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# CRS Report for Congress

## Juvenile Justice: Legislative History and Current Legislative Issues

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# Juvenile Justice: Legislative History and Current Legislative Issues

## Summary

Juvenile justice in the United States has predominantly been the province of the states and their localities. The first juvenile court in America was founded in 1899 in Cook County, Illinois, and, by 1925, all but two states had established juvenile court systems. The mission of these early juvenile courts was to rehabilitate young delinquents instead of just punishing them for their crimes; in practice, this led to marked procedural and substantive differences between the adult and juvenile court systems in the states, including a focus on the offenders and not the offenses, and rehabilitation instead of punishment.

The federal government began to play a role in the states' juvenile justice systems in the 1960s and 1970s. In 1974, Congress passed the first comprehensive piece of juvenile justice legislation, the Juvenile Justice and Delinquency Prevention Act (JJDPA). The JJDPA had three main components: it created a set of institutions within the federal government that were dedicated to coordinating and administering federal juvenile justice efforts; it established grant programs to assist the states with setting up and running their juvenile justice systems; and it promulgated core mandates that states had to adhere to in order to be eligible to receive grant funding. Although the JJDPA has been amended several times over the past 30 years, its basic shape remains similar to that of its original conception.

As it was passed in 1974, the JJDPA focused largely on preventing juvenile delinquency and on rehabilitating juvenile offenders. Subsequent revisions to the act added sanctions and accountability measures to some existing federal grant programs, and new grant programs to the act's purview. In altering the JJDPA to include a greater emphasis on punishing juveniles for their crimes, Congress has essentially followed the lead of the states. During the 1980s and 1990s, most states revised their juvenile justice systems to include more punitive measures and to allow juveniles to be tried as adults in more instances. This has marked a significant change in the philosophy of the juvenile justice system, both at the state level and at the federal level, from its original conception. Juvenile justice in general has thus moved away from emphasizing the rehabilitation of juveniles and toward a greater reliance on sanctioning them for their crimes.

The JJDPA's authorization expired in FY2007, but its major programs have continued to receive appropriations. Reauthorization will likely be an issue confronting the 110th Congress. Policy issues associated with its reauthorization could include what the best federal response to juvenile violence and juvenile crime should be; whether the system should focus on the rehabilitation of juvenile offenders or on holding juvenile offenders accountable for their actions; and whether the grant programs as currently comprised represent the best way to support juvenile justice efforts in the states. S. 3155, as reported by the Senate Committee on the Judiciary, would reauthorize the JJDPA's major provisions through FY2013, make some revisions to the act's core mandates, and create a new incentive grant program.

This report will be updated as circumstances warrant.

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## Introduction

Administering justice to juvenile offenders has largely been the domain of the states, and as a result of this the laws that pertain to juvenile offenders can vary widely from state to state. There is no federal juvenile justice system. Although the federal government does not play a direct role in administering juvenile justice, in the 1960s, the federal government began establishing federal juvenile justice agencies and grant programs in order to influence the states' juvenile justice systems. The Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974 created many of the federal entities and grant programs that continue to operate today, including the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the state formula grants. Eligibility for many of these grant programs is tied to certain mandates that the states have to adhere to in order to receive federal funding. Over the ensuing decades, the JJDPA has been modified a number of times, broadening the mandate of the agencies it created and adding to the grant programs it established.

This report will analyze the current federal legislation that impacts the state juvenile justice systems. Although the report provides some background information on the evolution of juvenile justice in the United States, the main focus of the report is the major federal legislation that impacts the states juvenile justice systems, including the JJDPA. As the major provisions of the JJDPA are currently authorized through FY2007, several issues pertaining to its reauthorization may be of concern to the 110th Congress, including, but not limited to, the following:

- Should the core mandates associated with the state formula grants be expanded or modified?
- Are the current grant programs effective?
- Is there sufficient coordination occurring at the federal level?
- Should the federal approach to juvenile justice focus on rehabilitation, accountability, or both philosophies?

The original JJDPA and its major revisions through the end of the 109th Congress will be addressed in **Appendices A** and **B**.

## Background

Juvenile justice in the United States has been predominantly the province of the states and their localities. The first juvenile court in America was founded in 1899 in Cook County, Illinois. Twenty-five years later, all but two states had enacted legislation establishing a separate juvenile court system for young offenders. The

mission of these juvenile courts was to attempt to turn young delinquents into productive adults rather than merely punishing them for their crimes. This led to marked procedural and substantive differences between the adult and juvenile court systems in the states, including a focus on the offenders and not the offenses, and on rehabilitation instead of punishment.[1]

The federal government began to play a role in the states' juvenile justice systems in the 1960s and 1970s. In the Juvenile Delinquency and Youth Offenses Control Act,[2] Congress provided funds for state and local governments, through the Department of Health, Education, and Welfare, to conduct demonstration projects to research improved methods for preventing and controlling crime committed by juveniles. In 1968, Congress passed additional legislation[3] to provide direct assistance to state and local governments and to train juvenile justice personnel. To receive funding, states were required to designate a single agency to take the lead in improving delinquency prevention and control programs. Also in 1968, Congress for the first time placed juvenile justice grant authority within the purview of the Department of Justice (DOJ). Despite these congressional efforts to provide assistance to the states as they attempted to rein in juvenile crime, juvenile arrests for violent crimes increased by 216% between 1960 and 1974.[4] This increase in juvenile violent crime outstripped the growth in the juvenile population; the under-18 population grew from 47 million in 1950 to 70 million in 1970, an increase of only 49%.[5] It seemed apparent that the technical assistance and financial aid that Congress had provided the states was not enough to address the growing problem of juvenile crime, and many commentators maintained that there was a need for a distinct federal entity to manage the federal government's response to juvenile delinquency. In 1974, Congress addressed the issue by passing the first comprehensive piece of juvenile justice legislation, the Juvenile Justice and Delinquency Prevention Act (JJDPA).[6] The JJDPA created a number of grant programs and a new federal agency within DOJ's OJJDP, to oversee these grant programs and to coordinate the federal government-wide response to juvenile delinquency.

In the 1980s, many states responded to the public perception that juvenile crime was increasing by passing more punitive laws for juvenile offenders. Some of these laws removed certain types of juvenile crimes from the juvenile court system altogether, mandating that they be handled by the adult criminal system instead.

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[1] U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice: A Century of Change*, National Report Series, December 1999, p. 2. Hereafter referred to as OJJDP, *A Century of Change*.

[2] P.L. 87-274.

[3] P.L. 90-445.

[4] U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "The JJDP Act: A Second Look," *Juvenile Justice*, vol. II, no. 2, Fall/Winter 1995.

[5] Federal Interagency Forum on Child and Family Statistics 1998, *America's Children: Key National Indicators of Well-Being*, at [http://www.childstats.gov/pdf/ac1998/ac_98.pdf].

[6] P.L. 93-415.

Other laws instituted mandatory sentences for juvenile offenders convicted of certain crimes. This movement toward punishing juveniles and away from working to rehabilitate them accelerated in the 1990s, with all but three states passing laws that modified or removed traditional juvenile court confidentiality agreements, all but five states passing laws easing the transfer of juveniles into the adult criminal justice system, and a majority of states passing laws expanding sentencing options for juveniles.[7] During this period, more punitive measures were incorporated into the accepted federal funding streams for juvenile justice programs through a series of revisions to the JJDPA. These revisions are described in **Appendices A** and **B**.

# Juvenile Justice History

## The First Juvenile Courts

The early criminal justice system in America did not include a separate juvenile justice system. The colonists brought the British criminal justice system with them to the new world. This system included forced apprenticeship for poor and neglected children. If a juvenile committed a crime, they were first warned, shamed, or given corporeal punishment and then returned to the community. If a child committed a major criminal act, however, they were treated and tried as adults. Trials and punishment were largely based on the offender's age; anybody over the age of seven was subject to a trial in criminal court.[8] These early American laws had three fundamental features: they established local control of the justice system, gave families the responsibility (and legal liability) for their children's actions, and distinguished between deserving and undeserving poor people.[9]

The first Juvenile Court in the United States was established in Chicago in 1899; by 1925, all but two states had established separate juvenile justice systems.[10] The Juvenile Court of Chicago was based on the British doctrine of *parens patriae*, or the notion of the state acting in the nature of a parent. This doctrine was used to explain the state's interest in distinguishing between adults and children in its dispensation of justice. Because children are not fully imbued with developmental or legal capacity, the *parens patriae* doctrine held that the government could provide protection and treatment for children whose parents were not providing adequate care

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[7] OJJDP, *A Century of Change*, p. 5.

[8] Karen Hess and Robert Drowns, *Juvenile Justice*, 4th Ed., Thomas Wadsworth, Belmont, CA, 2004, p. 7. Hereafter referred to as Hess and Drowns, *Juvenile Justice*.

[9] Grossberg, Michael, "Changing Conceptions of Child Welfare in the United States, 1020-1935," Chapter 1 in Margaret K. Rosenheim, Franklin E. Zimring, David S. Tanenhaus, and Bernardine Dorhn, eds., *A Century of Juvenile Justice*, University of Chicago Press, Chicago, IL, 2002, p. 6. Hereafter referred to as *A Century of Juvenile Justice*, Ch. 1.

[10] U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims: 1999 National Report*, 1999, p. 86, available at [http://www.ncjrs.org/html/ojjdp/nationalreport99/toc.html]. Hereafter referred to as OJJDP, *1999 National Report*.

or supervision.[11] The Juvenile Court of Chicago became the model for the various state juvenile justice systems that followed it. Its key features were the definition of a juvenile as a child under the age of 16; the separation of children and adults in correctional institutions; the establishment of special, informal procedural rules, including the elimination of indictments, pleadings, and jury trials; the provision of probation officers to monitor juveniles released into the community; and the prohibition of the detention of children below the age of 12 in a jail or police station.[12]

Although delinquency among children was punished, a key element of the juvenile justice system as it was conceived originally was the welfare of the child and the concept that delinquent children could be turned into productive citizens through treatment. This benevolent mission was clearly stated in most laws that set up juvenile justice systems, and led to substantial procedural and substantive differences between juvenile and adult criminal systems in the states. For example, in the adult criminal system, district attorneys selected which cases they would bring to trial, whereas in the juvenile justice system, the juvenile court itself often controlled which cases would be tried. Juvenile court intake considered extra-legal factors, such as the child's home situation, as well as legal factors when deciding whether to bring a case to trial, and had discretion to handle cases informally.[13]

Additionally, these early juvenile courts did not incorporate the procedural due process protections afforded adult criminal defendants, which were deemed unnecessary as a result of the court's benevolent mission. Attorneys for the state and the youth being tried were not considered essential to the system's operation, especially in less serious cases, and judges had a broad range of dispositions at their disposal that were tailored to the best interests of the child. Judges' dispositions became part of a treatment plan for the juvenile, and this treatment continued until the juvenile was considered cured or became an adult at age 21.[14]

In 1914, the practice of *diversion*, or the official halting of formal criminal proceedings against a juvenile offender, was established with the creation of the Chicago Boy's Court. The goal of diversion was to provide treatment for juveniles outside of the formal juvenile justice system. To this end, the juvenile court in Chicago released juveniles to the supervision and authority of various community service agencies, who evaluated the youth's behavior and reported back to the Court. If the evaluation was satisfactory to the Judge, the court officially discharged the juvenile without any formal record of the proceedings.[15]

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[11] OJJDP, *1999 National Report*, p. 86.

[12] Hess and Drowns, *Juvenile Justice*, pp. 15-16.

[13] OJJDP, *1999 National Report*, p. 86.

[14] OJJDP, *1999 National Report*, p. 87.

[15] Hess and Drowns, *Juvenile Justice*, p. 18.

By 1930, only the federal government continued to treat children who were charged with a crime as adults.[16] This situation led the U.S. Attorney General (AG) to recommend that juveniles charged with violating federal laws be returned to their home state's juvenile justice system, a proposition that Congress agreed with.[17]

## Early Federal Government Efforts

The earliest federal government involvement in juvenile delinquency occurred in 1909, when the White House held a Conference on the Care of Dependent Children. The goal of this conference was to share information about needy children across the United States and to emphasize the immediate need for action. This conference led directly to the creation of the U.S. Children's Bureau in 1912. The Children's Bureau was authorized to investigate and report on all aspects of child welfare, including the juvenile justice system.[18] In 1936, the Children's Bureau began providing the first federal subsidy program that provided child welfare grants to states. These grants were used to care for a wide array of at-risk youth, including juvenile delinquents.

The first major federal legislation addressing juvenile delinquents was enacted in 1938. The Federal Juvenile Delinquency Act of 1938 (FJDA)[19] left the state juvenile justice systems as the preferred alternative for juveniles arrested for violating federal laws, but gave the AG the discretion to charge a juvenile as an adult and allowed for federal juvenile proceedings if both parties agreed to it.

In 1951, Congress amended the FJDA with the Federal Youth Corrections Act.[20] This act afforded juvenile offenders tried as adults in the federal system special rehabilitation outcomes. Apart from this revision, however, the FJDA remained essentially unchanged for 35 years until Congress passed major Juvenile Justice reform measures in the 1970s. In 1951, Congress also established the Juvenile Delinquency Bureau within the Department of Health, Education, and Welfare (HEW). The bureau's placement within HEW can be seen as a reflection of the early governmental focus on the treatment of juvenile delinquents and the prevention of delinquency, rather than on punishment.[21]

In the 1950s and 1960s, however, many observers began to question the juvenile courts' ability to successfully rehabilitate delinquents. While the system's basic goal of rehabilitating juveniles through individually tailored plans was not in question, professionals in the field grew concerned about the growing numbers of juveniles being institutionalized for treatment purposes. This concern was reflected in a series

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[16] National Commission on Law Observance and Enforcement, *Report on the Child Offender in the Federal System of Justice*, 1931, p. 2.

[17] H.Rept. 958, 72nd Cong., 1st. Sess. 2, accompanying the bill enacted as 47 Stat. 301 (1932).

[18] *A Century of Juvenile Justice*, Ch. 1, pp. 27-29.

[19] 52 Stat. 764 (1938), 18 U.S.C. 921 to 927 (1940 ed.).

[20] 64 Stat. 1086 (1950), 18 U.S.C. 5005 to 5026 (1952 ed.).

[21] Hess and Drowns, *Juvenile Justice*, p. 21.

of Supreme Court rulings during the 1960s that required that juvenile court procedures become more formal in order to afford juveniles legal protections comparable to those afforded adults in criminal courts.[22]

The landmark Supreme Court ruling of this period, *In re Gault*,[23] concluded that hearings that could result in the institutionalization of children must afford the juveniles being tried the right to notice and counsel, the right to question witnesses, and the right to protection from self-incrimination. Although the Court did not include the right to appellate review in its decision, it encouraged the states to afford juveniles that protection as well.[24]

Congress responded to the increasing public awareness of juvenile crime by passing the Juvenile Delinquency and Youth Offenses Control Act of 1961.[25] This act authorized HEW to provide grants totaling $10 million annually, for three years, to states, local government entities, and private nonprofit agencies to fund demonstration projects that focused on improving the methods used to prevent and control juvenile crime. The projects funded through this initiative were focused on urban inner-cities that had the highest juvenile delinquency rates at the time.[26]

In 1968, Congress took two further actions that affected federal funding for juvenile justice. The first was the Juvenile Delinquency Prevention and Control Act,[27] which provided grant funding to the states and local government entities for the training of juvenile court personnel. These grants were to be administered by HEW. The second was the Omnibus Crime Control and Safe Streets Act,[28] which, among other things, involved DOJ in juvenile justice for the first time through the Law Enforcement Assistance Administration (LEAA), which was created in Title I of the act. LEAA was to serve as a clearinghouse for channeling federal funding to state and local law enforcement agencies, and giving states incentives to establish planning agencies and funding a wide variety of programs ranging from education and research to local crime control initiatives.

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[22] OJJDP, *A Century of Change*, p. 3.

[23] 387 U.S. 1, 87 S. Ct. 1428 (1967).

[24] Other Supreme Court rulings that have directly impacted juvenile justice include *Kent v. United States* (383 U.S. 541, 1966), *In re Winship* (397 U.S. 358, 1970), *McKeiver v. Pennsylvania* (403 U.S. 528, 1971), *Breed v. Jones* (421 U.S. 519, 1975), *Oklahoma Publishing Company v. District Court in and for Oklahoma City* (430 U.S. 308, 1977), *Smith v. Daily Mail Publishing Company* (443 U.S. 97, 1979), and *Schall v. Martin* (467 U.S. 253, 1984).

[25] P.L. 87-274.

[26] U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "The JJDP Act: A Second Look," *Juvenile Justice*, Vol. II, No.2, Fall/Winter 1995, p.12.

[27] P.L. 90-445.

[28] P.L. 90-351.

By the early 1970s, consensus began to form around the idea that the federal government's efforts to address juvenile justice were unfocused and underfunded.[29] The House Committee on Education and Labor in particular questioned the effectiveness of the Juvenile Delinquency Prevention and Control Act of 1968 and levied a number of criticisms at the way HEW implemented the act:

> The HEW administered program, during its first three years, was disappointing because of delay and inefficiency. A director of the Youth Development and Delinquency Prevention Administration was not appointed for over 18 months. Less than a third of the $150 million authorized for fiscal years 1968 through 1971 was appropriated. Furthermore, only half of the funds that were appropriated were actually expended. The funds were generally spent on underfunded, unrelated, and scattered projects. Weakness in program administration, the dominance of the Law Enforcement Assistance Administration, and inadequate funding contributed to reasons for a lack of total success.[30]

Disappointed with the way the 1968 act was implemented, consensus began to form within Congress around the idea of creating a new federal entity to oversee the federal government's juvenile justice efforts. As the Juvenile Delinquency Prevention and Control Act's authorization was expiring in 1974, Congress moved to replace it with a more comprehensive piece of legislation.

## The Juvenile Justice and Delinquency Prevention Act

The Juvenile Justice and Delinquency Prevention Act (JJDPA) was first passed by Congress in 1974[31] and was most recently reauthorized in 2002 by the 21st Century Department of Justice Appropriations Authorization Act.[32] Its provisions are currently authorized through FY2007. This section analyzes the JJDPA as it stands today.

By 1974, strong momentum had developed in the public, academic, and governmental arenas toward the idea that the juvenile justice system needed to focus on preventing juvenile delinquency, deinstitutionalizing youth already in the system, and keeping juvenile offenders separate from adults offenders. Congress responded to this growing consensus by passing the Juvenile Justice and Delinquency Prevention Act of 1974. The JJDPA had three main components: it created a set of institutions within the federal government that were dedicated to coordinating and administering federal juvenile justice efforts; it established grant programs to assist

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[29] U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "The JJDP Act: A Second Look," *Juvenile Justice*, Vol. II, No.2, Fall/Winter 1995, p.13.

[30] U.S. Congress, House Committee on Education and Labor, *Juvenile Justice and Delinquency Prevention Amendments of 1977*, H.Rept. 95-313, pp. 35-36.

[31] P.L. 90-415.

[32] P.L. 107-273.

the states with setting up and running their juvenile justice systems; and it promulgated core mandates that states had to adhere to in order to be eligible to receive grant funding. Although the JJDPA has been amended several times over the past 30 years, it continues to feature the same three components. As it was passed in 1974, the JJDPA focused the federal government's efforts largely on preventing juvenile delinquency and on rehabilitating juvenile offenders. Subsequent revisions to the act placed emphasis on influencing states to expand the use of sanctions and accountability measures through some existing grant programs, as well as adding new grant programs to the act's purview. The latest reauthorization of the JJDPA, enacted by P.L. 107-273, made several changes to the act, including consolidating various separate grant programs and modifying the language of some of the core mandates. **Appendix A** details the original JJDPA; **Appendix B** details the JJDPA's major subsequent revisions and includes a summary of the specific changes enacted by its last reauthorization.

## Concentration of Federal Efforts

The original JJDPA established the Office of Juvenile Justice and Delinquency Prevention (OJJDP) within DOJ's Law Enforcement Assistance Administration[33] (LEAA) as the new clearing house for the federal government's efforts to influence states' juvenile justice systems. Subsequent revisions to the JJPDA designated OJJDP as a stand-alone office within DOJ and directed the Administrator to report directly to the AG. Today, the JJDPA grants the Administrator of OJJDP a broad authority to coordinate the federal government's activities relating to the treatment of juvenile offenders, including programs that focus on prevention, diversion, training, treatment, rehabilitation, evaluation, research, and improvement of the states' juvenile justice systems.[34] The Administrator is charged with developing objectives, priorities, strategies, and long-term plans concerning the treatment and handling of juvenile offenders by federal agencies and by the states, and overseeing the implementation of these plans. Thus, the Administrator of OJJDP is, by statute, the lead individual in the United States federal government charged with developing and implementing policies that govern the treatment of juvenile offenders by federal agencies and the federal government's efforts to influence the states' juvenile justice systems.

**Coordinating Council on Juvenile Justice and Delinquency Prevention.** The original JJDPA established an independent organization known as the Coordinating Council on Juvenile Justice and Delinquency Prevention (Coordinating Council) to coordinate the federal government's juvenile delinquency programs. The Coordinating Council was to be composed of representatives from a broad range of federal agencies who "exercise significant decision making authority

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[33] LEAA was established to serve as a clearinghouse for channeling federal funding to state and local law enforcement agencies. LEAA gave states incentives to establish planning agencies and funded a wide variety of programs spanning from education and research to local crime control initiatives.

[34] 42 U.S.C. §5614.

in the Federal agency involved."[35] Subsequent revisions to the JJDPA expanded the number of agencies represented on the Coordinating Council.

Today, the Coordinating Council is an independent organization within the federal government charged with coordinating all federal juvenile delinquency programs, all federal programs that deal with unaccompanied minors, and all federal programs relating to missing and exploited children.[36] The Coordinating Council is composed of the heads of all the federal agencies that touch on these broad areas, including the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Administrator of OJJDP, the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Commissioner of Immigration and Naturalization (now the Commissioner of Immigration and Customs Enforcement). In addition to these standing members, the Coordinating Council is composed of nine other members, of which three are appointed by the President, three are appointed by the Speaker of the House, and three are appointed by the majority leader of the Senate. These nine members are to be juvenile justice practitioners who are not officers or employees of the U.S. government, and they are to serve one- to three-year terms. The AG acts as the Chairman of the Council, and the Administrator of OJJDP serves as the Vice Chairman of the council.

In essence, the role of the Coordinating Council is to coordinate the overall federal government policy and development of objectives and priorities for federal programs dealing with juvenile delinquency and unaccompanied minors. As a function of this, the Coordinating Council is charged to examine how the various programs in the federal government are operating and to report on the degree to which federal agency funds are being used for purposes consistent with the core mandates required in the state plans.[37] The Council is also charged to review why federal agencies take juveniles into custody and to make recommendations for how to improve the federal government's practices and facilities for detaining juveniles.

**Annual Report.** Starting in 1988, Congress required OJJDP to produce an annual report to Congress on the agency's operations. This report, by statute, must summarize and analyze the most recent data available to the federal government concerning the detention of juveniles, describe the activities funded by OJJDP and the activities of the Coordinating Council, identify the extent to which each state complies with the core mandates and their state plan requirements, and evaluate the effectiveness of federal juvenile delinquency programs in reducing the incidences of delinquency and violent crime among juveniles.[38]

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[35] P.L. 93-415, §206(a-b).

[36] 42 U.S.C. §5616.

[37] The JJDPA required states to formulate juvenile justice plans and adhere to certain mandates in order to receive formula grant funding; see discussion below.

[38] 42 U.S.C. §5617.

## State Formula Grants

The original JJDPA authorized OJJDP to make formula grants[39] to states, which can be used to fund the planning, establishment, operation, coordination, and evaluation of projects for the development of more effective juvenile delinqency programs and improved juvenile justice systems. Although this grant program has been modified through the intervening years, it remains in place today as one of the core components of the federal approach to influencing states' juvenile justice systems.

Funds are allocated annually among the states on the basis of relative population of people under the age of 18. However, the JJDPA sets minimum amounts that can be provided to the states depending on the total appropriation for the Formula Grant Program, which are outlined in **Table 1**. No more than 10% of the state's allocation can be used for administrative expenses, including creating the state juvenile justice plans and disbursing the grant funds. Additionally, funds used for administrative expenses must be matched by state or local funds. The JJDPA authorizes "such sums as may be necessary" through FY2007 to carry out the state formula grant program.[40]

### Table 1. Minimum Formula Grant Amounts

| Total Appropriation | State Minimums | Territory Minimums[a] |
|---|---|---|
| Less than $75,000,000 | $325,000 to $400,000 | $75,000 to $100,000 |
| $75,000,000 and above | $600,000 | $100,000 |

**Source:** 42 U.S.C. §5631.

**Note:** For any state to receive funding above the minimums, the allocation for every state or territory must exceed the appropriation they received in 2000.

a. Territory refers to the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**JJDPA Formula Grant Mandates.**[41] To receive formula grant funding through the JJDPA, states are required to formulate plans for the administration of juvenile justice within their jurisdiction and to submit yearly reports to OJJDP concerning their progress in implementing the programs being funded. The JJDPA stipulates a list of components that must be included in state plans, funding constraints for how the state formula grants can be apportioned, and four core mandates that must be adhered to in order to receive funding.

***State Plan Components.*** To receive state formula grant funding, states must submit a juvenile justice plan to OJJDP. Should the state fail to do so, or if the

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[39] See 42 U.S.C. §5631.

[40] 42 U.S.C. §5671(a)(1).

[41] This entire section references 42 U.S.C. §5633.

Administrator determines that the state's plan does not meet the requirements elucidated in 42 U.S.C. §5633 (a), OJJDP can make the formula grant funding available to local public and private nonprofit agencies within the state for use in activities that help the state meet the four core mandates. The following plan components are required of all states receiving funding:

- States must designate an agency to supervise the administration of the juvenile justice plan and show that this agency has the legal authority to implement the plan. States must also consult with local government entities as they formulate the plan.
- States must provide for an advisory group of 15 to 33 members that participate in the development and review of the state's juvenile justice plan.[42]
- States must provide for the analysis of juvenile delinquency issues within their jurisdiction, including a description of the services provided to address the issues and performance goals and priorities for the implementation of these services. States are also directed to formulate a plan for providing gender-specific services, a plan for providing juvenile justice services in rural areas, and a plan for providing needed mental health services to juveniles.

***Formula Grant Allocation.*** The JJDPA places several restrictions on how the funding received through the state formula grant program can be allocated within the states and territories. At least two-thirds of the funds received through the formula grant program must be passed through to units of local government, including Indian tribes[43] and local private agencies. Private agencies must have first applied to a local unit of government for funding and been turned down before being eligible for formula grant funding, and all expenditures must be consistent with the state's plan. Funding must be distributed equitably throughout the state, including rural areas.

Additionally, at least 75% of the funds provided to the state must be used for a wide array of juvenile justice related programs, including, but not limited to:

- community based alternatives to incarceration;
- counseling, mentoring, and training programs within the juvenile justice system as well as similar community based programs and services, including aftercare and after-school programs;

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[42] The make up of this group should include at least one local elected official, representatives from the various state agencies involved in preventing, responding to, and treating juvenile delinquency, and other individuals working or volunteering in the field. A majority of the advisory group cannot be employed by the federal, state, or local government, one fifth of the members must be younger than 24, and at least 3 of the members must be within the jurisdiction of the juvenile justice system. 42 U.S.C. §5633 (a)(3).

[43] Indian tribes must comply with the four core mandates in order to be eligible for funding.

- comprehensive juvenile justice and delinquency prevention programs that assist the coordination of service provision among the various players involved;
- providing services to address child abuse and neglect;
- expanding the use of probation offices;
- programs that address the relationship between juvenile delinquency and learning disabilities, and programs that help juveniles and their families overcome language barriers;
- projects designed to deter juvenile gang members from participating in illegal activities, including those that promote their involvement in lawful activities;
- substance and drug abuse prevention and treatment programs, including mental health programs;
- programs that focus on positive youth development for at-risk youth and juvenile offenders;
- programs that focus on strengthening families and providing them assistance to ensure juveniles have a nurturing home environment;
- programs that provide mental health services to juveniles at every stage of the juvenile justice process; and
- programs that encourage juvenile courts to develop a continuum of post-adjudication restraints that bridge the gap between probation and detention in a juvenile correctional facility.[44]

***Core Mandates.*** The original JJDPA included two core requirements, or mandates, that states had to adhere to in order to receive formula grant funding. Subsequent revisions to the JJDPA expanded the list of core mandates to the four that exist today. Failure to adhere to these requirements will result in a 20% reduction of funding for each of the four mandates with which the state is not in compliance. Additionally, the state will be ineligible for future funding unless: the state agrees to spend 50% of the allocated funding to achieving compliance with whichever mandate it is noncompliant with; the Administrator of OJJDP determines that the state has achieved "substantial compliance"; or the state has demonstrated an "unequivocal commitment to achieving full compliance with such applicable requirements within a reasonable time."[45] Following are the four core mandates as they are codified today:

- Deinstitutionalization of status offences (DSO). Juveniles who are charged with or who have committed an offense that would not be a crime if committed by an adult, and juveniles who are not charged with any offenses, are not to be placed in secure detention or secure correctional facilities.[46]
- Juveniles are not to be detained or confined in any institution in which they would have contact with adult inmates. Additionally,

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[44] 42 U.S.C. §5633(a)(9).

[45] 42 U.S.C. §5633 (c).

[46] The most common status offence is truancy.

correctional staff that work with both adult and juvenile offenders must have been trained and certified to work with juveniles.

- Juveniles are not to be detained or confined in any jail or lockup for adults, except for juveniles who are accused of nonstatus offenses. These juveniles may be detained for no longer than six hours as they are processed, waiting to be released, awaiting transfer to a juvenile facility, or awaiting their court appearance. Additionally, juveniles in rural locations may be held for up to 48 hours in jails or lockups for adults as they await their initial court appearance. Juveniles held in adult jails or lockups in both rural and urban areas are not to have contact with adult inmates, and any staff working with both adults and juveniles must have been trained and certified to work with juveniles.
- Disproportionate minority confinement. States are required to show that they are implementing juvenile delinquency prevention programs designed to reduce — without establishing or requiring numerical standards or quotas — the disproportionate number of minorities confined within their juvenile justice systems.

## Juvenile Delinquency Prevention Block Grants

In addition to the formula grants, the JJDPA also authorizes OJJDP to make grants available to carry out projects designed to prevent juvenile delinquency.[47] The 21st Century Department of Justice Appropriations Authorization Act[48] folded several pre-existing grant programs into the Juvenile Delinquency Prevention Block Grant program and authorized "such sums as may be necessary" for this purpose through FY2007.[49] As a result of this consolidation, purpose areas that may be funded through the block grant program comprise a wide array of services, treatments, and interventions, including, but not limited to:[50]

- Projects that provide treatment to juvenile offenders and at risk juveniles who are victims of child abuse or neglect, or who have experienced violence at home, at school, or in their communities. Additionally, the program can fund projects providing treatment and services to the families of these juveniles.
- Educational projects or support services for juveniles that focus on encouraging juveniles to stay in school; aiding in the transition from school to work; helping identify juveniles who have learning difficulties and disabilities both in school and in the juvenile justice

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[47] 42 U.S.C. §5651-5656.

[48] P.L. 107-273.

[49] See **Appendix B** for more information on the changes enacted by the 21st Century Department of Justice Appropriations Authorization Act, P.L. 107-273.

[50] The purpose areas noted here show the breadth of activities that can be funded through this grant program. There are 25 purpose areas in all, and the last purpose area authorizes funding for "other activities that are likely to prevent juvenile delinquency." 42 U.S.C. §5652.

system; encouraging new approaches to preventing school violence and vandalism; developing locally coordinated policies among education, juvenile justice, and social service agencies; and providing mental health services.
- Projects that expand the use of probation officers, especially for programs that permit nonviolent juvenile offenders to remain at home instead of being placed in an institution, and to ensure that juveniles complete the terms of their probation.
- Counseling, training, and mentoring programs, particularly for juveniles residing in low-income and high-crime areas.
- Community based projects and services aimed at reducing juvenile delinquency, including literacy and social service programs.
- Drug and alcohol abuse treatment programs.
- Postsecondary education and training scholarship programs for low income juveniles residing in neighborhoods with high rates of poverty, violence, and drug related crimes.
- Projects that establish an initial intake screening and evaluation of juveniles taken into custody, both to determine the likelihood that the juvenile will commit crimes in the future and to provide the appropriate interventions to prevent future crimes.
- Projects designed to prevent juveniles from participating in organized criminal gangs.

Grant funding is allocated to the eligible states based on the proportion of their population that is under the age of 18. To become eligible for these grants, states must submit an application assuring that no more than 5% of the grant will be used for administrative, evaluation, and technical assistance costs and that federal grant funding will supplement, and not supplant, state and local juvenile delinquency prevention efforts. Additionally, the state must have submitted a plan.

## Part E: Developing, Testing, and Demonstrating Promising New Initiatives and Programs (Challenge Grants)

The Challenge Grants program[51] was originally added in 1992 and was modified by the 21st Century Department of Justice Appropriations Authorization Act, which authorized "such sums as may be necessary" to carry out the program through FY2007. It replaced the Demonstration Programs grant that had been created by the original JJDPA (see **Appendices A and B** for more information on the prior grant programs). The Challenge Grants program authorizes OJJDP to make discretionary grants to state, local, and Indian governments and private entities to carry out programs that will develop, test, or demonstrate promising new initiatives that may prevent, control, or reduce juvenile delinquency. The Administrator is charged with ensuring that these grants are apportioned in such a way as to ensure an equitable geographical distribution of these projects throughout the United States.

[51] 42 U.S.C. §5661-5662.

## Title V Incentive Grants for Local Delinquency Prevention Programs

The Incentive Grants for Local Delinquency Prevention program[52] authorizes OJJDP to make discretionary grants to the states that are then transmitted to units of local government in order to carry out delinquency prevention programs for juveniles who have come into contact with, or are likely to come into contact with, the juvenile justice system. Unlike the other grant programs within the JJDPA, which are authorized through FY2007, the 21st Century Department of Justice Reauthorization Act authorized "such sums as may be necessary" for the Title V grant program through FY2008.

Activities that can be funded through the Title V Incentive Grants for Local Delinquency Prevention program include the following:

- alcohol and substance abuse prevention services;
- educational programs;
- child and adolescent health (as well as mental health) services;
- recreational programs;
- leadership programs;
- programs that teach juveniles that they are accountable for their actions;
- job or skills training programs; and
- other "data-driven evidence based prevention programs."

As it reviews the grant applications that it receives, OJJDP is to give priority to programs that

- include plans for service and agency coordination (including co-location of services);
- coordinate and collaborate with the Delinquency Prevention Block Grant recipients in the state;
- include innovative ways to involve the private sector in delinquency prevention activities;
- help states develop or enhance state-wide subsidy programs for early intervention and prevention of juvenile delinquency; and
- develop data-driven prevention plans and utilize evidence-based prevention strategies (including conducting program evaluations to determine the impact and effectiveness of the programs being funded).

Local government entities are eligible for funding if they are in compliance with the state plan requirements, and if they have submitted to the state's advisory group a three-year comprehensive plan outlining their plans for investing in delinquency prevention activities and for coordinating services delivered to at-risk juveniles and their families. Funding to local government entities is disbursed by the state, and these grants are conditioned on a 50% match by either the local entity or the state.

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[52] 42 U.S.C. §5781-5784.

Thus, the JJDPA includes four major grant programs within its purview: the State Formula Grant program, the Delinquency Prevention Block Grant program, the Challenge Grant program, and the Title V Incentive Grants for Local Delinquency Prevention program. The first three grant programs, located within Title II of the act, are authorized through FY2007. The Title V grant program is authorized through FY2008. While these grant programs differ slightly, they each provide funding for a wide array of juvenile delinquency prevention purposes. The State Formula Grant program and the Delinquency Prevention Block Grant program feature long lists of detailed purpose areas that overlap. Conversely, the Challenge Grant and the Title V grant programs feature broadly written purpose areas that provide more discretion to OJJDP in their administration. Although this report does not include appropriations data, it is important to note that the appropriators have not funded the Delinquency Prevention Block Grant since its inception. Instead, the appropriators have continued to fund some of the grant programs repealed in 2002 either as stand-alone appropriations or as carve-outs within the Title V grant program. This issue will be discussed in greater detail in the "Issues" section of this report.

## Juvenile Accountability Block Grants

The Juvenile Accountability Block Grant (JABG) program was originally created by the FY1998 DOJ Appropriations Act (P.L. 105-119) and was appropriated each subsequent fiscal year. However, the JABG program was codified by the 21st Century Department of Justice Reauthorization Act (P.L. 107-273) in Subtitle A of Title II of the act.[53] As such it falls outside the scope of the JJDPA, but nevertheless comprises a significant component of the federal government's approach to juvenile justice. The JABG program authorizes $350 million in appropriation for each fiscal year through FY2009.

The JABG program authorizes the AG to make grants to states[54] and units of local government to strengthen their juvenile justice systems and foster accountability within their juvenile populations. The program focuses resources on holding juveniles accountable for their actions and building up the juvenile justice system in the states. It also essentially signifies the high-water mark of the federal government's movement away from an emphasis on rehabilitating juveniles and toward the idea that juveniles need to be punished for their crimes; indeed, the only core mandate of the JABG program is that states must begin to implement a system of graduated sanctions[55] in order to be eligible for funding.

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[53] JABG was codified within the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ee); as such it resides outside the immediate purview of the JJDPA despite the fact that it is administered by OJJDP.

[54] Under this subheading, the word state refers to the 50 states as well as the District of Columbia and the Commonwealth of Puerto Rico. Additionally, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands are collective considered to be 1 state for the purposes of JABG allocations.

[55] Graduated sanctions should be designed so that sanctions are imposed on a juvenile for (continued...)

As originally codified, the JABG program authorized funding for 16 accountability-based purpose areas, including, but not limited to, implementing graduated sanctions; building or operating juvenile correction or detention facilities; hiring juvenile court officers, including judges, probation officers, and special advocates; and hiring additional juvenile prosecutors. The act also authorized a separate Tribal Grant program within the JABG appropriation to fund accountability-based measures aimed at strengthening the tribal juvenile justice systems. The JABG program was last authorized in 2006 by P.L. 109-162, which added a purpose area to the original 16 areas and authorized JABG at $350 million a year through FY2009.

## Purpose Areas

As currently comprised, the program authorizes funding for 17 accountability based purpose areas, including, but not limited to:

- implementing graduated sanctions;
- building or operating juvenile correction or detention facilities;
- hiring and training juvenile court officers, including judges, probation officers, special advocates, juvenile prosecutors, and detention or corrections personnel;
- supporting prosecutorial initiatives aimed at curbing drug use, violence, and gangs;
- establishing juvenile drug courts and gun courts;
- establishing juvenile records and information sharing systems between the courts, schools, and social service agencies to keep better track of repeat offenders;
- using risk and needs assessments to facilitate effective early interventions for mental health and substance abuse issues;
- accountability-based school safety initiatives;
- establishing and improving pre-release and post-release programs to help juveniles reintegrate into the community; and
- restorative justice programs that emphasize the moral accountability of an offender toward their victims and the affected community.

## Eligibility Requirements

The JABG program awards grants to the states; most of this funding is then sub-granted to units of local government. States and local entities must provide information about the activities that will be carried out with the grant funding and the criteria that will be used to assess whether the programs were effective (including the extent to which evidence-based practices were utilized). Additionally, states and local governments must provide assurances that the they are working toward implementing laws effecting the use of graduated sanctions for juvenile offenders.

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[55] (...continued)
each delinquent offense and escalate in intensity with each subsequent, more serious, offense. There should be "sufficient flexibility" to allow for individualized sanctions and services for juvenile offenders. Additionally, "appropriate consideration" should be given to public safety and the victims of the crime. 42 U.S.C. §3796ee-2(d).

As previously mentioned, the implementation of graduated sanctions is the only core mandate associated with the JABG program. These graduated sanctions should, at a minimum, ensure that

- sanctions are imposed on juvenile offenders for each delinquent offense they commit;
- sanctions escalate in intensity with each subsequent more serious offense;
- there is enough flexibility to tailor sanctions and services to each individual juvenile offender; and
- appropriate consideration is given when handing out sanctions to the victims of the crime and public safety in general.

States are allowed to participate in the program if their graduated sanctions are discretionary rather than mandatory, but must require each juvenile court in its jurisdiction to submit an annual report concerning the extent to which graduated sanctions were implemented and the reasons for which graduated sanctions were not applied. This information should be collected by units of local government and reported to the states, which in turn report it to the AG. Eligible states and units of local government are also required to establish and convene an advisory board that is charged with recommending a coordinated enforcement plan for the use of the JABG funds awarded. The board is to include, where appropriate, members of the state or local police, the prosecutors office, the juvenile court, the probation office, the education system, the social service system, a nonprofit victim advocacy organization, and a nonprofit religious or community group.

## JABG Allocation

Of the total amount appropriated for the JABG program, each state is automatically allocated 0.5%. The remaining 75% of the JABG funding is then allocated to the states in accordance to the ratio of their population of juveniles under the age of 18 to the overall population of juveniles under the age of 18 in the United States that fiscal year. The states must pass along not less than 75% of the funds they receive to units of local government, unless the state can demonstrably certify that their overall juvenile justice costs are more than 25% of the aggregate amount of juvenile justice expenditures in the state (i.e., the states expenditures plus all the units of local government expenditures) that fiscal year and that they have consulted with as many units of local government as practicable regarding their expenditures. States are required to pass along the funding to units of local government according to a formula that is based on the ratio of the local government's juvenile justice costs and the juvenile violent crimes[56] committed in their jurisdiction to the overall juvenile justice costs and juvenile violent crimes in the state.

The AG is authorized to make grants directly to specially qualified units of local government if the states do not qualify or apply for JABG funding. In these cases, the AG is authorized to reserve up to 75% of that states allocation to make grants

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[56] Violent crimes under this section include murder, non-negligent manslaughter, forcible rape, robbery, and aggravated assault.

directly to units of local government that meet the funding requirements outlined above. Lastly, the AG is authorized to use the average amount allocated by the states to their units of local governments as the basis for the amounts awarded to these specially qualified units of local government.

Of the total amount awarded to a state or a unit of local government, only 5% can be used to pay for administrative costs. Funds awarded under JABG cannot be used to supplant existing funding but must instead be used to increase the amount of funding that would otherwise be available to the state juvenile justice systems. The federal share of the activities funded through a JABG grant cannot exceed 90%, except for JABG funds used to construct juvenile court or detention facilities in which case the federal share is not to exceed 50%.

# Legislation in the 110th Congress

A number of bills have been introduced in the 110th Congress that would affect or modify the states' juvenile justice systems. These bills include a wide array of juvenile justice elements, including bills that would create new grant programs within the JJDPA, bills that would modify the state plan requirements and reauthorize the State Formula Grants, and bills that would expand the juvenile offender reentry grant program. However, only one of the bills reviewed, S. 3155, would reauthorize the entire JJDPA. S. 3155 was introduced in the Senate on June 18, 2008 and reported by the Senate Committee on the Judiciary on September 18, 2008. It has been placed on the legislative calendar. Following is a brief analysis of the bill's major provisions.

## S. 3155, to Reauthorize and Improve the JJDPA

S. 3155 would reauthorize and modify the JJDPA. The State Formula Grant would be reauthorized at the following levels: $196.7 million in FY2009; $245.9 million in FY2010; $295.1 million in FY2011; $344.3 million in FY2012; and $393.5 million in 2013. All other current grant programs under Title II of the act (such as the Delinquency Prevention Block Grant and the Challenge Grant Program) would be reauthorized at such sums as may be necessary each year from FY2009 through FY2013. The bill would appropriate $80 million each fiscal year from FY2009 through FY2013 for a new program to be known as the Incentive Grants for State and Local Programs, which is described below. Lastly, the bill would reauthorize the Title V Incentive Grants for Local Delinquency Prevention Programs at the following levels: $272.2 million in FY2009; $322.8 million in FY2010; $373.4 million in FY2012; $424 million in FY2012; and $474.6 million in FY2013.

The following sections will outline some of the major changes to the act.

**JJDPA Definitions and Annual Report Changes.** The bill would make changes to some of the acts definitions, including prohibiting individuals who were younger than their state's age of majority when they committed their crimes from

being categorized as "adult inmates" by OJJDP.[57] The bill would also require OJJDP to include additional information in its annual report to Congress, including data on the ethnicity of juveniles, the number of juveniles released from custody and their post-release living arrangements, the number of status offense cases petitioned to court (including the number held in secure detention), and the use of restraints on juveniles. The bill would require OJJDP to establish a uniform method of data collection that would be used by states to track and evaluate data on juvenile recidivism annually. The bill would also require OJJDP to evaluate the effectiveness of transferring juveniles to the adult criminal justice system and to report its findings to Congress within 42 months of enactment.

**State Formula Grant Changes.** The bill would also make a series of modifications to the state formula grant program. The bill would increase the percentage of funds that can be used to provide technical assistance to the states from 2% of the overall amount provided by Congress to 5%. The bill would require OJJDP to use any funds that have been withheld from a state due to its noncompliance with the JJDPA's core mandates to create an "improvement grant" that would be used to assist the state in achieving compliance. This grant would be conditioned on the state "developing specific action steps designed to restore compliance" and reporting its progress toward achieving these steps. The bill would also add status offenders to many of the grant program's purpose areas, allowing states to use formula grant funding to create programs aimed at status offenders as well as juveniles.

**State Formula Grant Juvenile Justice Plan Changes.** The bill would require states to post their juvenile justice plans publicly on a website and to include within their state advisory group experts on mental health or substance abuse issues, representatives from victim or witness advocacy groups, and a representative of a nonprofit receiving a grant under Title III of the act. The state plans submitted to OJJDP would be required to include a number of additional plans within their purview, including plans to reduce the number of children held in secure detention facilities as they await placement in residential facilities, to engage family members in the design and provision of services to juveniles, and to use community-based services to address the needs of juveniles and at-risk youth. Additionally, the bill would modify and expand the purpose areas that are available for funding under the state plan, including adding status offenders and at-risk youth to those eligible for community-based programs aimed at finding alternatives to detention; improving the recruitment, training, and retention of professional personnel in fields relevant to the prevention, identification, and treatment of juvenile delinquency; and expanding juvenile access to court-appointed legal counsel. The bill would also require that states, within three years of the bill's enactment, ensure that juveniles who are being tried as adults are not being held in adult lockups or jails and are not coming into

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[57] This provision is likely a response to some recent changes in OJJDP policy. OJJDP has begun requiring that states count juveniles who were tried as adults for their offenses to be considered "adult inmates" for the purposes of the JJDPA's core requirements. This means that, in order to receive their full state formula grant allocations, states would have to provide for the sight and sound separation of juveniles tried as adults from other juveniles in detention facilities.

contact with adult inmates. An exception would be made for instances in which a court finds that the juvenile's detention in an adult facility and contact with adult inmates is in the interest of justice; however the court would have to recertify this decision every 30 days.

The bill would create additional reporting requirements for state courts in instances where juvenile status offenders are detained for violating a valid court order issued for committing a status offense, and limit the time that such juveniles could be held in a secure detention facility to seven days. Additionally, the bill would require states to eliminate the use of valid court orders to detain status offenders in secure detention facilities within three years of enactment.[58] The bill would require state plans to provide for a series of procedural safeguards for adjudicated juveniles, including the implementation of written plans for providing pre- and post-release services to the juvenile, and the provision of a pre-release hearing and a discharge plan for all juveniles in detention facilities. Lastly, the bill would expand the current technical assistance program aimed at states that are not in compliance with the core mandates.

**Modification to the Core Mandates.** The bill would slightly modify the status offense core mandate in order to require states to encourage the use of community-based alternatives to secure detention. The bill would expand the disproportionate minority contact requirement to require states to undertake a series of steps to identify and address the issue. States would be required to "implement policy, practice and system improvement strategies" to identify the racial and ethnic disparities in their juvenile justice system (without establishing or requiring numerical standards or quotas). In doing so, states would be required to

- establish coordinating bodies comprised of stakeholders at the state, local, or tribal level to oversee and monitor their efforts vis-a-vis reducing racial and ethnic disparities;
- identify and analyze key decision points in the juvenile justice system to identify where disparities are being created;
- develop and implement systems to collect and analyze juvenile justice data in order to track racial and ethnic disparities;
- develop and implement plans to address the findings generated by the data collection above that include measurable objectives for implementing policy, practice, and system changes to address racial and ethnic disparities; and
- report publicly on the state's findings and their efforts to address the issue of racial and ethnic disparities.

**Delinquency Prevention Block Grant Changes.** The bill would slightly modify the existing program by including funding for programs targeting status offenders and for state collaborations with universities aimed at improving the recruitment, training, and retention of professional personnel in fields relevant to the

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[58] The bill provides for one-year extensions "for each additional year that the state can demonstrate hardship as determined by the Administrator" in complying with this mandate.

prevention, identification, and treatment of juvenile delinquency within the grant's purpose areas.

**Incentive Grants for State and Local Programs.** The bill would create a new incentive grant program for state and local governments. The new program would include several broad purpose areas:

- increasing the use of evidence-based prevention and intervention programs
- improving the recruitment, training, and retention of professional personnel in fields relevant to the prevention, identification, and treatment of juvenile delinquency
- implementing programs to increase training among decision makers and create collaborative plans regarding the provision of mental health and substance abuse services
- providing mental health and substance abuse screening, assessment, referral, treatment, diversion, and aftercare services for juveniles

The bill would limit the amount of funding that could be used for administrative expenses to 5% of the total provided.

## Other Juvenile Justice Related Bills

The majority of the other bills that will be discussed would focus on either reauthorizing parts of the JJDPA or creating new programs. Following is a brief discussion of each bill that would affect states' juvenile justice systems.

The Second Chance Act, H.R. 1593, as passed by the House, and S. 1060, as introduced in the Senate, would include broadly similar language that would expand the current offender reentry grant program at DOJ, replacing the 4 purpose areas currently eligible for funding with new purpose areas spanning every phase of the offender reentry process.[59] These grant programs would also be available to states for juvenile offenders. Applicants for these grants would be subjected to a number of requirements, including submitting a reentry strategic plan with their application, describing the long-term strategy, and providing a detailed implementation schedule, among other things. Both bills would require that states and localities match some of the federal funds provided; H.R. 1593 would require a 50% match and S. 1060 would require a 25% match.

S. 2237, the Crime Control and Prevention Act of 2007, includes Section III, the Enhanced Second Chance Act of 2007. In a number of respects, Section III of S. 2237 is similar to H.R. 1593 and S. 1060. S. 2237 would replace the current offender reentry grant program's four purpose areas with 27 new purpose areas spanning every phase of the reentry process; these purpose areas and the requirements to be eligible for funding are broadly similar to those found in H.R. 1593 and S. 1060. S. 2237

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[59] H.R. 1593 includes 7 broadly written purpose areas, while S. 1060 includes 21 more specific purpose areas. Despite this difference, the grant program in both bills would fund the same kinds of activities.

also includes Subtitle F, the Juvenile Delinquency Court Improvement Act. Subtitle F would create three grant programs aimed at assisting states to assess the areas of their juvenile justice systems that need improvement and to implement these improvements. The grant programs that would be established by the bill include broadly similar language that would provide funding for, among other things: providing training and technical assistance to juvenile justice practitioners and the court system; developing data systems and repositories to track the juvenile justice process and individual case files and making this information available to juvenile justice practitioners; and evaluating the improvements made to the juvenile justice system. The bill would also establish a grant program that would expand the use of model court programs. Lastly, the bill would reauthorize the State Formula Grant program, providing $120 million each year from FY2008 through FY2012.

S. 990 and H.R. 1692, the Fighting Gangs and Empowering Youth Act of 2007, would create a discretionary grant program within DOJ to assist communities in carrying out programs targeting at risk youth and juvenile offenders. Grant funding under this program could be used to provide family counseling, mentoring, parental training, and after school programs, among other things. The bills also include language similar to that found in H.R. 1593, S. 1060, and S. 2237 that would expand the current offender reentry grant program for juvenile offenders and establish a National Adult and Juvenile Offender Reentry Resource Center.

S. 2451, the First Step Forward Act of 2007, would make changes to the State Formula Grant program. It would require states to ensure that adjudicated juveniles have written case plans based on needs assessments that describe the pre- and post-release programs and services that will be provided to the juvenile. States would also be required to ensure that discharge planning occurs prior to a juvenile's release and that a hearing occurs no earlier than 30 days prior to release that includes a determination of that juvenile's discharge plan propriety. States would also be required to provide descriptions of their use of funds for post-release and aftercare services and to report on the number of juveniles being released from custody and the kinds of living arrangements to which they were released. The bill would also create a new offender reentry grant program for incarcerated youth (defined as individuals who are likely to be released prior to their 21$^{st}$ birthday) .

H.R. 3846, the YOUTH Promise Act, would establish a series of new grant programs and would provide funding for coordinating entities charged with overseeing the implementation of the grants and interfacing between local units of government, state and local law enforcement agencies, and the federal government. OJJDP would be authorized to award discretionary grants to units of local governments (including Indian tribes) to conduct needs and strength assessments in their areas and develop plans to meet those needs. In order to be eligible for funding, units of local governments would have to establish PROMISE Coordinating Councils that would include representatives from public and private sector entities as well as a list of juvenile justice stakeholders. The PROMISE Coordinating Councils would be charged with developing a PROMISE Plan for their unit of local government that would include a strategy for prioritizing and allocating resources, for implementing evidence-based prevention and intervention practices. OJJDP would also be authorized to award discretionary grants to units of local governments (including Indian tribes) to implement the PROMISE Plans they have developed. Grants to

specific units of local government would last up to four years, would be capped at $10 million per year, and would feature a 25% matching requirement. Up to $100,000 of the total funds provided would be used to evaluate the local unit of government's progress towards meeting the unmet needs identified by the PROMISE Plan. The bill would also authorize $500 million annually for the Juvenile Accountability Block Grant Program from FY2009 through FY2013.

H.R. 3922, the Gang Reduction, Investment, and Prevention Act, and S. 456, the Gang Abatement and Prevention Act of 2007, as passed by the Senate, would, among other things, authorize the Mentoring Initiative for System Involved Youth Program. Both bills would provide annual appropriations of $4.8 million; H.R. 3922 would provide this authorization each fiscal year from FY2009 through FY2013, while S. 456 would provide it each fiscal year from FY2008 through FY2012.

H.R. 4300, the Juvenile Justice Accountability and Improvement Act of 2007, would require states to implement laws and policies to afford juvenile offenders (defined as individuals who commit offenses before their 18th birthday) who are serving life sentences a meaningful opportunity for parole once during the first 15 years of incarceration and every 3 years thereafter. States not in compliance with this requirement within 3 years of enactment would lose 10 percent of their funding under the grant program codified at 42 U.S.C. 3750 et seq (popularly known as the Edward Byrne Memorial Justice Assistance Grant Program).[60] The AG would be directed to implement a similar system for juveniles serving life sentences in the federal prison system. Lastly, the bill would create a new grant program to improve the quality of legal presentation provided to juveniles charged with offenses that would potentially subject them to a term of life in prison.

H.R. 4453 and H.R. 4194, both titled the Underage Drinking Prevention Act of 2007, include similar language that would establish a grant program administered by OJJDP aimed at increasing the enforcement of underage drinking laws and preventing underage drinking.

H.R. 3547, the Gang Prevention, Intervention, and Suppression Act, would, among other things, create a grant program to help juvenile offenders reintegrate in their communities. The Secretary of Labor, in consultation with the Attorney General, would be directed to make grants to individuals between the ages of 14 and 21 who have been involved with gang-related crimes within a year of their eligibility for the grant program. The program would be used to fund a variety of programs and services, including schooling, job-training, mentoring, and other transition and follow up services.

H.R. 3411, the Juvenile Crime Reduction Act, would create a number of new grant programs in the JJDPA aimed at providing funding for states to increase the diversion of juveniles with mental health or substance abuse disorders into home and community-based care. Funds could be used to, among other things: provide training

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[60] For more information about the Edward Byrne Memorial Justice Assistance Grant Program, please refer to RS22416, *Edward Byrne Memorial Justice Assistance Grant Program: Legislative and Funding History*, by Nathan James.

on the availability and effectiveness of home- and community-based mental health and substance abuse treatment programs for juvenile justice practitioners in the state; develop comprehensive plans to address the needs of juveniles with mental health or substance abuse disorders who come into contact with, or are at risk of coming into contact with, the juvenile justice system; establish 4 regional research, training, and technical assistance centers to assist juvenile justice practitioners; and hire mental health professionals or organizations to assist state agencies to reform their mental health and substance abuse policies. The bill would also require states to include in their annual plans under the State Formula Grant program information concerning their efforts to implement evidence-based mental health and substance abuse disorder screening and assessment programs for juveniles held in secure facilities, and their methods for providing mental health and substance abuse disorder treatment for juveniles. Additionally, the bill would require that any funding provided for the Title V Incentive Grants for Local Delinquency Prevention Programs in excess of $110 million to be apportioned competitively by OJJDP as an "evidence based practice bonus" to jurisdictions committing to expend part of their Title V grant funding on evidence-based practices for the treatment of mental health or substance abuse disorders. The bonuses granted would equal 33% of the total amount the jurisdiction specified would be expended for this purpose.

H.R. 3168, the Path to Success: Gang Prevention through Community Partnerships Act, would create a new grant program within the Department of Education to award grants to community colleges to enter into partnerships with juvenile justice residential placement facilities and detention centers. These grants would be used to provide educational assistance to juveniles who reenter the community and pursue high school diplomas, vocational training, or associate's degrees.

H.R. 2645, the Judicial Initiative Mental Health and Substance Abuse Treatment Improvement Act of 2007, would amend the JJDPA to include a new Part G entitled Access to Mental Health and Substance Abuse Treatment. Part G would include two new grant programs. The first would be a discretionary grant program administered by OJJDP which would be used to fund the training of juvenile justice practitioners on the appropriate access to mental health and substance abuse treatment programs for juveniles. The second grant program authorized by the bill would provide block funding for states, in partnership with local communities, to establish diversion and treatment programs for juveniles with mental health or substance abuse problems. The bill would authorize $700 million to be appropriated from the Violent Crime Reduction Trust Fund each year from FY2008 through 2012 for the block grant program; 45% of this annual funding could be used for diversion programs and 55% could be used for treatment programs. The bill would also create a Federal Coordinating Council on Criminalization of Juveniles to study, coordinate, and report on the criminal and juvenile justice and mental health substance abuse activities within the federal government. The Council would be charged with proposing new legislation to improve the treatment of mentally ill juveniles in detention facilities.

S. 1560, the Child and Adolescent Mental Health Resiliency Act of 2007, would direct the Secretary of Health and Human Services to, among other things, provide grant funding to state, tribal, and local units of governments as well as non-profit organizations to provide mental health services to juveniles in the juvenile justice

system. $10 million would be authorized for this purpose in FY2008, and "such sums as may be necessary" each year from FY2009 through FY2012.

S. 1367, the Treatment and Prevention of Methamphetamine Abuse Act, and S. 627 and H.R. 1082, the Safe Babies Act of 2007, would all create a new program within the JJDPA to fund assistance for local court teams. OJJDP would be directed to provide funding to establish a National Court Teams Resource Center to provide assistance to local court teams to promote the well-being of maltreated children, help prevent child abuse and neglect, and promote family reunification. Local court teams would be required to conduct monthly case reviews of every case handled by the team and incorporate child-focused services into the case planning process, among other things, in order to be eligible for assistance. The bills would authorize $5 million for this purpose each year from FY2008 through FY2012.

H.R. 1806, the Youth Crime Deterrence Act of 2007, would expand the state plans submitted as part of the State Formula Grant program to include assurances that states are developing and implementing standards to reduce the incidence of juveniles missing from detention facilities; ensuring that juveniles leaving their juvenile justice systems are placed in stable permanent or transitional housing; providing descriptions of their provision of reentry and aftercare services for juveniles released from detention. The bill would create four new grant programs within the JJDPA, including a discretionary grant program to reduce juvenile participation in gangs and gang activities; a discretionary grant program to provide treatment and services for juvenile offenders (as well as their families) who are victims of child abuse or neglect; a discretionary grant program to fund a variety of state challenge activities; and a discretionary grant program to expand the use of mentors for juveniles and at-risk youth. Such sums as may be necessary would be authorized for these four new grant programs each year from FY2008 through FY2011.

H.R. 6934, the Juvenile Justice Reform Act of 2008, would make a number of alterations to the JJDPA, including specifying that the bar on contact between juveniles and adults in detention centers means sight and sound separation (this is how OJJDP has interpreted this provision in the past). The bill would modify the status offense core mandate, requiring that within three years of enactment juveniles who are charged with or who have committed a violation of a valid court order and juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the state will no longer be excluded from the mandate's purview. The bill would also bar states from detaining juveniles tried as adults with other adult inmates. Lastly, the bill would replace the current disproportionate minority contact provision with one that is largely similar to that found in S. 3155, as outlined above.

H.R. 5537, the Juvenile Justice Improvement Act of 2008, would also make a number of alterations to the JJDPA, including redefining the term "adult" to exclude juveniles being tried as adults. The bill would modify the status offense core mandate, disallowing status offenders who have committed a violation of a valid court order and juveniles who are held in accordance with the Interstate Compact on Juveniles from being excluded from the mandate's purview. Additionally, the bill would require that, within four years of enactment, juveniles tried as adults not be held in adult lockups or jails and be separated from adults by sight and sound when being detained awaiting their trial.

# Issues for Congress

The major issue that is likely to confront the 110th Congress will be the reauthorization of the JJDPA, which is currently authorized through FY2007. As Congress debates the JJDPA's reauthorization, however, Congress will likely face the same issues that have revolved around the juvenile justice system for the past 30 years:

- What is the appropriate federal role in an arena that has predominantly been the province of the states?
- What is the appropriate federal response to juvenile violence and juvenile crime?
- Should federal efforts to influence the states' juvenile justice systems focus on the rehabilitation of juvenile offenders, on holding juvenile offenders accountable for their actions, or some combination of both?
- Are the grant programs as currently comprised the best way to support juvenile justice efforts in the states?

The following section provides a more detailed examination of these potential issues.

## Rehabilitation Versus Accountability

As previously noted, the fundamental tension within the juvenile justice system over the past 30 years has been the relationship between rehabilitating juveniles and holding them accountable for their actions. To some extent, this is an arbitrary distinction in that the system as currently comprised includes both rehabilitative and accountability based programs. Nevertheless, viewed over the sweep of time there is little doubt that the juvenile system has trended away from having the rehabilitation of juveniles as its main goal. Instead, over the past few decades, the system has increasingly incorporated measures that emphasize holding juvenile accountable for their actions. For example, during the 1990s, 47 states and the District of Columbia enacted laws that made their juvenile justice systems more punitive.[61] As a result, juvenile justice can be conceptualized as a continuum that stretches philosophically *from* the rehabilitative idea that juveniles are wayward youth who can be taught to mend their ways and become contributing members of society *to* the accountability end of the spectrum which holds that juveniles must be taught to take responsibility for their actions through the meting out of punishment (often referred to as graduated sanctions).

The federal juvenile justice system can thus be viewed as a pendulum that swings between these two poles; over the past 20 years, it has clearly been swinging away from rehabilitation and toward accountability through the *addition* of graduated sanctions to the State Formula grant program's purpose areas and the *requirement* that states implement graduated sanctions in order to be eligible for JABG funding. The 110th Congress may consider whether the federal government, through its grant

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[61] *A Century of Change*, p. 5.

programs, should be focusing on rehabilitating juveniles, holding them accountable for their actions, or some combination of both of these philosophies.

## Expanding or Modifying the Core Mandates

The federal government has attempted to influence the states' juvenile justice systems through the core mandates that states must comply with in order to be eligible for funding. In essence, the federal government has used grant funding as a carrot to effectuate changes in the way that states house and treat their juvenile offenders. The last modification of a core mandate occurred with the JJDPA's last reauthorization, when the disproportionate minority confinement language was modified to preclude OJJDP from using numerical benchmarks in its implementation. A possible issue for Congress to consider may include whether to modify or expand the existing core mandates.

Proponents of expanding the core mandates could point to the fact that the mandates have been effective in inducing states to promulgate detention standards that focus on minimizing the contact between juvenile offenders and adults and in deinstitutionalizing status offenses.[62] Opponents of expanding the mandates, however, could point to the relative ineffectiveness of the disproportionate minority confinement mandate; most states continue to detain minorities at a higher rate than their percentage of the state's juvenile population and the language has been watered down over the years to ensure that OJJDP does not require states to meet quotas in order to adhere to the mandate.[63] Should Congress choose to expand the core mandates, policy options could include

- requiring states to ensure that their delinquency prevention programs are based on solid scientific evidence such as randomized control trials;[64]
- requiring states to show that they are reducing the recidivism rates of their juvenile offenders;[65]
- expanding the number and quality of programs available for female juveniles; [66]

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[62] See Office of Juvenile Justice and Delinquency Prevention, *The Mandates*, Fact Sheet, March 1994, at [http://www.ncjrs.gov/txtfiles/fs-9407.txt].

[63] See Eileen Poe-Yamagata and Michael A. Jones, *And Justice for Some*, Building Blocks for Youth, at [http://www.buildingblocksforyouth.org/justiceforsome/jfs.pdf].

[64] For more information on the uses of randomized control trials evaluate government programs, please refer to CRS Report RL33301, *Congress and Program Evaluation: An Overview of Randomized Controlled Trials (RCTs) and Related Issues*, by Clinton T. Brass, Blas Nuñez-Neto, and Erin D. Williams.

[65] See Federal Advisory Committee on Juvenile Justice, *2006 Annual Request for Information Final Report*, Appendix 2, available at [http://www.facjj.org/docs/APPENDIX_2-4_FACJJ_2006_Annual_Request_for_Information_10-16-06.doc]. Hereafter referred to as FACJJ Report.

[66] FACJJ Report.

- requiring states to implement mental health and substance abuse screening for juveniles;[67] or
- developing and implementing gang-violence reduction initiatives.[68]

## Juvenile Delinquency Prevention Block Grant

Over the past five years, there has appeared to have been some tension between the authorizing legislation and the structure of the appropriations for some juvenile justice grant programs. As previously noted, the last major reauthorization of the JJDPA eliminated a number of small grant programs and consolidated most of their purpose areas into the Juvenile Delinquency Prevention Block Grant. However, the annual appropriation for OJJDP continues to adhere to the previous structure, and funds have been appropriated in each subsequent fiscal year for some of the grant programs that were repealed in 2002. The current disconnect between the authorization and the appropriation could present a significant challenge for OJJDP. Given the disparity, OJJDP employees must spend some percentage of their time reconciling the differences between the authorization and the appropriation; this may not represent the best investment of OJJDP staff time.

Additionally, because the eligibility requirements and funding mechanisms of the old grant programs and the new block grant program are different, this dichotomy between the authorization and the appropriation likely represents a challenge to the states and units of local government as they apply for funding. A potential issue for Congress as it reauthorizes the JJDPA could include whether the Juvenile Delinquency Prevention Block Grant should be implemented as it was authorized, whether it should be modified, or whether it should be broken up again into its component grant programs to better reflect what has been occurring with the appropriation.

## Overlap in Grant Programs

The current grant programs within the JJDPA overlap in a variety of ways. The State Formula Grant and the Delinquency Prevention Block Grant programs, for example, both feature a wide array of purpose areas elucidated in legislative language that are largely similar. For example, both grant programs include purpose areas for

- counseling, mentoring, and training programs;
- community based programs and services;
- after school programs;
- education programs;
- programs that expand the use of probation officers;
- substance and drug abuse prevention programs;
- mental health services;
- gang-involvement prevention programs; and

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[67] FACJJ Report.

[68] FACJJ Report.

- coordinating local service delivery among the different agencies involved.

Additionally, the Delinquency Prevention Block Grant, the Challenge Grants, and the Title V Incentive Grants for Local Delinquency Prevention Programs all include language allowing OJJDP to provide funding for additional programs not included in the specific purpose areas identified. A potential issue for Congress could include whether the current overlap within the juvenile justice grant programs is appropriate. Possible policy options could include altering the current grant programs to target funding for specific activities in each grant program or consolidating the different grant programs into one large program. In its FY2008 budget request, for example, the Administration is proposing consolidating all of the juvenile justice grant programs into one large discretionary block grant.

The creation of new grant programs could be an alternative to modifying or consolidating the existing grant programs. Creating grant programs that are tailored to specific activities (e.g., gang-prevention, restorative justice, mentoring, etc.) could provide dedicated funding streams to activities that may get short shrift if they must compete for funding in a broader grant program. However, there are limited federal resources in the juvenile justice arena and adding grant programs without also increasing funding may take resources away from the current programs. A possible issue for the 110th Congress could include whether the existing grant programs are adequate, whether the existing grant programs should be modified, or whether new grant programs should be enacted.

## Coordination of Federal Efforts

The juvenile population comes into contact with a wide variety of federal programs overseen by a number different agencies. Under current law, the Administrator of OJJDP has a broad mandate to coordinate the federal government's overall response to juvenile offenders and juvenile delinquency prevention, including federal programs that focus on prevention, diversion, training, treatment, rehabilitation, evaluation, research, and improvement of the states' juvenile justice systems. Additionally, the Coordinating Council was established to help the various agencies involved in dealing with and providing treatment for juveniles better coordinate their efforts.

Some overlap exists within the federal government concerning programs that offer services for juveniles. For example, a growing body of evidence points to the relationship between child abuse or other forms of mistreatment and juvenile delinquency or other delinquent behavior such as youth violence.[69] This has led to a duplication of efforts within many federal agencies and what may sometimes be a considerable overlap in the funding opportunities available to states and local

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[69] While some studies show smaller effect sizes for the link between child abuse and youth violence than others, there is nevertheless a significant correlation between the maltreatment of juveniles and subsequent delinquent or violent behavior. U.S. Public Health Service, Office of the Surgeon General, *Youth Violence: A Report of the Surgeon General's Office*, 2001, pp. 65-72.

entities.[70] An example of this overlap is the universe of federal funding available for youth violence prevention. Funding for youth violence programs is available within DOJ, the Department of Health and Human Services, the Department of Education, the Department of Labor, and the Department of Agriculture. Within these diverse departments, youth violence prevention funding opportunities are available for virtually every aspect of the issue: the violent youth themselves, their victims, their families, the communities they live in, the juvenile justice system that prosecutes them, and the societal factors that contribute to the violence.[71] In effect, there are a multitude of federal programs throughout the government that deal with youth violence's causes, its effects, and its ramifications. The amount of coordination that is occurring between the departments on these issues remains an open question.

Given the nexus between youth violence and juvenile justice, the coordination of these federal government programs should lie within the province of OJJDP and the Coordinating Council. The Coordinating Council, for its part, meets quarterly (for three to four hours on average) to discuss the ongoing juvenile justice related efforts within the agencies.[72] Given the extent of the overlap that exists within the federal government, some could question whether more coordination should be required across departments. A potential issue for Congress could involve how effective OJJDP and the Coordinating Council have been in coordinating the federal efforts to reduce juvenile delinquency, including efforts to address youth violence, in order to more efficiently provide treatment and services to juvenile offenders.

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[70] See, for example, Janet Wiig with John A. Tuell, *Guidebook for Juvenile Justice and Child Welfare System Coordination and Integration*, Child Welfare League of America, 2004.

[71] From a CRS Congressional Distribution Memo, *Federal Youth Violence Programs*, Blas Nuñez-Neto, Coordinator. Available upon request.

[72] See Coordinating Council on Juvenile Justice and Delinquency Prevention, *Meetings*, available at [http://www.juvenilecouncil.gov/meetings.html].

# Appendix A. The Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974

The Juvenile Justice and Delinquency Prevention Act (JJDPA) was first passed by Congress in 1974[73] and was most recently reauthorized in 2002 by the 21st Century Department of Justice Appropriations Authorization Act.[74] Its provisions are currently authorized through FY2007. This appendix will analyze the original JJDPA.

The original JJDPA had three main components: it created a set of institutions within the federal government that were dedicated to coordinating and administering federal juvenile justice efforts; it established grant programs to assist the states with setting up and running their juvenile justice systems; and it promulgated core mandates that states had to adhere to in order to be eligible to receive grant funding. As it was passed in 1974, the JJDPA focused largely on preventing juvenile delinquency and on rehabilitating juvenile offenders.

## Federal Government Entities Established

The JJDPA established a range of federal government entities charged with overseeing the federal government's juvenile justice efforts that continue to exist today. In addition to establishing the first federal agency dedicated to the promulgation of juvenile justice, the act established a series of institutions aimed at increasing the federal government's coordination of juvenile delinquency programs and of programs that affect juveniles generally.

**The Office of Juvenile Justice and Delinquency Prevention (OJJDP).** Title II, Part A of the original JJDPA established OJJDP within DOJ's Law Enforcement Assistance Administration (LEAA) as the new clearing house for federal juvenile justice efforts. The act established the Office of the Assistant Administrator of OJJDP, who is charged with overseeing the Office and coordinating the federal government-wide juvenile justice efforts under the direction of the Administrator of the LEAA. The act endowed the Administrator with a series of powers, including the authority to require other federal entities with juvenile delinquency programs to submit information and reports to OJJDP, and charged the new entity with administering the programs that were created by the act. The act also directed the Administrator to implement the overall policy and develop the objectives and priorities for *all* federal juvenile delinquency activities as well as "all activities relating to prevention, diversion, training, treatment, rehabilitation, evaluation, research, and improvement of the juvenile justice system of the United States."[75] The LEAA Administrator, acting through the OJJDP Assistant Administrator, was thus given a broad mandate to oversee and coordinate not just the new agency's activities but all federal activities relating to the treatment of juveniles. OJJDP was required

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[73] P.L. 90-415.

[74] P.L. 107-273.

[75] P.L. 93-415, §204(a).

to present Congress with an annual report of its activities and of the federal government's overall juvenile delinquency programs.

**Coordinating Council on Juvenile Justice and Delinquency Prevention (Coordinating Council).** The act established an independent organization known as the Coordinating Council on Juvenile Justice and Delinquency Prevention to coordinate the federal government's juvenile delinquency programs. The Coordinating Council was to be comprised of representatives from a broad range of federal agencies who "exercise significant decision making authority in the Federal agency involved,"[76] including the Attorney General, Secretary of Health, Education, and Welfare, the Secretary of Labor, Director of the Special Action Office for Drug Abuse Prevention, Secretary of Housing and Urban Development, or their respective designees. Additionally, the Coordinating Council was to include the Assistant Administrator of OJJDP and the Deputy Assistant Administrator of the National Institute for Juvenile Justice and Delinquency Prevention. The Coordinating Council was to meet a minimum of six times per year and was to report its activities as part of OJJDP's annual report.

**Advisory Committee on Juvenile Justice and Delinquency Prevention (Advisory Committee).** The act established an Advisory Committee composed of 21 individuals who were to be appointed by the President to serve in an advisory capacity. These individuals were to be experts in the fields of juvenile delinquency prevention or treatment; juvenile justice administration; or community based programs and private voluntary organizations. The majority of the Advisory Committee was to be drawn from the private sector and at least one-third of the members were to be younger than 26 at the time of their appointment. The members were to serve without compensation and to meet no less than four times a year. The Advisory Committee was charged with making recommendations to the Administrator of OJJDP concerning the planning, policies, priorities, operations, and management of all juvenile delinquency programs within the federal government.

**The National Institute for Juvenile Justice and Delinquency Prevention (National Institute).** The act created the National Institute to coordinate the collection, preparation, and dissemination of data regarding the treatment and control of juvenile offenders. The National Institute was charged with serving as a clearing house for all information relating to juvenile delinquency and with conducting and encouraging research on juvenile delinquency. The National Institute was also charged with training juvenile justice practitioners from every level of government and the private sector who were connected with the treatment and control of juvenile offenders. The National Institute was endowed with the power to request other federal agencies to supply the data and statistics that were necessary for its mission, and to reimburse these agencies for the expenses associated with these requests.

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[76] P.L. 93-415, §206(a-b).

## Federal Grant Programs for Juvenile Justice

In addition to creating entities charged with overseeing and developing the juvenile delinquency prevention programs within the federal government, the JJDPA created two main grant programs that were aimed at helping states build up and manage their juvenile justice systems and prevent juvenile delinquency. Additionally, the JJDPA created a grant program aimed at helping states handle runaway youth.

**Formula Grant Program.** The first federal grant program established by the JJDPA was a formula grant program for states and local governments. This formula grant program was broadly aimed at helping states improve their juvenile justice systems by providing funding that could be used to assist in the planning, establishing, operating, coordinating, and evaluating of juvenile delinquency programs. Funding under this grant program was to be allocated to states based on their relative populations of people under the age of 18, and no state was to receive less than $200,000.[77] To receive funding under this grant program, the states were required to submit plans for how they were going to disburse the funding. The state plans were to describe a series of steps that states were to take in order to be eligible for funding, including the creation of juvenile justice entities within the state systems. States were required to pass along two-thirds of the funding to local government programs, unless granted a waiver by the Administrator, and 75% of the funds expended by the states were to be "used for advanced techniques in developing, maintaining, and expanding programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, and to provide community based alternatives to juvenile detention and correctional facilities."[78]

In addition to these restrictions on how the money was to be spent, the JJDPA established two core mandates that states had to adhere to in order to receive funding. The first of these mandates required states to ensure that juveniles who had committed offenses that would not be crimes if they were committed by an adult (known as status offenses) not be placed in juvenile detention or correctional facilities. This has become known as the deinstitutionalization of status offenders. The second mandate required states to ensure that juveniles were not detained or confined in any institution in which they would have regular contact with adults in the criminal justice system.

**Prevention and Treatment Programs Grant.** The act authorized the Administrator to make grants to and enter into contracts with public and private agencies, organizations, institutions, and individuals that focused on delinquency prevention and treatment. The act authorized the Administrator to enter into these grants and contracts to, among other things, develop and implement new approaches and methods for juvenile delinquency programs; develop and maintain community based alternatives to institutionalization; develop and implement programs that diverted juveniles from the traditional correctional system; improve the delivery of

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[77] The Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands were to receive no less than $50,000.

[78] P.L. 93-415, §223(a)(10).

services to delinquents and to at-risk youth; and implement programs aimed at keeping students in school.

**Demonstration Programs Grant.** The JJDPA also created a discretionary grant program aimed at supporting "innovative approaches to youth development and the prevention and treatment of delinquent behavior."[79] Grants under this program could be awarded to any state or local government agency, as well as nonprofit organizations, and were to last one year. The overarching goal of the program was to foster innovation in youth development.

[79] P.L. 93-415, §401.

# Appendix B. Subsequent Revisions to the JJDPA

Between 1974 and 2001, there were a number of laws enacted that modified the JJDPA in some manner. This appendix will outline the main changes that were made to the JJDPA over the past three decades.

## The Juvenile Justice Amendments of 1980 (P.L. 96-509)

In 1980, Congress made three major changes to the JJDPA and reauthorized the act through FY1984. One of the major changes enacted by P.L. 96-509 was the streamlining of the juvenile justice apparatus within DOJ; whereas the JJDPA placed OJJDP underneath the Law Enforcement Assistance Administration (LEAA) and gave the LEAA Administrator authority over the agency, under the new act's provisions the Administrator of OJJDP reported directly to the AG. In essence, this gave OJJDP a measure of independence and removed the filter between the administrator of OJJDP and the AG. Despite this, however, OJJDP remained administratively within LEAA. Another major change made to the JJPDA was the creation of a new core mandate that states were to adhere to in order to receive funding under the formula grant program: the removal of juveniles from adult jails and lockups. P.L. 96-509 also began the process of shifting the JJDPA's focus away from rehabilitation and towards sanctions, including language that called for OJJDP to focus additional attention on the problem of juveniles committing serious crimes by paying special attention to sentencing and adding resources to the juvenile court system.

The act also made a series of minor modifications to the Coordinating Council, the Advisory Committee, and the National Institute aimed at increasing the coordination of federal juvenile justice efforts and at including the perspective of juveniles into the process. Among the changes made to the JJPDA, the act allowed 7.5% of OJJDP's overall appropriation to be used for the concentration of federal juvenile delinquency efforts,[80] and it added the Director of the Bureau of Prisons, the Commissioner of the Bureau of Indian Affairs, the Commissioner for the Administration for Children, Youth, and Families, and the Director of the Youth Development Bureau to the Coordinating Council. The act directed the Advisory Committee to include at least five individuals younger than 24 years of age, at least two of whom should have been or continue to be under the jurisdiction of the juvenile justice system, and to contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system.

The main alteration made by the act was the new requirement that states stop detaining or confining juveniles in any jail or lockup for adults in order to be eligible for the state formula grant. The act did, however, allow for the temporary detention of juveniles accused of serious crimes in such facilities where no existing acceptable alternative placement was possible, subject to the promulgation of regulations by the Administrator. Failure to achieve compliance with this mandate within five years

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[80] This meant, in essence, that OJJDP could use 7.5% of the overall appropriation for its own administrative costs in ensuring that the grants that were awarded were effectively concentrating federal funding on the issues that were considered to be most important.

would terminate a state's ability to receive funding unless the Administrator determined that the state was in substantial compliance with the requirements. Substantial compliance was defined as a state's achieving the removal of not less than 75% of juveniles from adult jails and lockups, and making an unequivocal commitment to achieving full compliance within two additional years.

The act also expanded the scope of the Prevention and Treatment Programs Grant to include programs that were aimed at removing juveniles from adult jails and lockups, and provided that at least 5% of the funding available under this grant program be allocated to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

## The Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984 Act (P.L. 98-473)

P.L. 98-473 reauthorized the JJDPA through FY1988 and formally elevated OJJDP to a stand-alone office within DOJ under the general authority of the AG. Another major change made to the JJDPA by this act was the expansion of the Prevention and Treatment Programs Grant program. The act dedicated 15% to 25% of the overall funding for state formula grants to this program, and expanded the number of purpose areas that this discretionary grant could be used for, including, but not limited to, community based alternatives to detention; diversion mechanisms including restitution and reconciliation projects; advocacy activities aimed at improving services; programs that strengthen families; prevention and treatment programs; developing a national education program aimed at reducing juvenile delinquency; developing programs aimed at fostering youth employment; and developing programs aimed at keeping youths in school. At least 30% of the funding available under this program was to be apportioned to private nonprofit agencies and institutions.

## The Amendments to the Juvenile Justice and Delinquency Prevention Act of 1988 (P.L. 100-690)

In 1988, Congress reauthorized the JJDPA through FY1992. Among other things, the act required OJJDP to publish a comprehensive plan of the activities it would undertake each year in the federal register. It also required OJJDP to prepare an annual report each fiscal year providing a detailed summary and analysis of the national trends in juvenile justice, including the numbers and types of offenses with which juveniles were being charged; the rate at which juveniles were being taken into custody; the extent to which states were complying with their state plan requirements; and OJJDP and the Coordinating Council's activities. The act also required states, as part of their plans, to include information on their efforts to end the disproportionate confinement of minority youth in their detention systems, and it raised the minimum funding allocations available for states under the formula grant program. The act also directed OJJDP to include technical assistance as a purpose area for each of its grant programs and for the National Institute. The act modified the Prevention and Treatment Programs Grant program by deleting language inserted by P.L. 98-473 that required 15% to 25% of the formula grant funding be allocated

to this program and by expanding the number and types of considerations required to approve applications for funding.

**Gang Prevention Grant.** P.L. 100-690 also established a new grant program under Part D of Title II of the JJDPA aimed at funding prevention and treatment programs for juvenile gang members. The new discretionary grant program authorized the Administrator to make grants to public and private agencies and organizations. The new grant program identified 10 broad purpose areas aimed at reducing the numbers of juveniles joining gangs and providing treatment for juveniles convicted of gang-related criminal activities.

## The Juvenile Justice and Delinquency Prevention Amendments Act of 1992 (P.L. 102-586)

P.L. 102-586 reauthorized the JJDPA through FY1996. The main change enacted by this act was the elevation of disproportionate minority confinement to core mandate status. States that were not in compliance with this requirement within three years of the act's passage would no longer be eligible for formula grant funding. However, states that had shown "substantial compliance" with the requirement would be eligible for funding for two additional years. The act created a number of new grant programs within Title II of the JJDPA, including grants for community-based gang intervention, for state challenge activities, for juvenile victims of child abuse, and for mentoring. The act also added a new Title V to the JJDPA establishing a new program, the Incentive Grants for Local Delinquency Prevention Program.

The act also modified the composition of the Coordinating Council. In addition to the leaders (or their designated representatives) of the various federal agencies with a stake in the juvenile justice system, the Coordinating Council was to include nine individuals working in the field of juvenile justice who were not federal employees. They were to be appointed without regard to political affiliation. Three members were to be appointed by the President, three by the Speaker of the House, and three by the majority leader of the Senate.

Following is a description of the various grant programs that were implemented by the 1992 revision to the JJDPA.

**Community Based Gang Intervention Grant.** The act slightly modified the discretionary gang prevention grant authorized within Part D of Title II of the JJDPA by P.L. 100-690, renaming it the Gang-Free Schools and Communities Grant. The act also created a new grant program, the Community-Based Gang Intervention Grant. The new grant program authorized the Administrator to make grants to public and private nonprofit agencies, organizations, and institutions to reduce the participation of juveniles in gangs by engaging the community. The grant allowed funding to be provided for co-ordinating mechanisms such as regional task-forces, as well as for a variety of prevention and accountability measures. For example, on the accountability side the grant authorized funding for graduated sanctions, including the expanded use of a wide variety of interventions such as probation, mediation, restitution, community service, intensive supervision, electronic monitoring, and bootcamps, among others. On the prevention side the program

authorized funding for, among other things: treatment for juvenile gang members; prevention and treatment services for substance abuse by juveniles; and services to prevent juveniles from coming into contact with the juvenile justice system again as a result of gang-related activity.

**State Challenge Activities Grant.** The act created another new grant program under Part E of Title II of the JJDPA, the State Challenge Activities Grant (Challenge Grant). The Challenge Grant program allowed the Administrator to designate up to 10% of a state's formula grant for this new grant program. The act defined a challenge activity as a program that is aimed at, among other things, developing policies to provide services for juveniles in the juvenile justice system; increasing community-based alternatives to detention; developing programs that replaced traditional training schools with secure settings; developing programs that prohibited gender bias within the state's juvenile justice system and ensured that female juveniles had access to a full range of services, including treatment for physical or sexual assault and education in parenting; and increasing aftercare services for juveniles coming out of placement.

**Juvenile Victims of Child Abuse Grant.** The act created a third new grant program under Part F of Title II of the JJDPA for Juvenile Victims of Child Abuse. This program enabled the Administrator to enter into grants with public agencies and private nonprofit organizations to provide treatment for juvenile offenders who are victims of child abuse and neglect; provide transitional services, including individual, group, and family counseling; and carry out research on juvenile child abuse issues associated with these grants.

**Juvenile Mentoring Grant.** The act created a fourth new grant program under Part G of Title II of the JJDPA for juvenile mentoring programs. These grants could be awarded to local educational agencies (in partnership with public or private agencies) to establish and support mentoring programs. Mentoring programs eligible for funding included programs designed to link at-risk youth with responsible adults; promote personal and social responsibility; increase educational participation; discourage the use of drugs and violence; discourage participation in gangs; and encourage participation in community service and other community activities. Grant funding could not be used to directly compensate mentors (apart from reimbursement for incidental expenses) or support litigation of any kind, among other things.

**Boot Camp Grants.** The act created a fifth new grant program under Part H of Title II of the JJDPA to fund the establishment of up to 10 military-style boot camps in one or more states. These boot camps were to provide highly regimented schedules involving discipline, physical training, work, and drill, and to include educational and counseling services. States receiving funding under this program would be required to provide for post-release supervision and after-care services for the juveniles participating in their boot camps.

**Incentive Grants for Local Delinquency Prevention Programs (Incentive Grants).** The act created a new Title V within the JJDPA for Incentive Grants aimed at creating delinquency prevention programs at the local level. The grants would be allocated by state and passed along by each state's advisory group (as created under the state plan stipulations) to local government entities. Funding

could be used to provide recreation services, tutoring and remedial education, job skills, mental health services, substance abuse services, leadership development services, and programs that teach juveniles accountability for their actions. States were required to provide a 50% match for the grants and be in compliance with the core mandates in Title II in order to receive funding under this program.

## The 21st Century Department of Justice Appropriations Authorization Act of 2002 (P.L. 107-273)

P.L. 107-273 in 2002 represents the last major revision to the JJDPA. The act reauthorized OJJDP, which had remained unauthorized since FY1997 but which had been appropriated annually, through FY2007. The act also made some significant revisions to the JJDPA, most notably repealing all of the new grant programs in Title II created by P.L. 102-586 and consolidating their purpose areas within the Juvenile Justice and Delinquency Prevention Block Grant.

Among other things, the act amended the state plans section of the JJDPA and modified the disproportionate minority confinement core mandate provision. The revision to the core mandate directed the states to address the problem of disproportionate minority confinement, but stated that the states were not required to meet numerical quotas or standards in order to receive formula grant funding. The act also mandated that states enact policies requiring that individuals who work with both juveniles and adults in detention facilities be certified and trained to work with juveniles. In addition, the act added a number of additional stipulations to the state plans, including, among other things:

- that states notify appropriate public agencies within 24 hours of a child's apprehension for a status offense;
- that states specify up to 5% of their formula grant funding for incentive grants to reduce probation officer case loads; and
- that states establish systems and policies to incorporate child protective services records into juvenile case files and to ensure that child welfare records are available to the court.

If states failed to comply with any of the four core mandates they would have their formula grant funding reduced by not less than 20% for each mandate with which they were not in compliance. Additionally, states would be ineligible to receive any formula funding unless they agreed to spend 50% of the funding they received on achieving compliance with whichever core mandate they were non-compliant with, unless the Administrator determined that the state had achieved substantial compliance with the mandate.

**Juvenile Delinquency Prevention Block Grant.** Perhaps the major structural change enacted by P.L. 107-273 was the elimination of the series of grant programs that had been created within Title II of the JJDPA: the Gang-Free Schools and Communities Grant; the Community Based Gang Intervention Grant; the States Challenge Activities Grant; the Juvenile Victims of Child Abuse Grant; the Juvenile Mentoring Grant; and the Boot Camps Grant. In their stead, the act created a Juvenile Delinquency Prevention Block Grant aimed at funding programs that

reduced juvenile delinquency that incorporated most of the general purpose areas that had been eligible for funding under the previous grant programs. Included under this broad umbrella were 25 purpose areas that run the gamut of juvenile delinquency prevention, including, but not limited to, treatment programs; counseling programs; educational programs; programs that expanded the use of probation officers; community-based programs; drug-prevention programs; and gang-prevention programs.