Reauthorization Meeting Issue Papers

Crime Control Act of 1976 Pub. L. 94-503

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LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

U.S. DEPARTMENT OF JUSTICE

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COMMUNITY ANTI-CRIME PROGRAMS

I. Evaluation of the Amendment

A new subsection (c) is added to Section 101 to establish within LEAA an Office of Community Anti-Crime Programs under the direction of the Deputy Administrator for Policy Development. This office is to provide technical assistance to community and citizens groups to enable such groups to apply for grants, coordinate its activities with other Federal agencies and programs, and provide information on successful programs to citizen and community groups.

Section 203(b) is amended by adding a new paragraph (4) which requires the SPA to assure citizen and community organization participation in all levels of the planning process.

Section 301(b) is amended by adding a new paragraph (14). This new paragraph authorizes the use of Part C funds to develop and operate crime prevention programs in which community members may participate.

In addition to funds made available under Part C, Section 520(a) also authorizes to be appropriated $15 million for each fiscal year 1977 through 1979 for grants to be administered by the Office of Community Anti-Crime Programs for community patrol activities and the encouragement of neighborhood participation in crime prevention and public safety efforts under Section 301(b)(6) of the Act.

To implement these new amendments, the Office of Community Anti-Crime Programs has to be established and staffed; funds for grants have to be requested and appropriated; grant program guidelines and grant administration requirements have to be defined; and grantee eligibility criteria have to be determined.

II. Current Practice

LEAA has a citizens' initiative program which is administered through the LEAA Office of Regional Operations.

III. Issues

(1) Location within LEAA of Office? Staff?

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STATE LEGISLATIVE OVERSIGHT

I. Evaluation of the Amendment

Section 203(a)(1) provides in pertinent part:

> "Where such agency is not created or designated by State law, it shall be so created or designated by no later than December 31, 1978."

New Section 206 provides:

> "Sec. 206. At the request of the State legislature while in session or a body designated to act while the legislature is not in session, the comprehensive statewide plan shall be submitted to the legislature for an advisory review prior to its submission to the Administration by the chief executive of the State. In this review the general goals, priorities, and policies that comprise the basis of that plan, including possible conflicts with State statutes or prior legislative Acts, shall be considered. If the legislature or the interim body has not reviewed the plan forty-five days after receipt, such plan, shall then be deemed reviewed."

In the Senate, consideration of this issue began as a proposal by Senator Robert Morgan from North Carolina which would have permitted State legislatures to place the State planning agency under the control of the State Attorney General or other constitutional officer of the State. See S. Hearing Record, p. 83, 691.

The Senate Judiciary Committee rejected this proposal indicating that State jurisdiction for the LEAA program belongs in the Chief Executive. S. Rept. No. 94-847, 94th Cong., 2d Sess., May 13, 1976, at p. 16. However, the Committee agreed that the State legislature should have more participation in the development of the State plan. Pertinent to this decision is the testimony of Cal Ledbetter, Member of the Arkansas Legislature, S. Hearing Record, p. 134. Subsequently, the Committee amended the bill to provide that by no later than December 31, 1979, the State planning agency (SPA) must be created or designated by State law. (Sec. 203(a)). The SPA was to remain under the control and direction of the Chief Executive of the State.

The Committee added Section 206 to the Crime Control Act to allow the State legislature, or a legislative body designated by it, to request that the comprehensive State plan, or any revision or modification, be submitted for approval, suggested amendment, or disapproval, of the general goals, priorities, and policies that comprise the basis of the plan, prior to its submission to LEAA. In the floor debate, Senator McClellan

submitted amending language deleting the "approval, suggested amendment, or disapproval" language and substituting "review, comment, or suggested amendment." This amendment was agreed to without objection. 122 Cong. Rec. 12225 (daily ed., July 22, 1976).

Under the Senate version, the legislature had forty-five days after receipt of the plan or revision to review, comment, or suggest amendments. It would have had thirty days for modifications. After these time limits expire, the plan or modification would have been deemed approved, if not commented upon.

The House version of the amendment, as reported out of the Judiciary Committee, is essentially the same as the Senate version. The House version did not provide in Section 203(a) for the creation of the SPA by State law by December 31, 1979, as did the Senate's version. Section 206 differed in only three significant respects. First, the House added language that the review of the State plan include consideration of possible conflicts with State statutes or prior legislative acts. Second, the Senate Section 206 provided for "review, comment, or suggested amendment." The House version provides only for "review." Third, the Senate version gave only thirty days for review of modifications to the State plan; the House provided forty-five days. H. Rept. No. 94-1155, 94th Cong., 2d Sess., May 15, 1976, at p. 13.

The House considered and rejected an amendment offered by Mr. Wiggins which would have required mutual resolution of any differences between the State legislature and the Governor on the plan. 122 Cong. Rec. H 9309 (daily ed., Aug. 31, 1976).

The Conference adopted portions of both the House and Senate language, resulting in greater legislative input into the planning process and legislative enactment of SPA's. Cong. Rec. H 11907 (daily ed., Sept. 30, 1976).

This amendment was made in order to provide the State legislatures more input into the development of the goals, priorities, and policies of the State plan. It is also designed to institutionalize the SPA role in State government by requiring legislature adoption of the function.

SPA's must be created by State law before December 31, 1978. The SPA's and State legislatures must be immediately informed of this.

The added Section 206 will require that the SPA draft the comprehensive plan allowing for the forty-five days in which the legislature or the designated legislative body has to review it, submission of the plan to the legislature, reconsideration of the plan in light of the review, comments, or suggested amendments of the legislature or the designated legislative body has made, and then submit the plan to LEAA. These added steps in the development of the State plan and any revision or modification of the plan will take more time.

The State legislatures will have to designate a legislative body to handle the reviews when the legislature is not in session.

II. Current Practices

Currently:

. Twenty-three of the States are legislatively established. LEAA did not require more than this or an Executive Order.

. Most SPA's do not submit a plan to the legislature.

. Some State laws require submission to the legislature or review of the plan in the process of providing match, buy-in, or positions to the SPA.

. Some States conduct oversight hearing or review SPA functions through "O" base budget reviews.

III. Issues

(1) If legislative enactment is not obtained by December 31, 1978, can a State legally obtain LEAA Parts B, C, E or DF funds?

(2) If an FY 1977 plan has not been submitted, must it go through legislative review? If it has been submitted, but not approved?

(3) Is draft model legislation available?

(4) What is the minimum content of the legislation needed?

(5) If the legislation conflicts with Section 203 relating to the Governor's authority and responsibility for the program and is therefore ruled in non-conformity, what effect is had on the State's participation?

(6) Must revisions and modifications be submitted to the legislature? If so, what definitions govern?

(7) Must the advisory review be started or completed by the legislature within the forty-five days?

(8) Must the legislature's comments be in writing?

(9) Must the review be completed prior to plan submission to LEAA? In all cases?

(10) Will LEAA require copies of the review? If so, will it act on the review in any way?

(11) Can the legislature review and comment on local plans or local-related programs?

(12) Is there an appeal if legislative comments are rejected? To the SPA? To LEAA? What parties can appeal?

(13) Must the SPA respond in writing to legislative comments which are rejected?

(14) Will LEAA issue guidelines on location or placement in State government? Limiting split locations in State government? On procedures for submission and review?

(15) Can the function be placed in an operating agency? Under a legislatively-controlled body?

(16) Can the legislature require "0" base budgeting?

(17) How will conflicts of State and Federal law be resolved?

(18) If the legislature disapproves programs or projects, at the State level, during their review, is the SPA bound? If projects at the local level are disapproved, is the SPA bound?

(19) Can the legislature mandate supervisory board composition?

(20) Is the State legislative review required or obligatory upon request?

(21) What effect does the amendment have on the timing of LEAA's action to approve plans (or major amendments)? Is a forty-five-day delay to be considered automatic?

(22) Where State legislatures meet in January and the plan is due in LEAA in November, how can the State meet the deadline? Can the State's planning cycle be meshed with legislative review?

(23) What are the limits on State laws as they affect the SPA and the Governor's control of the LEAA program? (See addendum.)

(24) Must both houses of the legislature review? Is a joint resolution needed or just a "sense" of each house?

(25) Can a State obtain and expend "advances" on FY funds without State legislative review of the future year plan?

(26) Can the Governor approve the plan before legislative review of the plan?

Addendum

Pennsylvania--Statement of Pending Case Involving State Legislature--Shapp v. Sloan

The Pennsylvania General Assembly has attempted to exert restrictive control over LEAA funds by passing two laws which block distribution of funds to certain approved, ongoing programs. Pennsylvania General Assembly Act No. 117 of 1976 requires that all funds awarded by LEAA be placed in the general fund of the State and prohibits the State Treasurer from disbursing LEAA funds not appropriated by the State legislature. The Federal Augmentation Appropriation Act, No. 17-a, then made appropriations out of the general fund, excluding funds earmarked for the Special Prosecutor's Office and other LEAA-funded projects.

In so doing, the General Assembly has attempted to usurp control of the disbursement of LEAA funds, in violation of Section 203(a) of the Safe Streets Act which provides that grants shall be made to States to establish State planning agencies subject to control by the Chief Executive of the State.

The primary issues in the case are whether the Supremacy Clause of Art. 6 and the Impairment of Contracts Clause of Article I, §10 of the U. S. Constitution are violated by these laws; whether LEAA funds are or become State funds subject to legislative control under Art. III of the Pennsylvania Constitution; and whether the doctrine of Separation of Powers in Articles 2-5 of the State Constitution are violated by legislative incursion into this congressionally-mandated province of executive control. There were also questions of retroactivity of the legislation and legality of intervention by the General Assembly.

The key issue facing the court is whether the funds are State funds subject to the traditional legislative power of the purse, or Federal funds held in the State Treasury for custodial purposes. The Commonwealth Court is concerned about the gubernatorial, rather than legislative, control of these funds.

On October 5, the Commonwealth Court held arguments on the merits on cross motions for summary judgment. There has been no decision on these motions or on a petition for release of additional interim funds to the Special Prosecutor's Office.

Illinois--Statement of Settled Case Involving State Legislature

On at least four occasions, the Illinois General Assembly has legislatively attempted to exert control over the use and disbursement of LEAA funds. Two bills, S.B. 1668 of 1974 and S.B. 32 of 1975, would have statutorily enacted a new criminal justice commission to supercede the existing State planning agency. In 1972, S.B. 970 provided for disbursal of LEAA funds for a legislatively-determined purpose. Again, in 1974, the Illinois House of Representatives undertook to limit disbursal of LEAA-approved funds with H.B. 2347, an

appropriations bill which line-itemized State appropriations and made several changes affecting the comprehensive plan. These attempts to substitute the judgment of the legislature for that of the Governor were contrary to Section 203(a) of the Safe Streets Act and, if enacted and upheld, would have placed the State of Illinois in noncompliance with the Act, resulting in a possible fund cut-off. One of these acts, H.B. 2347, was enacted. By specification of fundable programs, H.B. 2347 would have eliminated funding authority for previously-approved programs. The bill vested in the legislature ultimate discretion over the distribution of LEAA funds which, under Section 203, must be vested in an SPA subject to executive control. The bill was enacted, the State Comptroller refused to honor vouchers for nonappropriated programs and hundreds of employees risked salary suspensions. The State Attorney General filed a suit against the Comptroller and asked for mandamus to compel fund release. The primary issue in the case was whether funds from the U. S. are State funds subject to appropriation by the State legislature.

The State High Court noted a long-standing practice of expending certain funds without an annual appropriation, ruled that Federal funds need not be appropriated by the General Assembly and compelled the State Comptroller to honor vouchers against such nonappropriated Federal funds. In the final portion of its decision, the court reminded Respondents of the risk of violating the Separation of Powers doctrine, noting that appropriations bills are usually passed late in the session and must promptly become effective in order to prevent government operations from grinding to a halt. This pattern substantially affects the gubernatorial power of amendatory veto.

The Comptroller was ordered to resume the dissemination of LEAA funds.

CITIZEN PARTICIPATION IN PLANNING PROCESS

I. Evaluation of the Amendment

Section 203(b) was amended by adding a paragraph (4) to require that the State planning agency "assure the participation of citizens and community organizations at all levels of the planning process." This amendment was introduced during Senate debate by Senator Javits as part of the package of amendments setting up the Office of Community Anti-Crime.

Senator Javits stated that the amendment:

> "would assure the participation of citizens and community organizations in all levels of the planning process by requiring in section 203 of the Act that LEAA take steps to achieve representation of citizen groups, church organizations, poverty groups, civil rights groups, and others on supervisory councils and regional planning boards. Since professional law enforcement personnel are already well represented, this gives non-professional concerned citizens a strong voice."

Section 203(a) prior to the 1976 amendments required representation of citizens, professional and community organizations on the SPA supervisory boards and on the regional planning units. Former section 203(d) (now (g)) provides that all meetings of planning organizations must be open to the public if final action is taken on the State plan or any application for funds. Because these prior provisions do deal with citizen participation, at least at the SPA and RPU levels, this new provision could be considered to require other planning bodies to have citizen participation. Although this is the clear reading of the amendment, Senator Javits' introduction would appear to be more limiting. The other planning bodies utilized and funded under the Omnibus Crime Control and Safe Streets Act are: Criminal Justice Coordinating Councils, local (non-RPU) planning agencies, judicial planning committees, and interstate metropolitan regional planning units. The amendment speaks in terms of assuring participation at <u>all</u> levels of the planning process.

One method of assuring such citizen participation in the planning process is to include representation of citizen and community organizations on these other planning boards. Another method that could be used by the planning bodies is to provide for public hearings on the local plans, the judicial plan and the final State plan. A third method could be a process for providing public review and written comments on the plan.

II. Current Practices

At the present time all SPA supervisory boards and RPU's are required to have citizen and community participation (LEAA Guideline M 4100.1E, Chap. 2, Par. 23b(1)(h) and Chap. 2, Par. 26e(2)). There is no requirement that any other planning bodies include citizen representation.

III. Issues

(1) Does this amendment limit the requirements for citizen participation to SPA's and RPU's?

(2) If additional participation is envisioned, should such representation be required on judicial planning committees, Criminal Justice Coordinating Councils, and other local planning bodies?

(3) If additional representation on planning bodies is not necessarily required, should there be another method for allowing community participation, particularly of the groups listed by Senator Javits: church, poverty, civil rights organizations?

(4) Should public hearings be required?

JUDICIAL AMENDMENTS

I. Evaluation of the Amendment

The Crime Control Act of 1976 contains numerous amendments designed to increase the participation of the judiciary of the several States in the LEAA program. The amendments to the Omnibus Crime Control and Safe Streets Act of 1968 provide for:

(1) a minimum mandatory judicial membership of three judicial representatives on the State planning agency (SPA) supervisory boards and executive committees;

(2) the establishment of judicial planning committees by the courts of last resort of the several States;

(3) the allocation of $50,000 in Part B planning funds for use by the judicial planning committees in developing an annual judicial plan for the use of LEAA Part C action funds by the judiciary;

(4) the use of Part C action funds for the development of a multi-year plan for the improvement of the judiciary; and

(5) the requirement that LEAA assure that the judiciary receives an adequate share of the Part C action funds allocated to each State.

A. Background--Legislative History

In June 1975, the Attorney General submitted to Congress a bill to extend the Law Enforcement Assistance Administration program through the end of fiscal year 1981. This bill, which was the Administration's bill, emphasized the need for the States to address court problems by specifically authorizing the funding of court programs under State plans funded by LEAA.

The bill proposed an amendment to the Omnibus Crime Control and Safe Streets Act to explicitly identify the improvement of court systems as a purpose of the LEAA block grant program. The bill authorized the use of LEAA Part C action funds for court planning. This bill did not mandate that the supervisory boards of the SPA include at least three judicial representatives. It did not specifically authorize the chief judicial officer of each State to establish a judicial planning committee. It did not allocate $50,000 in planning funds for judicial planning committees. It did specifically require LEAA to assure that the judiciary received an adequate share of LEAA Part C action funds.

The Administration bill was introduced by Senator Hruska as S. 2212 and hearings on the bill were held by the Senate in the Fall of 1975 and the Spring of 1976. Numerous representatives of the judiciary testified at these hearings and expressed concern about court involvement in the LEAA program.

Numerous references were made to a study done under the leadership of Dean John F. X. Irving of Seton Hall Law School. This study was funded by LEAA through American University and was initiated at LEAA's direction after representatives of the Conference of Chief Justices expressed concern to the LEAA Administrator about the involvement of courts in the LEAA program. The Irving study made numerous recommendations for increasing court planning efforts with LEAA funds.

After the hearings were completed in the Fall of 1975, Senator Kennedy met with representatives of the judiciary and developed a legislative proposal which ultimately was introduced as S. 3043. This bill contained many of the provisions in H.R. 8967 which Congressman Rodino originally introduced in the House of Representatives at the request of the Conference of Chief Justices.

The hearings by the Senate in the Spring of 1976 focused on S. 3043 as well as S. 2212. Following the completion of the Senate hearings, the Senate judiciary committee marked up S. 2212 and incorporated many of the provisions of S. 3043. The Senate judiciary committee bill contained all of the major amendments outlined above in Part I--Evaluation of the Amendment.

The Senate committee report on S. 2212, as amended, contains an extensive discussion of the judicial amendments. In the opening paragraphs it makes the following observations:

> "During the course of its hearings, the Subcommittee on Criminal Laws and Procedures received testimony to the effect that, despite Congressional intent to insure the participation and representation of all elements of the criminal justice system in the preparation of the comprehensive statewide plan and the equitable sharing of all of these elements in the funds distributed under the provisions of the Omnibus Crime Control and Safe Streets Act, this intent has frequently not been carried out with respect to the court systems of the several States. Testimony was received that, in many States, the judiciary was either underrepresented on the State planning agency or consistently received less than an appropriate share of Federal funds when its needs were compared to those of the other components of the criminal justice system.
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> "The solution proposed by the Committee, which incorporates to a great extent the language and concepts proposed by Senator Kennedy in S. 3043, should insure increased judicial participation in the planning process and a fairer allocation of Federal criminal justice funds for the courts without the defects noted above." (Senate Rep. No. 94-847, 94th Cong., 2nd Sess., p. 17.)

In the Senate, during floor debates, the judiciary committee amendments concerning the courts were passed together with an additional amendment introduced by Senator Nunn of Georgia and subsequently amended by Senator Durkin of New Hampshire. Senator Nunn's amendment provided that where a State law created a judicial planning agency, that agency could perform the judicial planning function under the LEAA Act. Senator Durkin's amendment specified that the statutorily created judicial agency had to be in being at the time of the enactment of this legislation. Senator Nunn wanted to assure that the amendment applied to his own State of Georgia's judicial agency. (Cong. Rec. S 12227, daily ed., July 22, 1976.)

The Administration bill was introduced in the House of Representatives as H.R. 13636. Hearings were held on this bill by the House judiciary committee in the Spring of 1976. Many representatives of the judiciary, including some who appeared in the Senate, expressed concern about court involvement in the LEAA program.

The bill, H.R. 13636, as amended and reported out of the House judiciary committee, required that not less than two of the members of the supervisory board must be approved from a list of nominees supplied by the courts. It also required that no less than one-third of discretionary funds be used for improving the courts, reducing criminal case backlog, or accelerating criminal case processing and disposition. H.R. 13636 authorized States to use Part C funds for courts. However, the House amendment did not establish a separate plan or planning process for the judiciary.

During debate, the House rejected the judiciary committee amendment which required one-third discretionary funds to be used for the courts. Congressman Wiggins stated that to approve such an amendment would inhibit the States from dealing with this problem themselves (Cong. Rec. H 9297, daily ed., Aug. 31, 1976). "It is going to be very easy for State planning agencies to turn down requests from the State judiciary and say 'you fellows are taken care of separately under the discretionary funding available to the Administrator.'" Congressman Wiggens also raised a problem he considered of "constitutional magnitude". He questioned whether the requirement in the House bill that the Governor appoint two nominees by the State judiciary to the State planning agency was a constitutional provision. (Cong. Rec. H 9309.) He mentioned the Supreme Court's ruling in Buckley v. Valeo which limited the intrusion of the Congress or the executive power to make appointments and he expressed the feeling that if a State constitution tracked the Federal Constitution, the Valeo decision might have some import. The House, on the floor, amended the definition of courts in H.R. 13636 to make clear that juvenile courts were included within the definition.

In conference, the Senate provision, with certain modifications, was accepted. The conference adopted the House definition of "courts" which made it clear that juvenile courts were to be considered an integral part of a State's law enforcement and criminal justice system and as such the conferees expected that the judicial planning committees would include representation of juvenile court judges and that the judicial plan would address the improvement of the State's juvenile court system.

B. Statement of Meaning of the Amendment

In order to understand the new judicial amendments, an understanding of the meaning of the terms "court" and "court of last resort" must be reached. The new amendments add the following definition of "court or courts" to Section 601(p) of the Omnibus Crime Control and Safe Streets Act:

> "Except as used in the definition of the term 'court of last resort,' the term 'court' means a tribunal or judicial system having criminal or juvenile jurisdiction."

This definition means first as noted above that courts with juvenile jurisdiction are covered by all provisions of the amendments that refer to courts. Senator Hruska in discussing the conference report made the following statement:

> "The inclusion in the conference report of the term 'courts' of tribunals or judicial systems having either criminal or juvenile jurisdiction, as adopted from the House bill, makes it clear that, regardless of the classification of juvenile courts having jurisdiction over juvenile offenders as civil in nature, the conference considers juvenile courts to be an integral part of a State's law enforcement and criminal justice system. As such, I expect that judicial planning committees will include representation of juvenile court interests and that the annual State judicial plan will address the improvement of the State's juvenile court system." Cong. Rec. S 17319, daily ed., Sept. 30, 1976.

The definition also means that tribunals or judicial systems that do not have criminal jurisdiction do not fall within the definition of courts. The second aspect of the definition appears to reaffirm the interpretation and application of the provision of the Omnibus Crime Control and Safe Streets Act to limit the degree to which LEAA funds can be used to fund the activities of courts whose jurisdiction is limited exclusively to civil matters.

This application and interpretation has authorized the funding of the activities of civil courts only where it can be clearly shown that the criminal courts of the State or local government could not be improved without also improving the operations of the civil courts. Thus, LEAA funds have been properly used to fund the work of the Iowa Courts to establish a unified court system. LEAA funds were also properly used to fund the studies that lead to the unification of the District of Columbia Superior Court.

This application and interpretation has been based on the definition of the terms "law enforcement and criminal justice" which appear throughout the LEAA Act and modify the authority of LEAA to grant funds to the States. This definition was not changed by the 1976 Act. It provides as follows:

> "(a) 'Law enforcement and criminal justice' means any activity pertaining to crime prevention, control or reduction or the enforcement of the criminal law, including, but not limited to police efforts to prevent, control, or reduce crime or to apprehend criminals, activities of courts having criminal jurisdiction and related agencies (including prosecutorial and defender services), activities of corrections, probation, or parole authorities, and programs relating to the prevention, control, or reduction of juvenile delinquency or narcotic addiction."

The term "court of last resort" is defined in Section 601(p) as follows:

> "(p) The term 'court of last resort' shall mean that State court having the highest and final appellate authority of the State. In States having two or more such courts, court of last resort shall mean that State court, if any, having highest and final appellate authority, as well as both administrative responsibility for the State's judicial system and the institutions of the State judicial branch and rulemaking authority. In other States having two or more courts with highest and final appellate authority, court of last resort shall mean the highest appellate court which also has either rulemaking authority or administrative responsibility for the State's judicial system and the institutions of the State judicial branch. Except as used in the definition of the term 'court of last resort', the term 'court' means a tribunal or judicial system having criminal or juvenile jurisdiction."

The meaning of this term is going to have to be determined on a State-by-State basis. There are some States with two "Supreme" courts. Texas has a supreme court for "civil" matters and a supreme court for "criminal" matters. The court of last resort in Texas is the one with civil jurisdiction. The Congress provided for this when, as noted above in the definition of courts, it made an exception for courts of last resort. They do not have to have to be tribunals with criminal jurisdiction. To the extent that we can assure compliance with the LEAA Act, LEAA will defer to States on the determination of what court is the "court of last resort."

The judicial amendments can be grouped into three main areas:

(1) judicial representation on the supervisory boards of State planning agencies;

(2) court planning and judicial planning committees; and

(3) provision of an adequate share of funds for courts.

A discussion of each of these three topics follows:

(1) Judicial Representation on the Supervisory Board of State Planning Agencies

Section 203 of the Omnibus Crime Control and Safe Streets Act defines the nature and purpose of State planning agencies. The Governor of each State is responsible for administration of the LEAA program in his State and the State planning agency is his instrumentality for carrying out this responsibility. Because of the diverse interests involved in the LEAA program, Section 203 defines the agencies, organizations and individuals who must be represented on the State planning agency. The representative requirements of Section 203 are met through the establishment in each State of a supervisory board which oversees and directs the operations of the State planning agency.

Section 203 was amended by the Crime Control Act of 1976 to specifically mandate judicial representation. The pertinent provisions read as follows:

> "(2) The State planning agency shall include as judicial members, at a minimum, the chief judicial officer or other officer of the court of last resort, the chief judicial administrative officer or other appropriate judicial administrative officer of the State, and a local trial court judicial officer. The local trial court judicial officer and, if the chief judicial officer or chief judicial administrative officer cannot or does not choose to serve, the other judicial members, shall be selected by the chief executive of the State from a list of no less than three nominees for each position submitted by the chief judicial officer of the court of last resort within thirty days after the occurrence of any vacancy in the judicial membership. Additional judicial members of the State planning agency as may be required by the Administration pursuant to section 515(a) of this title shall be appointed by the chief executive of the State from the membership of the judicial planning committee. Any executive committee of a State planning agency shall include in its membership the same proportion of judicial members as the total number of such members bears to the total membership of the State planning agency. The regional planning units within the State shall be comprised of a majority of local elected officials. State planning agencies which choose to establish regional planning units may utilize the boundaries and organization of existing general purpose regional planning bodies within the State."

This section must be read in conjunction with Section 203(a)(1) which provides as follows:

> "(a)(1) A grant made under this part to a State shall be utilized by the State to establish and maintain a State planning agency. Such agency shall be created or designated by the chief executive of the State or by State law and shall be subject to the jurisdiction of the chief executive. Where such agency is not created or designated by State law, it shall be so created or designated by no later than December 31, 1978. The State planning agency and any regional planning units within the State shall, within their respective jurisdictions, be representative of the law enforcement and criminal justice agencies, including agencies directly related to the prevention and control of juvenile delinquency, units of general local government, and public agencies maintaining programs to reduce and control crime, and shall include representatives of citizens, professional, and community organizations, including organizations directly related to delinquency prevention."

The new amendments now require that there be at least three judicial members on the supervisory board of each SPA. The chief judicial officer of the court of last resort and the chief judicial administrative officer are made ex officio officers with full privileges of membership. If the chief judicial or administrative officer cannot or chooses not to serve, the governor can appoint judicial members from a list of three nominees submitted by the chief judicial officer.

A local trial court judicial officer from a tribunal or judicial system with criminal jurisdiction must also be appointed by the governor from a list of no less than three nominees submitted by the chief judicial officer.

The amendment also authorizes the Administrator of LEAA to require the governor to appoint additional court representatives. The intention of this provision is to assure that the courts have an adequate representation on large supervisory boards.

Some State planning agencies appoint executive committees to transact much of their business. In order to assure that courts have an appropriate voice in the operation of the State planning agencies in these States, the amendments provide for proportional judicial representation on any executive committee if an SPA in the same ratio existing for the whole SPA.

The Senate judiciary committee explained these last two amendments in the section-by-section analysis of its report on S. 2212 as amended. The report provides as follows:

"The provision whereby the Administration may require additional judicial representation on the State planning agency beyond the three members designated in this subsection is addressed to the situation of the larger planning agencies where this minimal representation may not be adequate. For example, while three judicial members might be appropriate for a fifteen-member State planning agency, such limited judicial representation would clearly be inadequate in the case of a thirty-member planning agency. This provision is designed to permit the Administration to require additional judicial representation in such instances where this is not done voluntarily by the State. As a general rule, the concept of proportional judicial representation utilized with respect to the executive committee of a State planning agency would be applicable to judicial representation on State planning agencies in excess of fifteen members unless the Administration determines that fair judicial representation otherwise exists." Senate Rep. No. 94-847, 94th Cong., 2d Sess., p. 35 and 36.

The Senate report explained the purposes of its Section 203(a)(2) amendments in this fashion:

"These mandatory judicial membership requirements will insure an appropriate voice on behalf of the court systems of the States in the preparation of any State comprehensive plan and inevitably result in a fairer allocation of funding." Senate Rep. No. 94-847 94th Cong., 2d Sess., p. 18.

(2) Court Planning and Judicial Planning Committees

The amendments authorize the court of last resort of each State to establish or designate a judicial planning committee for the preparation of an annual judicial plan.

This authority for the establishment of judicial planning committees is set forth in Section 203(c) as follows:

"(c) The court of last resort of each State or a judicial agency authorized on the date of enactment of this subsection by State law to perform such function, provided it has a statutory membership of a majority of court officials (including judges, court administrators, prosecutors, and public defenders) may establish or designate a judicial planning committee for the preparation, development, and revision of an annual State judicial plan. The members of the judicial planning committee shall be appointed by the court of last resort or a judicial agency authorized on the date of enactment of this subsection by State law to perform such function, provided it has a statutory membership of a majority of court officials (including judges, court administrators, prosecutors, and public defenders) and serve as its pleasure. The committee shall be reasonably representative of the various local and State courts of the State, including appellate courts, and shall include a majority of court officials (including judges, court administrators, prosecutors, and public defenders).

The amendments do not mandate the establishment of a judicial planning committee. The appointment is at the discretion of the court of last resort of each State. It can choose to appoint a judicial planning committee at any time. It can select the members and neither LEAA nor the governor can overrule his selection so long as its membership is (1) reasonably representative of the various State and local courts in the State having criminal and juvenile justice jurisdiction, and (2) includes a majority of court officials (including judges, court administrators, prosecutors and public defenders).

The amendments are not clear on what happens when there is a judicial agency such as that described in the first two sentences of Section 203(c). The new amendments contemplate only one judicial planning committee, but the first two sentences of Section 203(c) appear to give the authority to appoint a judicial planning committee to either the chief judicial officer or the judicial agency that meets the Section 203(c) standards.

The provisions relating to the judicial agency in Section 203(c) were not in the Senate judiciary committee bill. They were added on the floor of the Senate by Senator Nunn of Georgia. He explained his amendment in this fashion:

> "I propose to make a minor change in the wording of section 203(c) of this bill to recognize the possibility that some States may have statutorily created judicial agencies of the kind existing in Georgia and if this is the case to authorize them, rather than the court of last resort to establish or designate the judicial planning committee." Cong. Rec. S 12227, daily ed., July 22, 1976.

The Nunn amendment was modified the following day by Senator Durkin of New Hampshire to apply only to judicial agencies created before the date of enactment of the amendments. Cong. Rec. S 12353, daily ed., July 23, 1976. The Durkin-Nunn amendment was modified in conference to apply to judicial agencies composed of a "majority" of court officials.

Functions of the Judicial Planning Committee

The first function given to the judicial planning committee relates to planning for the use of LEAA funds. This function is set forth in Section 203(d) as follows:

> "(d) The judicial planning committee shall--
>
> "(1) establish priorities for the improvement of the courts of the State;
>
> "(2) define, develop, and coordinate programs and projects for the improvement of the courts of the State; and

"(3) develop, in accordance with part C, an annual State judicial plan for the improvement of the courts of the State to be included in the State comprehensive plan. The judicial planning committee shall submit the State planning agency its annual State judicial plan for the improvement of the courts of the State. The State planning agency shall incorporate into the comprehensive statewide plan the annual State judicial plan, except to the extent that such State judicial plan fails to meet the requirements of section 304(b)."

The functions of the judicial planning committee with respect to courts are similar to those of the State planning agency with respect to the entire criminal justice system. The amendments define a planning process whereby the judicial planning committee must study the needs of the courts, prioritize those needs, define and develop programs to address those priorities and incorporate these priorities and programs into an annual judicial plan.

This plan is submitted to the State planning agency which will incorporate it in the State comprehensive plan except to the extent that it fails to meet the requirements of Section 304(b) of the Act. Section 304(b) reads as follows:

"(b) After consultation with the State planning agency pursuant to subsection (e) of section 203, the judicial planning committee shall transmit the annual State judicial plan approved by it to the State planning agency. Except to the extent that the State planning agency thereafter determines that such plan or part thereof is not in accordance with this title, is not in conformance with, or consistent with, the statewide comprehensive law enforcement and criminal justice plan, or does not conform with the fiscal accountability standards of the State planning agency, the State planning agency shall incorporate such plan or part thereof in the State comprehensive plan to be submitted to the Administration."

Under Section 304(b) a State planning agency would ordinarily accept the judicial plan. However, it can reject a judicial plan in whole or in part if the judicial plan requires more funds than the State planning agency has set aside for courts. If it is inconsistent with the priorities of the State plan or if it does not meet the fiscal accountability standards of the SPA as well as for other good and sufficient reasons consistent with Section 304(b).

The Senate report stated the role of the SPA under the new court amendments as follows:

"The amendments preserve the integrity of the current comprehensive planning process and the primacy of the State planning agency in this process. The State planning agency retains its authority under Committee amendments (1) for developing a comprehensive Statewide plan and necessary revisions thereof for the improvement of law enforcement and criminal justice throughout the State; (2) for defining, developing, and

correlating programs and projects for the State and the units of general local government in the State or combinations of States or units for improvement in law enforcement and criminal justice; and (3) for establishing priorities for the improvement of law enforcement and criminal justice throughout the State. Most importantly, the State planning agency retains its authority to allocate funds among the various components of the criminal justice system including courts." Senate Rep. No. 94-847, 94th Cong., 2d Sess., p. 17-18.

It should be understood that the judicial planning committee is not exempted from any of the requirements of the LEAA Act in developing, preparing, and implementing the judicial plan provisions. All State comprehensive plans must be based on the standards and goals process. They must include goals and priorities and standards related to those goals. Program funding must be tied to those standards. Since the annual judicial plan is to be included in the comprehensive plan it too must include goals, priorities and standards. The judicial plan must meet the relevant provisions of Section 303(a) of the LEAA Act regarding plan content.

The judicial plan and expenditures for courts must be consistent with the flow down provisions of Federal law including contracting procedures, civil rights, political activity, and environmental law.

The judicial planning committees may also develop a multi-year comprehensive plan for the improvement of courts. The content of this plan is set out in Section 302 of the LEAA Act. The multi-year plan was described as follows in the Senate report:

"Finally, the bill provides that Part C block grant funds may be used for the purpose of developing a multiyear comprehensive plan for the improvement of the courts. This multiyear plan for the general improvement of the courts is contemplated as a much broader and comprehensive document than the annual plan and will be drafted with a view toward determining the best and most efficient use of all court resources and not merely those made available through the LEAA program." Senate Rep. Nc. 94-847, 94th Cong., 2d Sess., p. 18-19.

If a judicial planning committee is not created or does not submit a plan, the SPA must prepare an annual State judicial plan. This is provided for in Section 203(e):

"(e) If a State court of last resort or a judicial agency authorized on the date of enactment of this subsection by State law to perform such function, provided it has a statutory membership of at least a majority of court officials (including judges, court administrators, prosecutors, and public defenders) does not create or designate a judicial planning committee, or if such committee fails to submit an annual State judicial plan in accordance with this section,

the responsibility for preparing and developing such plan shall rest with the State planning agency. The State planning agency shall consult with the judicial planning committee in carrying out functions set forth in this section as they concern the activities of courts and the impact of the activities of courts on related agencies (including prosecutorial and defender services). . ."

Review of Court Requests for LEAA Funds

Section 203(e) sets forth an additional function for judicial planning committees. The last sentence of Section 203(e) reads as follows:

"All requests from the courts of the State for financial assistance shall be received and evaluated by the judicial planning committee for appropriateness and conformity with the purposes of this title."

This function is "advisory." The final decision on approval of applications for funds rests with the SPA. This provision was explained as follows in the Senate report:

"All requests of the courts of the State for financial assistance must be evaluated by the judicial planning committee, if any, for appropriateness and conformity with the purposes of this title. Although the judicial planning committee is to evaluate all such requests, it should be emphasized that its evaluations are intended to be of an advisory nature and are not binding on the State planning agency." Senate Rep. No. 94-847, 94th Cong., 2d Sess., p. 36.

Provision of Planning Funds

The Act in Section 205 requires LEAA to allocate planning funds to State planning agencies, units of local government and judicial planning committees. Section 205 requires LEAA to first allocate $250,000 in planning funds to each State and then to allocate on a population basis the remainder of the funds appropriated by Congress for planning.

Section 203(f) requires the State planning agencies to make available to the judicial planning committees at least $50,000 of the planning funds it receives from LEAA. Section 203(f) provides, in pertinent part, as follows:

"(f) The State planning agency shall make such arrangements as such agency deems necessary to provide that at least $50,000 of the Federal funds granted to such agency under this part for any fiscal year will be available to the judicial planning committee and at least 40 per centum of the remainder of all Federal funds granted to the State planning agency under this part for any fiscal year will be available to units of general local government or combinations of such units to participate in the formulation of the comprehensive State plan required under this part. . . Any portion of such funds made available to the judicial planning committee and such 40 per centum in any State for any fiscal year not required for the purpose set forth in this subsection shall be available for expenditure by such State agency from time to time on dates during such year as the Administration may fix, for the development by it of the State plan required under this part."

The $50,000 is to be used for the judicial planning committee functions. It is to be used for the preparation, development, and revision of the annual judicial plan. It is also to be used for the evaluation of the requests from the courts of the States for financial assistance from the SPA's.

Citizen Participation in Court Planning

Section 203(b)(4) now provides that the State planning agency shall "assure the participation of citizens and community organizations at all levels of the planning process." This requirement would appear to apply to judicial planning committees. It does not mandate that citizens be made members of judicial planning committees but some level of citizen participation is necessary.

The North Dakota judiciary recently held a series of meetings with citizens throughout the State on court programs. This would meet the requirements of Section 203(b)(4).

Open Records

Section 203(g) provides in part as follows:

> "The State planning agency and any other planning organization for the purposes of this title shall provide for public access to all records relating to its functions under this title, except such records as are required to be kept confidential by any other provision of local, State, or Federal law."

This provision would apply to the records of the judicial planning committee. The records of judicial planning committees must be available to the public. This provision also applies to court records relating to the expenditure of public funds.

Court Programs that Can Be Funded

The general authority for funding of court programs at the State and local level under the LEAA block grant program is found in Section 301 of the LEAA Act. The general authority is contained in Section 301(b)(1). This provides that grants may be made for:

> "(1) Public protection, including the development, demonstration, evaluation, implementation, and purchase of methods, devices, facilities, and equipment designed to improve and strengthen law enforcement and criminal justice and reduce crime in public and private places."

The specific authority is contained in Section 301(b)(10). This provides that grants may be made for:

"(10) The definition, development, and implementation of programs and projects designed to improve the functioning of courts, prosecutors, defenders, and supporting agencies, reduce and eliminate criminal case backlog, accelerate the processing and disposition of criminal cases, and improve the administration of criminal justice in the courts; the collection and compilation of judicial data and other information on the work of the courts and other agencies that relate to and affect the work of the courts; programs and projects for expediting criminal prosecution and reducing court congestion; revision of court criminal rules and procedural codes within the rulemaking authority of courts or other judicial entities having criminal jurisdiction within the State; the development of uniform sentencing standards for criminal cases; training of judges, court administrators, and support personnel of courts having criminal jurisdiction; support of court technical assistance and support organizations; support of public education programs concerning the administration of criminal justice; and equipping of court facilities."

(3) Provision of an Adequate Share of Funds for Courts

The new amendments contain significant requirements that are designed to guarantee that courts receive adequate attention in the LEAA program. Section 303(d) of the LEAA Act now requires the SPA's to allocate to courts an adequate share of the assistance the SPA's receive from LEAA to implement their State comprehensive plans. LEAA cannot approve a comprehensive State plan unless and until it finds that it provides an adequate share of funds for court programs including programs for prosecution and defense.

Section 303(d) reads as follows:

"(d) In making grants under this part, the Administration and each State planning agency, as the case may be, shall provide an adequate share of funds for the support of improved court programs and projects, including projects relating to prosecutorial and defender services. No approval shall be given to any State plan unless and until the Administration finds that such plan provides an adequate share of funds for court programs (including programs and projects to reduce court congestion and accelerate the processing and disposition of criminal cases.) In determining adequate funding, consideration shall be given to (1) the need of the courts to reduce court congestion and backlog; (2) the need to improve the fairness and efficiency of the judicial system; (3) the amount of State and local resources committed to courts; (4) the amount of funds available under this part; (5) the needs of all law enforcement and criminal justice agencies in the State; (6) the goals and priorities of the comprehensive plan; (7) written recommendations made by the judicial planning committee to the Administration; and (8) such other standards as the Administration may deem consistent with this title."

This provision like most of the others discussed above was contained in the bill reported out of the Senate judiciary committee. The report language on Section 303(d) is limited. The report on page 38 makes the following statement:

> "A State plan may not be approved unless the Administration determines that it provides an adequate share of funds for court programs--a determination to be made in the light of the eight listed criteria." Senate Rep. No. 94-847, 94th Cong., 2d Sess., p. 38.

No guidance on the application of Section 303(d) is provided elsewhere in the legislative history. Presumably if the SPA develops a comprehensive plan which meets all the requirements of the LEAA statute including the requirements for consideration of the annual judicial plan, the courts should receive an adequate share of assistance.

The SPA's in their development of priorities and allocations of funds to courts should carefully weigh the first five criteria set forth in Section 303(d).

The importance of Section 303(d) is emphasized by the new amendments to Section 307. This section now reads as follows:

> "Sec. 307. In making grants under this part, the Administration and each State planning agency, as the case may be, shall give special emphasis, where appropriate or feasible, to programs and projects dealing with the prevention, detection, and control of organized crime and programs and projects designed to reduce court congestion and backlog and to improve the fairness and efficiency of the judicial system."

II. Current Practices

Courts have participated in the LEAA program since its inception and many of the requirements mandated by the new law have been implemented in various forms by some States.

Congressman McClory of Illinois made the following observations during the House debate on the LEAA Act:

> "Another important issue considered by the subcommittee was the degree to which the courts have been ignored in the disbursement and distribution of LEAA moneys. Led primarily by the National Conference of Chief Justices, the various court officials throughout the country argued that, as structured, the LEAA funding mechanism in the States was dominated by the law enforcement community. Therefore, it was argued, the courts, being underrepresented on State and local planning agencies, were receiving a disproportionately low share of LEAA moneys. The subcommittee gave these arguments serious consideration and concluded for a variety of reasons that the situation was not as dire as the judges portrayed it." Cong. Rec., Aug. 31, 1976, daily ed., p. H 9284.

(1) Judicial Representation on the Supervisory Board of the State Planning Agency

Prior to the enactment of the new amendments, LEAA required the States to include some judicial members on the supervisory boards of the State planning agencies. LEAA did not specify the character or quantity of judicial membership.

(2) Court Planning and Judicial Planning Committees

Prior to the new amendments, LEAA encouraged the courts of each State to develop annual plans for the use of LEAA funds and multi-year master plans for all court expenditures. LEAA also encouraged the States to support this effort. Some of the comprehensive plans submitted to LEAA for FY 1977 contain components developed by State courts. Following the issuance of the American University study, LEAA increased its direct funding of court planning and encouraged the development of judicial planning committees. Over half the States received funds from LEAA for these efforts. Numerous State courts also received planning funds from their State planning agencies and many State planning agencies had established court committees to advise them on court programs.

(3) Provision of an Adequate Share of Funds for Courts

Every State plan approved by LEAA provides funding for courts where the courts agree to participate in the LEAA program. The amount of funds allocated to the courts varies from State to State.

III. Issues

(1) Judicial Representation on the Supervisory Boards of the State Planning Agency

(a) Can the Chief Justice designate another member of the court to sit as his representative?

(b) Do the amendments overrule State laws which specify the composition of State planning agency supervisory boards?

(c) Do the amendments preempt State constitutions or laws that prohibit members of the judiciary from holding non-judicial offices?

(d) What happens if a chief judicial officer refuses to serve?

(e) When must the States assure that the judicial representatives are serving on the supervisory board?

(f) If one State has three judicial members on a fifteen-man board, must another State with a thirty-man board have six judicial members?

(2) Court Planning and Judicial Planning Committees

(a) Must the court of last resort establish a judicial planning committee?

(b) If the court of last resort fails to create a judicial planning committee may some other judicial officer establish a judicial planning committee.

(c) What is a judicial agency authorized by State law on the date of enactment of the Crime Control Act to prepare an annual judicial plan?

(d) When must a judicial planning committee be provided with the $50,000 in funds required to be allocated under Section 203(f).

(e) Must the annual judicial plan address the use of all court resources not merely those available under the LEAA program?

(f) Are judicial planning committees bound by LEAA guidelines and regulations in preparing annual court plans?

(g) What is the role of State legislatures in review of annual judicial plans?

(h) Are defender and prosecutor programs to be included in annual judicial plans?

(i) Are probation and pre-trial agency programs to be included in annual judicial plans where they are under the supervision and direction of the judiciary?

(j) On what basis can a State reject an annual judicial plan?

(k) Must a judicial planning committee if created, submit a plan?

(l) Must judicial planning committees prepare affirmative action equal employment opportunity programs?

(m) To what extent will LEAA guidelines and regulations apply to courts and judicial planning agencies?

(n) Some States as a matter of policy do not fund construction grants. If there is a total prohibition in State comprehensive plans against construction, can a State use this as a basis for denying approval of an annual judicial plan that includes construction projects?

(o) Do the States have to accept an annual judicial plan from a judicial planning committee for expenditure of FY 1977 funds?

(p) What recourse do the courts have to challenge the action of the SPA in rejecting their annual judicial plan?

(q) Are the judicial planning committees entitled to more than $50,000 in planning funds in States that receive more than $250,000 in planning funds?

(t) Are the $50,000 in planning funds to be in addition to any planning funds allocated to courts?

(r) Can the $50,000 granted to judicial planning committees be used to administer court grants contained in an approved annual judicial plan?

(s) Must LEAA reallocate FY 1977 planning funds to assure conformance with Section 205?

(t) Should SPA continue to maintain judicial planners on its staff or can it delegate functions performed by judicial planners to the staff of the JPC?

(u) What level of citizen participation in the planning process is necessary?

(v) Must the meetings of judicial planning committees be open to the public?

(w) Can annual and multi-year judicial planning efforts be funded under the authority of Section 301(b)(10) and 302?

(3) Provision of an Adequate Share of Funds for Courts

(a) Can LEAA require the States to allocate more funds to the judiciary before approving an annual State comprehensive plan?

(b) Can the State judiciary appeal directly to LEAA if it feels a State does not allocate an adequate share of assistance to courts?

(c) How will LEAA implement Section 303(d)?

(d) How will LEAA apply the criteria set out in Section 303(d)?

(e) Is LEAA review of court programs in State plans limited to determining if courts receive adequate funds?

PUBLIC EDUCATION

I. Evaluation of the Amendment

Section 301(b)(3) of the Act is amended by deleting the words "Public education relating to crime prevention" and inserting in lieu thereof "Public education programs concerned with law enforcement and criminal justice."

Originally, the Senate Judiciary Committee bill proposed to delete the words "Public education relating to crime prevention" from Section 301(b)(3) and to insert in lieu thereof "Public education programs concerned with the administration of justice." The reason for this amendment is explained by the Senate Judiciary Committee report as enabling LEAA to support a wider range of law-related education. 1/ H.R. 13636 had no comparable provision. The Conference Committee adopted the Senate amendment with one modification. 2/ The Conference Committee substituted the words "law enforcement and criminal justice" for the words "administration of justice."

II. Current Practice

The amendment must be read in conjunction with Section 601(a), which defines the term "law enforcement and criminal justice." The amendment authorizes LEAA Part C funds to be used for public education programs concerned with any activity pertaining to crime prevention, control or reduction or the enforcement of the criminal law; activities of corrections, probation, or parole authorities; and programs relating to the prevention, control, or reduction of juvenile delinquency or narcotic addiction.

III. Issues

Are public education programs concerned with the administration of justice fundable under Section 301(b)(3)?

1/ S. Rep. No. 847, 94th Cong., 2d Sess. 37 (1976).
2/ 122 Cong. Rec. H 11467 (daily ed. September 28, 1976).

CRIMINAL JUSTICE COORDINATING COUNCILS

I. Evaluation of the Amendment

The Crime Control Act of 1976 amends Section 301(b)(8) to expand the scope of Criminal Justice Coordinating Council (CJCC) activities fundable under Part C of the Act. Section 301(b)(8) now reads:

> "(8) The establishment of a Criminal Justice Coordinating Council for any unit of general local government or any combination of such units within the State, having a population of two hundred and fifty thousand or more, to assure improved planning, coordination, monitoring, and evaluation of all law enforcement and criminal justice activities." (Emphasis added.)

This amendment, adopted from Senate Bill S. 2212 by the Conference Committee, reflects the general concern of the Senate with providing adequate evaluation and monitoring of the expenditure of LEAA funds in order to insure that funds are being expended in accordance with the purposes of the Act and in the most efficient and effective manner possible (S. Rep. No. 94-847, p. 26-27).

In the section-by-section analysis the Senate Report, supra, comments on this amendment as follows:

> "Section 9 of the bill amends section 301 of the Act by . . . providing in subsection (b)(8) that Criminal Justice Coordinating Councils may monitor and evaluate as well as coordinate law enforcement and criminal justice activities;".

The Conference Committee made the following comment (H. Rep. No. 94-1723) in adopting the Senate amendment to Section 301(b)(8):

> "The Senate bill would permit the use of part C funds for monitoring and evaluation. The House amendment would not change present law, which would preclude the use of part C funds for these purposes. The Conference substitute will adopt the Senate provision. This will permit the use of part C funds for monitoring and evaluation in addition to any other funds made available for these purposes under other parts of title I, and is not intended to limit access by Criminal Justice Coordinating Councils to these other funds, but provide an additional source for increased funding of monitoring and evaluation."

II. Current Practices

LEAA Guideline M 4100.1E defines a CJCC as:

> ". . . any body so designated which serves a unit of general local government, or any combination of such units within a State, with a population of 250,000 or more; and which has responsibility for assuring improved planning and for the coordination of local criminal justice agencies within its jurisdiction." (Chap. 2, Para. 26b(2).)

The Guideline further provides that if a CJCC performs both CJCC and RPU functions (as part of a multi-purpose regional planning unit), they must be allocated Part B and Part C funds in proportion to the staff efforts devoted to each function (Chap. 2, Para. 26b(4)).

The latter guideline provision is based on Office of General Counsel Legal Opinion No. 75-54, May 22, 1975. That opinion reaffirmed that CJCC functions related to comprehensive plan development and administration, e.g., local priority-setting, support of the regional supervisory board, grant development, grant management, grant review, and grant-related input into the SPA, are to be funded from Part B fund sources.1/

Attachment A to the Legal Opinion (OGC Legal Opinion No. 72-8, March 21, 1972) establishes minimum qualifications for CJCC elgibility. Attachment B, an excerpt from the Final Report of the National Commission on the Causes and Prevention of Violence, establishes the range of CJCC planning and coordination activities which are fundable from Part C fund sources.

Monitoring the activities of law enforcement and criminal justice agencies in order to achieve coordination was and remains a proper CJCC function utilizing Part C funds. Monitoring of LEAA grant-funded projects, a plan administration activity, was formerly eligible for funding only under Part B. Such activity, where performed by a CJCC under authority delegated by the SPA, may now be fundable from Part C fund sources. Further, other types of monitoring activity, performed by a CJCC on behalf of a constituent local unit or units of government, may also be fundable from Part C fund sources whether or not such activity is related to LEAA funding.

1/ Office of General Counsel Legal Opinion No. 75-13, November 5, 1974, distinguished Part B-funded agencies, whose duty is to plan, monitor, and administer Crime Control Act projects under authority derived from the State, from Part C-funded CJCC's which are primarily coordinators between police, courts, and corrections, and which exist under the authority of a local unit of government or combination of such units.

With regard to evaluation, the actual costs of all program and project evaluation have been recognized as an activity fundable from Part C fund sources (see Office of General Counsel Legal Opinion No. 74-43, November 19, 1973). However, other types of evaluation activity such as the development and administration of an evaluation plan, evaluation of the net effect of planning functions and evaluation activities, and the normal monitoring of the financial management or progress of State subgrants of LEAA funds were considered fundable only from Part B fund sources. Under the amendment, where a CJCC performs evaluation activity of the latter type under authority delegated by the SPA or performs evaluation activity on behalf of a constituent local unit or units of government, these activities may be fundable from Part C fund sources.

In sum, the amendment could be construed to: (1) permit monitoring and evaluation activity, previously fundable as functions of Part B planning and administration activity, to be funded with Part C funds where the activities are performed by CJCC's; (2) permit CJCC's to provide monitoring and evaluation activities on behalf of a constituent unit or units of local government only where these activities are unrelated to Crime Control Act planning and administration activity, thus expanding the CJCC coordination role to include these activities; (3) permit planning activity related to the coordination, monitoring and evaluation roles of the CJCC to be funded with Part C funds with other planning activities unrelated to these functions continuing to be fundable only with Part B planning funds.

III. Issues

(1) Can the monitoring and evaluation function of CJCC's be limited to performance of such activities on behalf of local governments as an adjunct to its coordination function or broadly construed to include monitoring and evaluation activities previously fundable as functions of Part B planning and administration activity?

(2) Does the addition of monitoring and evaluation functions broaden the scope of planning activities which CJCC's can perform with Part C funds and, if so, to what extent?

(3) Even though authority exists for the use of Part C funds for monitoring, should SPA encourage use of Part C funds for this purpose?

CRIMES AGAINST THE ELDERLY

I. Evaluation of the Amendment

Section 301 of the Act is amended to now authorize the Administration to make grants to States having comprehensive plans for:

> "(11) The development and operation of programs designed to reduce and prevent crime against elderly persons."

The Senate and House bills were identical on this provision.

As explained in the Senate Report, S. Rept. No. 847, 94th Cong., 2d Sess. 19 (1976):

> ". . . the Committee has amended S. 2212 to specifically authorize LEAA to make grants for the development and operation of programs designed to reduce and prevent crime against elderly persons. The specific recognition should serve to encourage and is intended to encourage the development of such programs in those jurisdictions where it is appropriate."

This provision should be read in conjunction with the State plan requirements amendment. Section 303 of the Act is amended by adding subsection (16) which requires that the State plan shall:

> "(16) provide for the development of programs and projects for the prevention of crime against the elderly, unless the State planning agency makes an affirmative finding in such plan that such a requirement is inappropriate for the State;".

Earlier bills introduced by Senator Beall (S. 3277) and Senator Roth (S. 1875) would have required that no State plan could be approved as comprehensive, and therefore eligible for LEAA funding unless it included a comprehensive plan for the prevention of crime against the elderly. It was recognized by the Senate Committee that not every State is faced with this problem; and for those States that are not, it is not appropriate to require the development of a program to prevent crime against the elderly as a precondition for funding the State plan. Accordingly, the Committee simply amended Section 301 and left Section 303 unaffected.

On July 22, 1976, Senator Beall introduced the present State plan amendment on the floor. He stated that it was time to attack this problem by developing, on the State and local level, comprehensive plans for effectively combating crime against the elderly. By comprehensive planning, greater coordination between State and local agencies could be achieved.

II. Current Practices

Prior to this amendment, LEAA had funded study and testing measures to prevent crime against the elderly. These programs were authorized under the general provisions of the Act providing for public protection and the reduction of crime. The Senate Report acknowledged LEAA's efforts in this area and supported the continued development of such programs.

III. Issues

(1) Is every State required to develop a program to prevent crime against the elderly as a precondition for funding the State plan?

(2) Is there any general rule to determine which States are required to include programs for the prevention of crimes against the elderly?

(3) What type of determination is required by the SPA that a program for the elderly is not required in the State?

(4) If an SPA determines that the inclusion of programs for the prevention of crime against the elderly is not appropriate, may the determination be challenged? May it be challenged at any time and by whom?

(5) Will LEAA be issuing guidelines on appropriate types of programs to be funded under this provision?

(6) For those States that have not submitted their statewide plan by the time the amendments became law, are they required to adhere to the plan requirements regarding programs for the elderly?

SPECIAL NEEDS OF DRUG OFFENDERS AND COORDINATION WITH STATE DRUG AGENCIES

I. Evaluation of the Amendment

Section 301 has been amended to include a new section (12) which authorizes the Administration to make grants to States for the development of programs to identify "the special needs of drug-dependent offenders (including alcoholics, alcohol abusers, drug addicts, and drug abusers)." The Conference Report noted that:

> "It is anticipated, however, that no State plan could be determined to be comprehensive if it fails to provide programs which are here added to the permissive section where the need for those programs has been demonstrated." Cong. Rec. H 11473 (September 28, 1976, daily ed.) (emphasis added).

Congressman McClory underscored this point on the House floor during debate of the Conference substitute. Cong. Rec. H 11908 (September 30, 1976, daily ed.).

Section 303(18) now requires a State plan to:

> "establish procedures for effective coordination between State planning agencies and single State agencies designated under section 407(e)(1) of the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1176(e)(1)) in responding to the needs of drug dependent offenders (including alcoholics, alcohol abusers, drug addicts, and drug abusers)."

In addition, Section 402 now requires the Institute, in consultation with the National Institute on Drug Abuse, to:

> "make studies and undertake programs of research to determine the relationship between drug abuse and crime and to evaluate the success of the various types of drug treatment programs in reducing crime and . . . report its findings to the President, the Congress, and the State planning agencies, and upon request, to units of general local government."

Finally, Section 519(11) of the Act now requires the Administration to provide a "description of the implementation of, and compliance with the regulations, guidelines, and standards required by section 454 of this Act" in its annual report to the President. Section 454 requires LEAA to issue guidelines for drug treatment programs in State and local prisons and parole programs, and to coordinate with the Special Action Office for Drug Abuse Prevention in developing those guidelines.

On May 11, 1976, Congressman Rodino introduced three amendments in the House Judiciary Committee for the purpose of increasing the emphasis in LEAA-funded programs on the relationship between drugs and crime. All three amendments passed by voice vote.

The first amendment would have added an additional requirement to the State plan under Section 303. The amendment would require a State plan to identify:

> ". . . the special needs of drug-dependent offenders (including alcoholics, alcohol abusers, drug addicts, and drug abusers) and [establish] procedures for effective coordination between State planning agencies and single State agencies designated under section 409(e)(1) of the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1176(e)(1)) in responding to such needs."

The agencies created under 21 U.S.C. 1176(e)(1) are responsible for preparing and administering State plans to establish, conduct, coordinate and evaluate projects aimed at improving drug abuse prevention in the State.

The second amendment would have required the LEAA National Institute of Law Enforcement and Criminal Justice, in consultation with the National Institute on Drug Abuse, to:

> ". . . make continuing studies and undertake programs of research to determine the relationship between drug abuse and crime and to evaluate the success of the various types of drug treatment programs in reducing crime and shall report its findings to the President, the Congress, and the State planning agencies, and, upon request, to units of general local government."

The third amendment would have required LEAA, as part of its annual report to the President, to give a complete description of its implementation of the guidelines required under Section 454 of the Act for drug treatment programs in correctional facilities.

The Committee Report (H. Rept. No. 94-1155, 94th Cong., 2d Sess., May 15, 1976, at p. 15) explained that these amendments were a response to a national drug epidemic. Citing the Domestic Council's White Paper on Drug Abuse, the Report estimated that the direct cost of drug abuse to the Nation was between $10-$17 billion a year, and that law enforcement officials believed that 50 percent of all robberies, muggings, burglaries, and other property crimes were committed by drug addicts. The three amendments were intended to provide needed hard data on the relationship between drug abuse and crime.

The three amendments were agreed to by the full House on August 31, 1976. Cong. Rec. H 9296 (daily ed.). Comments supporting their adoption were offered by Congressman Rodino (H 9277), Congressman Conyers (H 9281), Congressman Daniel (H 9289), and Congressman Gilman (H 9290).

Three substantially identical amendments were offered in the Senate on July 22, 1976, by Senator Hathaway of Wyoming. The two most significant differences between his amendments and Congressman Rodino's were that (1) they were offered as amendments to Section 301 and were, therefore, not a condition of comprehensiveness under Section 303; and (2) they focused more attention on the relationship between alcohol abuse and crime.

Senator Hathaway explained that his amendments were not offered as "requirements" because he wanted "to avoid overly categorizing LEAA programs." Cong. Rec. S 12220 (July 22, 1976, daily ed.).

Mr. Hathaway's increased emphasis on alcohol abuse was manifested in two ways. In his amendment on coordination between LEAA State planning agencies and State drug agencies, Senator Hathaway added coordination with those agencies designated under Section 303(a) of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970. The responsibility of such agencies under the above Act is essentially the same, with respect to alcohol, as the responsibility of the drug agencies created under the Drug Abuse Act of 1972.

In addition, Senator Hathaway's amendments would authorize the Institute to consult with the National Institute of Alcohol Abuse and Alcoholism (NIAAA), as well as NIDA for the same purposes listed in Congressman Rodino's amendment.

In support of his amendments on the Senate floor, Senator Hathaway explained that:

> ". . . a relatively small portion of LEAA's resources have been focused on the vast number of criminal offenders whose crimes can be associated with alcohol and other drug abuse.
>
> "It is hoped that these amendments will serve both to raise questions and to elicit answers on the local, State, and Federal level regarding this poorly understood relationship between crime and the abuse of drugs and alcohol.
>
> "These amendments are thus designed to mandate procedures for the joint effort of State planning agencies and single State agencies in identifying the treatment needs of alcohol and drug abusers, promote research in this area and insure the wide dissemination of findings." S 12220, id.

The amendments were agreed to en bloc. S 12221, id.

The Conference Committee adopted the Senate approach to the development of programs to identify the special needs of drug-dependent offenders and the House approach to coordination with State drug agencies.

Senator Hathaway expressed his support for these provisions but noted his regret that the conferees eliminated the reference to coordination with NIAAA that he had proposed. He expressed his hope that the Institute would see fit to coordinate with NIAAA notwithstanding the lack of a specific statutory mandate. Cong. Rec. S 17973 (October 1, 1976, daily ed.).

Senator Bayh was particularly pleased with the provision authorizing the Institute to coordinate with NIDA, believing that their cooperation would help assure that the information gap in the area of drugs and crime is filled.

II. Current Practices

Paragraph 78c(15) of the State Planning Agency Grants Guideline Manual, M 4100.1E (January 16, 1976) implements Section 454 of the Crime Control Act by requiring SPA's to describe how they conduct "a concerted effort to provide voluntary drug and alcoholism treatment programs for drug addicts, drug abusers, alcoholics, and alcohol abusers who are either within correctional institutions or facilities or who are on probation or other supervisory release programs."

States must identify all available resources for the provision of treatment services, including drug and alcohol treatment services and central intake or referral services within both the criminal justice system and the community. In addition, each State was to have begun establishing minimum standards for intake services.

States are also required to develop a long-range plan, to include identification of the drug- or alcohol-abusing population within the correctional system, a catalogue of existing community-based and correctional resources, and a listing of the types of services presently available and planned for the future.

Each State was also required, by October 1, 1976, to provide necessary treatment for convicted persons with a drug or alcohol problem.

III. Issues

(1) What new responsibilities concerning drug offenders are placed on the SPA's by these amendments?

(2) What new responsibilities concerning alcohol abusers are placed on the SPA's by these amendments?

(3) What new responsibilities are placed on the Institute?

(4) What new responsibilities are placed on LEAA?

(5) What will be required of States that have not yet filed their comprehensive plan?

EARLY CASE ASSESSMENT PANELS

I. Evaluation of the Amendment

A new paragraph (13) is added to Section 301(b) of the Act. This amendment authorizes Part C funds to be used to establish early case assessment panels under the authority of an appropriate prosecuting official for any local unit having a population of at least 250,000 population. The panels would screen and analyze cases as soon as possible after charges are brought, determine the feasibility of successful prosecution; and expedite the prosecution of cases involving offenders and perpetrators of violent crimes.

This amendment was originally offered during Senate floor consideration of S. 2212 by Senator Morgan on behalf of Senator Bentsen.[1]/ Senator Bentsen viewed the early case assessment program as a managerial technique which will enable prosecutors to set orderly priorities. The setting of priorities and concentrating prosecution efforts will result in a more effective and efficient allocation of prosecutorial resources. This will help to reduce court delays and to reduce the abuse of plea bargaining. States may amend their State plans to address this new program area.

The early case assessment panel amendment was offered during House floor debate on H.R. 13636 by Congressman Krueger.[2]/ Under the House amendment, the panels would be established under the authority of an appropriate prosecuting official. The Conference Committee adopted the House provision.

II. Current Practice

LEAA's career criminal program is a form of early case assessment.

III. Issues

(1) May combinations of units apply for early case assessment panel grants?

(2) May units with less than 250,000 population apply?

(3) Are funds awarded for early case assessment panels included in the Section 303(d) adequate share of funds for court improvement program requirement? If so, does the JPC review the application for funds?

(4) May prosecutors apply directly to the SPA?

(5) May early case assessment panels use Part C funds to pay the salaries of prosecutors?

1/ 122 Cong. Rec. S. 12432 (daily ed. July 26, 1976).

2/ 122 Cong. Rec. H. 9426 (daily ed. September 2, 1976.

WAIVER OF STATE LIABILITY FOR MISSPENT INDIAN SUBGRANT FUNDS

I. Evaluation of the Amendment

Funding of Indian tribes under the Act has posed the potential for burdening the States with an inequitable situation. This situation has been brought about by the unique legal status afforded Indian tribes in the United States. It prompted the formulation of this statutory amendment. The amendment would relieve States of liability for misspent Indian subgrant funds where the States do not have an adequate forum to enforce the grant provisions imposing liability on Indian tribes.

The generally recognized view today is that Indian tribes are quasi-sovereign nations. The tribes, unless they have ceded sovereignty to the States, possess full powers of internal sovereignty but are subject to the legislative powers of the United States in all external matters. States by law and long-standing policy have been excluded from exercising any jurisdiction or control over Indian matters occurring on Indian land where the Indian tribe has retained its sovereignty.

An Indian tribe which performs law enforcement functions, as determined by the Secretary of the Interior, is defined under Section 601(d) of the Act as a unit of general local government. As such a unit, the Indian tribe is eligible for block and discretionary grant awards. A fundamental policy of the Act is that the State shall be responsible and liable for the improper expenditure of Federal funds. Section 303(a)(2) requires that a State in its comprehensive plan shall:

> "provide for such fund accounting, audit monitoring and evaluation procedures as may be necessary to assure fiscal control, proper management, and disbursement of funds received under this title."

The Guideline Manual clearly places responsibility and commensurate liability upon the States for misspent grant funds. However, the unique status afforded Indian tribes can leave the States without jurisdiction to audit, monitor, or enforce grant conditions against the tribe that they are ultimately responsible for.

The Attorney General of North Dakota requested a legal opinion from the Office of General Counsel on the questions of whether a State without jurisdiction in Indian country would be liable for misspent Indian grant funds. The Office of General Counsel responded that the express statutory provision and promulgated regulations did not differentiate between grants to Indian tribes and other grantees. Accordingly, States would have the same responsibility and liability with respect to grants made to Indians as they would have under any other grant award.

The Office of General Counsel, realizing the potential inequities involved, requested an opinion from the Comptroller General on whether LEAA could waive State liability for misspent Indian subgrant funds. The Comptroller General ruled in opinion B-171019, June 3, 1975, that State liability for misspent Indian subgrant funds may not be waived by LEAA, even though the State is unable to take legal action to recover such funds because of traditional sovereignty and jurisdictional problems. This decision was predicated largely on the clearly expressed congressional intent of placing responsibility and liability for the administration of the program on the States.

The lack of authority to effectively enforce conditions or take fund recovery action has fostered a hesitancy on the part of the States to include Indian tribes in the LEAA program. Indian tribes because of their special law enforcement and criminal justice problems critically need to be included in the LEAA program. It is with this background that the amendment was proposed.

Sections 306 and 507 of the Act are amended by adding the following sentence:

> "Where a State does not have an adequate forum to enforce grant provisions imposing liability on Indian tribes, the Administration is authorized to waive State liability and may pursue such legal remedies as are necessary."

The provision relieves a State which lacks jurisdiction to audit, monitor, and enforce grant conditions from liability for misspent Indian grant funds. LEAA than has the right to proceed against the Indian tribes for recovery or take any other action necessary.

Both the Senate and House version of the Amendments contained this waiver of liability provision. The Senate version contained it in Sections 306 and 455(a). This made the waiver applicable only to Parts C and E grant awards. The House version which prevailed in conference contained the provision in Sections 306 and 507, the Administrative Section. The placement in the Administrative Section indicates that the waiver would be available for all grant funds awarded under the Act to Indian tribes.

The House legislative history of the House was not very enlightening on this provision. However, as the statutory language of the House and Senate version were identical, resort to the legislative history of the Senate version is helpful in understanding the purpose of the amendments. Senate Report 94-847, 94 Cong. 2nd Sess. May 11, 1976, provided that:

"Although, at first blush, this authority would appear to be directed against the Indian tribes, it is actually designed to provide for their increased participation in the LEAA program. Under the direct provision of Title I of the Omnibus Crime Control and Safe Streets Act, each State is liable for misspent subgrant funds, a liability that cannot be waived by LEAA. It is then up to the State to seek indemnification from the subordinate jurisdiction. In some jurisdictions, by virtue of treaty or otherwise States do not have the legal authority to seek such indemnification from certain Indian tribes. The possibility of being held liable by LEAA for subgrant funds misspent by those tribes without the ability to seek indemnification has resulted in a hesitancy on the part of those States to award funds to the tribes.

"The provision of a statutory waiver authority, allowing those States to avoid liability in these instances will encourage them to increase the amount of funds provided to the tribes and increase Indian participation in the LEAA program."

The critical language of this statutory amendment is adequate forum. If a State does have an adequate forum, liability cannot be waived.

II. Current Practice

There currently does not exist any practice for relieving States of liability for misspent Indian block grant funds. For discretionary grant awards, the State planning agency can certify to LEAA that it does not have an adequate forum in which to pursue subgrantee liability. LEAA can waive State liability and agree to pursue legal remedies for fund misuse if necessary. The procedure is set forth in Appendix 12 of the Guide for Discretionary Grant Programs, M 4500.1D (July 10, 1975).

III. Issues

(1) What constitutes an adequate forum?

(2) What effect does Public Law 280 have in determining what is an adequate forum?

(3) Does a State have an adequate forum where jurisdiction has retroceded to the Federal Government?

(4) Does a State have an adequate forum where funds are granted to a "restored" tribe?

(5) Is the waiver of liability for misspent Indian funds available for grants that were made prior to the Amendments?

MINI-BLOCK GRANTS

I. Evaluation of the Amendment

Section 303(a)(4) is amended to read as follows:

> "(4) provide for procedures under which plans may be submitted to the State planning agency for approval or disapproval, in whole or in part, annually from units of general local government or combinations thereof having a population of at least two hundred and fifty thousand persons to use funds received under this part to carry out a comprehensive plan consistent with the State comprehensive plan for the improvement of law enforcement and criminal justice in the jurisdiction covered by the plan. Approval of such local comprehensive plan or parts thereof shall result in the award of funds to the units of general local government or combinations thereof to implement the approved parts of their plans, unless the State planning agency finds the implementation of such approved parts of their plan or revision thereof to be inconsistent with the overall State plan;". (New language underlined.)

In addition, Section 304(a) is revised to read as follows:

> "(a) State planning agencies shall receive plans or applications for financial assistance from units of general local government and combinations of such units. When a State planning agency determines that such a plan or application is in accordance with the purposes stated in section 301 and in conformance with an existing statewide comprehensive law enforcement plan or revision thereof, the State planning agency is authorized to disburse funds to implement the plan or application."

The amendment originated in the Senate Judiciary Committee. It was not part of the Administration bill.

> "During the hearings, testimony was received from the Advisory Commission on Intergovernmental Relations (ACIR) and others on the advisability of establishing modifications to the current funding mechanism as it relates to local governments or combinations of local governmental units. The Committee has generally agreed with the recommendations of the ACIR and other parties concerned with this issue." S. Rept. No. 94-847, 94th Cong., 2d Sess., May 13, 1976, at 21. See also Hearing Before the Subcommittee on Criminal Laws and Procedures, Committee on the Judiciary, U. S. Senate, 94th Cong., 2d Sess., On Amendments to Title I (LEAA) of the Omnibus Crime Control and Safe Streets Act, p. 294.

The amendment was also a part of S. 3043, introduced by Senator Kennedy and constituted of refinement of his original amendment on this subject in 1973.

The House Committee rejected a similar amendment and on a division vote of 42 ayes to 50 noes the full House rejected a mini-block amendment offered by Mr. Conyers. Cong. Rec. H 9305 (daily ed., Aug. 31, 1976).

The Conference "retained present law in reference to miniblock grants but added language to effectuate the 1973 amendment." Cong. Rec. H 11907 (daily ed., Sept. 30, 1976). Congressman Mazzoli offered the language of the final version in Conference. See Cong. Rec. H_____(daily ed., Oct. 1, 1976).

The Senate Report offers the best analysis of the meaning of the amendment. (S. Rept. ibid).

The amendment and report make clear that:

- More than a "procedure" is now required.
- A "separate program" is not envisioned.
- Reduced paperwork is expected.
- Total resource planning is envisioned.
- Legal and guideline requirements on the SPA must be met by the local applicant.
- The amendment must work within the "block grant" concept.
- The 250,000 population requirement is retained in the final bill.

II. Current Practice

States have only been required to adopt a "procedure" for potential use of this concept. It is not widely used. Supplemental applications still flow to the SPA after local plans are approved.

The primary burden will be on the SPA's to institute new "legal and "procedural" arrangements which will tie-in automatic mini-block awards to local plans complying with the requirements of the Act, LEAA and SPA guidelines, and the State plan.

III. Issues

(1) Can the SPA still require detailed grant applications? In this regard see Senator Kennedy's statement [Cong. Rec. S 18020 (daily ed., Oct. 1, 1976, and Congressman Mazzoli's statement, ibid).] following passage of the bill.

(2) How can a tri-partite legal arrangement be worked out when the local plan developer is not the legally responsible party for the action projects?

(3) Can the SPA make budget deletions or program changes as an award condition?

(4) Can the SPA require more detail on budget and program as part of the local plan?

(5) How can the local plan be reconciled with the judicial plan for the larger local bodies (250,000)?

(6) Is the amendment effective for the current approved FY 1977 plan?

(7) Can the State legislative review consider the priorities and goals of the local plans?

(8) What effect will the amendment have on SPA policies for fund distributions?

(9) Who has legal authority to submit the local plan?

(10) If a regional local plan is submitted, what is the status of other applications submitted by local units comprising the region? Must the region be involved?

(11) If a local plan is denied in whole or in part, can an appeal be made to the SPA, to LEAA, or to both? Who may appeal?

(12) Does LEAA need to approve the local plan? Does it need to be completed or approved by the SPA before the State plan is submitted to LEAA?

(13) At what point does legal entitlement to the funds set out in the local plan result?

(14) How can "approval in part" be made to work?

(15) What does Section 304 really mean?

(16) Does LEAA need a guideline for this amendment?

(17) Can a mini-block grant be awarded to a unit of government under 250,000 population?

EVALUATION REQUIREMENTS

Evaluation and reporting requirements are added throughout the new amendments. Section 303(a)(17) requires the development of evaluation procedures in the comprehensive plan. These procedures will show how programs and projects will be evaluated in each State. Section 303(b) of the Act requires that prior to approval of the comprehensive plan, the Administration must make an affirmative finding based on an evaluation of the plan, that the plan is likely to contribute to effective law enforcement and criminal justice in the State and make a significant effort to deal with crime. Section 402(c) authorizes the National Institute to conduct evaluations of LEAA programs. Section 501 requires LEAA to establish rules and regulations for proper auditing, monitoring, and evaluation of the comprehensiveness and impact of programs. Section 515 requires strengthened evaluation requirements. Section 519 requires an evaluation of the various plans to be included in the amended report, section 521 outlines the record keeping requirements, and section 601(a) sets out the meaning of the term evaluation. This issue paper deals with the amendments affecting "evaluation" as a function of LEAA and the SPA's. Separate papers cover plan review and reporting requirements.

I. Evaluation of the Amendments

A. Evaluation 303(a)(17)

The requirement to make an evaluation component part of the comprehensive plan was contained in a house amendment to the Bill. It is included as a part of the plan to insure that the projects funded under the Act would maintain data and information necessary to allow the Institute to perform evaluation. The inclusion of the evaluation amendment arose out of two concerns. The first was the lack of objective standards and criteria by which some indication of success or failure of similar projects could be determined and the need for the National Institute of Law Enforcement and Criminal Justice to tie together the outcome of its research into successful projects to the funding policies of the agency. H.R. Rep. No. 94-1145, 94th Cong. 2nd Sess. 9, (1976).

B. Evaluation 402(c)

The Institute is also required to develop criteria and procedures for the performance measurement of programs and projects carried out under this Act, and to disseminate such information about such criteria and procedures to State planning agencies. The Institute must consult with SPA's in development of the criteria. The Institute shall also assist the Administrator in the performance of section 515(a) duties.

The Institute is not only required to set standards but they are also required to make evaluations wherever possible and to receive the results of evaluation of the various programs and projects carried out under the Act to determine the extent to which programs and policies had met the requirements of the Act.

The House report states that the requirement for standards is based on the need to develop a standardized set of criteria for professional review of results. The Institute as the research arm of LEAA is responsible for assuring that this is done. The results of these decisions would be used by the Administration when decisions are to be made about future funding. H. Rep. No. 94-1155; 94th Cong. 2nd Sess. 24, (1976).

This new section requires the Institute to make evaluations and receive and review results of evaluations from the States. This is designed to be consistent with section 303 requirements requiring the States to place an evaluation component in their comprehensive plan.

C. Part E Corrections 453(10)

The legislation adds a conforming amendment to the Act to require evaluation of Part E funds as part of the comprehensive plan.

This is basically a technical amendment by the House to require evaluation of Part E programs and projects prior to funding. There is no legislative history discussion of this amendment. This is consistent with the House requirement that an evaluation plan be included in the State plan. The technical change is in section 453 (10) of the Act.

Prior to the receipt on any Part E grants, a State must develop an evaluation component for the Part E grants in its comprehensive plan.

LEAA will have to draft general guidelines for the States to develop the evaluation plan component of the State comprehensive plan.

D. Evaluation 501

One of the criticisms leveled against LEAA during course of the Senate hearings before the Senate subcommittee on Criminal Laws and Procedures concerned the purported failure of LEAA to evaluate its programs sufficiently. S.R. No. 94-847, 94th Cong. 2nd Sess. 26, (1976).

As part of the Senate's desire to tighten up on evaluation and monitoring, section 501 of the Act was amended to require:

"the Administration to establish rules and regulations as are necessary to assure proper auditing, monitoring and evaluation by the Administration of both the comprehensiveness and impact of ~~programs~~ funded under this title in order to determine whether such programs submitted for funding are likely to contribute to the improvement of law enforcement and criminal justice and the reduction and prevention of crime and juvenile delinquency and whether such programs, once implemented, have achieved the goals stated in the original plan and application."

This section according to the S.R. No. 94-847, 94th Cong. 2nd Sess. 40 authorizes the Administration to establish rules and regulations necessary to assure the proper auditing, monitoring, and evaluation by the Administration of both comprehensiveness and impact of programs funded by LEAA. The purpose is to provide an information base to determine (1) whether proposed programs are likely to contribute to the improvement of law enforcement and criminal justice and the reduction and prevention of crime and juvenile delinquency and (2) whether such programs, once implemented, have achieved the goals stated in the original plans and applications. This is a specific aspect of the more general rule making authority already granted the Administration under section 501 and encompasses such current rules and regulations as may now be in existence on the subject.

This section must be viewed in conjunction with section 303(a)12 which has changed the original record requirement which was to "provide for such fund accounting, audit, monitoring, and evaluation procedures as may be necessary to assure fiscal control, proper management, and disbursement of funds under this title to:

"provide for such accounting, auditing, monitoring, and evaluation procedures as may be necessary to keep such records as the Administration may prescribe (emphasis added) to assure fiscal control, proper management, and disbursement of funds received under this title."

The impact of these amendments will require SPA's and their subgrantees to provide more information than is currently required by FMC 74-7 and current M 4100 Guidelines if the Administration determines that this is necessary to provide for proper evaluation, improve law enforcement and criminal justice and reduce crime. It should be noted, however, that much of LEAA's guidelines already cover the requirements of the statute.

E. Evaluation 515(a)(3)

Section 515(a)(3) requires the development of appropriate procedures for determining the impact and value of programs funded and whether such funding should continue to be allocated for such programs.

These requirements were developed as part of the Senate Bill to assure compliance with evaluation requirements. It further reinforces other sections of the Act relating to evaluation. This requirement of the Act will have to be closely coordinated with the Institute's requirement to conduct evaluation of State programs and the 303 requirements to make an evaluation component part of the comprehensive plan and the requirement for administrative findings regarding the effectiveness of the plan. This section is only generally discussed in the Senate report under the heading of evaluation and monitoring. S. Rep. No. 94-847, 94th Cong. 2nd Sess. 26, (1976).

F. Evaluation 601

The term evaluation is defined in section 601 of the Act as "the administration and conduct of studies and analyses to determine the impact and value of a project or a program in accomplishing the statutory objectives of this title." This definition was added to the Bill in the Senate floor debate as a technical amendment submitted by Senator McClellan, 122 Cong. Rec. S 12219 (1976).

II. Current Practices

Current LEAA evaluation procedures are outlined in chap. 3, par. 64, of the LEAA Planning Grant Guide, January 16, 1976. Currently, SPA's are required to outline their evaluation plan as part of their Part B planning requirements. Originally, however, the SPA's evaluated according to our "planning needs." This flexibility will not be available under the new act. SPA's are further required to report both evaluation findings and their use to LEAA.

III. Issues

(1) What type of directions will be provided by LEAA in the implementation of the new evaluation requirements?

(2) What portion of the new Institute requirements will be placed on the SPA's as a result of the amendments and what funds are available to fund the additional activities?

(3) How will the new requirements be implemented in a State that approves mini-block grants?

(4) What new instructions and guidelines will be needed by LEAA to fulfill the new monitoring and evaluation requirements? For example, will the need for an information base require a set analysis of each project to meet the record-keeping requirements?

(5) Does the definition of "evaluation" limit the scope of other statutory requirements of the legislation regarding evaluation?

(6) What is the role of the Institute and the SPA's in the development of uniform evaluation standards?

STATE PLAN REVIEW

I. Evaluation of the Amendment

The amendments dealing with the review of the comprehensive State plan are:

> Section 303. "(b) Prior to its approval of any State plan, the Administration shall evaluate its likely effectiveness and impact. No approval shall be given to any State plan unless and until the Administration makes an affirmative finding in writing that such plan reflects a determined effort to improve the quality of law enforcement and criminal justice throughout the State and that, on the basis of the evaluation made by the Administration, such plan is likely to contribute effectively to an improvement of law enforcement and criminal justice in the State and make a significant and effective contribution to the State's efforts to deal with crime. No award of funds that are allocated to the States under this part on the basis of population shall be made with respect to a program or project other than a program or project contained in an approved plan." (Emphasis added.)
>
> Section 515(a). "(1) review, analyze, and evaluate the comprehensive State plan submitted by the State planning agency in order to determine whether the use of financial resources and estimates of future requirements as requested in the plan are consistent with the purposes of this title to improve and strengthen law enforcement and criminal justice and reduce and prevent crime; if warranted, the Administration shall thereafter make recommendations to the State planning agency concerning improvements to be made in that comprehensive plan;". (Emphasis added.)

Under the new amendments LEAA must prior to its approval of any State plan, evaluate its likely effectiveness and impact. No approval can be given to any State plan unless the Administration makes an affirmative finding in writing that the plan reflects a determined effort to improve the quality of law enforcement and criminal justice throughout the State. The Administration must also evaluate the plan to determine that the plan is likely to contribute effectively to the State's efforts to deal with crime.

The Administration must review, analyze, and evaluate the comprehensive State plan in order to determine whether the use of financial resources and the estimates of requested future funding are consistent with the purposes of improving and strengthening law enforcement and criminal justice. Section 515(a)(1) specifically provides that the Administration, if it is warranted, is to make recommendations to the State planning agency as to how the comprehensive plan is to be improved.

The comprehensive and statewide definition, development, and correlation of programs and projects and the establishment of priorities are essential parts of the State plan. Under the new amendments, the Administration will be required to now evaluate whether the priorities set by the State will contribute effectively to the State's efforts to deal with crime.

Standards will be established upon which the basis for such an evaluation can be made. The Act requires that the plan must reflect a determined effort to improve the quality of law enforcement and criminal justice throughout the State. This same finding (except that it was not required to be in writing) was a necessary prerequisite for plan approval prior to the 1976 amendments.

Under the new amendments, this assessment must now be made as a written finding and must be based upon an evaluation that the plan contributes effectively to the improvement of law enforcement and criminal justice in the State and makes a significant and effective contribution to the State's efforts to deal with crime.

The Senate report stated:

> "The requirement that evaluation be conducted prior to approval and that an affirmative written finding be made are directed to the concerns of those who feel that LEAA has merely tended to serve as a conduit of Federal funds without particular concern about how those funds are being used." (Senate Rept. No. 94-847 at p. 27.)

The Senate report went on to state:

> "A new subsection (b) of section 303 strengthens the Administration's responsibility to evaluate State plans as to their likely effectiveness and impact. Before approving any State plan, the Administration must affirmatively find, on the basis of its evaluation, that the plan is likely to contribute effectively to an improvement of law enforcement and criminal justice in the State and make a significant and effective contribution to the State's efforts to deal with crime." (Senate Rept. No. 94-847 at p. 38.)

It is apparently congressional intent that LEAA play a more active role in assessing the probable effectiveness of the plan submitted by the SPA.

II. Current Practices

The Administration does not now make any written findings regarding the effectiveness of the State plan. Under prior Section 303(b) the criteria for approval of a plan was that:

". . . the Administration finds that such plan reflects a determined effort to improve the quality of law enforcement and criminal justice throughout the State."

Where a State plan, after review was found to be comprehensive, establishing law enforcement and criminal justice priorities and addressing all the programmatic and financial requirements, then the plan was approved.

The new provision will require an evaluation that the plan is likely to contribute effectively to an improvement of law enforcement and criminal justice in the State and make a significant and effective contribution to the State's efforts to deal with crime.

III. Issues

(1) Does Section 515(a)(1) authorizing LEAA to make recommendations regarding how to improve the plan bring LEAA into the State's priority setting process?

(2) Are these recommendations advisory or mandatory?

(3) Should the recommendations go to improving the present plan or improving a future plan?

(4) Should the written findings with regard to the State plan be published in the Federal Register?

(5) Should hearings be held on the proposed findings?

(6) Must the written findings be made on plans that have not been approved to date?

(7) What should those written findings be if standards are not established until a future date?

(8) Will requirements of Section 303(b) apply to plan amendments as well as full plans?

(9) Will standards be sufficiently flexible so that differing State needs can be considered?

CORRECTIONS - NONPROFIT GRANTEES

I. Evaluation of the Amendment

Only minor changes were made in the corrections portions of the Crime Control Act of 1976.

Nonprofit organizations have been added as possible direct recipients of LEAA Part E funds.

The amendment to the Act will allow LEAA to make direct grants to nonprofit organizations. This will be of particular value to national organizations who now may receive LEAA funds directly. The actual amended change is in section 455(a)2 of the Act. The change was not discussed in the legislative history in any depth except for the statement in the House Report (H.R. No. 94-1155, 94th Cong. 2nd Sess. p. 25) that the requirement was added to make the Part E consistent with Part C. LEAA may now make grants directly to nonprofit organizations under Part E of the Act.

II. Current Practices

LEAA must now make a grant to a nonprofit organization through a State or local unit of government.

III. Issues

(1) Is there a difference between "nonprofit organizations" and "private nonprofit organizations"?

(2) Will LEAA only make grants directly to national nonprofit organizations? Should it pass through awards to local nonprofit organizations through the SPA?

(3) Is there a conflict with the provisions of Part E relating to title to property and control of funds and award of grants directly to nonprofits?

CORRECTIONS - NATIONAL INSTITUTE SURVEY

I. Evaluation of the Amendment

The New Act requires the National Institute to survey existing and future needs in correctional facilities in the nation, and the adequacy of Federal, State and local programs to meet such needs.

This amendment was added by Senator Biden during the Senate debate of the Bill. Senator Biden states that the purpose of the correctional study is to find out "what is happening" in the system. He states that "The Institute is required to study the need for more prison space now and in the future and to determine whether existing programs can meet that need." Initial analysis suggests that this survey should be conducted of both jails and long-term correctional systems as well as for both adults and juveniles. 122 Cong. Rec. S 12228 (daily ed, July 22, 1976).

The amendment requires the Institute to conduct the correctional survey prior to September 30, 1977. The requirement is for a one time survey.

II. Current Practice

From 1970 to 1974 LEAA has conducted numerous correctional surveys of correctional facilities, both of jail facilities and total correctional systems. LEAA has also conducted a survey to assess juvenile jail facilities in the United States. LEAA is now planning a comprehensive survey of all detention facilities in the country.

III. Issues

(1) Should the survey cover only long-term adult correctional facilities or should it cover jails? Both adult and juvenile?

(2) Are county and regional correctional facilities to be covered? Community-based programs and facilities? Probation and parole?

100% INDIAN FUNDING

I. Evaluation of the Amendment

Indian tribes in the United States are afforded a rather unique status. This has been recognized by LEAA and is reflected in the statutory amendments. The amendments now provide for 100% grants to Indians under all parts of the Act and waiver of State liability for misspent Indian subgrant awards when the States do not have an adequate forum to enforce grant conditions.

Sections 301 and 306 of the Act were amended in 1971 to provide that if the Administration determines that an Indian tribe or other aboriginal groups does not have sufficient funds available to meet the local share of the costs of any program or project, the Federal share may be increased to the extent the Administration deems necessary. This means that Part C funding to Indian tribes may be up to 100%.

As indicated in Senate Report No. 1253 91st Cong. 2nd Sess. 44 (1971) the 1971 waiver of match provisions were intended to respond to the difficulties experienced by Indian tribes in providing match. These provisions were to serve as a reminder to LEAA and the States of their obligations to Indian tribes and similar groups and as an incentive to fully involve Indian tribes in the LEAA program.

The new statutory waiver provision amends Section 507 of the Act by adding a subsection (b) which provides:

> "In the case of a grant to an Indian tribe or other aboriginal groups, if the Administration determines that the tribe or group does not have sufficient funds available to meet the local shares of the costs of any program or project to be funded under this grant, the Administration may increase the Federal share of the cost thereof to the extent it deems necessary..."

This provision means that if a tribe or other aboriginal group does not have sufficient funds to meet its match requirement, LEAA or the State can fund the total program and dispense with the local match requirement.

This subsection, placed in the Part F Administrative Provisions, is almost identical to the 1971 Part C provisions. The only distinguishing language is that the Part C provision indicates that the waiver of match is limited to grants made under Part C.

II. Current Practice

The current practice of granting the waiver of matching funds for Part C funds for Indian tribes is set forth in Guideline Manual M 7100.1A, Chapter 4, section 15 "Waiver of Required Match for Indian Applications." It is provided that requests for a waiver of matching funds for Indian tribes or other aboriginal groups must be supported by a formal letter of certification stipulating that match for the Indian application cannot be provided. This certification must be executed in name and title by the recognized Indian leader of the applicant Indian group. LEAA will then provide a written response to the SPA directors certifying that a waiver of match has been authorized.

III. Issues

(1) Is the waiver of match applicable to only Part C or does it apply to Part B and E funds also?

(2) To which tribes is the waiver of match available?

(3) If a grant is made to a coalition of Indian tribes of which some of the tribes are not eligible for waiver, may a waiver for the entire coalition be granted?

(4) Will the same procedures in operation and utilized for granting Part C waiver be employed for waivers of match under other Parts of the Act?

(5) Is a blanket fiscal year waiver possible with the new amendment?

(6) Will those tribes with Part "C" waivers be automatically covered for waivers under other parts of the Act?

(7) What constitutes "other aboriginal groups"?

CIVIL RIGHTS

I. Evaluation of the Amendment

On March 9, 1976, Representative Barbara Jordan offered H.R. 12364 to amend Section 518(c) of the Crime Control Act of 1973. This amendment was incorporated into H.R. 13636 on May 12, 1976, and was adopted with amendments by the full Judiciary Committee.

During House debate on August 31, 1976, on the bill H.R. 13636 Congressman Butler offered a substitute amendment to the Jordan amendment which was agreed to unanimously by a voice vote.

The Senate had made no amendments to Section 518(c). The Conference on the Senate and House bills adopted the House provision with certain modifications. (See Chart A.)

Mr. Butler, in introducing the amendment to Section 518(c), stated that the amendment was offered to insure that the House of Representatives spoke clearly, concisely, and consistently on the subject of civil rights enforcement for State and local governments' Federally-funded activities.

He referenced the State and Local Fiscal Assistance Act amendments (Revenue Sharing) which had been passed by the House and which contained expanded civil rights protections.

However, as finally enacted, the LEAA Civil Rights amendments and the Revenue Sharing Civil Rights amendments are significantly different in their timing and coverage. The Revenue Sharing provision adds age and handicapped status as bases for nondiscrimination protection. The Revenue Sharing provision also creates a different enforcement mechanism.

Amended Section 518(c) reaffirms and strengthens the Federal government's role in requiring as a condition of receipt of any grant by a State or local government that no person shall, on the grounds of race, color, religion, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any program or activity funded under the Act.

The amendment requires that where any State or Federal court, or any State or Federal administrative agency (pursuant to procedures consistent with the Federal Administrative Procedures Act, 5 U.S.C. §554) finds that there has been a pattern or practice of discrimination, LEAA must upon receipt of such notice send a letter to the Governor and unit of local government requesting that compliance be secured.

The prior provisions of law required such a notification to the Governor only where LEAA determined after its own investigation that there was a failure to comply with the nondiscrimination provisions. It was at that

point the Administrator was required to notify the Governor of the State and request him to secure compliance.

Under the new provisions of Section 518(c), the enforcement mechanism is also initiated when the LEAA Administrator makes a determination of non-compliance after an investigation.

Funds must be suspended 90 days after the recipient government is notified unless one of the following occurs: (1) Compliance has been secured by the chief executive or (2) an administrative law judge has made a determination at a preliminary hearing that the recipient is likely to prevail on the merits in a compliance hearing. The suspension will then be deferred until the conclusion of the full compliance hearing. The preliminary hearing must be requested by the Governor before the 90-day period concludes. The funds will be suspended if the determination is not made in that 90 days. If a favorable determination is made after the 90 days the suspension will be lifted. In such a preliminary hearing, the burden of proof is on the recipient of funds.

If compliance has not been secured and if a favorable determination is not issued, funds will be suspended in the specific program or activity in non-compliance. The suspension is effective for 120 days during which time the State or local government may request a full compliance hearing. The hearing must be initiated by the Administration within 60 days after request. Within 30 days after the conclusion of the hearing, LEAA must make a finding of compliance or noncompliance.

Funds may also be suspended as a result of a suit filed by the Attorney General under Section 518(c)(3). Forty-five (45) days after the filing of such a suit by the Attorney General, funds must be suspended by LEAA unless a court within that time grants preliminary relief to the recipient government. Payment of funds can only be resumed by the court. Therefore, any investigation or enforcement proceedings that have been initiated by LEAA prior to the filing of the suit by the Attorney General should be suspended since jurisdiction would now be with the court.

There are two other significant provisions. A private right of action by private parties, alleging that they have been discriminated against by a recipient of LEAA funds, is also authorized to enforce compliance. This action can be filed after the private party has exhausted his administrative remedies before LEAA. The law provides that administrative remedies are deemed exhausted 60 days after the date the administrative complaint is filed with LEAA, or any other administrative enforcement agency, unless within that time there has been a determination by the Administration, or the Agency (presumably the other administrative enforcement agency) on the merits. In that case, such remedies shall be deemed exhausted at the time the determination becomes final. (Under Revenue Sharing, exhaustion of remedies occurs 90 days after a complaint is received.) Attorneys' fees may be granted by the court to the prevailing complainant in the private action.

Senator Hruska stated (Cong. Rec. S 17320, daily ed., Sept. 30, 1976), in discussing the provision authorizing private parties to initiate civil actions in Federal or State courts that such an action would lie "against a State government or unit of local government or any officer or employee thereof acting in an official capacity whenever such government employee or officer has engaged in or is engaging in any discriminatory act or practice prohibited by the LEAA Act. This provision is an analogy to Title 42, Section 1983, United States Code, which authorizes action in Federal courts against State or local officials acting under color of law."

Relationship of §518(b) and Goals and Timetables

There is no intent to authorize the Administration to impose a quota on the recipient of LEAA funds. Section 518(b) still binds the Administration.

LEAA has an affirmative obligation to seek to eliminate discriminatory practices, voluntarily if possible, prior to fund termination.

LEAA can request that recipients eliminate the effect of past discrimination by requiring the recipient to commit itself to goals and timetables. This is not a quota. A goal is a numerical objective fixed realistically in terms of the number of qualified applicants available. Factors such as a lower attrition rate than expected, bona fide fiscal restraints, or a lack of qualified applicants would be acceptable reasons for not meeting a goal that has been established. No sanctions would be applied if a goal in a compliance agreement could not be met for the above reasons. (See Senator Hruska's statement, Cong. Rec. S 17320.)

Compliance Agreements

The Conference Report specifically stated the "compliance under Section 518(c)(2)(B) includes the securing of an agreement to comply over a period of time, particularly where compliance would require an extended period of time for implementation. (Conference Report, Cong. Rec. H 11474, daily ed., Sept. 28, 1976.)

Employment Cases

The intent of the Conference was that the standards of Title VII of the Civil Rights Act of 1964 apply. (Conference Report, Cong. Rec. H 11474, daily ed., Sept. 28, 1976.)

II. Current Practices

The Office of Civil Rights Compliance has the responsibility to investigate complaints of discrimination made against LEAA recipients. The fund cut-off procedure is triggered once LEAA determines that a recipient is in

noncompliance. The Governor of the State in which noncompliance has been found is usually given 60 days to secure voluntary compliance. If the Governor is unsuccessful, fund termination proceedings are initiated by another letter to the Governor permitting him ten days to request a hearing on the issue of non-compliance. If no hearing is requested, funds are terminated immediately. If a hearing is requested, no action to terminate is taken until after a hearing is conducted, the Administrator reviews the record and the hearing examiner's recommendation and makes a final determination of noncompliance. No other outside findings either by a court or other administrative agency will of itself trigger fund termination procedures.

III. Issues

(1) Does Section 518(c) apply to non-governmental grantees (nonprofits, colleges)?

(2) What do we mean by "receipt of notice"? When is notice received? Would findings reported by reporting services and received by LEAA be "receipt of notice" or must LEAA first receive a copy of the order?

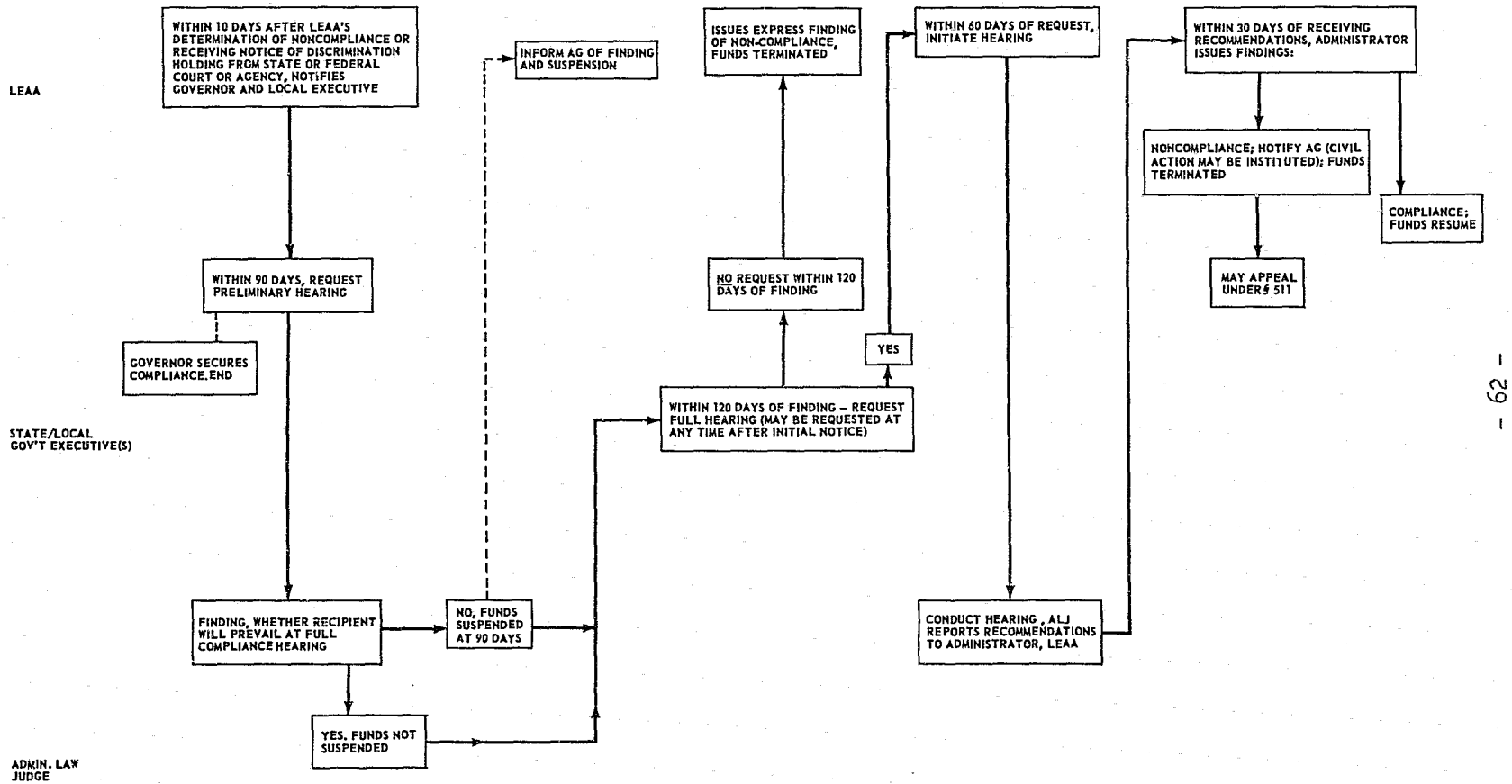
(3) What does consistent with the Federal Administrative Procedures Act mean? How will such a determination be made?

(4) Will there be additional requirements placed on the SPA's to advise LEAA of court and agency findings within the State?

(5) To what extent can LEAA attempt voluntary resolution before an LEAA finding is made?

ADMINISTRATIVE PROCESS FOR NONCOMPLIANCE UNDER AMENDED SECTION 518(c)*

CHART A



*FUNDS MAY ALSO BE SUSPENDED 45 DAYS AFTER THE FILING OF A SUIT BY THE ATTORNEY GENERAL UNDER § 518 (c)(3).

CHART B

Administrative Process for Noncompliance Under ORS

°Receipt of Holding of Discrimination by Court or Federal Administrative law judge
°Secretary Finding 1/

Within 10 days

Notice to government

Within 30 days of notice

State government informally presents evidence re discrimination 2/ and whether program or activity is ORS funded.

Secretary issues determination by end of 30 days

Compliance

Compliance 3/ agreement within 10 days

Noncompliance

Request for full hearing within 10 days

Suspension

Full hearing 30 days of request 2/

Preliminary Finding within 30 days

Recipient may prevail

Noncompliance suspension of funds

Hearing completed

Compliance finding suspension terminates

A.L.J. may order termination at his discretion*

Noncompliance funds suspended before 31st day unless recipient enters into compliance agreement*

*Payment of funds to resume when: (1) Compliance agreement entered into, or (2) Secretary determines recipient has complied with provisions compliance agreement, (3) recipient complies fully with court order, (4) upon rehearing recipient found not to discriminate, (5) appellate court reverses.

1/ Secretary finding defined as:

°by Secretary--made within 90 days after complaint is received
°that is is more likely than not that the recipient has failed to comply.

2/ Except in the case of a court holding or holding by Federal Administrative Law Judge - such a holding is conclusive and hearing (both preliminary and full hearing shall relate to the question of finding. If court holding is reversed by appellate court, then proceedings and suspension shall terminate.

3/ Agreement between secretary or in case of a court holding agency responsible for prosecuting claim (if secretary approves agreement) and chief executive of State or local government; 15 days after execution, copy must be sent to complainant.

Exhaustion of Administrative remedies: 90 days after filing of complaint with ORS or any other administrative enforcement agency which has entered into a cooperative agreement with the ORS and no determination is issued or a determination of nondiscrimination is issued.

REPORTING REQUIREMENTS

I. Evaluation of the Amendment

Section 519 requires the Administration to report to the President and Congress on or before December 31 of each year on activities performed pursuant to the Act during the preceding fiscal year. This section has been amended so that all components of the required report are now clearly delineated. The new amended provision reads as follows:

> "Sec. 519. On or before December 31 of each year, the Administration shall report to the President and to the Committees on the Judiciary of the Senate and House of Representatives on activities pursuant to the provisions of this title during the preceding fiscal year. Such report shall include--
>
> "(1) an analysis of each State's comprehensive plan and the programs and projects funded thereunder including—
>
> "(A) the amounts expended for each of the components of the criminal justice system,
>
> "(B) a brief description of the procedures followed by the State in order to audit, monitor, and evaluate programs and projects,
>
> "(C) the descriptions and number of program and project areas, and the amounts expended therefore, which are innovative or incorporate advanced techniques and which have demonstrated promise of furthering the purposes of this title,
>
> "(D) the descriptions and number of program and project areas, and amounts expended therefore, which seek to replicate programs and projects which have demonstrated success in furthering the purposes of this title,
>
> "(E) the descriptions and number of program and project areas, and the amounts expended therefore, which have achieved the purposes for which they were intended and the specific standards and goals set for them,
>
> "(F) the descriptions and number of program and project areas, and the amounts expended therefore, which have failed to achieve the purposes for which they were intended or the specific standards and goals set for them, and
>
> "(2) a summary of the major innovative policies and programs for reducing and preventing crime recommended by the Administration during the preceding fiscal year in the course of

providing technical and financial aid and assistance to State and local governments pursuant to this title;

"(3) an explanation of the procedures followed by the Administration in reviewing, evaluating, and processing the comprehensive State plans submitted by the State planning agencies and programs and projects funded thereunder;

"(4) the number of comprehensive State plans approved by the Administration without recommending substantial changes;

"(5) the number of comprehensive State plans on which the Administration recommended substantial changes, and the disposition of such State plans;

"(6) the number of State comprehensive plans funded under this title during the preceding three fiscal years in which the funds allocated have not been expended in their entirety;

"(7) the number of programs and projects with respect to which a discontinuation, suspension, or termination of payments occurred under section 509, or 518(c), together with the reasons for such discontinuation, suspension, or termination;

"(8) the number of programs and projects funded under this title which were subsequently discontinued by the States following the termination of funding under this title;

"(9) a summary of the measures taken by the Administration to monitor criminal justice programs funded under this title in order to determine the impact and value of such programs;

"(10) an explanation of how the funds made available under sections 305(a)(2), 402(b), and 455(a)(2) of this title were expended together with the policies, priorities, and criteria upon which the Administration based such expenditures; and

"(11) a description of the implementation of, and compliance with, the regulations, guidelines, and standards required by section 454 of this Act."

Both the Senate and House had bills which defined the requirements of Section 519. As indicated in the Joint Explanatory Statement of the Committee in Conference, Cong. Rec. H 11473, Sept. 28, 1973, the Conference "adopted the House provision with several technical changes designed to assure proper reporting by general program areas and eliminate reporting in excessive detail."

As the legislative history indicated, it was intended by this amendment to require reports sufficiently comprehensive to form a basis for the exercise of congressional oversight of the Administration's performance.

It was not intended to require an inordinately lengthy document as several of the requirements may be met by the submission of a brief statistical summary.

The amendment is going to require a detailed survey and analysis by the SPA of the operation of the LEAA program in the respective States during the preceding fiscal year so that LEAA can meet the new requirements.

II. Current Practices

Currently, the annual report is prepared without any meaningful statutory guidance or direction. Some of the information required by Section 519 has been included in past annual reports.

III. Issues

(1) Will all the new reporting requirements of Section 519 be required for the Eighth Annual Report?

(2) When is the Eighth Annual Report due?

(3) Is this report limited to FY 1976 or will it take into account the transitional quarter?

(4) What input will be required from the States to permit LEAA to meet this requirement?

(5) Will a data base, forms, and guidelines be supplied to the States?

JUVENILE JUSTICE MAINTENANCE OF EFFORT

I. Evaluation of the Amendment

Section 520(b) of the Crime Control Act of 1976 and Section 261(b) of the Juvenile Justice Act, as amended, require that:

> "In addition to the funds appropriated under section 261(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, the Administrator shall maintain from the appropriation for the Law Enforcement Assistance Administration, each fiscal year, at least 19.15 percent of the total appropriations for the Administration, for juvenile delinquency programs."

In S. 2212 the Administration proposed the deletion of the maintenance of effort requirement from Section 520(a) and Section 261(b) of the Crime Control Act and Juvenile Justice Act respectively.

The Senate Judiciary Committee adopted a flexible maintenance of effort formula based on 19.15 percent of the total Parts C and E allocation for each fiscal year. (See S. Rep. No. 94-847, May 13, 1976, pp. 30-31.)

Senator Birch Bayh, the only member of the Judiciary Committee who failed to vote to report the bill out of Committee, initially proposed a floor amendment to return to the existing maintenance of effort provision and then offered a floor amendment requiring that LEAA expend 19.15 percent of its total Crime Control Act appropriation for juvenile delinquency programs. The second amendment was approved by the Senate.

The House bill retained the existing maintenance of effort provision.

The Conference Committee adopted the Senate provision.

The floor debate on Senator Bayh's amendment (see 122 Cong. Rec. S 12330 - 12350, daily ed., July 23, 1976) indicates that opponents of the amendment interpreted it to require that 19.15 percent of the total appropriation be expended out of the total allocation of Parts C and E funds.

However, Senator Bayh denied this. His remarks include the following statements:

"The commitment to improving the juvenile justice system should be reflected in each category of LEAA activity: technical assistance-research, evaluation, and technology transfer; educational assistance and special training; data systems and statistical assistance; management and operations; and planning as well as the matching and discretionary grants to improve and strengthen the criminal justice system." (S 12332).

"I suggest that we would require in this amendment that we at least have 19.15 percentage of LEAA moneys spent across the board for juvenile crime and delinquency." (S 12335).

"The Senator does agree that under the bill as recommended by himself and the Senator from Arkansas the same 19.15 percent level is required under block grants C and E to be devoted to juvenile delinquency as the Senator from Indiana is requiring. It is the same level of funding that will go to juvenile delinquency in block grants." (S 12338).

". . . both the pending bill and my amendment requires (sic) that 19.15 percent be spent of C and E on juvenile programs." (S 12345).

"Not one cent more will go back to local communities under C and E grants if my amendment is successful than would be the case under the present bill. Both figures would be $82 million." (S 12346). [Note: $82,738,533 is 19.15 percent of the total FY 1977 allocation of C and E funds--$432,055,000.]

Senator Bayh indicated that he was speaking either of (1) budget categories and/or (2) program categories (police, courts, corrections) in the application of the percentage. However, Senator Roman Hruska, one of the managers of the bill in Conference, with the House, made the following statement with regard to the maintenance of effort provision during Senate floor debate on adopting the Conference bill:

"Mr. President, the conferees agreed to a Senate provision which specifies that the administration shall maintain from the LEAA appropriation each fiscal year at least the same level of financial assistance for juvenile delinquency programs as such assistance bore to total appropriation for the programs funded pursuant to Parts C and E of this title during fiscal year 1972.

"The effect of this provision is to require that LEAA assure that of the total appropriated funds for the purpose of implementing the Omnibus Crime Control and Safe Streets Act of 1968, 19.15 per centum be expended for juvenile delinquency programs. The amendment, however, does not specify that LEAA expend exactly 19.15 per centum of each of its budget categories for juvenile delinquency control and prevention."

It appears reasonable to conclude that any Crime Control Act funds allocated to or budgeted for juvenile justice purposes can be counted toward meeting the maintenance level and that the maintenance level could be satisfied on an aggregate basis rather than through application of the 19.15 percent to each budget category or program area.

The "goal level" concept (see below) could be adjusted to reflect a decreased required expenditure level for the States or eliminated. In addition, procedures could be instituted to include Part B planning funds within the scope of the maintenance requirement.

At the State level, the simplest approach would be to require that each State allocate and expend an aggregate of at least 19.15 percent of its total allocation (each fiscal year) of Parts B, C and E block grant funds for planning activities and programs related to juvenile justice and delinquency prevention. This would assure that maintenance is achieved at the State level and assure a satisfactory minimum commitment by each State to juvenile justice and delinquency prevention programming.

Alternatively, goal levels could be set for each State based on: (1) 19.15 percent of the allocation of Parts B, C and E funds to that State, or (2) a per capita basis which would achieve 19.15 percent of the aggregate State allocations of Parts B, C and E funds (analogous to the current method). Under either of these bases, LEAA could continue to reserve the right to require States below their goal level to increase their allocation of funds for juvenile justice programs in an amount sufficient to achieve an aggregate allocation and expenditure equal to 19.15 percent of the total Parts B, C and E allocation. The percentage could also be applied separately to action funds (C and E) and planning funds (B).

At the Federal level, LEAA would then be obligated to assure that 19.15 percent of the remaining funds appropriated under the Crime Control Act are expended for juvenile justice-related purposes.

II. Current Practices

LEAA Guideline M 4100.1E, Chap. 3, Para. 76b, establishes a "goal level" for each State based on per capita expenditure needed to reach the State's share of the maintenance level. The sum of each State's goal level equals the FY 1972 State expenditure level for juvenile programs of $89 million. Only if the aggregate State allocations fall below the $89 million level are States below their "goal level" required to allocate additional funds for juvenile programs. The guideline restricts State reprogramming out of the juvenile justice area unless LEAA determines that the maintenance of expenditure level would not be adversely affected.

III. Issues

Policy issues include the following:

(1) Should LEAA require that the States be responsible for maintaining a proportionate share of the maintenance requirement from Parts B, C and E funds?

(2) If so, should LEAA utilize:

(a) separate maintenance requirements for Part B planning funds and Parts C and E action funds or a single requirement for all three fund sources; or

(b) an aggregate method for all States utilizing goal levels based on either a flat percentage (19.15 percent) or a per capita basis or a flat percentage (19.15 percent) applicable to each State individually.

(3) What criteria, if any, should be established to guide the States in allocating Parts B, C and E funds for juvenile justice purposes?

(4) Should LEAA commit 19.15 percent of its Parts C and E discretionary funds to juvenile justice programs or apply the 19.15 percent to the aggregate of Crime Control Act funds retained at the Federal level?

(5) What criteria and methods should LEAA adopt to account for funds utilized for juvenile justice purposes at the Federal level?

Maintenance of Effort -- F. Y. 1977

LEAA F. Y. 1977 Appropriation -- Crime Control Act - $678,000,000
Juvenile Justice Act - 75,000,000
TOTAL $753,000,000

State Share -- Block	Part B -	$ 60,000,000	(19.15% =	$11,490,000)
	Part C -	306,039,000	(19.15% =	$65,501,426)
	Part E -	36,005,000		
	TOTAL	$402,044,000	19.15% =	$76,991,426
LEAA DF --	Part C -	$ 54,007,000		
	Part E -	36,004,000		
	TOTAL	$ 90,011,000	19.15% =	$17,237,106
LEAA Other* --		$185,945,000**	19.15% -	$35,608,468
	Aggregate Expenditure			-$129,837,000

*Other includes budget categories: technical assistance; research, evaluation, and technology transfer; educational assistance; data systems and statistic assistance; and management and operations.

**This figure includes $40 million appropriated for the High Crime Area Program which was not authorized in the Crime Control Act of 1976. Appropriate adjustment will be required upon disposition of these funds.

REVOLVING FUND

I. Evaluation of the Amendment

Section 521 added a section to set up a revolving fund.

> "(e) There is hereby established a revolving fund for the purpose of supporting projects that will acquire stolen goods and property in an effort to disrupt illicit commerce in such goods and property. Notwithstanding any other provisions of law, any income or royalties generated from such projects together with income generated from any sale or use of such goods or property, where such goods or property are not claimed by their lawful owner, shall be paid into the revolving fund. Where a party establishes a legal right to such goods or property, the Administrator of the fund may in his discretion assert a claim against the property or goods in the amount of Federal funds used to purchase such goods or property. Proceeds from such claims shall be paid into the revolving fund. The Administrator is authorized to make disbursements by appropriate means, including grants, from the fund for the purpose of this section."

Senator Hruska introduced during the Senate floor debate (122 Cong. Rec. S 12222 (daily ed., July 22, 1976)) an amendment to set up a revolving fund for the purpose of supporting projects that will acquire stolen goods and property in an effort to disrupt illicit commerce and goods in such property. The amendment allows for funding up to 100 percent of the grants.

Senator Hruska stated in the floor debate that the basis of claims will be on the amount of LEAA funds that went into the actual recovery of stolen property. It shall apply to the sale or royalties utilized from the disposition of goods that are not claimed by the rightful owner. It is further stated that the authority will not be exercised when the money amounts that can be recovered are small.

> "Because administrative costs of this fund should be held to a minimum, and there is no intent to utilize such an amendment for numerous claims relating to small personal properties of victims of these burglaries, it is anticipated that the Administrator will exercise discretion and concentrate on the recovery of amounts of Federal funds expended upon the larger or most costly items." 122 Cong. Rec. S 12223 (daily ed., July 22, 1976).

The amendment also changes Section 301(c) of the Act to allow for increased funding for Project Sting-type grants.

LEAA will now participate at some level in the distribution of income from Project Sting grants. LEAA may also at its discretion fund up to 100 percent of the cost of these grants.

II. Current Practices

LEAA does not now as a matter of law participate in the recovery of money used in Project Sting-type grants. They may receive some funds back if a grant expires or the recovered funds may be treated as project income if a grant is in progress.

Internal guidelines for the use of Project Sting funds need to be developed. This process is underway.

III. Issues

(1) The new requirement will only be utilized when a recovery is to be made over a certain amount. What would be the appropriate amount?

(2) Can new Part C discretionary funds be used to begin the revolving fund or must the fund be started with existing Part C funds?

(3) What new accounting procedures will be needed?

(4) If part of the original funding has been with State or local funds, will a percentage distribution have to be made?

(5) When property is acquired in a shared project, who will have title to the property?

(6) Can income generated from anti-fencing projects in existence prior to the "Sting" amendment be included in the revolving fund?

APPENDIX A

October 28, 1976

LEAA positions based on initial reading of the Crime Control Act of 1976. The answers are stated in abbreviated form. They are keyed to the Reauthorization Meeting Issue Papers Booklet.

Timing

As a general rule, the requirements of the Crime Control Act of 1976 will be applied in their totality to those plans not submitted to LEAA on the date of enactment of the Crime Control Act. Those would be the following States: New Jersey, District of Columbia, Maryland, Florida, Utah, Hawaii. The only exception will be in the area of Crimes Against the Elderly and Drug Abuse, and, if the States certify in the plan that they in fact took into account the concerns raised by those provisions, LEAA will require no new submission for Crimes Against the Elderly or Drug Abuse.

As a rule, all requirements imposed on LEAA by the Crime Control Act which require findings with reference to the comprehensive plans will apply to all plans not approved by LEAA on the date the Crime Control Act became effective.

Those States, in addition to the ones cited above to which this provision will apply are: Massachusetts, Rhode Island, Vermont, Tennessee, North Carolina, Arizona, Guam, Washington, and Idaho.

TIMETABLE FOR IMPLEMENTATION OF CRIME CONTROL ACT OF 1976

	Unsubmitted 1977 Plans As of 10/15/76	Submitted But Unapproved 1977 Plans As of 10/15/76	Approved 1977 Plans As of 10/15/76	FY 1977 Planning Grant As of 10/15/76	M 4100.1F FY 1978 Planning Grant	M 4100.1F FY 1978 Plan
Legislative Review	Yes	No	No	--	--	Yes
Statutory Creation	No	No	No	No	No	No
JPC	Court Option	Court Option (PS)	Court Option (PS)	Court Option (PS)	Court Option	Court Option
Judicial Members on Supervisory Board	--	--	--	Yes (PS)	Yes	Yes
Judicial Plan	Court Option	Court Option (PS)	Court Option (PS)	--	--	Yes
Planning Funds to JPC Upon JPC Formation	--	--	--	Yes, if requested (PS)	Yes, if requested	--
Citizen Participation	--	--	--	Yes (PS)	Yes	--
Special Emphasis/Courts	Yes	Yes	SPA Option	--	--	Yes
Elderly	Certify	Certify	No	--	--	Yes
Drugs	Certify	Certify	No	--	--	Yes
Maintenance of Effort/JD	Yes	Yes	Yes	Yes	Yes	Yes
Mini-Blocks	Yes	Yes (PS)	Yes (PS)	Yes (PS)	Yes	Yes
Reporting	Yes	Yes	Yes	Yes	Yes	Yes
§303(b) Req.	Yes	Yes	No	--	--	Yes
§303(d) Req.	Yes	Yes	No	--	--	Yes

(PS) -- Plan Supplement

Community Anti-Crime Programs (Pages 1-2)

(1) The Office of Community Anti-Crime Programs is to be established within the Office of Regional Operations reporting to Deputy Administrator for Policy Development. There will be some staff.

(2) Already have $15,000,000 appropriated this year.

(3) Through (7). Will seek advice from the General Accounting Office because the statute and legislative history is unclear.

(8) No.

(9) Yes.

State Legislative Oversight (pages 3-8)

(1) No as to B, C, and E funds. Yes as to DF funds. Section 305 control reallocation of funds as block funds.

(2) Yes if not submitted. No if submitted.

(3) Yes, from the ACIR.

(4) It must create a State Planning Agency that meets the Section 203 requirements.

(5) Only if there is direct conflict with the required statutory provisions will the law be in noncompliance with our statute. The Federal law must prevail as to allocation or award of LEAA funds.

(6) If the modifications revise more than 15 percent of the program allocations in the plan, it must be submitted to the legislature. If the legislature wants to see any change, it can so require. (This answer is being reconsidered.)

(7) Review must be completed by the legislature within 45 calendar days.

(8) This is up to the States.

(9) The legislative reivew must not be in before we accept the plan. A draft plan can be submitted subject to subsequent legislative review. We will not approve a plan until the review is completed.

(10) Part 1 -- Yes.
Part 2 -- Only as it relates to statutory compliance.

(11) Yes, they can review the whole plan. Intent is to obtain an advisory review on the goals, priorities and policies only. SPA's should also submit executive summaries detailing those factors.

(12) Legislative comments are advisory only. However, LEAA will consider any noncompliance issue raised by the legislature. Their rights are no greater or no less than any other body. There is no appeal unique to the legislature.

(13) No.

(14) No, no more guideline than is required by statute.

(15) Part 1--yes. Part 2--No.

(16) Yes, but authority does not derive from this statute.

(17) In favor of Federal law as to eligibility of Federal funds.

(18) Part 1--No, but if match is subsequently denied by legislature and no "program" match is available, the effect is disapproval.

Part 2--No.

(19) Yes, as long as the governor retains majority control in accord with Section 203.

(20) Obligatory upon request only.

(21) No, it can be concurrent.

(22) Part 1--By appointment of an interim committee with responsibility to conduct the legislative review.
Part 2--Yes, it should happen. We will try to support legislative review.

(23) See addendum to Issue paper.

(24) This is up to the State.

(25) Yes, for FY 79 and on. For FY 78 the issue is open.

(26) Yes, before and/or after.

Citizen Participation in Planning Process (pages 9-10)

(1) No.

(2) No, it is a matter for the States to decide.

(3) and (4) Yes--States should develop policies and procedures for involving citizens as groups and individuals in the planning development process. States should use the appropriate mechanisms to meet the statutory requirement.

Judicial Amendments (Pages 11-28)

Issues

1(a). Yes, unless this is prohibited by the by-laws and regulations of the SPA which are applied uniformly to all members of the Supervisory Board.

1(b). Section 203 of the Act specifies the composition of the Supervisory Board. We expect that most States will take prompt action to change their laws. If State laws specify a composition for the Supervisory Boards that varies from the 203 requirements, the State laws will have to be change. In the past some States attempted to pass laws which violated 203. We have found that such laws do not take precedence over the Federal requirements of 203. If a problem arises in a State with respect to judicial representation, we will look at that problem and apply the rules we have applied in the past.

1(c). This issue will have to be decided by the Judiciary in each State. LEAA cannot require that an individual serve on a Supervisory Board if that individual chooses not to serve. If a Judge feels that his State law prevents him from serving on the Supervisory Board, LEAA will not require that he serve on the Board. However, it is possible that Federal law could be used as a basis for overriding State law. See King v. Smith, 392 U.S. 309 at note 34.

1(d). The chief judicial officer can submit names for his position to the Governor. The Governor can select someone from the list of three.

1(e). We would expect that States will comply with the requirements no later than January 15. In no case will we approve a State planning grant for FY 1978 if the requirements are not met.

1(f). No. More than three are required but there is no absolute requirement that the proportion of judicial representation be based on a 1 to 5 ratio. The 1 to 5 ratio is a guide.

2(a). No.

2(b). Only the court of last resort or judicial agency authorized by State law on the date of enactment of the Crime Control Act can establish a judicial planning committee.

2(c). The Judicial Council in Georgia appears to be such a judicial agency. We do not know if there are others.

2(d). We expect that all courts that need planning funds will receive an initial allocation of these funds as soon as possible. There are four ways the funds could be allocated:

(1) Part B planning funds currently given to the courts could be used for the judicial planning committee;

(2) LEAA will make reversionary Part B funds available for the courts;

(3) LEAA will allow current recipients of Part C grants for current planning to use these grants for preparation of annual judicial planning; or

(4) As a last resort, LEAA will require the States to make planning funds available.

LEAA is seeking a supplemental appropriation for Part B planning funds and expects to have that supplemental appropriation in the spring.

2(e) The Act provides that the annual judicial plan should deal with LEAA funds. It can, of course, deal with all the resources but does not have to. It should, however, evaluate the resources that are available and apply the LEAA funds to those critical areas in which resources are not available.

2(f). Yes.

2(g). State legislature's preview is required upon request only for the State comprehensive plan. To the extent that court programs are covered in the comprehensive plans, the State legislature will deal with that in its review.

2(h). No, but the annual State judicial plan should take into account the resources available for prosecutors and defenders and the prosecution and defense programs in the comprehensive plan for their possible impact on court programs. The Act does require the SPA to avoid duplication, overlapping or inconsistent programs for prosecutors and the Judiciary.

2(i). Yes.

2(j). Under the standards set forth in 304(b).

2(k). Yes, if it receives planning funds.

2(l). Yes, if the judicial planning committee receives more than $25,000 or uses more than 25 employees.

2(m). To the same extent that they apply to the SPA and other agencies receiving LEAA funds.

2(n). Yes.

2(o). If a court plan is prepared prior to the time the comprehensive plan is submitted to LEAA, the State must accept the court plans for FY 77 funds to the extent that such plans are consistent with the Statewide law enforcement and criminal justice plan. Section 304(b) is prospective in application and applies to comprehensive plans "to be submitted to the Administration" and not the plans submitted to the Administration. A court could submit an annual judicial plan for FY 1977 funds and the SPA should consider it to the extent it is consistent with the comprehensive plans approved by LEAA and the other requirements of Section 304(b).

2(p). There are essentially three recourses:

(1) Every State under 303(8) must provide for appropriate procedures to review action by the SPA disapproving an application for which funds are available.

(2) 303(d) required LEAA to consider written recommendations made by the judicial planning committee in determining if an adequate share of funds has been set aside for courts.

(3) 509 of the LEAA Act states that the Administration shall whenever the Administration finds there is substantial failure to comply with the LEAA Act, LEAA regulations, and comprehensive plans, notify applicants and grantees that further payments will not be made until there is no longer such failure. In 28 Code of Federal Regulations Part 18, LEAA has established procedures which provide that the administrator or his designee will make a prompt investigation whenever a complaint or other information indicates their failure to comply with provisions of the Act. If the investigation indicates a failure to comply with provisions of the Act, informal resolution will be attempted. If this is unsuccessful, a hearing will be initiated under 509. Guidelines will be developed to define the relationship between SPA and JPC on judicial plan approval.

2(q). Judicial planning committees are to be given at least $50,000. They are not entitled by the statute to more, although we would anticipate that they would receive more in larger States.

2(t). Yes.

2(r). Yes, but they do not have to be used to administer court grants.

2(s). When supplemental appropriations are received, LEAA will reallocate FY 1977 planning funds but planning funds must be provided before supplemental appropriations if a JPC is established and if the JPC requests planning funds.

2(t). The court planning functions could be delegated to the staff of the judicial planning committee. Planning staff will be necessary at SPA on JPC to review the annual court plan and to assure its effective integration into the rest of the plan.

2(u). The Act does not specify the level of citizen participation. The States and courts can establish reasonable procedures.

2(v). No, unless the judicial planning committee is given authority by the SPA to approve court grants.

2(w). Annual judicial planning efforts would be funded under Part B. Multiyear planning efforts can be funded under Part B or Part C.

3(a). Yes, if LEAA reviews show that courts will not receive adequate share of funds.

3(b). See the answer to 2(p).

3(c). and (d). LEAA will develop information which expands on the standards set forth in §303(d). LEAA will review the process by which the State allocates funds to courts. That process will start as soon as possible. LEAA court specialists will follow the State efforts to prepare their plans. The courts specialists will make affirmative efforts to assure that the courts receive an adequate share of funds. This will occur prior to plan submission.

3(e). No. LEAA must assure that court programs meet all the requirements of the statute including the requirements of Sections 303(b), 303(c), 303(d) and 515(a).

(1) Yes, if the program involves any element of the criminal justice system. No if it is a civil justice program.

Criminal Justice Coordinating Councils (pages 30-32)

(1) Yes, it does not give the SPA's authority to limit the pass-through of funds to major cities and counties as required by Section 203. Even though there is legal authority, LEAA programs have been criticized for having too much of its money going into overhead and administration. To the extent Part C funds are used for these purposes, it detracts from the objectives of the program to fund action projects. Assumption of costs applies.

(2) Yes, monitoring and evaluation only. No administration. This section does not diminish in any way the responsibility of the States to pass through Part B funds to major cities and counties as required by Section 203 of the Act.

(3) Congress has expressed concern over the use of LEAA funds for administration to the detriment of programs to improve the strength of the criminal justice system. Accordingly, LEAA is not going to recommend to the States that they encourage the use of Part C funds for monitoring. The SPA's should be aware that the assumption of costs provisions apply.

Crimes Against the Elderly (Pages 33-34)

(1) Yes, unless an affirmative finding is made the one is not needed.

(2) No, there are factors such as population of elderly, victim rate, crime analysis, reports, etc. that can be considered.

(3) A crime analysis among other things.

(4) Yes! Yes! Anyone may raise a non-compliance issue with LEAA. If it is a valid issue, LEAA will have to deal with the issue.

(5) No.

(6) If the States certify in the plan that they took into account the concerns raised by these provisions, LEAA will require no new submissions for this area.

Special Needs of Drug of Drug Offenders and Coordination with State Drug Agencies (Pages 35-38)

(1) Must coordinate with State drug agency to respond to needs of drug offenders. If need for programs is demonstrated, programs must be provided in plan. If need is not demonstrated, programs need not be provided in plan. Guidelines will address this issue.

(2) Reasonable effort to coordinate with State alcohol agency and develop programs on alcohol abuse and crime.

(3) Must, in consultation with NIDA, study relationship between drug abuse and crime, evaluate success of drug treatment programs, report findings.

(4) Must report on Section 454 guidelines and compliance by State and local prisons.

(5) If these States certify in the plan that they took into account the concerns raised by these provisions, LEAA will require no new submissions for this area.

Early Case Assessment Panels (Page 39)

(1) Yes.

(2) Yes, under the authority of Section 301(b)(1) there was no congressional intent to stop small units from operating early case assessment panels.

(3) LEAA must assure under Section 303(d) that court programs receive an adequate share of funds, including programs relating to prosecutor and defender services. Hence, projects for early case assessment panels will be included in adequate share of funds for courts. The JPC's only review applications for projects from courts unless JPC plans for prosecution and defense.

(4) The prosecutors can always apply to an SPA. However, if an SPA funds a prosecutor's program, it would have to come out of the State share. Ordinarily, the prosecutor should go to the local government to get funding out of the pass-through funds.

(5) Yes, within the one-third salary limitation.

Waiver of State Liability for Misspent Indian Subgrant Funds (pages 40-42)

(1) State courts, not tribal or Federal courts.

(2) Those States that obtain and/or retain civil jurisdiction under Public Law 280 having an adequate forum.

(3) No.

(4) No, unless State conditions differ.

(5) Yes.

Mini-Block Grants (pages 43-45)

(1) Ordinarily not, LEAA policy is to reduce red tape and delays; we want streamlined procedures that meet statutory requirements. The work process should be streamlined; one application and plan can cut red tape and streamline the process. In accord with existing policy, a State can aggregate the match by governmental unit. The SPA will still need reporting on a project basis as to how the funds are being spent. All the requirements--bookkeeping, records, accounting, civil rights, environmental, Part E, etc.--must be met in the "plan" or by agreement in some other way.

(2) By delegation or compact, the process must be worked out in advance and built into the State plan.

(3) Yes.

(4) Yes--with a view that we all want to minimize red tape.

(5) There must be coordination between the preparation and development of the judicial plan and the mini-block plans for larger jurisdictions. Each State should work this out.

(6) Yes, the amendment is effective for plans approved or not yet approved. The State Planning Agency should have a procedure in place in not more than six months. Such procedures may apply to all unawarded funds from any fiscal year fund source. Automatic award for regional plans previously approved cannot be made until the State plan has been modified and such a procedure is in effect. Awards to local governments who might otherwise be eligible for mini-block awards should not be delayed pending development of this procedure.

(7) Yes, to the extent it is part of the State plan.

(8) None--the SPA still must pass through the statutory requirement.

(9) Mayors or county executives unless joint power agreements delegate authority to Regions.

(10) SPA determines in accord with State plan and procedure.

(11) Part 1--yes.
Part 2--Only to raise a noncompliance issue.

(12) Part 1--Only to the extent that it is incorporated in the comprehensive plan and to the extent the area is a high crime area.
Part 2--Yes, if the area is a "high crime" area per the Guidelines.

(13) When there is an approved State plan and a complete local plan in accord with Section 304 and an obligation document.

(14) Up to the States. A minimum would require tying funds to approved "programs."

(15) The State plan governs.

(16) Yes, a small guideline.

(17) Yes.

Evaluation Requirements (pages 46-50)

(1) LEAA will issue by December 31, 1976 a request for a Plan Supplement Document amending both the 77 Planning Grant Application and the 77 Comprehensive Plan and giving specific guidance as to what new requirements must be met in the evaluation area as a result of the 76 amendments. In addition, FY 78 SPA guidelines will be issued at approximately the same time. Changes in existing evaluation guidelines will be minimal. In addition, LEAA will begin offering in 1977 evaluation training and technical assistance for personnel at both the SPA and RPU levels.

(2) Very few, if any, NILECJ requirements will be passed on. Funding decisions at this point pending.

(3) At the discretion of the SPA. LEAA actively encourages a localrole in evaluation.

(4) Existing guidelines will remain basically in effect with the requirement that SPA's undertake at least some intensive evaluation.

(5) No.

(6) The Institute is now working with the SPA's in defining this role.

State Plan Review (pages 51-53)

(1) No, the responsibility for setting priorities is vested in the State under Section 203 of the Act. However, Section 515(a)(1) does contemplate that LEAA will review the process by which the States develop these priorities. LEAA, based on Sections 515(a)(1) and 303(b) may make recommendations to the State Planning Agencies concerning improvements to be made in the comprehensive plan.

(2) Ordinarily these recommendations would be advisory. However, if LEAA finds that the State plan does not comply with the Section 303(b) standards or the Section 515 standards, they can have a mandatory effect and raise an issue of noncompliance with the statute. We would expect that the State would act in good faith on the recommendations.

(3) Both

(4) and (5) Yes, we will be seeking SPA views.

(6) Yes.

(7) We will have abbreviated standards shortly.

(8) Probably for substantive amendments only.

(9) Yes.

(1) Yes, there is no difference. It is a distinction without a difference.

(2) As a general rule, we will only make direct grants to national nonprofit organizations and local nonprofit grants will flow from LEAA through the SPA.

(3) There is no conflict with the provisions of Part E relating to title, property, control of funds, and award of grants directly to nonprofits. The limitations in Section 453 apply only to grants made to the State planning agency.

(1) Yes, yes.

(2) Yes, yes. Probation and parole are not explicitly stated in the statute but in order to effectively carry out the survey it is LEAA's intention to use its other authority to include probation and parole in the study.

100% Indian Funding (pages 56-57)

(1) Yes, it applies to Parts B, C, E.

(2) Appendix 7 of the Financial Guideline M 7100.

(3) Yes, in accord with legal opinion on such.

(4) Yes.

(5) Yes.

(6) Yes, see legal opinions on subject of aboriginal groups.

Civil Rights (pages 58-64)

(1) If grants flow through a State Planning Agency, yes. Title VI applies to direct grants.

(2) Actual notice--such notice must provide a copy of the finding so that we can determine its relationship to LEAA funded activities.

(3) To be consistent with the Federal Administrative Act, an agency's administrative procedure must include due process, right to a hearing and presentation of evidence.

(4) We are considering alternative methods and would appreciate comments.

(5) LEAA is preparing reasonable timetables and procedures for securing voluntary compliance.

Reporting Requirements (pages 65-67)

(1) To the extent that LEAA is able to gather that information prior to December 31, 1976, the information will be included in the report.

(2) December 31, 1976.

(3) It will take into account the transitional quarter.

(4) Some information will be required from the States. We will be developing procedures in consultation with the States for determining what information is necessary and how it will be gathered.

(5) Yes, as necessary. We want to minimize the red tape associated with this provision.

Juvenile Justice Maintenance of Effort (Pages 68-71)

(1) Yes.

(2) A combined requirement will be used in the three fund sources. It will be an aggregate method for all States utilizing goal levels based on a per capita basis. In effect, no new burdens are placed on the SPA's. The current guideline applicability for maintenance of effot will be retained. LEAA has made an administrative determination that a percentage of Part B funds equivalent to the amount of juvenile justice funds the States allocate under Parts C and E will be applied.

(3) and (4) LEAA will be required to make up the difference out of all of its Omnibus Crime Control and Safe Streets Act accounts. First, we calculate the amount of money the States put in juvenile justice under Part B, C, and E, and the difference will be made up by LEAA under all its categorical accounts. The end result will be that 19.15 percent of the total appropriations for the Crime Control Act will be applied to juvenile justice purposes. LEAA is not changing the criteria by which it determines the programs and projects being used for juvenile justice purposes.

Revolving Fund (pages 73-74)

(1) There will be three categories of property:
1. Unclaimed property. This will be subject to public auction.
2. Property which is claimed, we have no rights. There will be a de minimis rule set. If the cost of recovering the property exceeds the value we receive, we will ordinarily not include the property.
3. Those that the insurance companies reimbursed the owners of the property.

(2) New Part C discretionary funds will be used to establish "sting" projects. The proceeds from these projects, as well as projects started before the Act, can be applied to the revolving fund.

(3) We will issue specific guidelines. We will expect strict controls.

(4) Yes, for both DF and block subgrants.

(5) The true owner always has title. LEAA has a claim. Federal law will control.

(6) Yes, it must be included.

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