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U.S. Department of Justice
Office of Justice Programs

Violent Offender Incarceration and Truth in Sentencing Incentive Grant Program: Interim Final Rule

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Violent Offender Incarceration and Truth in Sentencing Incentive Grant Program

AGENCY: U.S. Department of Justice, Office of Justice Programs (OJP).

ACTION: Interim Final Rule.

SUMMARY: This Interim Rule implements and requests comments regarding the Violent Offender Incarceration and Truth in Sentencing Incentive Grant Program, Subtitle A of Title II of the Violent Crime Control and Law Enforcement Act of 1994. The Violent Offender Incarceration and Truth in Sentencing Grant Program will provide grants to states, and states organized in multi-state compacts, for assistance to correctional systems. These regulations are being issued in accordance with the mandate in Subtitle A of Title II that rules and regulations regarding the uses of grant funds under this program be issued. While this rule discusses the implementation of the overall Subtitle A program, fiscal year 1995 funds have only been appropriated for the construction-related costs of correctional boot camps.

DATES: Interim rule effective on December 7, 1994; comments must be received March 7, 1994.

ADDRESS: Comments may be sent to Marlene Beckman at the Office of Justice Programs, 633 Indiana Avenue, 13th Floor, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center at 1-800-421-6770 or (202) 307-1480.

SUPPLEMENTARY INFORMATION: Federal funding is authorized under Subtitle A of Title II of

the Violent Crime Control and Law Enforcement Act of 1994 (Subtitle A), Public Law 103-322, for grants to states, and states organized in multi-state compacts, for assistance to adult and juvenile correctional systems. The program recognizes that states and local jurisdictions have experienced substantial increases in jail, prison and juvenile confinement populations in recent years, resulting in escalating costs and serious difficulties in managing overcapacity correctional populations. Because of these constraints, correctional systems have often been unable to implement new programs, develop alternative confinement strategies, or open new facilities. This program seeks to provide funds to address the immediate needs of correctional facilities and programs.

In particular, the program emphasizes the need to make available both conventional jail and prison space for the confinement of violent offenders and to ensure that violent offenders remain incarcerated for substantial periods of time through the implementation of truth in sentencing laws. Accordingly, Subtitle A directs the Attorney General to award grants to construct, develop, expand, modify, operate, or improve correctional facilities, including boot camp facilities and other alternative correctional facilities that will free secure prison space for the confinement of violent offenders.

Fifty percent of the total amount of funds appropriated each year will be allocated for Truth in Sentencing Incentive Grants and the other 50 percent will be allocated for Violent Offender Incarceration Grants, 85 percent of which is to be distributed by specified formula with the remaining 15 percent available for discretionary grant awards.

The formula amount available to carry out the grant programs for any fiscal year will be allocated to each eligible state based on Part 1 violent crime data reported to the Federal Bureau of Investigation for use in the Uniform Crime Reports (UCR). If such data is unavailable, applicants may also utilize figures as reported in publications by the Bureau of Justice Statistics (BJS). (See, e.g., "Census of State and Local Correctional Facilities, 1990.")

The statute contemplates the availability of \$7.9 billion in funding over six years, beginning with \$175 million authorized in fiscal year 1995. It is important to note, however, that Congress appropriated only \$24.5 million for Subtitle A programs for fiscal year 1995. Moreover, the Appropriations Act limits these funds to a discretionary grant program for the construction of correctional boot camps. Specifically, grant awards in fiscal year 1995 are to develop, construct, or expand boot camp programs which include coordinated, intensive aftercare services following release. It is anticipated that program guidelines and information outlining the application process for adult and juvenile boot camp fiscal year 1995 grant awards will be available in January 1995.

Statement of the Problem

State and local prison populations continue to grow. Moreover, there are a number of states and local jurisdictions under court order because of overcrowding in their correctional facilities. The majority of jurisdictions operate above the total rated capacity for their correctional facilities. Those facilities under court order for overcrowding which have taken steps to control their burgeoning inmate populations tend to operate at or near capacity in order to remain in compliance with the court orders.

Correctional systems faced with rising prison populations and court-ordered ceilings have responded in various ways. Some have implemented population management task forces to ensure that violent criminals are not released as a result of accommodating nonviolent offenders. Others have simply released offenders when their institutions reach a certain population level, without significant

controls over the security classifications of the inmates. Still other systems under court order have implemented statutory release programs.

The Violent Crime Control and Law Enforcement Act of 1994

Subtitle A provides for immediate assistance to correctional systems to contend with this growing inmate population crisis. Of primary importance is the recognition that there must be adequate conventional confinement space for violent offenders, both adults and juveniles, to serve a substantial portion of their sentences. This program, therefore, provides grants to assist correctional systems in managing a comprehensive approach which will provide for the confinement of violent offenders; help address the problems associated with overcapacity in correctional facilities through the improvement, development, expansion or modification of present facilities and programs; and support comprehensive programs and treatment that will assist in reducing recidivism.

Federal, State and Local Partnerships

Because crime is primarily a state and local issue, the Subtitle A grant program envisions a federal, state, and local collaboration to address the problems associated with the incarceration and punishment of violent offenders. State and local government officials were involved in the congressional hearings that guided this legislation, and will continue to be involved as the Department of Justice moves forward in establishing policy guidance, developing regulations, and implementing program guidelines.

In addition, this grant program provides flexibility to states and local governments in utilizing federal funds to plan, construct, and operate correctional facilities in ways that best meet their needs and in the most cost-effective manner. Built into the program is the recognition that correctional systems can use grant funds in a variety of ways to ensure the greatest and most timely impact.

Under Subtitle A, corrections systems will have the ability to quickly bring on-line additional bed space in facilities which, although construction has been completed, are not being utilized due to funding constraints. States and local agencies can also activate prison and jail expansion and juvenile corrections projects that have been planned, but not launched, due to lack of funds. The grant program further provides for the expansion of alternative correctional options for nonviolent offenders which will free secure bed space for dangerous offenders to serve their sentences.

Moreover, corrections systems will have flexibility in using surplus federal property. Beds for violent offenders can be made available in secure facilities through the conversion of closed military facilities or other appropriate federal facilities to facilities for housing low-security inmates.

Subtitle A also recognizes the benefits of regional prisons, particularly for adjoining localities. The economies of scale resulting from a multi-state compact prison are particularly beneficial for confining specialized groups of offenders, such as medical/psychiatric inmates, inmates requiring protective custody, and high security inmates.

The grant program balances appropriate accountability through various eligibility criteria, the availability of technical assistance, and the evaluation of programs implemented with these funds, with the flexibility states and local governments require and deserve based on their individual needs and expertise. Grant eligibility criteria specifically provide for the involvement of counties and local governments and the sharing of funds with these entities.

Moreover, the federal role provides sufficient structure and definition in the eligibility criteria to meet the program's goals, while allowing for judgment by grant recipients to take into account the states' various unique situations, criminal and juvenile justice practices, and correctional systems. The program accounts for the different needs of the states and local entities, and reflects that there is no "national standard" approach that will suit all jurisdictions. The grant monies are available for

the range of correctional needs such as system planning and facility development, as well as the construction, expansion, modification, improvement, and operation of a variety of correctional facilities.

Violent Juvenile Crime

Concern also continues nationwide over the escalation in violent juvenile crime. According to the FBI's Uniform Crime Reports, juvenile arrests for violent offenses increased dramatically over the five-year period from 1988 to 1992 — 47 percent — while adult violent crime arrests increased 19 percent. The estimated 129,600 Violent Crime Index arrests of juveniles in 1992 was the highest in our history, with 3,300 arrests for murder, 6,300 for forcible rape, 45,700 for robbery and 74,400 for aggravated assault. Moreover, during the past few years, there has been a marked escalation of homicides by juvenile offenders. Teenage homicides have more than doubled since 1984, and juvenile homicides involving firearms have increased 175 percent since 1983. Of particular importance is that the size of the current 14-17 year-old population, which has been responsible for much of the recent youth violence, will increase by about 20 percent in the next decade.

The "Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders," developed by the Department's Office of Juvenile Justice and Delinquency Prevention, is the centerpiece of the Department's response to growing juvenile crime. The Subtitle A grant program is an integral part of the comprehensive strategy's intervention component. The program is based on the recognition that an effective model for the treatment and rehabilitation of delinquent offenders must combine accountability and sanctions with increasingly intensive treatment and rehabilitative efforts at every stage of the continuum.

The intervention component calls for establishing a range of graduated sanctions that includes both immediate interventions and intermediate sanctions, including both nonresidential and residential placements and programming. Boot camps offer an

intermediate sanction for nonviolent juvenile offenders. These programs should be short-term and include a formal aftercare phase, actively involving the family and the community in supporting and reintegrating the juvenile into the community.

While the strategy encourages the use of nonresidential community-based programs and intensive supervision programs for many juvenile offenders, it recognizes that the criminal behavior of some serious, violent and chronic offenders requires the use of secure detention and corrections facilities to protect the community and provide a structured treatment environment. This grant program will facilitate jurisdictions in meeting the challenge of placing juvenile offenders in need of confinement in secure facilities.

Grants for Correctional Facilities

The Subtitle A authorization provides for two different grant programs: (1) Violent Offender Incarceration Grants, and (2) Truth in Sentencing Incentive Grants. Of the total federal funding authorized to Subtitle A grant programs each year, 50 percent is allocated for each of these two grant initiatives. With the exception of a limited discretionary grant program, this funding will be distributed to states based on the formula specified in Subtitle A. Although the statute provides for states and multi-state compacts as the only eligible grant recipients, Subtitle A requires that states involve counties and other units of local government and share funds received under this program with them.

To be eligible to receive funding under either of the Subtitle A programs, states must comply with a series of assurances involving sentencing policies and practices and other guarantees of sound correctional systems to ensure that violent offenders are sufficiently incapacitated and that the public is protected.

Included in the assurances are requirements that the state: (1) implement sentencing reforms that ensure violent offenders receive sufficiently severe punishments, (2) recognize the rights and needs of crime victims, and (3) develop a comprehensive correc-

tional management plan that includes diversion programs, particularly drug diversion programs, community corrections programs, systems designed to accurately evaluate and classify inmates within the system, and programs and treatment designed to assist in reducing recidivism, including rehabilitation and treatment programs and job skills. Emphasis will be placed on a corrections system's ability to plan for and implement these basic components of a comprehensive and coordinated approach to correctional policy.

Comprehensive Correctional Planning

By definition, a comprehensive system involves state and local governments; thus, the development of a comprehensive plan necessitates a partnership and collaboration among state and local entities. Because the flow of offenders begins at the local level, both local and state governments play key roles in the punishment of offenders through alternative sanctions and incarceration in correctional facilities. The input of county and municipal juvenile and criminal justice officials will be considered essential to creating an effective overall state strategy to meet the goals of this grant program. Both local and state governments also have a strong interest in any change in the capacity of any component of the corrections system. The statutory assurances are clear in their intent that states are expected to share funds with local units of government in support of effective implementation of the comprehensive plan.

Participants in the comprehensive plan development should represent a broad mix of interested and involved organizations and officials from varying perspectives. Every effort should be made by the state to include mayors, city and county officials, police departments, sheriffs, judges, prosecutors, community corrections administrators, representatives from the treatment and education communities and indigent defense, concerned citizens, and victims' advocates, as well as the juvenile justice system. Applicants should also take an active role in involving state and juvenile justice administrative agencies and advisory boards. The manner in which criminal and juvenile justice

functions are structured in various states and their relationships with other justice agencies will affect the roles played in the development of an effective correctional plan.

The comprehensive correctional plan must address how the state has involved local jurisdictions and the plan for sharing funds with local facilities, truth in sentencing and victims' rights issues, and the continuum of correctional options required for adult and juvenile offenders. It must meet the overall goal of incarcerating violent offenders, and must convey the options for nonviolent offenders that will free up traditional bed space to accomplish that goal.

Victims' Rights and Needs

To be eligible to receive grants, states must provide assurances that they have implemented policies that provide for the recognition of the rights and needs of crime victims. No specific requirements for complying with this condition are prescribed by this interim rule in relation to fiscal year 1995 funding because of the need for comprehensive review of the status of victims' rights measures in state systems. State applications for fiscal year 1995 funding should include information on measures which are in effect or under consideration in the state to protect the rights and interests of crime victims.

More definitive guidance will be provided concerning compliance with this condition in a final rule or related guidelines for funding in fiscal year 1996 and thereafter. Areas that have been identified as implicating important rights and needs of crime victims include: (1) providing notice to victims concerning case and offender status, (2) providing an opportunity for victims to be present at public court proceedings, (3) providing victims the opportunity to be heard at sentencing and parole hearings, (4) providing for restitution and other compensation to victims, and (5) establishing administrative mechanisms or other mechanisms to effectuate these rights.

States that expect to seek funding under this program in fiscal year 1996 or thereafter are encour-

aged to review the status of victim rights measures in their systems, particularly with reference to the five areas identified above. Federal law incorporates significant measures in each of these areas for federal cases. The provisions of federal law governing these issues may be useful for states as a possible model for reform, if they have not already adopted similar measures in their own systems. See 42 U.S.C. 10606(b)(3), (7), 10607(c) (notice concerning case and offender status); 42 U.S.C. 10606(b)(4) (right to be present at public court proceedings); Rule 32 of the Federal Rules of Criminal Procedure, as amended effective December 1, 1994 (right of allocution in sentencing for victims); 18 U.S.C. 3663, 3553(c) (general restitution provisions for federal cases); 42 U.S.C. 10607(a) and (b), 10607(c)(5) (assignment of responsibility for victim-related functions).

Truth in Sentencing Incentive Grants

To be eligible to receive funding under the Truth in Sentencing Grant Program, in addition to meeting the assurances listed in Subtitle A, states must also meet certain sentencing requirements. In particular, to qualify for this part of the grant program, states must have in effect sentencing laws that either provide for **violent offenders** to (1) serve not less than 85 percent of their sentences, or (2) meet other requirements that ensure that violent offenders, and especially repeat violent offenders, remain incarcerated for substantially greater percentages of their imposed sentences.

The Office of Justice Programs is aware that the vast majority of states will at present have difficulty in meeting the condition that violent offenders serve at least 85 percent of the sentence imposed. No specific guidance for complying with this assurance is prescribed at this time both because funding for this program is not available in FY '95, and also because of the need for further review of state compliance issues. Moreover, we are particularly interested in comments from the field on compliance issues and on the definition of "violent offender" for purposes of truth in sentencing grant awards.

FY 1995 Correctional Boot Camp Initiative

The availability of funds each year is, of course, limited by the appropriations process. In fiscal year 1995, Congress has allocated \$24.5 million to Subtitle A grant programs and has imposed additional limitations on the uses of these grant funds.

Consistent with congressional intent, grant awards in fiscal year 1995 will be for construction-related costs of correctional boot camps and will be allocated through the discretionary grant component of the Violent Offender Incarceration Grant Program. Construction-related costs are broadly interpreted to include costs associated with both the planning and development of the facility. OJP is expressly precluded, however, from funding operating expenses.

Specifically, grant funds can be used to plan, develop, construct, or expand adult and juvenile boot camp programs which must include coordinated, intensive aftercare services for inmates following release. Pursuant to the requirements specified in Subtitle A, boot camps are correctional programs of no longer than six-months incarceration and must: (1) exclude offenders who have at any time been convicted of a violent felony or similarly adjudicated juveniles, (2) adhere to a regimented schedule, (3) provide for inmate participation in education, job training and substance abuse counseling or treatment, and (4) coordinate intensive aftercare services with the services provided during the period of confinement.

The program emphasis in fiscal year 1995 will be on the construction, renovation and expansion of correctional boot camp facilities that will free conventional prison, jail and juvenile correctional space for the confinement of violent offenders so they can serve a substantial amount of their imposed sentences. To receive funds, correctional systems will have to demonstrate, through a comprehensive correctional plan and prisoner screening and security classification system, that (1) there is a need for additional secure confinement space for violent offenders, and (2) this need will be met

through the construction of a boot camp facility that provides housing otherwise unavailable for nonviolent offenders.

With regard to juvenile facilities, priority will be given to juvenile boot camps that are designed to prevent juvenile offenders at risk from becoming violent offenders. This desired outcome will most likely be accomplished if the jurisdiction engages in efforts that maximize the likelihood that juvenile boot camp participants would otherwise be incarcerated in traditional secure facilities (e.g., participation limited to those youths who have been adjudicated delinquents and who have been sentenced to the juvenile state correctional agency). Among this population, juvenile offenders whose escalating patterns of delinquent behavior indicate that an authoritative boot camp intervention is likely to suppress or abate emerging tendencies towards chronic or violent delinquent behavior should be considered prime candidates for boot camp participation.

To be eligible to receive grants for correctional boot camp construction, states must meet the eligibility criteria outlined for the Violent Offender Incarceration Grant Program, including the assurances specified in Section 20101(b) of Subtitle A.

Detailed program guidelines and application material for the fiscal year 1995 correctional boot camp initiative will be available in January 1995.

Technical Assistance and Training/Evaluation

In keeping with the intent of Congress to assist states in meeting these assurances, the Department proposes to designate up to 10 percent of the funds available in this program to provide technical assistance and training to states that presently do not meet the required general assurances or want to expand and improve on current efforts in these areas. Specifically, the Department will provide training and assistance to states with the comprehensive corrections planning process, the development of truth in sentencing statutes, and in other-

wise moving toward compliance with the required conditions. States which meet the general assurances in fiscal year 1995, or are working toward compliance, will be in a better position to receive grant monies under these programs over the next several years.

Further, it is the intent of the Department that selected federal initiatives under the new anti-crime law be evaluated. To accomplish this goal, a portion of the overall funds authorized under this Subtitle will be set aside for purposes of implementing a national evaluation strategy. Recipients of funds must agree to cooperate with federally-sponsored evaluations of their projects and to conduct evaluations as required by the national evaluation strategy. In addition, recipients of program funds will be required to conduct a local assessment and report on program implementation.

Request for Comments

In submitting comments, please be cognizant of the above-described statutory limitations. In administering the Subtitle A, Correctional Facilities Grant Program, OJP seeks to fulfill congressional intent by ensuring that the statutory limitations are applied appropriately to all recipients.

Comments are particularly encouraged with respect to the following definitions and implementation policy issues:

- 1) Definition of "Violent Offender" [§ 91.2(a), § 91.4(b)] (This interim rule reserves the issue for now, but the Department will issue a final rule based on comments received, in advance of the implementation of Subtitle A in fiscal year 1996);
- 2) Definition of "Serious Drug Offense" [§91.4(b)];
- 3) How a state can demonstrate compliance with the assurance that it has implemented, or will implement, correctional policies and programs, including "truth in sentencing laws that: (a) "ensure that violent offenders serve a substantial portion of the sentences imposed," (b) "are designed to provide sufficiently severe punishment for violent offend-

ers, including violent juvenile offenders," and (c) "the prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public." [§ 91.2(i), § 91.3(b)(1)];

4) How a state can demonstrate compliance with the condition to "provide for the recognition of the rights and needs of crime victims" [§ 91.3(b)(2)];

5) How a state can demonstrate that, as a result of the funds received under this section, secure space will be made available for the confinement of violent offenders [§ 91.3(b)(3)];

6) How to ensure that states have met the condition to involve and share funds received with counties and other units of local government [§ 91.3(b)(5);

7) How to define the scope of the Comprehensive Correctional Plan [§ 91.3(d)]; and

8) How a state can demonstrate compliance with the condition for receiving Truth in Sentencing Incentive Grants, i.e., "persons convicted of violent crimes serve not less than 85% of the sentence imposed" [§ 91.4(b)].

In soliciting comments on the above definitions and key policy implementation issues, OJP hopes to forge a productive federal/state/local partnership in addressing the challenge of providing an effective criminal justice system response to the increased numbers of violent offenders.

The final rule will address all comments submitted and substantive differences incorporated will be explained.

Administrative Requirements

This regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. This rule is a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

The Assistant Attorney General for the Office of Justice Programs in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)) has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

No information collection requirements are contained in this rule. Any information collection requirements contained in future application notices for programs authorized by this rule will be reviewed by the Office of Management and Budget (OMB), as is required by the provisions of the Paperwork Reduction Act, 91 U.S.C. 3504(h).

This regulation is being published as an interim final rule, without prior publication of notice and comment, and is made effective immediately, for good cause as explained below. Under 5 U.S.C. 553(a)(2), matters relating to grants are exempted from notice and comment requirements. Moreover, in this case, advance notice and comment would be impractical and contrary to the public interest. Title II, Subtitle A of the Violent Crime Control and Law Enforcement Act of 1994 requires the publication of regulations implementing the grant program within 90 days of enactment of the Act.

In order to satisfy congressional requirements and intentions of expeditious implementation, these regulations are effective immediately so that eligible states may apply for the boot camp discretionary program. Publishing a notice of proposed rulemaking and awaiting receipt of comments would significantly delay the implementation of the FY '95 boot camp grant program. Such delay would be contrary to the public interest and would contradict the congressional intent to provide immediate grant assistance.

Although OJP will proceed expeditiously with regard to the promulgation of guidelines for the fiscal year 1995 boot camp program, we are very interested in receiving public comment on the overall program and will consider all comments in preparing the final rule.

List of Subjects

Grant Programs, Judicial Administration.

For the reasons set out in the preamble, Title 28, Chapter 1, of the Code of Federal Regulations is amended by adding a new part 91 as set forth below.

PART 91 — GRANTS FOR CORRECTIONAL FACILITIES

Subpart A — General

Section

- 91.1 Purpose
- 91.2 Definitions
- 91.3 General Eligibility Requirements
- 91.4 Truth in Sentencing Incentive Grants
- 91.5 Violent Offender Incarceration Grants
- 91.6 Matching Requirement

Subpart B — FY 1995 Correctional Boot Camp Initiative

91.10 General

Authority: Section 20105 of Subtitle A, Title II of the Violent Crime Control and Law Enforcement Act of 1994.

Subpart A — General

§ 91.1 Purpose.

The Attorney General, through the Assistant Attorney General for the Office of Justice Programs, will make grants to states and to states organized as multi-state compacts to construct, develop, expand, operate or improve correctional facilities, including boot camp facilities and other alternative correctional facilities that can free conventional space for the confinement of violent offenders, to:

(a) ensure that prison space is available for the confinement of violent offenders; and

(b) implement truth in sentencing laws for sentencing violent offenders.

§ 91.2 Definitions.

(a) “*Violent Offender*” — Reserved.

(b) “*Serious Drug Offense*” means an offense involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance [as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)], for which a maximum term of imprisonment of 10 years or more is prescribed by state law.

(c) “*Part 1 Violent Crimes*” means murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports. If such data is unavailable, Bureau of Justice Statistics (BJS) publications may be utilized. See, e.g., “Census of State and Federal Correctional Facilities, 1990.” [“Part 1 Violent Crimes” are defined here solely as the statutorily prescribed basis for the formula allocation of funding.]

(d) “*Recipient*” means individual states or multi-state compacts awarded funds under this Part.

(e) “*State*” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam and the Northern Mariana Islands.

(f) “*Comprehensive Correctional Plan*” means a plan which represents an integrated approach to the management and operation of adult and juvenile correctional facilities and programs and which includes diversion programs, particularly drug diversion programs, community corrections programs, a prisoner screening and security classification system, appropriate professional training for corrections officers in dealing with violent offenders, prisoner rehabilitation and treatment programs,

prisoner work activities (including to the extent practicable, activities relating to the development, expansion, modification, or improvement of correctional facilities) and job skills programs, educational programs, a pre-release prisoner assessment to provide risk reduction management, post-release assistance and an assessment of recidivism rates.

(g) “*Correctional facilities*” includes boot camps and other alternative correctional facilities for adults or juveniles that can free conventional bed space for the confinement of violent offenders.

(h) “*Boot Camp*” means a corrections program for adult or juvenile offenders of not more than 6-months confinement (not including time in confinement prior to assignment to the boot camp) involving:

(1) assignment for participation in the program, in conformity with state law, by prisoners other than prisoners who have been convicted at any time for a violent felony;

(2) adherence by inmates to a highly regimented schedule that involves strict discipline, physical training, and work;

(3) participation by inmates in appropriate education, job training, and substance abuse counseling or treatment; and

(4) post-incarceration aftercare services for participants that are coordinated with the program carried out during the period of imprisonment.

(i) “*Truth in sentencing laws*” means laws that:

(1) ensure that violent offenders serve a substantial portion of sentences imposed;

(2) are designed to provide sufficiently severe punishment for violent offenders, including violent juvenile offenders; and

(3) the prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public.

§ 91.3 General Eligibility Requirements.

(a) Recipients must be individual states, or states organized as multi-state compacts.

(b) Application Requirements. To be eligible to receive either a formula or a discretionary grant under Subtitle A, an applicant must submit an application which includes:

(1) Assurances that the state(s) have implemented, or will implement, correctional policies and programs, including truth in sentencing laws. No specific requirements for complying with this condition are prescribed by this interim rule for fiscal 1995 funding because of the need for further review of the status of truth in sentencing laws and the impact and needs requirements relating to reform in state systems.

(2) Assurances that the state(s) have implemented or will implement policies that provide for the recognition of the rights and needs of crime victims. States are not required to adopt any specific set of victims rights measures for compliance, but the adoption by a state of measures which are comparable to or exceed those applied in federal proceedings will be deemed sufficient compliance for eligibility for funding. If the state has not adopted victims rights measures which are comparable to or exceed federal law, the adequacy of compliance will be determined on a case-by-case basis. States will be afforded a reasonable amount of time to achieve compliance. States may comply with this condition by providing recognition of the rights and needs of crime victims in the following areas:

- i) providing notice to victims concerning case and offender status;
- ii) providing an opportunity for victims to be present at public court proceedings in their cases;
- iii) providing victims the opportunity to be heard at sentencing and parole hearings;
- iv) providing for restitution to victims; and

v) establishing administrative or other mechanisms to effectuate these rights.

(3) Assurances that funds received under this section will be used to construct, develop, expand, operate or improve correctional facilities to ensure that secure space is available for the confinement of violent offenders.

(4) Assurances that the state(s) has a comprehensive correctional plan in accordance with the definition elements in section 91.2. If the state(s) does not have an adequate comprehensive correctional plan, technical assistance will be available for compliance. States will be afforded a reasonable amount of time to develop their plans.

(5) Assurances that the state(s) has involved counties and other units of local government, when appropriate, in the construction, development, expansion, modification, operation or improvement of correctional facilities designed to ensure the incarceration of violent offenders and that the state(s) will share funds received with counties and other units of local government, taking into account the burden placed on these units of government when they are required to confine sentenced prisoners because of overcrowding in state prison facilities.

(6) Assurances that funds received under this section will be used to supplement, not supplant, other federal, state, and local funds.

(7) Assurances that the state(s) has implemented, or will implement within 18 months after the date of the enactment of the Violent Crime Control and Law Enforcement Act of 1994 (September 13, 1994), policies to determine the veteran status of inmates and to ensure that incarcerated veterans receive the veterans benefits to which they are entitled.

(8) Assurances that correctional facilities will be made accessible to persons conducting investigations under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997.

(9) If applicable, documentation of the multi-state compact agreement that specifies the construction, development, expansion, modification, operation, or improvement of correctional facilities.

(10) If applicable, a description of the eligibility criteria for participation in any boot camp that is to be funded.

(c) States, and states organized as multi-state compacts, which can demonstrate affirmative responses to the assurances outlined above will be eligible to receive funds.

(d) Each state application for such funds must be accompanied by a comprehensive correctional plan. The plan shall be developed in consultation with representatives of appropriate state and local units of government, shall include both the adult and juvenile correctional systems, and shall provide an assessment of the state and local correctional needs, and a long-range implementation strategy for addressing those needs.

(e) Local units of government, i.e., any city, county, town, township, borough, parish, village or other general purpose subdivision of a state, or Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, are in turn eligible to receive subgrants from a participating state(s). Such subgrants shall be made for the purpose(s) of carrying out the implementation strategy, consistent with state(s)' comprehensive correctional plan.

(f) In awarding grants, consideration shall be given to the special burden placed on states which incarcerate a substantial number of inmates who are in the United States illegally. States will not be required to submit additional information on numbers of criminal aliens.

The Bureau of Justice Assistance (BJA) and the Immigration and Naturalization Service (INS) are currently working together to implement the State Criminal Alien Assistance Program (SCAAP) to assist the states with the costs of incarcerating criminal aliens. The Office of Justice Programs will

coordinate with the SCAAP program to obtain the relevant information.

§ 91.4 Truth in Sentencing Incentive Grants.

(a) Half of the total amount of funds appropriated to carry out Subtitle A for each of the fiscal years 1996, 1997, 1998, 1999 and 2000 will be made available for Truth in Sentencing Incentive Grants.

(b) Eligibility. To be eligible to receive such a grant, a state, or states organized as multi-state compacts, must meet the requirements of section 91.3 and must demonstrate that the state(s) —

(1) has in effect laws which require that persons convicted of violent crimes serve not less than 85% of the sentence imposed; or

(2) Since 1993 —

(i) has increased the percentage of convicted violent offenders sentenced to prison;

(ii) has increased the average prison time which will be served in prison by convicted violent offenders sentenced to prison;

(iii) has increased the percentage of sentence which will be served in prison by violent offenders sentenced to prison; and

(iv) has in effect at the time of application laws requiring that a person who is convicted of a violent crime shall serve not less than 85% of the sentence imposed if —

(A) the person has been convicted on 1 or more prior occasions in a court of the United States or of a state of a violent crime or a serious drug offense; and

(B) each violent crime or serious drug offense was committed after the defendant's conviction of the preceding violent crime or serious drug offense.

(c) Formula Allocation. The amount available to carry out this section for any fiscal year will be allocated to each eligible state in the ratio that the number of Part 1 violent crimes reported by such state to the Federal Bureau of Investigation for 1993 bears to the number of Part 1 violent crimes reported by all states to the Federal Bureau of Investigation for 1993.

(d) Transfer of Unused Funds. On September 30 of each fiscal years 1996, 1998, 1999 and 2000, the Attorney General will transfer to the funds to be allocated under the Violent Offender Incarceration Grant formula allocation (section 91.5) any funds made available to carry out this section that are not allocated to an eligible state under paragraph (b) of this section.

§ 91.5 Violent Offender Incarceration Grants.

(a) Half of the total amount of funds appropriated to carry out this subtitle for each of fiscal years 1996, 1997, 1998, 1999 and 2000 will be made available for Violent Offender Incarceration Grants.

(b) Eligibility. To be eligible to receive such a grant, a state, or states organized as multi-state compacts, must meet the requirements of section 91.3(b).

(c) Allocation of Violent Offender Incarceration Funds —

(1) Formula Allocation. 85% of the sum of the amount available for grants under this section for any fiscal year and any amount transferred as described in section 91.4(c) for that fiscal year will be allocated as follows:

(i) 0.25% will be allocated to each eligible state except that the United States Virgin Islands, American Samoa, Guam and the Northern Mariana Islands shall each be allocated 0.05%.

(ii) The amount remaining after application of paragraph (c)(1)(i) of this section will be allocated to each eligible state in the ratio that the number of Part 1 violent crimes reported by

such state to the Federal Bureau of Investigation for 1993 bears to the number of Part 1 violent crimes reported by all states to the Federal Bureau of Investigation for 1993.

(2) Discretionary Allocation. Fifteen percent of the sum of the amount available for Violent Offender Incarceration Grants for any fiscal year under this subsection and any amount transferred as described in section 91.4(c) for that fiscal will be allocated at the discretion of the Assistant Attorney General for OJP to states that have demonstrated:

(i) the greatest need for such grants, and

(ii) the ability to best utilize the funds to meet the objectives of the grant program and ensure that secure cell space is available for the confinement of violent offenders.

(d) Transfer of Unused Funds. On September 30 of each fiscal years 1996, 1997, 1998, 1999 and 2000, the Assistant Attorney General will transfer to the discretionary program under paragraph (c)(2) of this section any funds made available under paragraph (c)(1) of this section that are not allocated to an eligible state under paragraph (c)(1) of this section.

§ 91.6 Matching Requirement.

(a) The federal share of a grant received under this subtitle may not exceed 75 percent of the costs of a proposal described in an application approved under this subtitle. The matching requirement can only be met through a hard cash match, and must be satisfied by the end of the project period. A certification to that effect will be required of each recipient of grant funds and must be submitted to the Office of Justice Programs with the application.

Subpart B — FY 1995 Correctional Boot Camp Initiative

§ 91.10 General.

(a) Scope of Boot Camp Program. Funding is appropriated in fiscal year 1995 to provide grants to states and multi-state compacts to plan, develop, construct and expand correctional boot camps for adults and juveniles.

(b) Adult and juvenile boot camps, referred to as "correctional boot camps," are programs that "provide a structured environment for delivering non-traditional corrections programs to criminal offenders."

(c) With respect to this program, the mandates of the Juvenile Justice and Delinquency Prevention Act (42 U.S.C. Sec. 5601 et seq.) shall apply.

(d) Eligibility.

(1) Funding is available for both adult and juvenile boot camps. To be eligible for the funding of boot camps, states must comply with the general assurances in 91.3(b) or demonstrate steps taken toward compliance. While the majority of assurances are applicable to the adult correctional system, those states applying for grants for juvenile boot camps must include the juvenile system in the state comprehensive correctional plan and demonstrate how construction of the boot camp will make secure space available to house violent juvenile offenders.

(2) For purposes of the FY '95 boot camp program, a "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or an act of juvenile delinquency that would be punishable by imprisonment for such term if committed by an adult, that:

(i) involves the use or attempted use of a firearm or other dangerous weapon against another person, or

(ii) results in death or serious bodily injury to another person.

(3) States must document that the boot camp program does not involve more than six-months confinement (not including confinement prior to assignment to the boot camp) and includes:

(i) assignment for participation in the program, in conformity with state law, by prisoners other than prisoners who have been convicted at any time of a violent felony;

(ii) adherence by inmates to a highly regimented schedule that involves strict discipline, physical training and work;

(iii) participation by inmates in appropriate education, job training, and substance abuse counseling or treatment; and

(iv) post-incarceration aftercare services for participants that are coordinated with the program carried out during the period of imprisonment.

(4) States must provide assurances that boot camp construction will free up secure institutional bed space for violent offenders.

(e) Evaluation.

(1) Recipients will be required to cooperate with a national evaluation team throughout the planning and implementation process. Recipients are also strongly encouraged to provide for an independent evaluation of the impact and effectiveness of the funded program.

(2) Jurisdictions are strongly encouraged to engage in systematic planning activities and to develop and evaluate boot camps as part of a comprehensive and integrated correctional plan.

(f) Limitation on funds. Grant funds cannot be used for operating costs. States will be required to show how operating expenses will be provided.

(g) Matching Requirement. The federal share of a grant received may not exceed 75 percent of the costs of the proposed boot camp program described in the approved application. The matching requirement can only be met through a hard cash match, and must be satisfied by the end of the project period; facility operating expenses may not be used to meet the match requirement for the construction project supported. Match may be made

through grantee contribution of construction-related costs. A certification to that effect will be required of each recipient of grant funds.

(h) Innovative Boot Camp Programs. Jurisdictions are encouraged to explore the development of "innovative" boot camp programs which incorporate principles based on the accumulation of research and practical experience, and reflect sound and effective correctional practice.

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