



# Department of Justice

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**STATEMENT OF**

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**BEFORE THE**

**COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**AT A HEARING ENTITLED**

**IMPROVING ACCOUNTABILITY AND OVERSIGHT OF  
JUVENILE JUSTICE GRANTS**

**PRESENTED  
April 21, 2015**

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**Before the Senate Judiciary Committee**  
**United States Senate**  
**April 21, 2015**

Chairman Grassley, Ranking Member Leahy, and other distinguished members of the Committee, thank you for inviting me to speak here today. I appreciate the opportunity to discuss the Department of Justice's efforts to improve implementation of the Juvenile Justice and Delinquency Prevention Act (JJDP Act).

For more than forty years, the Department has used its grant-making authority under the JJDP Act to help protect children and families who come into contact with the juvenile justice system. As you know, the Act sets nationwide standards for state-based juvenile justice systems and empowers the Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP) to award funds to ensure compliance with those standards. Thanks to the hard work and enlightened vision of OJJDP and its many partners in the juvenile justice field, our nation has made significant strides in ensuring justice and safety for youth, families, and communities. Today, violent crime arrest rates for youth are at their lowest point since at least 1980. Between 1997 and 2011, the population of youth in residential placement declined by 42 percent, and the number of youth in residential placement for committing status offenses like violating curfew, running away from home, and underage drinking has decreased by 64 percent.

As the Assistant Attorney General for the Office of Justice Programs (OJP), which oversees OJJDP, I have seen firsthand the crucial role that OJJDP plays in safeguarding our communities and improving the lives of children in crisis. However, we are aware of long-standing problems in the way OJJDP monitors states' compliance with the Act. In part due to concerns raised by this Committee, we have been reviewing OJJDP's compliance monitoring program, which has revealed a number of errors and systemic flaws in the program's operation. Although our review is ongoing, we wanted to share with you some of our preliminary findings and our efforts to resolve these issues.

The three overarching problems with OJJDP's compliance monitoring program are: (1) the regulations governing the program are old, outdated, and inconsistent with the JJDP Act, as amended; (2) the standards used to make compliance determinations are vague, thus injecting substantial subjectivity into the monitoring process, and (3) the extended timeline between a state's filing of a compliance report and OJJDP's compliance determination is inconsistent with the statute.

Before going further, it is helpful to briefly review several key features of the law. Under the JJDP Act, states must comply with twenty-eight requirements in order to receive formula grant funds. Of the twenty-eight, four are deemed “core” requirements because the JJDP Act requires that a state’s award be reduced for non-compliance with any of the core requirements: (1) the deinstitutionalization of status offenders (DSO); (2) jail removal; (3) sight and sound separation; and (4) addressing disproportionate minority contact, where it exists (DMC).

The law uses a carrot-and-stick funding mechanism to ensure compliance. OJJDP awards grant funds on an annual basis to help states meet their statutory obligations, but if a state fails to comply with a core requirement, not only must OJJDP reduce that state’s funding by twenty percent in the following fiscal year, but the state must also agree to spend fifty percent of its annual allocation to achieve compliance in the relevant core requirement.

Our preliminary review indicates that, between fiscal years 2007 and 2014, OJJDP imposed funding reductions in approximately sixty instances of noncompliance, totaling approximately \$12 million in cuts across seventeen states. It appears, however, that this funding mechanism did not always work as it was supposed to, and there were some instances where a state was permitted to “cure” its noncompliance and avert a funding cut by submitting supplemental data from subsequent years, as discussed more fully below.

As I said, we have identified three overarching problems. Let me describe them in greater detail.

### **1. Old, Outdated, and Inconsistent Regulations**

The first problem is that OJJDP’s compliance monitoring program relies on regulations that are old, outdated, and inconsistent with the current version of the JJDP Act.

As you know, the Act was first passed in 1974 and has been reauthorized several times since, most recently in 2002. In some instances, OJJDP failed to update the regulations to reflect these statutory revisions, and many of the current regulations remain unchanged from their initial publication in 1981. No new regulations have been released since 1996.

However, since at least the 1990s, OJJDP has provided states with written guidance for complying with the JJDP Act. During the 2000s, this assistance took the form of published “Guidance Manuals,” which OJJDP released in December 2001,

September 2003, January 2007, and October 2010. In some ways, these Guidance Manuals were more up-to-date than the regulations, in that they reflected some of the statutory changes that the regulations did not. In other ways, unfortunately, these Manuals simply incorporated and repeated many of the practices that were inconsistent with the Act itself.

One of the clearest illustrations of these outdated regulations is the “*de minimis*” exception to certain core requirements. The *de minimis* exception was first conceived thirty-five years ago as a way to allow states to demonstrate substantial compliance with a core requirement—and avoid a funding reduction—by proving to OJJDP that the extent of their noncompliance was “insignificant” or otherwise insubstantial. In regulations published in 1981, OJJDP created a complicated rubric that purportedly established how and when states qualified for the exception. The problem is that this complicated rubric relied on statistics compiled in 1979, and has not been updated since. These standards—incorporating decades-old data—were repeated in all four Guidance Manuals, and formed the basis for compliance determinations through the 2010s, despite major changes in the juvenile justice system during the intervening years.

We recognize that it has taken far too long for OJJDP to develop new regulations. We understand that the Committee is looking to reauthorize or otherwise amend the JJDP Act, and so as we undertake reforms at OJJDP, we will look to the Committee for guidance whether we should expedite new regulations or wait for Congress to pass new legislation.

## **2. Vague Standards for Compliance Determinations**

Another problem uncovered during our review is the vagueness of the standards used to make compliance determinations. A number of key terms used in OJJDP regulations and policies are unclear or ill-defined, which resulted in individual reviewers making their own subjective decisions about their meaning and thus injecting substantial subjectivity into the monitoring process.

Once again, the *de minimis* exception illustrates this problem. As I said before, a state that fell short of full compliance could nonetheless be found in substantial compliance—and avoid a funding cut—by meeting certain criteria under the *de minimis* exception. Yet some of those rules were so vague as to be essentially meaningless.

Consider, for example, the DSO core requirement. According to the Guidance Manuals going back at least as far as 2001, a state with a DSO violation rate between 5.8 and 17.6 per 100,000 could achieve compliance under the *de minimis* exception if the state “adequately met” two criteria, which were described as “Criterion B” and

“Criterion C.” This created two problems. First, neither the Manuals nor the regulations defined the term “adequately met,” leaving OJJDP reviewers to rely on their own judgment when assessing whether that standard was satisfied. Second, the “criteria” themselves were remarkably unclear. It appears that a state could meet “Criterion C,” for example, by demonstrating, in certain circumstances, a plan for *future* compliance, which runs contrary to the very idea of linking funding grants to a state’s performance in the prior year.

These vague standards contributed to the failure of process we have discovered at OJJDP. Under my direction and the direction of the Administrator of OJJDP, OJJDP is revising its policies and guidance documents to bring greater clarity to the process and to provide reviewers with a set of objective standards for evaluating compliance.

### **3. Extended Timeline Between Compliance Reporting and Compliance Determinations**

A third problem relates to the extended timeline between a state’s filing of a compliance report and OJJDP’s compliance determination. The Act requires that OJJDP’s grant funding determinations be based on data submitted by the states for the prior year. In practice, however, there has been a two- to three-year lag between the states’ data submission and the fiscal year affected by the compliance determination.

OJJDP used this extended timeline to provide assistance to states that were not in compliance with the core requirements based on their initial data submissions. In some cases, it appears that OJJDP permitted states to submit additional—or “supplemental”—data from later time periods as a way of avoiding a funding reduction, essentially allowing subsequent compliance to excuse prior noncompliance. Our ongoing review suggests that this practice extended as far back as 1997, and the use of extended timelines and supplemental data was reflected in all four Guidance Manuals.

We recognize that these practices do not reflect the current version of the statute. Going forward, we will no longer accept supplemental data and we are working to shorten the gap between the submission of a state’s data and OJJDP’s compliance determination based on that data. As part of our review, we are attempting to determine what portion of OJJDP’s annual compliance determinations involved the use of supplemental data or conditional awards, and we intend to update the Committee as we gather more details about this practice.

## **Ongoing Efforts to Resolve Problems and Improve Process**

There is much work left to do. Even at this preliminary stage, it is clear that these problems represent both a failure of process and a lack of internal controls within OJJDP used to ensure proper implementation of the Act. Although our review remains ongoing, we are already developing new policies to improve compliance with the statute and to make certain that such errors do not happen in the future.

Last month, we created a new “Core Protections Division” within OJJDP, which will be responsible for ensuring adherence to the Act. We appointed an experienced auditor and one of my trusted advisors to serve as the Division’s first Acting Associate Administrator. With the assistance of OJP leadership, the new Acting Associate Administrator will be working with OJJDP to develop consistent compliance guidelines for states, to streamline the process for submitting compliance data, and to establish an objective and data-driven process to assess compliance.

In addition, we are reviewing all available options to determine whether OJJDP can recover any of the funds that were improperly awarded to states because of failures in the compliance monitoring process. We anticipate, however, that recovery could be difficult, in part because these compliance failures, inconsistencies, and poor record-keeping make it challenging for OJJDP to determine which states received funds to which they were not entitled. As the Committee is aware, a six-year OIG investigation has revealed systemic failures in Wisconsin. OJJDP has frozen all of Wisconsin’s unspent formula grant funds and notified the State of its plan to conduct an audit within the next 60 days.

We appreciate you bringing your concerns to our attention, and we look forward to collaborating with you as we try to resolve these longstanding issues within this important grant program. Thank you for this opportunity, and I look forward to taking your questions.