

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
JEFF FLAKE, ARIZONA
DAVID VITTER, LOUISIANA
DAVID A. PERDUE, GEORGIA
THOM TILLIS, NORTH CAROLINA

PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

February 27, 2015

VIA ELECTRONIC TRANSMISSION

Karol Mason
Assistant Attorney General
Office of Justice Programs
U.S. Department of Justice

Dear Assistant Attorney General Mason:

On September 5, 2014, I wrote to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the Office of Justice Programs (OJP) regarding allegations that OJJDP knowingly granted millions of taxpayer dollars to states that incarcerated runaway youth, foster youth, and other vulnerable minors in violation of the Juvenile Justice and Delinquency Prevention Act (JJDPA). As detailed in my January 14, 2015 letter, OJJDP's responses to my inquiry confirmed whistleblowers' accounts of compliance monitoring failures at OJJDP.

The pivotal question is whether OJJDP is implementing two separate and distinct compliance monitoring obligations under the law:

- OJJDP is required to reduce a state's funding for a given year by 20 percent for each core requirement violated in the previous fiscal year.¹
- OJJDP is *also* required to ensure that such a state does not receive *any* JJDPA funds for the year, unless that state meets one of two criteria, including a showing of subsequent, substantial compliance with the requirement(s) it was violating.²

OJJDP has defended a policy which appears to erroneously interpret these obligations as interchangeable. The policy allows non-compliant states to avoid the 20 percent reductions so long as they demonstrate subsequent, substantial compliance with the non-compliant requirement(s). According to OJJDP, this policy dates back to 1986. Consequently, there is a question as to how much total JJDPA funds may have been unlawfully disbursed since then.

My last letter detailed OJJDP's compliance monitoring failures in Wisconsin, and noted allegations of similar failures in four other states. Today's letter concerns those and other states.

¹ 42 U.S.C. § 5633 (c)(1).

² 42 U.S.C. § 5633 (c)(2). Significantly, subsections (c)(1) and (c)(2) are conjoined by the operative "and." Moreover, the equally operative "unless" qualifies only subsection (c)(2).

I. Virginia

Two independent sources have alleged that – subsequent to OJJDP’s receipt of my initial September 5, 2014 letter concerning this matter – a current OJJDP employee who previously worked for Virginia as the JJDP liaison for that state admitted to OJJDP staff that he knowingly submitted fraudulent data on behalf of Virginia in its annual applications for JJDP grants. This employee allegedly claimed that it was widely believed among the states that OJJDP does not verify data reported by states. One whistleblower claims that in 2005, Virginia reported to OJJDP that the state had only seven “lock-up” facilities in the entire state, even though there may be seventy such facilities in northern Virginia alone.

Yet, according to the OJJDP website, Virginia has received full funding under the JJDP every year since 2006.³ Such reports seem to underscore whistleblowers’ core allegation that OJJDP knowingly allows states to receive JJDP funds to which they are not entitled, and that this lack of compliance monitoring is common knowledge among the states.

II. Tennessee

Tennessee has received full funding under the JJDP every year since 2006.⁴ This fact suggests that the state has complied with all four of the JJDP’s core requirements in that time, including the Deinstitutionalization of Status Offenders (DSO) requirement. This requirement prohibits states that receive JJDP funds from incarcerating youth for offenses that are considered unlawful only because of the offender’s age, such as running away from home.

However, under the “24-hour” exception to the DSO requirement – an exception not found in the statute – states may detain status-offender youth for up to 24 hours, exclusive of weekends and holidays, immediately prior to and subsequent to *an initial court appearance*.⁵ Significantly, this exception does not allow the detention of status offender youth for any duration, *post-adjudication*.⁶

Yet, in Knox County alone, post-adjudication incarcerations of status-offender minors have occurred hundreds of times since 2007 – according to a law school professor who operates a public interest clinic that represents juvenile status offenders in Knox County courts. Allegedly, despite records that show routine violations of the DSO requirement since then, Knox County reported zero DSO violations in at least two of those years. Yet, even after the professor wrote a letter to OJJDP Administrator Robert Listenbee on November 6, 2013 outlining these concerns, OJJDP allegedly was unwilling to receive documentation of these alleged violations.

III. Illinois

A whistleblower alleges that Illinois has not complied with the Disproportionate Minority Contact (DMC) requirement since 2008, even though the state has received full funding under the JJDP every year since 2006.⁷ Under the DMC requirement, states must submit a detailed

³ *Id.*

⁴ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *State Compliance With JJDP Act Core Requirements*, <http://www.ojjdp.gov/compliance/compliancedata.html>.

⁵ 28 C.F.R. § 31.303(f)(2).

⁶ *Id.*

⁷ See note 3, *supra*.

plan outlining programs, projects, and activities that “address juvenile delinquency prevention efforts and system improvement efforts designed to reduce . . . the disproportionate number of juvenile members of minority groups, who come into contact with the juvenile justice system.”⁸

According to the whistleblower, OJJDP staff found a serious deficiency in Illinois’ DMC programs, and determined that funding should be correspondingly reduced. Reportedly, OJP’s Office of General Counsel (OGC) agreed with this determination. However, Administrator Listenbee allegedly overruled both determinations, without providing a legitimate justification. By the whistleblower’s estimation, Administrator Listenbee overturns OJJDP staff and OGC in their findings of noncompliance and the legally required funding reductions about *ten times per year*. As a result, violation of the DMC requirement among the states is reportedly widespread. Since 2008, OJJDP reportedly has only found one state out of compliance with this requirement.⁹

The whistleblower also alleges that Administrator Listenbee recently instructed OJJDP staff to issue a “blanket pass” for all states regarding the DMC requirement, by notifying all states that they will not be found out of compliance with the DMC core requirement in 2015. In OJJDP’s October 28, 2014 letter, OJJDP admitted that “the ‘not out of compliance’ notifications began in 2013 and will continue each year until [a compliance monitoring] tool [currently in development] is implemented.”

Setting aside the legality of these “not out of compliance” predeterminations which appear contrary to the requirements of the statute, the whistleblower alleges that Administrator Listenbee has been overruling non-compliant determinations and funding reductions well before 2013, since 2008.

IV. Rhode Island

According to whistleblowers, in “demonstrating” its compliance with the DMC requirement in one particular year, virtually all that Rhode Island did was to arrange for a single meeting with the local NAACP chapter. If accurate, this practice would seem to fall short of the statutory requirement that a state seeking to satisfy the DMC requirement must submit a detailed plan outlining programs, projects, and activities aimed at “reducing the disproportionate number of juvenile members of minority groups, who come into contact with the juvenile justice system.”¹⁰ Further, the regulations require states to demonstrate specific efforts taken to achieve this goal and to provide quantifiable documentation addressing it.¹¹

V. Puerto Rico¹²

In every year since 2006, Puerto Rico has been non-compliant with two core requirements of the JJDP: (1) separation of juveniles from adult offenders in secure facilities (“separation”) and (2) removal of juveniles from adult jails and lockups (“jail removal”).¹³ OJJDP actually carried out 20% reductions corresponding to those violations in each year.¹⁴ However, in each year,

⁸ 42 U.S.C. § 5633 (a) and § 5633 (a)(22).

⁹ See note 3, *supra*.

¹⁰ 42 U.S.C. § 5633 (a) and § 5633 (a)(22).

¹¹ 28 C.F.R. § 31.303(j).

¹² Under the JJDP, Puerto Rico is considered a “state.” 42 U.S.C. § 5603 (7).

¹³ See note 3, *supra*.

¹⁴ *Id.*

Puerto Rico still received *some* JJDPA funds.¹⁵ Under the law, the disbursement of partial funds in such circumstances is allowed only if Puerto Rico had, for each of those years: (1) showed subsequent, substantial compliance with the non-compliant requirements,¹⁶ or (2) agreed to spend 50% of the partial funds to achieve compliance with the non-compliant requirements.¹⁷

According to the OJJDP website, Puerto Rico did not demonstrate subsequent, substantial compliance with the separation or jail removal requirements in any of those years.¹⁸ Under the statute, the only way that OJJDP should have provided *any* JJDPA grants to Puerto Rico is if Puerto Rico had agreed to spend 50% of the partial funds it received in each of those years toward achieving compliance with those requirements. According to whistleblowers, however, Puerto Rico allegedly used these funds to make unnecessary purchases of sport utility vehicles and other items. Moreover, even the partial funds that Puerto Rico received from OJJDP were reportedly obtained through the provision of false data and the submission of statutorily required plans that are literally incomprehensible. According to whistleblowers, these problems are well-known among OJJDP management.

Whistleblowers allege that OJJDP employees who raised these issues internally were removed from duty or prompted to look the other way. In 2013, OJJDP reportedly imposed a belated measure of accountability, by “freezing” Puerto Rico’s JJDPA funds. However, OJJDP later unfroze those funds at the urging of Puerto Rico, according to whistleblowers. This decision was allegedly made in part to provide for the salary of a JJDPA liaison in Puerto Rico, who is married to an OJJDP employee.

VI. Idaho

In 2010, OJJDP conducted a Compliance Monitoring Field Audit of Idaho. The audit revealed several issues in Idaho, including problems in data verification:

Idaho's 2009 compliance monitoring report[] indicates that all facilities identified in the universe reported data in 2009 [H]owever, the compliance monitor reported that not all 85 lockups had in fact reported data to [Idaho]. The compliance monitor notified the authors of this report that *the JJ Specialist changed the original figure of 24 to 85*. Later during the audit at the two lockups visited it was further validated that *data on juveniles held were unavailable thus confirming that not all 85 lockups could have reported data to the State*. Of further concern is that Idaho reported in its original 2009 compliance monitoring report that not a single lockup in Idaho held any juveniles in 2009; a number of policies provided from Boise Police Department and Jerome Police Department *contradict* this.¹⁹

Idaho then submitted a revised 2009 compliance monitoring report, which showed:²⁰

¹⁵ *Id.*

¹⁶ 42 U.S.C. § 5633 (c)(2)(A).

¹⁷ 42 U.S.C. § 5633 (c)(2)(B).

¹⁸ See note 3, *supra*.

¹⁹ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Compliance Monitoring Audit Report, State of Idaho, Department of Juvenile Corrections, July 26-29, 2010, at 12. Emphases added.

²⁰ *Id.* at 13.

- 236 violations of the DSO requirement [for a rate of 57.19 per 100,000].
- 98 violations of the separation requirement.
- 131 violations of the jail removal requirement [for a rate of 31.75 per 100,000].

Despite these documented violations, Idaho has received full funding under the JJDPa since 2006, with the exception of Fiscal Year 2012.²¹ Idaho's funding for that year was reduced by 20%, but this only accounted for the DSO violations. It does not appear that OJJDP reduced Idaho's funding by 20% for its violations of the separation and jail removal requirements.

VII. Alabama and the District of Columbia

Finally, in November 2014, OJJDP cited Alabama and the District of Columbia as states other than Wisconsin that were recently allowed to submit supplemental data to support a finding of compliance, despite providing initial data that were non-compliant with JJDPa requirements. Given the above-referenced concerns regarding the legality of this policy, Alabama and the District of Columbia may have received funds to which they were not entitled under the JJDPa.

VIII. Questions

Accordingly, please provide written responses to the following by March 13, 2015:

1. What is OJJDP's understanding of 42 U.S.C. § 5633 (c)(1) and § 5633 (c)(2)?
 - a. Do those subsections impose separate obligations on OJJDP?
 - b. Is the OJJDP policy referenced above consistent with these obligation(s)? If so, how?
 - c. OJJDP has published on its website its compliance monitoring determinations since 2006.²² Please specify all instances among these which involved the exercise of OJJDP's longstanding policy referenced above.
2. Regarding Virginia:
 - a. Is it true that a current OJJDP employee who used to work as a JJDPa liaison for Virginia admitted to OJJDP staff that he submitted fraudulent data on behalf of Virginia in its annual applications for JJDPa grants?
 - b. Is it true that a current OJJDP employee who used to work as a JJDPa liaison for Virginia admitted to OJJDP staff that it is widely believed among states that OJJDP does not verify data that it receives from states?
 - c. Will you investigate whether Virginia provided false data to OJJDP and whether and how much federal taxpayer dollars it unlawfully received?
3. Regarding Tennessee: Was OJJDP ever contacted by a law school professor concerning DSO violations in Knox County? If so:
 - a. Did OJJDP review any of his data or statistical compilations?
 - b. Did OJJDP ever follow-up on any of his allegations, including verifying whether Knox County reported DSO violations correctly? If so, how?

²¹ See note 3, *supra*.

²² *Id.*

4. Regarding the DMC requirement in Rhode Island, Illinois, and Other States:
 - a. Has there ever been a year in which Rhode Island was deemed compliant with the DMC requirement on the basis of a meeting with the NAACP?
 - b. Has Administrator Listenbee ever overruled a non-compliant finding and/or funding reduction determination that was made by either OJJDP compliance monitoring staff or OJP's Office of General Counsel? If so, how many times, which years, for which states, and on what grounds?
 - c. Are the post-2013 "not out of compliance" notifications consistent with 42 U.S.C. § 5633 (c)(1) and § 5633 (c)(2)? If so, how?

5. Regarding Puerto Rico: Given Puerto Rico's failure to comply with the separation and jail removal requirements since 2006, why has OJJDP allowed Puerto Rico to continue receiving JJDP funds in every year since 2006?
 - a. If that determination was made under § 5633 (c)(2)(B), how does OJJDP ensure that Puerto Rico is spending 50% of its grants to achieve compliance with the separation and jail removal requirements?
 - b. Has OJJDP ever frozen and then unfrozen Puerto Rico's JJDP Title II funds since 2006? If so, please explain the rationale for each decision.
 - c. Since 2006, has an OJJDP employee ever been married to an employee in the JJDP liaison office in Puerto Rico?
 - d. Dating back to 2006, please provide copies of all 3-year plans and annual amendments to those plans that Puerto Rico was required to submit to OJJDP under 42 U.S.C. § 5633 (a).

6. Regarding Idaho:
 - a. Did OJJDP ever reduce Idaho's funding by 20% for its documented violations of the separation and jail removal requirements in 2009?
 - b. Has OJJDP verified whether Idaho has implemented the corrective actions outlined in that audit report?

7. Regarding Alabama: Please provide both the initial and supplemental DSO Violation Rates that led to the October 2004 finding of compliance:
 - a. Did those rates cover the exact same period of time?
 - b. Did OJJDP carry out each of its compliance monitoring obligations under 42 U.S.C. § 5633 (c)(1) and § 5633 (c)(2)?

8. Regarding the District of Columbia: Please provide both the initial and supplemental DSO Violation Rates involved in OJJDP's October 2007 finding compliance, contingent upon receipt of additional information.
 - a. Did those rates cover the exact same period of time?
 - b. Did OJJDP carry out each of its compliance monitoring obligations under 42 U.S.C. § 5633 (c)(1) and § 5633 (c)(2)?

Please number your responses according to their corresponding questions. Should you have questions, please contact Jay Lim of my Committee staff at (202) 224-5225. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Chairman

cc: Michael E. Horowitz
Inspector General
U.S. Department of Justice