a “greater understanding within the pilot communities of the complexity and pervasiveness of DMC issues and the realization that serious efforts to address DMC require numerous resources, including time, money, technical assistance, and above all, commitment.”²⁶

Advocates supporting the imposition of penalties on those who commit crimes, regardless of their race or ethnicity, argue that the seriousness and large number of crimes committed by minority youth are the primary cause of DMC. In contrast, opponents of disproportionate minority confinement cite deep concern about what they see as evidence of racial inequity within the juvenile justice system. Additionally, they maintain that there are harmful long-term effects of negatively labeling and incarcerating large numbers of mainly male, minority youth.²⁷

The Senate Version Would Establish A New Mandate. Unlike the House version, the Senate version would add a new mandate to require that states take before the court those juveniles arrested with illegal firearms at school, and detain them for at least 24 hours if the court determines they are a danger to themselves or others. The Senate version was approved in the wake of the shooting at Columbine High School, near Denver, Colorado, and this new mandate would address the problematic aspects of the recent spate of school shootings nationwide.

Penalty for Failure to Comply. Both House and Senate versions would amend the requirement that states failing to comply with those mandates would lose 25% of Title II, Part B formula grants for each mandate not met, unless waived by federal grant officials. The House version would reduce the amount to 12.5% for each mandate not met, allowing states to receive 50% of their grant funding if they do not comply with *any* of the four mandates. Similarly, the Senate version would reduce the amount to 10% for each mandate not met, allowing states to receive 50% of their grant funding if they did not comply with any of that bill’s five mandates. House and Senate authorizations for Title II, Part B are shown in Appendix 1.

Non-discrimination of Formula Grants for Religious Organizations. Both versions stipulated that religious organizations could not be discriminated against by state or local governments in the award of grants under Title II, Part B.

²⁶ *Ibid.*, p. 11.

²⁷ John Cheeves, “Racial Inequity Cited in Youth Detention Study,” *Lexington, KY Herald-Leader*, March 15, 2000 [<http://www.kentuckyconnect.com/>]

Title II, Part C through Part I: Selected Grant Programs

Reorganization of Discretionary Grant Programs. Both versions would repeal or reorganize several provisions authorizing discretionary grant programs within the JJDP Act. The House version would repeal Title II, Part C (Discretionary Programs), Part D (Gang-related Programs), Part E (State Challenge Activities); Part F (Treatment for Juvenile Offenders); Part G (Mentoring); and Part H (Boot Camps). In the place of these programs, the House measure would add Part C (Juvenile Delinquency Prevention Block Grant Program); Part D (Research, Evaluation, Technical Assistance, Training); and Part E (Developing, Testing, and Demonstrating Promising New Initiatives and Programs). The emphasis appeared to be on eliminating existing “issue-focused” grant programs, and replacing them with new programs designed to assist states and local governments with training, evaluation, and workable demonstration models that may be successfully reproduced nationwide.

The Senate version moved in a similar direction to that found in the House, but retained many of the existing grant programs in the JJDP Act. The Senate would retain Part C (Discretionary Programs) and Part D (Gang-related Programs), but would strike Parts E through F, and H. The Senate measure would add a Part E (Developing, Testing, and Demonstrating Promising New Initiatives and Programs), and Part F (Mentoring, formerly Part G). A new Part G (Administrative Provisions) provides authorizations for Title II programs.

Title V: Local Delinquency Prevention Grants

Both versions of H.R. 1501 would repeal Title V (Incentive Grants for Local Delinquency Prevention Programs).

Amendments to the Juvenile Accountability Incentive Block Grants

New Purposes Added for JAIBG Program Funding. Although administered by OJJDP, the Juvenile Accountability Incentive Block Grant (JAIBG) program was established outside of the JJDP Act, under FY1998 Commerce, Justice, State Appropriations legislation (P.L. 105-119). Both versions of H.R. 1501 would replace the JAIBG Program with the Juvenile Accountability Block Grants (JABG). Under the House version, the new program would provide that funds be used to strengthen the juvenile justice system. New purposes for which the funds could be used include implementing graduated sanctions (that require establishing a range of timely, appropriate consequences linked to offenses at all levels of severity); building and operating correctional facilities; funding juvenile witness assistance programs; establishing training programs for law enforcement and court personnel to prevent and control juvenile crime; establishing and maintaining records systems for juveniles who engage in violent crimes (listed as a prerequisite for *receiving* grant funds under existing law); establishing and maintaining programs to conduct risk and need assessments of juvenile offenders, including mental health and drug treatment; establishing and supporting restorative justice programs; supporting a toll-free hotline to report threats of school violence; and implementing activities to encourage character education and development.

The Senate version would provide that funds be used for accountability of juvenile offenders and for reducing risk factors associated with juvenile crime or delinquency. The measure would replace the enumerated purposes for which the funds could be used with: (1) implementing graduated sanctions; (2) providing for victim restitution and restorative justice; (3) requiring juveniles to finish school or vocational training; (4) requiring juvenile offenders to provide child support as applicable; (5) curbing and punishing truancy; (6) establishing information and tests to aid in identifying, prosecuting and sentencing juvenile offenders; (7) developing and implementing the Serious Habitual Offenders Comprehensive Action Program (SHOCAP); (8) encouraging multijurisdictional anti-gang programs; (9) constructing or remodeling juvenile correctional facilities; (10) implementing training and providing technology to juvenile justice officials for juvenile crime control; (11) encouraging character education and training programs; (12) punishing adults who involve juveniles in the commission of a crime; (13) establishing juvenile crime prevention programs; (14) setting up juvenile drug and alcohol treatment programs; (15) implementing school counseling programs; (16) providing drug testing for juveniles upon arrest; and (17) addressing mental health and substance abuse needs through training of justice system officials.

Changes to the Grant Allocation Formula. Under existing law, the JAIBG state grant allocation formula gives each state 0.5% of total JAIBG appropriated funds, with remaining monies allocated proportionally on the basis of juvenile population. Funds to each state must be shared with local governments on a 25% state and 75% local basis.²⁸ Local government monies are to be distributed based on the following formula: two-thirds allocated according to the jurisdiction's law enforcement expenditures over the three most recent calendar years, and one-third according to the average number of Part 1 violent crimes by juveniles²⁹ over the 3 most recent calendar years. The House version would decrease the state base to 0.25% of the total funds for each state, and the Senate version retains the state base under existing law (0.5%). The distribution of local government monies would be amended from two-thirds to three-quarters allocated according to the jurisdiction's law enforcement expenditures over the three most recent calendar years, and one-third to one-quarter according to the average number of Part 1 violent crimes over the 3 most recent calendar years. The Senate version would change the state/local government split from 25%/75% to 30%/70%.

²⁸ According to the Bureau of Justice Assistance (BJA), a "local government" is defined as a "jurisdiction is classified as any county, township, city, or village. This definition also includes Indian tribes or Alaskan Native villages that carry out substantial governmental duties and powers. The Commonwealth of Puerto Rico is considered a unit of general-purpose local government as well as a state. For the parish-level of government in the state of Louisiana, the parish sheriff is the eligible unit of local government." See the BJA website at: [<http://www.ojp.usdoj.gov/BJA/html/llelig.htm>], visited on Noember 17, 2000.

²⁹ As defined by the FBI's Uniform Crime Reports, Part 1 violent crimes are murder, rape, robbery, and aggravated assault.

Other Provisions

Both bills contained numerous juvenile- or crime-related provisions not directly related to OJJDP and its programs. For example, both versions would require the application of adult probation and supervised release rules to juvenile delinquents. Both versions would penalize at the federal level those who recruit others for a criminal street gang, and would add gambling, the use of explosives, immigrant smuggling, and obstruction of justice to the list of prohibited gang activities. In addition, both versions contained a provision, called Aimee's Law, that would allow any state to be reimbursed from federal law enforcement funds set aside for another state, when the former state prosecutes and imprisons violent offenders with a prior conviction for similar crimes in the latter state. Specifically, this loss in grant funds would be triggered by the latter state's less stringent sentencing laws.

Both versions addressed Internet service filters to block access by children to websites containing objectionable materials. The Senate version would mandate that Internet service providers must provide their customers with software to screen or filter downloaded information, while the House version would make schools and libraries ineligible for federal aid for high-speed access to the Internet if they do not block or filter obscene materials from their computer terminals.

Other provisions ranged from the display of the Ten Commandments on state or municipal property (House version only), to the approval of student drug testing by local school districts with the permission of parents or guardians (Senate version only), to the authorization of FBI assistance to state and local governments undertaking the investigation of deaths of children under the age of 13 years (House version only). Unlike the House version of H.R. 1501, the Senate version contained a gun-related provision that would require criminal background checks for all sales at gun shows and for those who seek to redeem their own guns at pawn shops.³⁰

³⁰ For a fuller discussion of the gun control provisions, see CRS Issue Brief IB10014, *Gun Control*.