

**2004 Annual Recommendations Report**  
**To the Administrator of the Office of Juvenile Justice**  
**and Delinquency Prevention**

Federal Advisory Committee on Juvenile Justice

January 2005



## Introduction

The newly chartered Federal Advisory Committee on Juvenile Justice (FACJJ) held its first meeting January 12–14, 2004, in Point Clear, AL.<sup>1</sup> According to the requirements of the 2002 Juvenile Justice and Delinquency Prevention (JJDP) Act (Section 223), members of the committee are to advise the President and Congress on federal legislation pertaining to juvenile justice and provide ongoing advice to the U.S. Department of Justice, Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP) about the operation of OJJDP.

At this inaugural meeting, FACJJ established four committees to help guide its mission: the Annual Report Committee to prepare the recommendations reports to the President and Congress and to the OJJDP Administrator; the Grants Committee; the Legal Affairs Committee, and the Planning Committee. Also during this first meeting, FACJJ approved two recommendations from the Grants Committee about OJJDP's planned distribution of Title V Community Prevention Grants Program funds in fiscal year (FY) 2004 and FY 2005, and one recommendation from the Legal Affairs Committee requesting clarification about the language of the Anti-Lobbying Act (18.U.S.C. Section 1913).

In keeping with its mandate to advise OJJDP, FACJJ forwarded the three recommendations to the OJJDP Administrator. On March 23, 2004, OJJDP provided responses to the three recommendations. These recommendations and the corresponding responses, including a cover letter from the OJJDP Administrator, are included in appendix A.

This *2004 Annual Recommendations Report to the Administrator of the Office of Juvenile Justice and Delinquency Prevention* contains 23 additional recommendations regarding the operation of OJJDP and suggests issues to be addressed by OJJDP in the future.

FACJJ firmly believes that OJJDP must continue to emphasize delinquency prevention efforts. Although the juvenile arrest rate continues to fall, serious juvenile justice issues remain and complex new ones are arising. Recommendations in this report address a number of these critical juvenile justice issues, including alternatives to detention; transfer and certification; disproportionate minority contact with the juvenile justice system; the need for collaboration among agencies; and the mental health and drug abuse treatment needs of juvenile offenders. The report also suggests improvements in the way some OJJDP programs are administered.

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<sup>1</sup> The advisory committee was originally named the Juvenile Justice Advisory Committee. Per Recommendation Number 23, the committee's name was changed to the Federal Advisory Committee on Juvenile Justice. This change will not take full effect until this report is approved by the Juvenile Justice Advisory Committee at their December 2004 meeting and the JJAC Charter is modified and approved by OJJDP.

The common thread running through all of these recommendations is the need to continue focusing on prevention and intervention efforts. Many communities find it difficult to sell the idea of prevention programs, especially with delinquency rates continuing to drop. The drastic cuts to OJJDP's budget over the past 3 years also send a misleading message to the public that prevention efforts are no longer needed. Moreover, every year millions of children are born and millions of children reach adolescence, which makes delinquency prevention an ongoing, never-ending responsibility. As the federal agency responsible for addressing juvenile crime and delinquency, OJJDP can play a pivotal role in keeping the President, Congress, and the public aware that this is not the time to cut back on prevention efforts. The recommendations in this report highlight some of the reasons the nation must remain focused on delinquency prevention programs.

## **FACJJ Recommendations**

1. *FACJJ recommends that OJJDP fund and support research into the effect the increased use of alternatives to detention has had on reducing disproportionate minority contact (DMC) and other core requirements. The research should examine community-based alternatives to detention and screening and assessment instruments used to reduce detention. OJJDP should use the research findings to develop a training and technical assistance program that will assist states in addressing detention reform in their communities while continuing to protect public safety.*

Data from the first Juvenile Residential Facility Census (JRFC) conducted in 2000 indicates a number of residential facilities are overcrowded. About 40 percent of facilities responding to the survey reported their residents outnumbered their beds (Sickmund, 2002).

The 1999 Census of Juveniles in Residential Placement (CJRP), which gathers information about juvenile offenders in custody, found that a disproportionate number of minorities were in residential placement in nearly all states. Although minority youth accounted for only 34 percent of the U.S. juvenile population at that time, they accounted for 62 percent of juveniles held in both public and private juvenile residential facilities (Sickmund, 2004).

Are alternatives to detention being used with minority youth? If so, how often are they used compared to use of alternatives with nonminority youth? Are these alternatives cost-effective? Do they make a difference in recidivism? These are some of the questions states need answered.

As indicated in their 3-year Formula Grant program plans, most states are in compliance with the DMC requirement of the JJDP Act. However, being in compliance does not mean states have completely eliminated the overrepresentation of minority youth in their juvenile justice systems. States acknowledge they need help in addressing the DMC issue. Providing a training and technical assistance program based on research would be an asset to states trying to implement detention reform. This training and technical assistance program should encourage the use of alternatives to detention and the replication of national detention reform models.

2. *FACJJ recommends that OJJDP fund and support research into the effect that the increased use of charging or certifying youth as adults in criminal court has had on DMC and the other core requirements. Research topics should include the transfer, certification, and placement of juveniles in adult courts for trial as adults and the housing and treatment of youth in adult correctional facilities and programs.*

Many states have transfer laws that allow certain juveniles to be transferred to criminal court where they may be prosecuted as if they were adults. Although the number of juvenile delinquency cases judicially waived to criminal court declined 54 percent between 1994 and 2002 (Puzzanchera et al., forthcoming), the trend of juvenile transfer and certification to adult court continues. In fact, the above statistic may be misleading because there is little data available about the number of juveniles being sent to adult court through other means, such as direct file. Much information about the effects of this trend, especially as it relates to minority youth, remains unknown.

The disparity in violent crime arrest rates for black juveniles and white juveniles declined substantially between 1980 and 2002; however, juvenile arrests in 2002 disproportionately involved minorities. Whereas white youth comprised 78 percent of the juvenile population and black youth 16 percent in 2002, 55 percent of juvenile arrests for violent crimes involved white youth and 43 percent involved black youth (Snyder, 2004).

How many of these youth are being transferred to adult court for trial? Is there disproportionate representation of minorities in the transfer population? Is transferring certain juveniles to the adult criminal justice system actually making a difference in reducing juvenile crime or juvenile recidivism rates? Are transferred youth receiving the treatment and education programs they need? Are they being held safely away from adult criminals? What are the financial incentives and disincentives between states and local units of government that may impact the decision on whether to transfer juveniles to adult court for trial?

For example, in Michigan, counties and the state share the costs of treatment/confinement when a juvenile is adjudicated pursuant to delinquency proceedings, but only the state is financially obligated when a juvenile is convicted in adult criminal court and committed to the Michigan Department of Corrections.

Although many questions lack answers, findings emerging from the limited research available about waivers and transfers are disturbing. A study that examined the Illinois law regarding mandatory transfer of young drug offenders to adult court found that minority youth are far more affected by the law than white youth. In fact, the study found that 99 percent of the youth transferred to adult court in Cook County (Chicago) for drug crimes in 1999–2000 were African American or Latino (Ziedenberg, 2001). Researchers said this occurred even though surveys (such as the 1999 National Household Survey on Drug Abuse and the National Institute of Drug Abuse Survey) show that white youth use drugs at the same or higher rates than youth of color.

OJJDP needs to fund an independent research and evaluation study of the impact of charging youth as adults and use the findings from this research to

develop model programs, standards, and incentive funding for the housing and treatment of juveniles sentenced to adult correctional systems. In recognition that juvenile offenders are being transferred to adult correctional systems, the agency also should stress to states the critical necessity of having specific standards and programs for housing and treating youth sentenced or certified as adults.

3. *FACJJ recommends that OJJDP provide expanded technical assistance, technology, and training to local communities to help them implement truly effective practices for preventing and reducing DMC.*

Most states have done a good job in identifying and assessing the number of minority youth who come into contact with the juvenile justice system. Because these states have recognized that there is a problem, they now need more information about interventions that are effective in addressing DMC. OJJDP should provide information, technical assistance and training, and model programs that would help states successfully reduce the number of minority youth in their juvenile justice systems.

4. *FACJJ recommends that the OJJDP Administrator request the Coordinating Council on Juvenile Justice and Delinquency Prevention (Coordinating Council) to establish an interagency task force to examine mental health issues in the child welfare and juvenile justice systems and the role of appropriate federal agencies in promoting access by children and youth to needed mental health services. The task force should be comprised of the Administrators of OJJDP; the U.S. Department of Health and Human Services' (HHS) Substance Abuse and Mental Health Services Administration, Administration for Children and Families, and Centers for Medicare and Medicaid Services; and the Assistant Secretary of Education for Special Education. The task force should be charged with making recommendations to Congress on how to improve mental health services for youth, foster interagency cooperation, and remove interagency barriers.*

The large number of children in the juvenile justice system who have mental health disorders is a critical problem for which juvenile justice practitioners are begging for help. Estimates indicate that too many of the youth who come into the juvenile justice system need mental health services. For example, preliminary data from OJJDP's research into alcohol, drug, and mental health (ADM) disorders among juvenile detainees in the Cook County (IL) Detention Center show that two-thirds of the detained youth have one or more ADM disorders (Teplin, 2001). Yet many agencies do not have funds to provide the necessary mental health services.

According to a recent congressional report, thousands of children are incarcerated in juvenile detention centers for no reason other than they are waiting for community mental health services (U.S. House of

Representatives, 2004). The report, commissioned by Representative Henry Waxman (D–California) and Senator Susan Collins (R–Maine), estimates that juvenile detention facilities spend an estimated \$100 million each year to house youth who are waiting for mental health services.

A 1999 report on mental health by the U.S. Surgeon General also cited a lack of certain types of mental health services, including wraparound services for children with serious emotional problems and multisystemic treatment programs (U.S. Department of Health and Human Services, Office of the Surgeon General, 1999). The report pointed out that both types of treatment need to be coordinated among health, social service, education, and community agencies.

In addition, a recent U.S. General Accounting Office (2003) report indicated a nationwide problem of misinformation among parents without resources who do not know where to go for help with a troubled child. These parents often believe they must relinquish custody for their child to receive the mental health treatment he/she needs. According to Dr. Susan Orr, Associate Commissioner, Children's Bureau, Administration for Children and Families, such restrictions do not exist, but a large disconnect between the perception and reality continues to exist (Coordinating Council on Juvenile Justice and Delinquency Prevention, 2003).

Mental health services for juveniles also could be improved if all states were granted waivers to their state Medicaid plans to allow them to use Medicaid funds to provide home- and community-based services to treat children with mental health needs. The federal government also needs to examine the issue of using Medicaid funds to treat juveniles who are being held in juvenile detention facilities prior to adjudication. Although federal regulations (42 C.F.R. Section 435.1009) governing the use of Medicaid funds prohibit using these funds for the treatment of any person who is considered to be an inmate of a public institution, these same regulations go on to say that an individual is not considered an inmate of a public institution if “he is in a public institution for a temporary period pending other arrangements appropriate to his needs” [(42 C.F.R. Section 435.1009 (b))]. Nevertheless, many states consider detained juveniles ineligible for mental health services funded by Medicaid. New Mexico is one of the few states that has made Medicaid funding available for preadjudicated juveniles being held in detention facilities.

FACJJ believes a task force comprised of the agencies mentioned above could provide Congress with critical information on how mental health services for youth and interagency cooperation can be improved and could also recommend ways to remove interagency barriers that hinder disadvantaged children’s access to appropriate mental health treatment.

5. *FACJJ recommends that OJJDP disseminate information to states about culturally competent mental health assessment issues. Diagnostic screening that addresses both substance abuse and mental health should be made available for all children referred to the juvenile justice system, along with appropriate referrals that are commensurate with the diagnosis. That is, children with mental health issues should be referred to mental health services and, where appropriate, petitioned under the mental health section of a juvenile code. These referrals should be culturally competent and relevant to the child's needs.*

Juvenile justice practitioners across the country are concerned about the number of youth in the juvenile justice system who have mental health disorders and about the lack of screening and assessment tools needed to address this issue. Quality screening and assessment tools are needed to ensure that all juveniles who enter the system have full-scale mental health assessments followed up with treatment plans that address individual needs.

The President's New Freedom Commission on Mental Health (2003) called for making early mental health screening, assessment, and referral to services a common practice for both children and adults. The Commission also stressed the need to provide quality screening and early intervention in the juvenile justice and child welfare systems.

OJJDP can help address this critical need by providing practitioners with information and training about effective diagnostic screening tools and treatment programs for co-occurring ADM disorders. Continuing to place juvenile offenders with mental health problems on probation or in corrections facilities without proper treatment will do nothing more than leave these juveniles' disorders unaddressed in a juvenile justice system unequipped to deal with them.

6. *FACJJ recommends that, until Congress provides funding for the new Juvenile Delinquency Prevention Block Grant (JDPBG) program in an amount equal to or greater than the highest appropriation for the Title V Delinquency Prevention Grants (Title V) program, OJJDP should continue to fund the Title V program as a formula-based block grant program rather than as a discretionary program.*

OJJDP should not change the funding process for the Title V program from a formula-based block grant program to a discretionary program for several reasons. Establishing a competitive process for FY 2005 funds might delay distribution of funds that states are counting on to continue their existing Title V projects. Although a state or local government is required to provide a 50-percent cash or in-kind match for each Title V grant, changing the funding rules in midstream could leave some Title V communities without enough money to complete their projects.

In addition, Title V is the only federal funding source dedicated solely to delinquency prevention programs. Making these funds available to only a few states through a discretionary program at a time when state budgets are being reduced sends a message that delinquency prevention is no longer an OJJDP priority. Despite the good news about the declining juvenile violent crime rate, there is no shortage of juvenile justice problems to be addressed. It is imperative that delinquency prevention remain an OJJDP priority.

7. *FACJJ recommends that OJJDP study the tribal passthrough funding formula and devise a new, more equitable way of distributing these funds to the tribes. The plan should create a formula that provides sufficient funds for the tribes to effectively address their juvenile justice needs. The proposed plan should then be sent to Congress.*

States with American Indian and Alaska Native (AI/AN) tribes that perform law enforcement functions are required to pass through a portion of their formula grant funds to these tribes for juvenile justice activities. The minimum amount a state is required to allocate to their tribes is based on the proportion of the state's youth population residing in areas where the tribal government performs law enforcement functions. In many cases, the amount is too small to support effective juvenile justice and delinquency prevention activities. For example, the amount allocated for Massachusetts in FY 2003 was \$21; Rhode Island, \$23; Alabama, \$41; and Louisiana, \$97.

Although many states supplement the amount awarded to AI/AN tribes, the formula that determines the percentage of passthrough funding is seriously flawed and needs to be reconsidered. Based on what OJJDP has learned from administering the Tribal Youth Program, it is in a unique position to reexamine the existing passthrough formula and propose a formula that would be more equitable and provide enough funding for the tribes to make a difference. OJJDP should enlist the expertise of the program manager of the OJJDP Tribal Youth Program (TYP) and the Formula Grant program staff, and propose a radical restructuring of the tribal passthrough grant funding formula.

8. *FACJJ recommends that OJJDP move the deadline for states to submit applications for all formula and block grant programs from spring to early fall so states can receive their grant funds at the beginning, rather than the end, of the federal fiscal year.*

As in the past, OJJDP required states to submit their applications for FY 2004 formula grant, Title V, and JABG funds by March 31; the deadline for the Enforcing the Underage Drinking Laws program was February 27. States often do not receive their signed grant agreements back until up to 7 months after the official start date of the award. This creates a significantly reduced timeframe in which to allocate and expend funds. Moving the deadline from

spring to early fall would benefit both the state and OJJDP staff. States could receive and expend their grant funds at the beginning of a fiscal year, instead of more than halfway through it. Because the federal government's fiscal year ends on September 30, OJJDP and OJP staff members generally are extremely busy during the last quarter as they try to process all grant awards before the end of the fiscal year. Changing the existing deadline for block and formula grant applications would alleviate this burden.

9. *FACJJ recommends that OJJDP promulgate guidelines that encourage states and local subgrant recipients to use evidence-based research when establishing programs and to fund proven best practices or promising approaches. At the same time, the states and OJJDP should support innovative research and other programs to help find new ideas that are effective in addressing juvenile justice issues.*

Because the amount of federal grants to states is decreasing, it is crucial that states make wise use of their limited dollars by funding programs that have the best potential of addressing juvenile delinquency and crime. The White House Task Force for Disadvantaged Youth points out in its final report that one of the most significant roles the federal government plays in youth programs is supporting research and program evaluation (2003:54). OJJDP should take what has been learned from its research and evaluation programs and help states determine what works when it comes to delinquency prevention and intervention programs.

Although the juvenile crime rate is declining, a number of complex problems remain. Juvenile drug offenses are up, arrest rates of females are increasing (or decreasing less than rates for males), youth gang problems continue, and many youth in the juvenile justice system suffer from mental health disorders. States cannot afford to fund programs that have not been proven effective.

10. *FACJJ recommends that OJJDP assist states in developing sustainability funding for effective programs funded with federal funds. OJJDP should provide technical assistance on how states can plan to successfully sustain programs using private or public resources, and should urge states to discuss sustainability funding in their 3-year Formula Grant plans. State subgrant recipients should also be encouraged to develop long-term plans for supporting effective programs after federal funding ends.*

In this age of shrinking federal and state budgets, states need to develop plans to find additional funds for their programs once their federal grants end. Asking states to address sustainability funding in their 3-year Formula Grant plans would be an important first step. In addition, OJJDP could sponsor conferences and provide training and technical assistance to show how state and local governments have successfully planned for long-term support of their programs by using private and public resources.

Title V communities could possibly be examples. The Title V program helps communities do a better job of leveraging resources and maximizing their return on limited federal funds, in part because state and local governments are required to provide a 50-percent cash or in-kind match for each grant. Consequently, the level of community ownership and investment in these programs is impressive and has contributed to Title V's success. (However, FACJJ is not recommending that OJJDP require states to provide matching funds in order to receive any federal funds.)

11. *FACJJ recommends that OJJDP promptly complete the revised Juvenile Accountability Block Grant (JABG) guidance manual, because the new program referencing the manual began on October 1, 2003. OJJDP should also develop an annual report or an easily accessible and user-friendly database that reports on data collected from states under the new JABG performance measures. FACJJ also recommends that OJJDP develop a series of user-friendly manuals on how to administer each of its block and formula grant programs.*

An OJJDP Bulletin, *Changes to OJJDP's Juvenile Accountability Program* (Andrews and Marble, 2003), indicated that an update of the JABG guidance manual would be forthcoming, but to date, nothing has been published. Although FACJJ appreciates OJJDP's efforts to solicit input for the manual from the field, the juvenile justice specialists administering state JABG programs need this manual now. It is especially important in light of the program's new requirement that grantees report and assess their activities regularly.

FACJJ also recommends that OJJDP develop user-friendly manuals, similar to the Edward Byrne Memorial Program manual developed by OJP's Bureau of Justice Assistance, on how to administer each of its block and formula grant programs. The existing manuals are cumbersome and difficult to follow. Developing streamlined, plain English manuals would help make administering the programs easier for grantees, and would perhaps help OJJDP staff as well.

12. *FACJJ recommends that OJJDP standardize program reporting for subgrants among its block and formula grant programs. It is difficult and time-consuming for states to complete the different reports now required.*
13. *FACJJ recommends that OJJDP work closely with the Bureau of Indian Affairs (BIA) to provide training to state staff and State Advisory Group (SAG) members on the unique issues that arise in working with sovereign nations and AI/AN youth. In many cases, a lack of understanding of the complex jurisdictional issues by SAGs, state staff, and other individuals working directly with the tribes makes collaborative efforts difficult.*

Staff members from BIA and OJJDP, especially those involved with TYP, have valuable experience working directly with tribal leaders. As these individuals know, there are many complex jurisdictional issues involved when working with sovereign nations, such as BIA versus Tribal Courts, enrolled members of tribes versus nonenrolled members, and the Indian Child Welfare Act. In addition, tribes often develop culturally relevant activities, such as traditional sweat lodges (spiritual purification ceremonies) or talking circles (similar to group therapy) as part of their juvenile delinquency prevention programs. Such activities may be unfamiliar to, and misunderstood by, some state staff and SAG members.

FACJJ recognizes that OJJDP staff worked closely with tribal members when developing the TYP guidelines to ensure that the program was culturally relevant. The results exemplify what can be accomplished through mutual respect and understanding when federal and tribal governments work together to prevent youth violence and substance abuse. OJJDP and BIA staff members are in a unique position to share their knowledge and experience with others at the state level who are working with tribal members.

14. *FACJJ recommends that the Coordinating Council develop a waiver that would allow federal agencies to pool funds and develop a pilot program to give at-risk youth access to programs based on their needs, rather than on a program label. For example, there is considerable confusion as to whether Medicaid funds can be used to provide mental health treatment for juveniles who are being held in secure juvenile detention facilities prior to adjudication. This is just one example of the barriers that restrict the use of federal funds for treatment programs for at-risk youth.*

In its final report, the White House Task Force for Disadvantaged Youth reported that in FY 2003, “the federal government will spend \$223.5 billion to help needy children and their families” (2003:53). Pooling some of these funds to help youth already in the juvenile justice system or those at risk of entering the system makes financial sense. The Coordinating Council should develop a pilot program to create innovative funding strategies that allow blended funding at the local level: funding that cuts across the treatment, education, workforce development, child welfare, justice, and housing (especially low-income housing) systems.

15. *FACJJ recommends that OJJDP expand its current program efforts to address youth gangs, especially in light of findings from the 2002 National Youth Gang Survey that suggest youth gang activity may be on the rise.*

According to the 2002 National Youth Gang Survey (the latest data available), every city with a population of 250,000 or more reported having a youth gang problem in 2002 (Egley and Major, 2004). Preliminary results from the survey indicate a slight increase in the prevalence of gang activity compared with

2001, suggesting that youth gang activity may be on the rise after stabilizing for several years. Another finding from the survey points to a finite need to be concerned about this issue: 42 percent of law enforcement officers who responded to the survey indicated that their youth gang problem was “getting worse” in 2002 compared with 2001, and only 16 percent indicated it was “getting better.” In the 2001 survey, these figures stood at 27 percent and 20 percent, respectively.

Longitudinal research has shown that gang membership significantly predicts delinquency and in fact, is an even more powerful predictor of delinquency than associating with delinquent peers or having committed a prior violent act. Fight Crime: Invest in Kids, a Washington-based nonprofit group of police chiefs, sheriffs, prosecutors, and crime victims, released a report in 2004 that highlighted programs in Baton Rouge, LA; Boston, MA; and Philadelphia, PA; that have been effective in keeping youth out of gangs. The group also expressed concern about cutting funding for youth gang programs, citing the need to continue to focus on prevention and intervention efforts. FACJJ shares this concern and recommends that if Congress appropriates funds for the previously unfunded JDPBG program in FY 2005, OJJDP should use some of these funds for youth gang programming.

*16. FACJJ recommends that OJJDP work closely with other federal agencies that provide substance and alcohol abuse treatment dollars to states to help agencies better understand the need to place a higher priority on youth in, or at risk of involvement in, the juvenile justice system. OJJDP should provide these agencies with state data that shows the high percentage of youth in the system who need treatment and indicates that funds for services within the juvenile justice system cannot support the level of need.*

The juvenile arrest rate for drug abuse violations increased 59 percent between 1993 and 2002 (Snyder, 2004). This is troublesome because youth who use alcohol and drugs are at greater risk of more serious delinquency, and many of them end up in the juvenile justice system. Juvenile justice practitioners from across the nation are concerned about the lack of drug and alcohol treatment options for these youth and point to both the lack of funding for such programs and the lack of coordination of available substance abuse resources.

Although it is important to have programs to prevent youth from using drugs in the first place, it is equally important that federal and state agencies understand the urgent need to provide interventions that help keep substance-abusing at-risk youth out of the juvenile justice system and possible future criminal involvement.

17. *FACJJ recommends that the OJJDP Administrator immediately seek and advocate for an amendment to the Anti-Lobbying Act (18 U.S.C. Section 1913) that specifically exempts SAGs and SAG members from the provisions of the Act when acting in accordance with the directives set forth in the JJDP Act, individual state laws, or state executive orders. In the alternative and in the interim, FACJJ recommends that the Administrator seek and advocate for a controlling Office of Management and Budget opinion consistent with the aforementioned exemption.*

FACJJ is concerned that this directive, as it stands, could have serious implications for SAGs that might be required by state statutes to report to their legislatures and governors on juvenile justice laws, rules, and regulations.

18. *FACJJ recommends that OJJDP examine existing research that looks at the number of youth incarcerated for technical violations, such as probation and parole violations, and the use of graduated sanctions to see “what works.” Based on this research, OJJDP should then develop a technical assistance program to help communities and states find more effective ways of addressing these technical violations.*

According to the National Center for Juvenile Justice in Pittsburgh, PA, on a typical day in 2001, 15 percent of all juveniles in residential custody in the United States (or about 15,500 persons out of the total daily custody population of 104,400 persons) were being held for a technical violation (Howard Snyder, National Center for Juvenile Justice, personal communication, May 13, 2004). The proportion for females in custody was greater than for males in custody (21 percent versus 14 percent). Focusing only on the daily population of detained youth (those held awaiting adjudication), 24 percent were in detention for a technical violation (22 percent of male detainees and 31 percent of female detainees). Focusing only on the daily population of committed youth (those held in facilities postadjudication), 12 percent were committed for a technical violation (11 percent of committed males and 16 percent of committed females).

Are states overinstitutionalizing youth for technical violations? Are youth being moved too quickly into an institution for such violations? Would intermediate sanctions be more effective with youth who violate probation and parole requirements? What types of intermediate sanctions are available and which ones work best? Research about these issues needs to be pulled together to show what works and what is not working.

Based on this research, OJJDP should develop a program of training and technical assistance to help states and communities reduce the number of pre- and postadjudicated youth institutionalized for technical violations. The money states save by using graduated sanctions rather than

institutionalization could then be reinvested in prevention and pre-institutionalization intervention programs.

*19. FACJJ recommends to that OJJDP provide an intensive program of training and technical assistance to help states and communities address the increasing number of female offenders in the juvenile justice system. It is imperative that juvenile justice professionals and policymakers understand the nature and causes of female delinquency (which often differ from those of male delinquency) and implement gender-specific programs for these offenders.*

Between 1980 and 2002, the total arrest rate for juvenile males declined 19 percent, and the rate for juvenile females grew 30 percent. More specifically, between 1980 and 2002, the female juvenile arrest rate for Violent Crime Index offenses increased 49 percent and the male rate fell 25 percent (Howard Snyder, National Center for Juvenile Justice, personal communication, Sept. 13, 2004).

The rising number of juvenile female offenders and the lack of gender-specific programs for them is a critical issue that needs to be addressed at all points in the juvenile justice system. Female development, their pathways to delinquency, and the delinquent acts they commit differ greatly from those of males. For example, research indicates that juvenile female offenders often have histories of physical, emotional, and sexual abuse (all risk factors for delinquency); family problems; academic problems; and trouble developing healthy relationships with others. They also suffer from physical and mental disorders. Consequently, at-risk females require programs that provide physical and emotional security, positive female role models, and a sense of belonging and self-worth. These needs differ considerably from those of males (Greene, Peters and Associates, 1998).

Prevention and intervention programs already in place for males likely will not work for females, yet states and communities have been slow to develop and implement programs specifically geared toward females (Shepherd, 2002). OJJDP should develop a training and technical assistance program that will provide information to practitioners about the vast differences between juvenile female and male offenders and offending, and help practitioners address these differences through research-based, gender-appropriate services.

*20. FACJJ recommends that OJJDP provide technical assistance and training on improving community support for youth re-entry programs. This community support should include health, mental health, education, family, and vocational programs.*

Thousands of youth are released from secure and residential facilities every year to return to their communities. Once these youth return to their communities, they may or may not receive the support that they need to stay out of trouble.

It is important that policymakers and communities recognize the importance of providing a continuum of aftercare services for these youth, services that include health, mental health, education, family, and vocational programs. Research also indicates a need to establish the necessary collaborative arrangements within the community *before* the juvenile is released (Gies, 2003). In the best-case scenario, a comprehensive aftercare process should begin immediately after sentencing and continue through incarceration and the offender's release into the community.

Policymakers, practitioners, and community leaders need help in developing the programs and community support necessary to help juvenile offenders reenter their communities after they are released from secure and residential facilities. OJJDP can provide that help by developing a training and technical assistance program about re-entry.

21. *FACJJ recommends that OJJDP allocate \$375,000 in OJJDP funds in FY 2005 and beyond to support FACJJ activities required by Section 223(f)(2)(C-E). The funds would support two annual in-person meetings of the full advisory group, one yearly FACJJ Annual Report Committee meeting, writing of the annual reports, and teleconference calls with committee members. These activities are necessary to support the committee's purpose of advising the President, Congress, and the OJJDP Administrator on matters related to juvenile justice.*
22. *FACJJ recommends that OJJDP provide \$394,000 funding in FY 2005 and beyond to support training and technical assistance for SAG members as required by Section 223(f)(2)(A-B) of the JJDP Act.*

The membership of SAGs rotates often for a number of reasons: a change in governors, members moving away, and revisions in bylaws. In addition, SAG members are political appointees and have a variety of backgrounds and job experience with vast differences in their knowledge about juvenile justice issues. Providing a continual source of training helps ensure that new SAGs have the ability to carry out their mandated responsibilities.

Also, as SAGs work to address issues of particular concern to their states, the opportunity to work with chairs and SAGs from other states is crucial. Most states have experienced the same or similar problems over time. Networking helps SAG members draw on the experiences of other states and adapt responses tailored to their own needs. This helps reduce the time and money needed for each SAG to "reinvent the wheel," especially when it comes to

addressing compliance with the four core requirements. OJJDP-sponsored training and technical assistance is a valuable tool for SAG members.

*23. FACJJ requests that the OJJDP Administrator amend the Charter and Bylaws of the Juvenile Justice Advisory Committee (JJAC) in two areas:*

- Change the name of JJAC to the Federal Advisory Committee on Juvenile Justice (FACJJ) to eliminate confusion with like-named State Advisory Groups.
- Amend Section X of the bylaws by adding the following language: “Both annual reports [the one to the President and Congress and the one to the OJJDP Administrator] shall be distributed to the President and Congress, the governor of each state and territory, and the chair and juvenile justice specialist of every SAG with a request that the chair distribute the report to each member of the SAG.” FACJJ recommends that the reports could be distributed to SAG members electronically.

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## Appendix A

### Letter From the Administrator of OJJDP to the JJAC Chair in Response to the Three Recommendations

March 23, 2004

Mr. David R. Schmidt, Chair  
Juvenile Justice Advisory Committee  
2319 Mountain Road, NW  
Albuquerque, New Mexico 87104

Dear Mr. Schmidt:

Thank you for your leadership as the Chair of the Juvenile Justice Advisory Committee (JJAC). The inaugural meeting of the JJAC in January 2004, in Point Clear, Alabama, was a great success due to the willingness of so many people from across the country to attend and provide recommendations to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) on the programs of the office.

During the meeting, there were three recommendations from the JJAC. In responding to the recommendations, I offer that they are the types of recommendations that OJJDP is seeking from the JJAC – they are specific and indicate a recommended course of action; justification is provided for the recommendations; and the recommendations are of regional or national significance. The JJAC recommendations are attached, with an accompanying OJJDP response.

OJJDP looks forward to responding to additional recommendations from the JJAC. As part of its Annual Report, it is hoped that the JJAC will present draft recommendations for review, discussion, and approval at the next JJAC meeting. This meeting is scheduled for July 9-10, 2004, and will take place in Denver, Colorado. I look forward to meeting with you then.

Sincerely,

/s/

J. Robert Flores  
Administrator

Enclosure (1)

## **Status of the Juvenile Justice Advisory Committee Recommendations From January 14, 2004**

### ***JJAC Recommendation #1***

If approximately \$16.5 million is appropriated under the Title V program in FY 2004, JJAC recommends that OJJDP continue the current formula-based distribution of the Title V Incentive Grants for Local Delinquency Prevention Programs in FY 2004. This recommendation is based upon the following:

- FY 2005 funding and beyond is uncertain.
- Without a state distribution, there is a disincentive for states and Congress to be supportive of future funding.
- Absent a broad national distribution to all states, there will be less support for the core requirements.
- States need the FY 2004 distribution to continue funding current Title V projects.
- Continued funding would ensure an additional year of transition funding if the Title V program moves to a competitive solicitation.
- In a time when state budgets are being reduced, the Title V funding is critical.
- Establishing a competitive process for the FY 2004 funds may delay distribution of funds.

### ***OJJDP Response: Adopt***

The FY 2004 appropriations were signed into law on January 20, 2004, providing approximately \$16.5 million for the Title V Incentive Grants for Local Delinquency Prevention Programs program. In response to the strong rationale that JJAC presented, these funds are being made available to the States in a formula-based allocation.

### ***JJAC Recommendation #2***

JJAC remains open to working with OJJDP to develop distribution of FY 2005 Title V funds. It is recommended that the Grants Committee of JJAC work with OJJDP to evaluate this structure. In the event that there is a competitive solicitation for Title V funds, JJAC recommends that all funds are awarded to states for approval and distribution through the State Advisory Groups.

### ***OJJDP Response: Adopt With Change***

While future funding is uncertain for this program, OJJDP appreciates the willingness of JJAC to assist in developing a competitive Title V grant program. Prior to the inaugural meeting of JJAC, OJJDP met with representative members of State Advisory Groups, State Administering Agencies, and State Juvenile Justice Specialists in May 2003, to review a draft regulation for a competitive Title V program. OJJDP has subsequently incorporated recommendations from

this meeting into a revised Title V program regulation. When the regulation is published in the *Federal Register* for public comment, JJAC members will have an opportunity to provide additional input.

The resulting regulation will adhere to the JJDP Act, which requires that the funds be awarded to State governments and that the State Advisory Groups have an opportunity to review and comment on all grant applications submitted.

***JJAC Recommendation #3***

There presently exists an apparent conflict between the language of the Anti-Lobbying Act (18 USC § 1913) as recently amended and the need for individual State Advisory Groups to make an annual report to Congress and the President (section 223).

It has also come to the attention of JJAC that a significant number of the states are required, pursuant to state statute, to report to their legislature and/or their governors on the status of juvenile justice laws, rules, and regulations. These state requirements could also be construed as being in conflict with the Anti-Lobbying Act.

JJAC is requesting that the Administrator advise Congress, Office of Management and Budget, and General Counsel of these gray areas and seek clarification.

*OJJDP Response: Adopt*

OJJDP has received clarification from the Office of General Counsel, Office of Justice Programs, on the Anti-Lobbying Act, 18 U.S.C. § 1913. This information is attached.



## Information From the Office of General Counsel, Office of Justice Programs

### *The Federal Anti-Lobbying Act, in Response to a Request From OJJDP*

#### IN GENERAL

**Overview.** Effective Nov. 2, 2002, Pub. Law 107–273 amended the Anti-Lobbying Act, 18 U.S.C. § 1913, in three important respects— (1) it broadened the scope of prohibited lobbying using federal funds at all levels of government; (2) it broadened the application of the Act to *any* users of federal funds, not just federal employees (as had been the case before); and (3) it prescribed civil penalties, in place of the former criminal ones. In principle, these changes affect all federal funds, including every grant or contract. When a **federal statute** “express[ly] authorize[s]” particular activities that the Anti-Lobbying Act otherwise would prohibit, however, the provisions of that Act do not apply. In any event, the Anti-Lobbying Act governs only activities conducted *using federal funds*.

**OJP Prophylactic Role.** To assist grantees to comply with the Anti-Lobbying Act and avoid making potentially-costly mistakes, OJP is requiring all of its grantees (not just OJJDP grantees) to obtain written approval from it before using any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government. Of course, this requirement should not be understood to suggest that OJP lawfully could grant a “waiver” from the Act’s provisions. The purpose of this requirement, rather, is— (1) to put grantees on notice of those provisions; and (2) to provide OJP with the opportunity to review, in each particular case, whether or not there actually is a federal statute that provides “express authorization” for the use of federal funds to engage in those activities.

#### STATE AND LOCAL

**Educational activities.** A State Advisory Group is **not** prohibited by the Anti-Lobbying Act from using federal funds to report to its legislature and/or governor as to the status of juvenile-justice laws, rules, policies, or regulations: **provided**, that such reporting does not entail any “inten[tion] or design[] to influence in any manner [the] favor[ing], adopt[ion,] or oppos[ition], by vote or otherwise, [of or to] any legislation, law, ratification, policy or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy or appropriation.” Such reporting would be educational in nature and would **not** fall within the prohibition of that Act.

**Other activities.** Section 223(a)(3)(D)(i) & (ii) and (E)(i) of the JJDP Act— (1) requires each State Advisory Group to provide ongoing advice to its designated State agency and supervisory board, and to submit to the governor

and the legislature at least annual recommendations regarding State compliance with the core requirements of the JJDP Act; and (2) authorizes each such SAG also to provide ongoing advice to the State as to the composition of the State supervisory board and local criminal justice advisory board. OJP believes this Section to provide “express authorization” (within the meaning of the Anti-Lobbying Act) to allow SAGs to use federal funds to perform the activities described therein. Accordingly, use of federal funds to perform such activities would **not** be prohibited by the Anti-Lobbying Act.

## **FEDERAL**

The Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 does **not** require or authorize individual State Advisory Groups to lobby the Congress or the President. Section 223(f) of that Act, rather, creates a Federal Advisory Committee (composed of representatives of each of the State Advisory Groups), which **is** charged with advising the OJJDP Administrator, the Congress, and the President on the operation of OJJDP and on federal legislation pertaining to juvenile justice and delinquency prevention. OJP believes this Section to provide “express authorization” (within the meaning of the Anti-Lobbying Act) to allow the JJAC (which is the Federal Advisory Committee created by that Section) to use federal funds to perform the advisory functions described therein. Consequently, performance by JJAC of the activities described in that section would **not** be prohibited by the Anti-Lobbying Act: **provided**, that such performance is conducted in accordance with provisions of the Federal Advisory Committee Act.

# Appendix B

## Federal Advisory Committee on Juvenile Justice Members

State	Primary Member	Alternate Member
Alabama	Joe M. Thomas	Harry Williams
Alaska	Barbara B. Tyndall	Carol Brenckle
American Samoa	Ala'alamua L.A. Filoiali'i	John H. Lutali
Arizona	Margaret Trujillo	Derrick Johnson
Arkansas	Jerry K. Walsh	Luke Flesher
California	Stan Hanstad	Victor Mow
Colorado	Lindi Sinton	Joseph Higgins
Connecticut	Anthony J. Salius	Eileen M. Daily
Delaware	Michael Arrington	Vacant
District of Columbia	Terri Odom	James D. Berry, Jr.
Florida	Robert M. Evans	Frank Orlando
Georgia	Andrew J. Harris, Jr.	Vacant
Guam	Christopher M. Duenas	Christine Baletto
Hawaii	Maryanne W. Kusaka	Linda C. Uehara
Idaho	Scott Mosher	Vacant
Illinois	Michael Mahoney	Patricia Connell
Indiana	Robert Mardis	Susan Carpenter
Iowa	Carl Smith	Allison Fleming
Kansas	Ken Moore	Mark Gleeson
Kentucky	Hasan Davis	Brenda Caudill-Barnes
Louisiana	Bernardine S. Hall	Ronald Rossitto
Maine	Edwin Chester	Christine Thibeault
Maryland	James G. Kirk	Ron Rivlin
Massachusetts	Robert P. Gittens	Valerie Johnson
Michigan	Jeriel Heard	Jeffrey Fink
Minnesota	Michael Mayer	Sarah Dixon
Mississippi	Alfred L. Martin, Jr.	Eric Williams
Missouri	Donald Wolff	Margaret Harlan
Montana	Steven Rice	Peggy Beltrone
Nebraska	Allen R. Jensen	Thomas G. McBride
Nevada	Dan Prince	Daniel Coppa
New Hampshire	Glenn Quinney	Paul Lawrence
New Jersey	B. Thomas Leahy	George Yefchak
New Mexico	David R. Schmidt	Vacant
New York	Michael J. Elmendorf II	Patrice S. Lockart
North Carolina	Linda W. Hayes	Robin Jenkins
North Dakota	Mark A. Johnson	Al Lick
Northern Marianas	Vacant	Vacant

<b>State</b>	<b>Primary Member</b>	<b>Alternate Member</b>
Ohio	Tom Mullen	David Schroot
Oklahoma	Susan Cochran Morris	John Thomas Selph
Oregon	Billy F. Wasson	Faye Fagel
Pennsylvania	Daniel Elby	Ronald Sharp
Puerto Rico	Jose R. Negron	Vacant
Rhode Island	Brendan Gerrity	Dottie DeFeo
South Carolina	Harry W. Davis, Jr.	John D. Elliott
South Dakota	Janine Kern	Doug Herrmann
Tennessee	Cindy Durham	Beverly Cosley
Texas	Charles Brawner	Dwight Harris
Utah	Gary Anderson	Fred Peake
Vermont	Dick Smith	Kreig Pinkham
Virginia	Robert E. Shepherd, Jr.	Charles S. Martin
Virgin Islands	Vacant	Vacant
Washington	Ann M. Carey	Sergio Hernandez
West Virginia	Fred P. McDonald	Phyllis Stewart
Wisconsin	Deirdre Garton	Jerry Jansen
Wyoming	John E. Frentheway	Ian Sandefer