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Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

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

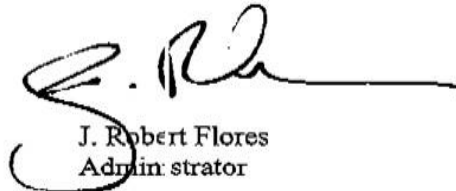
Dear Mr. Schmidt:

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,



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, the 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 23, 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 the JJAC presented, these funds are being made available to the States in a formula-based allocation.

JJAC Recommendation #2:

The JJAC remains open to working with OJJDP to develop distribution of FY 2005 Title V funds. It is recommended that the Grants Committee of the JJAC work with OJJDP to evaluate this structure. In the event that there is a competitive solicitation for Title V funds, the 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 the JJAC to assist in developing a competitive Title V grant program. Prior to the inaugural meeting of the 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 the 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.

The 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 provided below:

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.