

DEPARTMENT OF JUSTICE**Office of Juvenile Justice and
Delinquency Prevention****[OJP (OJJDP)-1187]****RIN 1121-ZB24****Program Announcement,
"Nonparticipating State Program,
Wyoming"****AGENCY:** Office of Justice Programs,
Office of Juvenile Justice and
Delinquency Prevention, Justice.**ACTION:** Notice of issuance of
competitive program announcement.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.*, (hereinafter the JJDP Act), is issuing a program announcement and solicitation for applications from nonprofit agencies operating statewide in the State of Wyoming. Because of non-compliance with the core requirements of the JJDP Act, the State is not eligible to receive its fiscal year (FY) 1995, 1996, and 1997 Formula Grants program allocations under Part B of Title II of the JJDP Act, which total \$1,708,650. (State allocations of \$600,000 per year, minus \$91,350 which has been awarded directly to the Wyoming Department of Family Services for the support of the activities of the Wyoming State Advisory Group Council on Juvenile Justice.) Eligible applicants for the Nonparticipating State Program are limited to private nonprofit agencies operating statewide, who propose innovative service delivery programs designed to provide placement alternatives to existing secure confinement placements that are not consistent with the core requirements of the JJDP Act. Applicants must currently be operating in the State and their proposed programs must directly impact the State of Wyoming's ability to meet the core requirements of the JJDP Act. The successful applicant will enter into a cooperative agreement with OJJDP to be expended over a two year period. Of the total amount available, \$1,366,920 will be utilized by the recipient to contract with local public or private nonprofit agencies for local community-based placement alternatives to adult jails and lockups for both delinquent and status offender populations, with the remaining \$341,730 retained by the applicant to manage the contracts and provide technical assistance to and

coordination among the local contractors funded under the Nonparticipating State Grant Program. **DATES:** Applications under this program are due October 19, 1998.

FOR FURTHER INFORMATION CONTACT: For further information contact Gregory C. Thompson, State Representative, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW, Washington, DC 20531, (202) 307-5924. E-Mail: Thompson@ojp.usdoj.gov
SUPPLEMENTARY INFORMATION:

I. Introduction and Background**A. JJDP Act Statutory Requirement**

Pursuant to section 223(d) of the JJDP Act, if a State chooses not to submit a Formula Grants Program plan, fails to submit a plan, or submits a plan which does not meet the requirements of the JJDP Act, the OJJDP Administrator shall endeavor to make the Formula Grants program fund allotment, under section 222(a) of the JJDP Act, available to private nonprofit agencies within the State. The funds must be used solely for the purpose(s) of achieving compliance with the following JJDP Act core requirements:

1. Section 223(a)(12)(A), requires that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses (other than an offense that constitutes a violation of a valid court order or a violation of section 922(x) of Title 18 or a similar State law), or alien juveniles in custody, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities.

2. Section 223(a)(13), provides that juveniles alleged to be or found to be delinquent, and those within the purview of section 223(a)(12)(A) above, shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges or with the part-time or full-time security staff (including management) or direct-care staff of a (collocated) jail or lockup for adults;

3. Section 223(a)(14) provides that no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which make exceptions with regard to the detention of juveniles accused of nonstatus offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within twenty-four hours after being taken into

custody (excluding weekends and holidays) provided that such exceptions are limited to areas that are in compliance with section 223(a)(13), above; and

a. (1) are outside a Standard Metropolitan Statistical Area; and

(2) have no existing acceptable alternative placement available; or

b. are located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, so that a brief (not to exceed 48 hours) delay is excusable; or

c. are located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

For further information and explanation of regulatory exceptions, to the provisions of section 223(a)(12)(A), (13) and (14), see the OJJDP Consolidated Regulation (28 CFR Part 31), 31.303 (c-d) substantive requirements. Copies of the Consolidated Regulation may be obtained by contacting the Office of Juvenile Justice and Delinquency Prevention at (202) 307-5921.

B. History

For the past several years, the State of Wyoming has failed to demonstrate compliance with sections 223(a)(12)(A), (13), and (14) of the JJDP Act. The last official monitoring report representing the 1991 monitoring year, reported exceptionally high violation rates as follows:

1. Wyoming was not in compliance with the deinstitutionalization of status offenders requirement of section 223(a)(12)(A) of the JJDP Act. Wyoming's 275 reported incidents of noncompliance resulted in a rate of 203.7 per 100,000 juvenile population. To establish full compliance with de minimis exceptions to section 223(a)(12)(A) of the JJDP Act, the rate cannot exceed 29.4 per 100,000 juvenile population.

2. Wyoming was not in compliance with section 223(a)(13) of the JJDP Act. The 1991 Compliance Monitoring Report reported 1,176 violations of the sight and sound separation provision of the JJDP Act. Full compliance requires either: (1) no violations, or (2) that the instances of noncompliance are in violation of State law or policy, do not constitute a pattern or practice, are unlikely to recur, and the State has developed an acceptable plan to

eliminate noncompliant incidents. Wyoming did not meet either of the eligibility criteria specified above.

3. Wyoming was not in compliance with the jail and lockup removal requirement of section 223(a)(14) of the JJDP Act. Wyoming reported 1,628 violations, a noncompliance rate of 1,205.6 incidents per 100,000 juvenile population. The maximum de minimis rate is no more than 9 per 100,000 juvenile population.

At the present time, Wyoming does not have in place a compliance monitoring system capable of reporting accurate data concerning the detention of nonoffenders, status offenders, and criminal-type juvenile offenders. Wyoming has recently taken a positive step toward resuming participation in the JJDP Formula Grants program with the establishment of a State Advisory Council on Juvenile Justice that will undertake an effort to examine available data sources and establish a compliance monitoring system within the next two years. OJJDP will continue to work with the State agency with the goal of Wyoming rejoining the OJJDP Formula Grants program.

C. Problems To Be Addressed

Wyoming has not been able to successfully address the core requirements of the JJDP Act due to State laws that sanction violations, a lack of local policies that promote the coordination of available resources, and a limited number of alternative resources available to communities. Local jurisdictions, therefore, are using secure facilities to detain or confine juveniles in a manner inconsistent with sections 223(a)(12)(A), (13) and (14) for a number of reasons:

1. The lack of policies regarding the issues of juveniles in secure confinement consistent with section 223(a)(13) and (14), and the secure confinement of status offender juveniles in violation of section 223(a)(12)(A) of the JJDP Act;

2. The lack of coordination and cooperation among juvenile justice system agencies including schools, law enforcement, prosecution, the judiciary, jails, corrections, public and private service providers, and local public interest groups, which contributes to placement of juveniles in jails and lockups that violate the section 223(a)(12)(A), (13), and (14) of the JJDP Act;

3. The lack of a flexible network of services and programs that is responsive to local jurisdiction's needs and capabilities. This network should focus upon jurisdictions with the most difficult barriers to meeting the core requirements of the JJDP Act; and

4. The lack of alternative services which can be sustained over time with local resources including, but not limited to:

- a. availability of appropriate secure juvenile facilities for the detention of juvenile criminal-type offenders;
- b. intensive supervision in a child's home as a placement alternative and use of home detention, including electronic monitoring;
- c. emergency foster care, shelter care, group care, and independent living arrangements; and
- d. crisis intervention services, short-term residential crisis intervention programs, and non-secure holdovers that can be used for conflict mediation, emergency holding, and provision of emergency attention for youth with physical or emotional problems.

II. Program Goals and Objectives

In accordance with section 223(d) of the JJDP Act, the goal of this program is to assist Wyoming in developing a range of secure and nonsecure alternatives and revising associated policies to move the State toward compliance with section 223(a)(12)(A), the deinstitutionalization of status offenders and nonoffenders, section 223(a)(13), the separation of juveniles from adults in adult jails and lockups, and section 223(a)(14), the removal of juveniles from adult jails and lockups requirements. To achieve these goals, and thus ensure a fair and effective system for juvenile custody, applicants must provide each of the following:

A. A succinct statement describing an understanding of the goals and objectives of the program.

B. A problem statement to include a discussion of the applicant's understanding of:

1. State laws impacting the placement of juveniles in adult jails and lockups and status offenders and non-offenders in secure detention or correctional facilities, and the issues surrounding the removal of such juveniles from the facilities;

2. What the monitoring data indicates about the multiple jurisdictions' compliance in relation to the measurable core requirements of the JJDP Act where the applicant is proposing to contract for the development of alternative placements to adult jails and lockups;

3. State legislative, judicial and executive branch activities related to supervision and protection of status offenders and non-offenders and jail removal;

4. How the applicant plans to impact, in measurable terms, the goal of meeting the core requirements of the JJDP Act, in

Wyoming, by providing community-based alternative placements to adult jails and lockups; and

5. The applicant's ability to establish and maintain a working relationship with the Wyoming State Advisory Group (SAG), and the Wyoming Department of Corrections in order to coordinate efforts and enhance the project's impact on the State's efforts to meet the JJDP Act core requirements.

C. Program Strategy

OJJDP anticipates entering into a cooperative agreement with an applicant to contract for community-based placement alternatives to adult jails and lockups and provide technical assistance to, and coordination among, multiple service providers involved in the Nonparticipating State Program.

Applicants should describe the proposed approach and timeline for achieving program goals and objectives. The timeline needs to address the development of policies and procedures, a training plan for project employees, a plan for the provision of program services, and public awareness efforts on the core requirements of the JJDP Act. A discussion of how the goals and objectives of the program will be accomplished, a description of the products to be prepared, and other anticipated outcomes should also be included. A plan for assessing the effectiveness of the overall program must be described.

The selected recipient will be expected to establish and/or maintain a working relationship with Wyoming's SAG and the Wyoming Department of Corrections. In order to have the greatest impact on advancing State efforts to meet the JJDP Act core requirements, the recipient will be expected to use the most recent monitoring data available in making site selections for the establishment of community-based alternatives to adult jails and lockups.

The applicant must describe in detail how the proposed strategy will:

1. Provide technical assistance to the contractors providing community-based placement alternatives to adult jails and lockups on program implementation and evaluation;

2. Provide coordination among contractors participating in the Nonparticipating State Grant program to ensure that the individual and collective efforts are enhancing the State's ability to meet the core requirements of the JJDP Act;

3. Undertake a public information effort to inform public officials and citizens about the core requirements of the JJDP Act and best practices in

juvenile justice and delinquency prevention programming.

4. Establish or maintain an ongoing working relationship with the Wyoming SAG and Wyoming Department of Corrections.

D. Program Implementation Plan

Applicants should prepare a plan, including timelines and milestones, that outlines the major activities involved in implementing the program and describe how they will allocate available resources to implement the program and how the program will be managed.

E. Organizational Capability

Applicants must demonstrate that they are eligible to compete for an award on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience

Applicants must concisely describe their experience with respect to the eligibility criteria described in Section IV. Applicants must demonstrate how their experience and capabilities will enable them to achieve the goals and objectives of this initiative.

2. Capability of Working With Other Organizations in the State

Applicants must demonstrate that they have discussed this program with local and State elected public officials or their staffs, the Wyoming Department of Corrections, key decision makers in the juvenile justice system such as juvenile court judges, associations of those involved in juvenile justice, the boards of public and private youth service providers, the Wyoming SAG, and other groups whose cooperation or participation is essential to the success of the program. The applicant must describe how it will be able to obtain the aforementioned cooperation or participation.

3. Financial Capability

In addition to the assurances provided in Part V, Assurances (OJP Form 4000/3), OJP procedures require private nonprofit applicants to demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this announcement are disbursed and accounted for properly.

OJP procedures require nongovernmental applicants having no recent history with OJP, to complete a financial capability questionnaire. This questionnaire must be completed by an independent auditor and submitted to the awarding agency before the award is made. Copies of the form (Accounting

System and Financial Capability Questionnaire—OJP Form 7120/1) will be provided with the materials as described in Section V, and must be prepared and submitted along with the application.

III. Dollar Amount and Duration

A. The budget and project period for this program will be two years (from the date of award). A cooperative agreement of \$1,708,650 available from fiscal years 1995, 1996, and 1997 Formula Grant funds reallocated for award under the Nonparticipating State Program on a competitive basis to a statewide private nonprofit agency currently operating in Wyoming. Of this amount, \$1,366,920 will be available to contract for local community-based placement alternatives to adult jails and lockups for both delinquent and status offender populations, with the remaining \$341,730 available to manage the contracts and provide technical assistance to, and coordination among, the contract recipients. The recipient will be required to make funds available to Indian Tribes, at a minimum, in the same amount that the State of Wyoming would have been required to pass-through to Tribes under section 223(a)(5)(C) of the JJDP Act, (\$21,644). The financial assistance provided under this program requires no matching contribution in accordance with Part C of Title II of the JJDP Act, except as provided under B., below.

B. No more than one-fourth of the funds received by a public or private organization may be used for construction or renovation purposes. Use of funds for construction is limited to innovative, community-based facilities for fewer than 20 persons and must be approved in advance by OJJDP. All construction funds must be matched dollar-for-dollar, in cash, by the local jurisdiction.

IV. Eligibility Criteria

Applications are invited from private nonprofit agencies operating statewide in the State of Wyoming that agree to operate their programs and services, whether or not supported with Federal grant funds, in a manner consistent with the JJDP Act core requirements and, can demonstrate knowledge and experience in developing and/or implementing programs and projects statewide and at the local level. To be eligible for consideration, an applicant must address the following:

A. An understanding of the intent of the statutory requirements of the JJDP Act and the general approaches for implementing the requirements at the local level;

B. Knowledge of, and experience with, juvenile justice systems, local jails, lockups, and secure juvenile detention facilities, the specific problems, strategies, and program alternatives necessary to achieve the objectives of this program, ability to use monitoring data specific to targeted jurisdictions to indicate the project's impact on JJDP Act compliance, and the ability to provide community-based alternative placements to adult jails and lockups;

C. Capability to develop management and fiscal systems necessary for the proper administration of Federal funds;

D. Capability to fulfill the activities and responsibilities identified in the Program Strategy section of this announcement;

E. Capability to work effectively with local and State elected public officials, Wyoming Department of Corrections officials, key decision makers in the juvenile justice system, boards of public and private youth service providers, and the Wyoming SAG which exists within the State for the purpose of achieving the objectives of this program;

F. Capability to analyze project impact in light of monitoring data specific to jurisdictions that have reported high numbers of noncompliant incidents;

G. Provide an explanation of how all their agency programs and services will operate in a manner consistent with the core requirements of the JJDP Act;

H. Provide a discussion of the status of the State with regard to deinstitutionalization of status and nonoffenders, separation of juveniles and adults in secure custody, and removal of juveniles from adult jails and lockups in accordance with the requirements of the JJDP Act and OJJDP's implementing regulations; and

I. Capability to develop, submit for approval, and utilize approved policies and procedures for the implementation of community-based services and placement options programs, a timeline for development of the policies and procedures, a training plan for project employees, a timetable for the provision of program services, and a strategy to educate the public about the program and solicit community support for the proposed community-based placement alternatives.

The applicant must describe how the provision of the proposed services will directly impact, in measurable terms, the State's ability to meet the core requirements of the JJDP Act.

V. Program Application Requirements

Only applicants who agree to operate in a manner consistent with the core

requirements of the JJDP Act and that provide an assurance that they will work toward the goal of bringing the State into compliance with the core requirements of the JJDP Act will be eligible for an award. All applicants must submit a completed Standard Form 424, Application for Federal Assistance; Standard Form 424A, Budget Information; OJP Form 4000/3, Program Narrative and Assurances; and OJP Form 4061/6, Certifications. All applications must include the information required by this specific solicitation as well as the Standard Form 424. The narrative must not exceed 35 pages in length (excluding forms, assurances, and appendixes) and must be submitted on 8½ by 11-inch paper, double spaced on one side of the paper in a standard 12-point font. This is necessary to maintain fair and uniform standards among all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

The SF-424 must appear as a cover sheet for the entire application. The project summary should follow the SF-424. All other forms must then follow. Applicants must sign: OJP forms 4000/3 and 4061/6, Certifications Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements. The applicant's signature on this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement. Applicants are requested to submit the original signed application (SF-424) and two copies to OJJDP.

Applicants that are receiving other funds in support of the proposed activity should identify other organizations that will provide financial assistance to the program and indicate the amount of funds to be contributed during the program period. Provide the title of the project, name of the public and private grantor, and amount to be contributed during the program period. Give a brief description of the program. In addition to the above requirements, the following information should be included in the application.

If this program is closely related to a project supported by funds awarded by

another agency, the following information must be provided:

A. A list of the names of any organizational units that will assist in any part of this other particular program activity.

B. The title of the other project, the name of the public or private grantor, and the amounts requested or to be contributed during this program/budget period.

C. A brief description of the program. Applications and copies must be sent to the following address: Gregory C. Thompson, State Representative, Office of Juvenile Justice and Delinquency Prevention, SRAD, 810 7th Street, NW, 8th Floor, Washington, DC 20531.

OJJDP will notify applicants in writing that their applications have been received. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission has been selected for funding.

When submitting joint applications with more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship as primarily cooperative or collaborative when developing products and delivering services will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated the payee and, as such, will receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and separately responsible for all project funds and services. Each co-applicant must sign the SF-424 and indicate their acceptance of the conditions of joint and separate responsibility with the other co-applicant.

All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole source procurement in excess of \$100,000 must receive prior approval of the awarding agency.

VI. Procedures and Criteria for Selection

All applicants will be evaluated and rated by an OJJDP staff panel according to general selection criteria below. Selection criteria determine each applicant's responsiveness to minimum program application requirements, organizational capability, and thoroughness and innovativeness in

responding to strategic issues related to project implementation. OJJDP staff reviewers will use the following criteria to rate applications.

A. Statement of the Problem. (20 points) The applicant includes a clear, concise statement of the problem addressed in this program.

B. Definition of Objectives. (20 points) The goals and objectives are clearly defined and the objectives are clear, measurable, and attainable.

C. Project Design. (20 points) The project design is sound and constitutes an effective approach to meeting the goals and objectives of this program and impacting the State's ability to meet the core requirements of the JJDP Act. The design provides a detailed implementation plan with a timeline that indicates significant milestones in the project, due dates for products, and the nature of the products to be submitted. The design contains program elements directly linked to the achievement of the project.

D. Management Structure. (15 points) The project's management structure and staffing is adequate to successfully implement and complete the project. The management structure for the project is consistent with the project goals and tasks described in the application. The application explains how the management structure and staffing assignments are consistent with the needs of the program.

E. Organizational Structure. (15 points) The applicant organization's potential to conduct the project successfully is documented. Applicant demonstrates knowledge of and experience in the juvenile justice field. Applicant demonstrates that staff members have sufficient substantive expertise and technical experience. Applications will be judged on the appropriateness of the position descriptions, required qualifications, and staff selection criteria.

F. Reasonableness of Costs. (10 points) Budgeted costs are reasonable, allowable, and cost effective for the activities proposed, and are directly related to the achievement of the program objectives. All costs are justified in a budget narrative that explains how costs are determined.

OJJDP staff review recommendations are advisory only and the final award decision will be made by the Administrator. OJJDP will negotiate specific terms of the award with the selected applicant.

VII. Audit Requirements

State and local governments, nonprofit organizations, and institutions of higher education are governed by

OMB Circular A-133, as amended. Whether an audit is required under this circular is dependent upon the amount of Federal funds that are expended during the recipient's fiscal year. If the organization expends \$300,000 or more per year in Federal funds, the organization shall have a single audit conducted in accordance with the OMB Circular A-133.

VIII. State Single Point of Contact

To comply with Executive Order 12372, applicants from State and local units of government or other organizations providing services within a State must submit a copy of their application to the State Single Point of Contact, if one exists, and if the program has been selected for review by the State.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitative Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Nondiscrimination Regulations (28 CFR part 42, subparts C, D, E, and G).

B. In the event a Federal or State court or administrative agency makes a finding of discrimination, after a due process hearing, on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights (OCR) of the Office of Justice Programs.

C. Applicants shall maintain and submit to OJJDP upon request, timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which the primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under a grant award.

X. Immigration and Naturalization Service Requirements

Organizations funded under the Wyoming Nonparticipating State Program must agree to complete and keep on file, as appropriate, the Immigration and Naturalization Service Employment Eligibility Form (I-9). This form is to be used by the recipient of Federal funds to verify that persons employed by the recipient are eligible to work in the United States.

XI. Submission Requirements

This program announcement is a request for proposals from nonprofit agencies operating statewide in the State of Wyoming. The applications and necessary forms will be provided upon request by calling (202) 307-5924. Applicants must submit an original signed application and two copies to OJJDP.

Applications must be received by mail or hand delivered to OJJDP by 5:00 p.m. EST October 19, 1998.

Those applications sent by mail should be addressed to: SRAD/OJJDP, United States Department of Justice, 810 7th Street, NW, 8th Floor, Washington, DC 20531. Hand delivered applications must be taken to the SRAD, 8th Floor, 810 7th Street, NW, Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Appendix

Definitions of Terms

1. *Adult jail.* A locked facility administered, by State, county, or local law enforcement and public or private correctional agencies. The purpose of such facility is to detain adults charged with violating criminal law pending trial. Facilities used to hold convicted adult criminal offenders, usually sentenced for less than one year, are also considered adult jails.

2. *Adult lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

3. *Criminal-type offender.* A juvenile offender who has been adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult (i.e. a criminal-type offense).

4. *Accused juvenile offender.* A juvenile on whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, (i.e., a criminal-type offender or a status offender), but no final adjudication has been made by the juvenile court.

5. *Adjudicated juvenile offender.* A juvenile who the juvenile court has

determined through an adjudicative procedure is a juvenile offender, (i.e., a criminal-type offender or a status offender).

6. *Facility.* A place, an institution, a building or part thereof, a set of buildings or an area, whether or not enclosing a building or set of buildings, that is used for the lawful custody and treatment of juveniles and that may be owned and/or operated by public and private agencies.

7. *Juvenile offender.* An individual within a juvenile court's jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law (i.e., a criminal-type offender or a status offender).

8. *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law, a judicial order or decree.

9. *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court—usually under abuse, dependency, or neglect statutes—for reasons other than legally prohibited conduct of the juvenile.

10. *Nonparticipating State.* A State which chooses not to submit a plan, fails to submit a plan, or submits a plan which does not meet the requirements of section 223 of the JDP Act and thus is not participating in the Formula Grants Program authorized by Part B of Title II of the JDP Act for a particular fiscal year; or a State found ineligible to receive program funds because of failure to achieve or maintain substantial compliance with the JDP Act, its implementing regulation (28 CFR Part 23), or a plan or application submitted pursuant to Part B of Title II of the JDP Act.

11. *Secure.* As used to define a detention or correctional facility this term describes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

12. *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

13. *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to a court order; who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States; and with respect to whom an appropriate public agency, before the issuance of such order—

(i) reviewed the behavior of such juvenile and the circumstances under which such juvenile was brought before the court and made subject to such order;

(ii) determined the reasons for the behavior that caused such juvenile to be brought before the court and made subject to such order; and

(iii) determined that all dispositions (including treatment), other than placement

in a secure detention facility or a secure correctional facility, have been exhausted or are clearly inappropriate.

The requirements for using the valid court order exception can be found in the Formula Grants Regulation, 28 CFR Part 31, at § 31.303(f).

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DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)-1188]

RIN 1121-ZB25

Program Announcement, "Nonparticipating State Program, South Dakota"

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of competitive program announcement.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.*, (hereinafter the JJDP Act), is issuing a program announcement and solicitation for applications from nonprofit agencies operating statewide in the State of South Dakota. Because of non-compliance with the core requirements of the JJDP Act, the State is not eligible to receive its fiscal year (FY) 1997 and 1998 Formula Grants program allocations under Part B of Title II of the JJDP Act, which total \$1,200,000. Eligible applicants for the Nonparticipating State Program are limited to private nonprofit agencies operating statewide who propose innovative service delivery programs designed to provide placement alternatives to existing secure confinement placements that are not consistent with the core requirements of the JJDP Act. Applicants must currently be operating in the State and their proposed programs must directly impact the State of South Dakota's ability to meet the core requirements of the JJDP Act. The successful applicant will enter into a cooperative agreement with OJJDP to be expended over a two year period. Of the total amount available, \$960,000 will be utilized by the applicant to contract with local public or private nonprofit agencies for local community-based placement alternatives to adult jails and lockups for both delinquent and status offender populations, with

the remaining \$240,000 retained by the applicant to manage the contracts and provide technical assistance to and coordination among the local contractors funded under the Nonparticipating State Grant Program.

DATES: Applications under this program are due October 19, 1998.

FOR FURTHER INFORMATION CONTACT: For further information contact Gregory C. Thompson, State Representative, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW, Washington, DC 20531, (202) 307-5924. E-Mail: Thompson@ojp.usdoj.gov

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. JJDP Act Statutory Requirement

Pursuant to section 223(d) of the JJDP Act, if a State chooses not to submit a Formula Grants Program plan, fails to submit a plan, or submits a plan which does not meet the requirements of the JJDP Act, the OJJDP Administrator shall endeavor to make the Formula Grants program fund allotment, under section 222(a) of the JJDP Act, available to private nonprofit agencies within the State. The funds must be used solely for the purpose(s) of achieving compliance with the following JJDP Act core requirements:

1. Section 223(a)(12)(A), requires that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses (other than an offense that constitutes a violation of a valid court order or a violation of section 922(x) of Title 18 or a similar State law), or alien juveniles in custody, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities.

2. Section 223(a)(13), provides that juveniles alleged to be or found to be delinquent, and those within the purview of section 223(a)(12)(A) above, shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges or with the part-time or full-time security staff (including management) or direct-care staff of a (collocated) jail or lockup for adults;

3. Section 223(a)(14) provides that no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which make exceptions with regard to the detention of juveniles accused of nonstatus offenses who are awaiting an initial court appearance

pursuant to an enforceable State law requiring such appearances within twenty-four hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas that are in compliance with section 223(a)(13), above; and

a. (1) are outside a Standard Metropolitan Statistical Area; and

(2) have no existing acceptable alternative placement available; or

b. are located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, so that a brief (not to exceed 48 hours) delay is excusable; or

c. are located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

For further information and explanation of regulatory exceptions, to the provisions of section 223(a)(12)(A), (13) and (14), see the OJJDP Consolidated Regulation (28 CFR Part 31), 31.303 (c-d) substantive requirements. Copies of the Consolidated Regulation may be obtained by contacting the Office of Juvenile Justice and Delinquency Prevention at (202) 307-5924.

B. History

The State of South Dakota submitted compliance monitoring data to OJJDP, in the 1996 Compliance Monitoring Report, which demonstrated a failure to achieve compliance with sections 223(a)(12)(A), (13), and (14) of the JJDP Act. This resulted in South Dakota's failure to qualify for award of its FY 1997 and FY 1998 Formula Grants Program allocations. The monitoring data reflected:

1. South Dakota is not in compliance with the deinstitutionalization of status offenders requirement of section 223(a)(12)(A) of the JJDP Act. South Dakota's 150 reported incidents of noncompliance resulted in a rate of 37.69 per 100,000 juvenile population. To establish full compliance with de minimis exceptions to section 223(a)(12)(A) of the JJDP Act, the rate cannot exceed 29.4 per 100,000 juvenile population.

2. South Dakota is not in compliance with section 223(a)(13) of the JJDP Act. The 1996 Compliance Monitoring Report reflected 65 violations of the sight and sound separation provision of the JJDP Act. Full compliance requires