

Section 7

Standards for Demonstrating Compliance

7.1 Grant Funds Affected by Compliance

If a State demonstrates compliance with the core protections, it is eligible for Formula and Challenge Grant funds. Moreover, units of local government and federally recognized tribes that are in compliance with the core protections are eligible for Title V Community Prevention Grant funds.

Formula Grant Funds. The State must demonstrate the extent to which each of the four core protections are met. If the State fails to demonstrate the required level of compliance by the end of the fiscal year for which funds are allocated, the State's Formula Grants allotment will be reduced by 25 percent for each such failure. Further, the State must agree to expend all remaining funds (except planning and administration, State advisory group set-aside funds, and Indian tribe pass-through funds) for the purpose of achieving compliance with the requirement(s) for which the State is in noncompliance. However, if the OJJDP Administrator makes a discretionary determination that the State has substantially complied with the requirement(s) for which there is noncompliance and that the State has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, then the restriction on expenditures will not apply. In order for such a determination to be made, the State must demonstrate that it has diligently carried out the plan approved by OJJDP, demonstrated significant progress toward full compliance, submitted a plan based on an assessment of current barriers to DMC, and provided an assurance that added resources will be expended, from Formula Grants or other fund sources, to achieve compliance.

Where a State's allocation is reduced, the amount available for planning and administration and the required pass-through allocation, other than the State Advisory Group set-aside, will be reduced because they are based on the reduced allocation.

State Challenge Grant Funds. The State is eligible to apply for State Challenge Grant funds if the State is eligible for its Formula Grant award. Therefore, a State not eligible for its Formula Grant award because of noncompliance is not eligible for a State Challenge Grant.

Community Prevention Grant Funds – State Eligibility. A State out of compliance with the JJDP Act may still be awarded Community Prevention Grants if there are units of general local government eligible to receive grant awards based upon their compliance with the core protections.

Community Prevention Grant Funds – Unit of Local Government Eligibility. For a unit of general local government or federally recognized tribe to be eligible to apply to the State for Title V Community Prevention Grant funds, the unit must be certified by the State Advisory Group as

in compliance with the four core protections. The specific unit of general local government that is seeking certification must demonstrate compliance with the four core protections. Therefore, a State Advisory Group is not allowed to certify a city's compliance based on the overall compliance status of the county. The unit of general local government must obtain this certification prior to applying for an award of funds. In determining eligibility, the State Advisory Group must certify only those units of general local government that are within the de minimis parameters provided in sections 7.3, 7.4, and 7.5 and base this determination on the locality's most current census data.

The compliance certification applies to all facilities operated by or contracted by the unit of general local government. This certification is not limited to a specific catchment area within the boundaries of the unit of general local government. Therefore, the certification must also include any facility that the unit of general local government operates, contracts for, or uses inside or outside its boundaries. However, the certification does not apply to facilities operated or controlled by other governmental units within the local governmental boundaries that are not used by the local government.

In order for a unit of general local government to be in compliance with the disproportionate minority confinement (DMC) core requirement, the State Advisory Group must certify that the unit of general local government is cooperating in data gathering and analysis to determine if DMC exists. If DMC is found to exist within the boundaries or jurisdiction of the unit of general local government, the unit must be making an adequate effort toward addressing, or assisting the State to address, this issue. The level of cooperation and commitment must be satisfactory to support efforts to achieve the goals of the DMC requirement.

After awards have been made to units of local government, the State must ensure that these communities continue to comply with the four core protections. Title V awards to units of local government must be in 12-month increments for periods of up to 3 years. Continuation funding for each of the 12-month increments is based on the unit of local government's satisfactory performance and continued compliance with the four core protections. As part of its Community Prevention Grants program, the State must have a plan which will identify and discontinue all Community Prevention Grants funding to units of local government that fall out of compliance.

7.2 Deadline for Establishing Eligibility for Formula Grant Funds

The deadline date for a State to demonstrate eligibility for its annual allocation of Formula Grant funds is March 31 or 60 days after OJJDP officially notifies States of their Formula Grant allocation, whichever is later. Demonstrating eligibility includes submitting a complete grant application by this deadline and submitting a monitoring report and other documentation that establishes compliance with the core protections of the JJDP Act. If a State cannot meet the deadline for good cause, it may apply for an extension to OJJDP in writing by the application due date. The extension will not be continued past the end of the fiscal year for which the State has applied for funds. The funds for which the State could not demonstrate eligibility will not be held past the end of the fiscal year for which the State applied for funds, nor will the entire award be

held past the end of the fiscal year for which the State applied for funds in order to provide additional time to establish eligibility.

7.3 Demonstrating Compliance: Deinstitutionalization of Status Offenders

Full compliance with DSO is achieved when a State has removed 100 percent of status offenders and nonoffenders from secure detention and correctional facilities. The legal concept of *de minimis*, meaning “the law cares not for small things,” is generally applied where small, insignificant or infinitesimal matters are at issue. OJJDP has developed de minimis standards for States that have not removed 100 percent of status offenders and nonoffenders from secure detention and correctional facilities. If States that have not achieved 100 percent can demonstrate full compliance with de minimis exceptions pursuant to the OJJDP policy criteria,¹ the State will be determined to be in compliance with DSO. The OJJDP policy establishes three criteria to be applied in making a determination of whether a State has demonstrated full compliance with the deinstitutionalization of status offenders requirement. The three criteria, A, B, and C, are listed below.

Criterion A: The extent of noncompliance is insignificant or of slight consequence in terms of the total juvenile population in the State. In applying Criterion A, the following four standards² will be used:

1. States which have an institutionalization rate less than 5.8 per 100,000 population will be considered to be in full compliance with the de minimis exceptions and will not be required to address Criteria B and C.
2. States whose rate falls between 5.8 and 17.6 per 100,000 population will be eligible for a finding of full compliance with de minimis exceptions if they adequately meet Criteria B and C.

¹ *Federal Register* 46, no. 6 (January 9, 1981): 2567-2568 (see appendix C).

² To establish these numerical standards, in 1980 OJJDP calculated the average rate of DSO violations in eight States (i.e., two States from each of the four Bureau of Census regions). The eight States selected by OJJDP in 1980 were those having the smallest institutionalization rate per 100,000 population *and* which also had an adequate system of monitoring for compliance. By applying this procedure and utilizing the information provided in the eight States’ most recently submitted monitoring reports, OJJDP determined that the eight States’ average annual rate was 17.6 incidences of status offenders and nonoffenders held per 100,000 population under 18. In computing the standard deviation from the mean of 17.6, it was determined that a rate of 5.8 per 100,000 was one standard deviation below the mean and 29.4 was one standard deviation above the mean.

3. States whose rate is above 17.6 but does not exceed 29.4 per 100,000 will be eligible for a finding of full compliance with de minimis exceptions only if they fully satisfy Criteria B and C.
4. States which have a placement rate in excess of 29.4 per 100,000 population are presumptively ineligible for a finding of full compliance with de minimis exceptions because any rate above that level is considered to represent an excessive and significant level of status offenders and nonoffenders held in juvenile detention or correctional facilities.

OJJDP will consider requests from such States where the State demonstrates exceptional circumstances which account for the excessive rate. Exceptional circumstances are limited to situations where, but for the exceptional circumstance, the State's institutionalization rate would be within the 29.4 rate established above.

The following will be recognized for consideration as exceptional circumstances:

1. Out-of-State runaways held beyond 24 hours in response to a want, warrant, or request from a jurisdiction in another State or pursuant to a court order, for the sole purpose of being returned to proper custody in the other State;
2. Federal wards held under Federal statutory authority in a secure State or local detention facility for the sole purpose of effecting a jurisdictional transfer, appearance as a material witness, or for return to their lawful residence or country of citizenship; and
3. A State has recently enacted changes in State law which have gone into effect and which the State demonstrates can be expected to have a substantial, significant, and positive impact on the State's achieving full compliance with the deinstitutionalization requirement within a reasonable time.

In order to make a determination that a State has demonstrated exceptional circumstances under (1) and (2) above, the State must have developed a separate and specific plan under Criterion C which addresses the problem in a manner that will eliminate the noncompliant instances within a reasonable time.

It is of critical importance that all States seeking a finding of full compliance with de minimis exceptions demonstrate progress toward full compliance annually in order to be eligible for a finding of full compliance with de minimis exceptions.

States may provide additional information that they deem relevant in determining the extent to which the number of noncompliant incidences is insignificant or of slight consequence. However, factors such as local practice, available resources, or organizational structure of local government will not be considered relevant by OJJDP in making this determination.

Criterion B: The extent to which the instances of noncompliance were in apparent violation of State law or established executive or judicial policy. The following information must be provided in response to Criterion B and must be sufficient to make a determination as to whether the instances of noncompliance with DSO as reported in the State’s monitoring report were in apparent violation of, or departures from, State law or established executive or judicial policy. OJJDP will consider this criterion to be satisfied by those States that demonstrate that all or substantially all of the instances of noncompliance were in apparent violation of, or departures from, State law or established executive or judicial policy. This is because such instances of noncompliance can more readily be eliminated by legal or other enforcement processes. The existence of such law or policy is also an indicator of the commitment of the State to the deinstitutionalization requirement and to achieving and maintaining future 100% compliance. Therefore, information should also be included on any newly established law or policy which can reasonably be expected to reduce the State’s rate of institutionalization in the future.

1. A brief description of the noncompliant incidents must be provided which includes a statement of the circumstances surrounding the instances of noncompliance. (For example: Of 15 status offenders/nonoffenders held in juvenile detention or correctional facilities during the 12-month period for State X, 3 were accused status offenders held in jail in excess of 24 hours, 6 were accused status offenders held in detention facilities in excess of 24 hours, 2 were adjudicated status offenders held in a juvenile correctional facility, 3 were accused status offenders held in excess of 24 hours in a diagnostic evaluation facility, and 1 was an adjudicated status offender placed in a mental health facility pursuant to the court’s status offenders jurisdiction.) Do not use actual names of juveniles.
2. Describe whether the instances of noncompliance were in apparent violation of State law or established executive or judicial policy. A statement should be made for each circumstance discussed in item 1 above. A copy of the pertinent/applicable law or established policy should be attached. (For example: The three accused status offenders were held in apparent violation of a State law which does not permit the placement of status offenders in jail under any circumstances. Attachment “X” is a copy of this law. The six status offenders held in juvenile detention were placed there pursuant to a disruptive behavior clause in our statute which allows status offenders to be placed in juvenile detention facilities for a period of up to 72 hours if their behavior in a shelter care facility warrants secure placement. Attachment “X” is a copy of this statute. A similar statement must be provided for each circumstance.)

Criterion C: The extent to which an acceptable plan has been developed which is designed to eliminate the noncompliant incidents within a reasonable time, where the instances of noncompliance either (1) indicate a pattern or practice, or (2) appear to be consistent with State law or established executive or judicial policy, or both. If the State determines that the instances of noncompliance (1) do not indicate a pattern or practice, and (2) are inconsistent with and in apparent violation of State law or established executive or judicial policy, then the State must explain the basis for this determination. In such case no plan would be required as part of the request for a finding of full compliance.

The following must be addressed as elements of an acceptable plan for the elimination of noncompliant incidents that will result in the modification or enforcement of state law or executive or judicial policy to ensure consistency between the State's practices and the JJDP Act deinstitutionalization requirements.

1. If the instances of noncompliance are sanctioned by or consistent with State law or executive or judicial policy, then the plan must detail a strategy to modify the law or policy to prohibit noncompliant placement so that it is consistent with the Federal deinstitutionalization requirement.
2. If the instances of noncompliance are in apparent violation of State law or established executive or judicial policy, but amount to or constitute a pattern or practice rather than isolated instances of noncompliance, the plan must detail a strategy which will be employed to rapidly identify violations and ensure the prompt enforcement of applicable State law or executive or judicial policy.
3. The plan must be targeted specifically to the agencies, courts, or facilities responsible for the placement of status offenders and nonoffenders in compliance with DSO. It must include a specific strategy to eliminate instances of noncompliance through statutory reform, changes in facility policy and procedure, modification of court policy and practice, or other appropriate means.

If OJJDP makes a finding that a State is in full compliance with de minimis exceptions based, in part, upon the submission of an acceptable plan under Criteria C above, the State will be required to include the plan as part of its current or next submitted formula grant plan as appropriate. OJJDP will measure the State's success in implementing the plan by comparison of the data in the next monitoring report indicating the extent to which noncompliant incidences have been eliminated.

Determinations of full compliance status will be made annually by OJJDP following the submission of the annual monitoring report. Any State reporting less than 100% compliance in any annual monitoring report would, therefore, be required to follow the above procedures in requesting a finding of full compliance with de minimis exceptions.

7.4 Demonstrating Compliance: Jail Removal

Full compliance is achieved when a State demonstrates that the last submitted monitoring report, covering 12 months of actual data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of jail removal. As with the deinstitutionalization of status offenders requirement, OJJDP has developed de minimis standards for States that have not achieved 100% removal of juveniles from adult jails and lockups. Full compliance with de minimis exceptions is achieved when a State demonstrates that it has met the numerical or substantive de minimis standards below:

Numerical de Minimis Standard. To comply with this standard the State must demonstrate that each of the following two requirements has been met:

- i. The incidents of noncompliance reported in the State's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the State;³ and
- ii. An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of State law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

Any State whose prior full compliance status is based on having met the numerical de minimis standard must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100%) compliance in order to maintain eligibility for a continued finding of full compliance with de minimis exceptions.

Substantive de Minimis Standard. To comply with this standard the State must demonstrate that each of the following requirements has been met:

- i. State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of jail removal;

³ Under an exception to the numerical de minimis standard, when the annual rate for a State exceeds 9 incidents of noncompliance per 100,000 juvenile population, the State will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis standard unless the State has recently enacted changes in State law which have gone into effect and which the State demonstrates can reasonably be expected to have a substantial, significant, and positive impact on the State's achieving full (100%) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.

- ii. All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from the State law, rule, or policy referred to in (i) above;
- iii. The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;
- iv. Existing mechanisms for the enforcement of the State law, rule, or policy referred to in (i) are such that the instances of noncompliance are unlikely to recur in the future; and
- v. An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in (iv) above.

Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the annual monitoring report. Any State reporting less than full (100%) compliance in its annual monitoring report may request a finding of full compliance with the substantive or numerical de minimis exceptions. The request may be submitted in conjunction with the monitoring report, or as soon thereafter as all information required for a determination is available, or it may be included in the annual State plan and application for the State's Formula Grant award.

7.5 Demonstrating Compliance: Separation

Compliance with Section 223(a)(13) has been achieved when a State can demonstrate that:

- i. The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of Section 223(a)(13); or
- ii. The instances of noncompliance reported in the last submitted monitoring report do not indicate a pattern or practice but rather constitute isolated instances; and
 - A. Where all instances of noncompliance reported were in violation of or departure from State law, rule, or policy that clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of Section 223(a)(13), existing enforcement mechanisms are such that the instances of noncompliance are unlikely to recur in the future; or
 - B. An acceptable plan has been developed to eliminate the noncompliant incidents.

Summary of Standards for Demonstrating Compliance

Deinstitutionalization of Status Offenders	
Rate per 100,000 Juveniles	Criteria for Compliance
0.0	The State has demonstrated full compliance.
0.1 to 5.7	The State has demonstrated full compliance with de minimis exceptions.
5.8 to 17.6	The State is eligible for a finding of compliance with de minimis exceptions if it <u>adequately meets</u> two criteria: a. Noncompliant incidents violated State law, and b. An acceptable plan has been developed that is designed to eliminate the noncompliant incidents.
17.7 to 29.4	The State is eligible for a finding of compliance with de minimis exceptions if the State <u>fully satisfies</u> two criteria: a. Noncompliant incidents violated State law, and b. An acceptable plan has been developed that is designed to eliminate the noncompliant incidents.
29.5 and greater	The State is presumptively ineligible for a finding of full compliance with de minimis exceptions because any rate above this level is considered to represent an excessive and significant level of status offenders and nonoffenders held in juvenile detention or correctional facilities.

Jail Removal	
Rate per 100,000 Juveniles	Criteria for Compliance
0.0	The State has demonstrated full compliance.
0.1 to 9.0	The State is eligible for the <u>numerical de minimis</u> exception if the State has developed an acceptable plan to eliminate the noncompliant incidents through the enactment or enforcement of State law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.
9.1 and greater	The State is eligible for the <u>substantive de minimis</u> exception if the State meets five criteria: A. There are recently enacted changes in State law that are expected to have a significant impact on the State's achieving full compliance. B. All instances of noncompliance were in violation of State law. C. The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances. D. There are existing mechanisms to effectively enforce State law. E. An acceptable plan has been developed to eliminate the noncompliant incidents.

Separation	
Number of Violations	Criteria for Compliance
0	The State has demonstrated full compliance.
1 and greater	The State is eligible for a finding of compliance if the instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances and one of the following criteria is satisfied: A. Instances of noncompliance were in violation of State law and existing enforcement mechanisms are such that the instances of noncompliance are unlikely to recur in the future, or B. An acceptable plan has been developed to eliminate the noncompliant incidents.

