



July 11, 2011

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Department of Justice
Submitted via www.regulations.gov

Attention: Docket No. DOJ-LA-2011-0016

Subject: Comments on Preliminary Plan for Retrospective Review Under Executive Order 13,563

On behalf of the Campaign for Youth Justice (CFYJ), I am writing to submit a response to the request for public comment regarding the U.S. Department of Justice's (DOJ) Preliminary Plan for Retrospective Review of Existing Regulations. CFYJ is a national non-profit organization working to end the practice of prosecuting youth in adult criminal court and seeking more effective approaches for youth in the juvenile justice system. We commend DOJ for providing this opportunity to provide suggestions regarding the regulations that should be reviewed and the factors to be considered as the review is conducted.

DOJ Should Promote Transparency and Public Participation in Regulatory Activities

As noted in the Preliminary Plan, DOJ is "primarily a law-enforcement agency, not a regulatory agency... [and] because of the limited scope of its rulemaking activities, the Department also has limited in-house staff and resources devoted to the regulatory process." Similarly, as a juvenile justice advocacy organization, we have limited staff and resources to devote to following and participating in the various regulatory processes that occur. In fact, if it were not for a colleague mentioning this process, we would not have been aware of the opportunity to comment on the Preliminary Plan. We believe the Preliminary Plan's effort to promote transparency (as discussed on page 16 of the plan) is insufficient. Promoting regulatory activities in the *Federal Register* or on the Open Government website is not an adequate way to obtain meaningful public input from the juvenile justice community.

Recommendation 1: Each office within DOJ that has responsibility for implementing regulations should have a dedicated webpage with information on the existing regulations that are in operation, copies of relevant policy guidance that is useful to understanding how the regulations have been interpreted, and relevant pending activities from the *Federal Register*. For example, with a few minor alterations, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Compliance Monitoring page (<http://www.ojjdp.gov/compliance/>) could provide this information.

Recommendation 2: DOJ should promote regulatory activities on broadly disseminated email newsletters (e.g., JuvJust).

Ensure Proper Evaluation of Youth-Related Rules

According to the Preliminary Plan, DOJ “plans to create an internal working group to review existing regulations and recommend revisions. The working group will include staff from the Office of the Deputy Attorney General, the Office of the Associate Attorney General, the Office of Legal Policy, the Office of Legal Counsel, the Civil Rights Division, the Office of Justice Programs, and the Justice Management Division.” As an organization working on behalf of children and youth involved in juvenile and criminal justice systems, we know that far too often adults are unaware of the unique needs and concerns of youth. We are concerned that given the size and scope of the adult population relative to the child population, particularly the populations most affected by DOJ programs and activities, the needs of youth will likely be overlooked during any retrospective review process.

We hope DOJ will make special provisions to ensure that rules affecting youth are evaluated appropriately.

Recommendation 3: Rules affecting children should not be discounted simply because they affect a smaller population than rules affecting adults.

Recommendation 4: The composition of the internal working group tasked with evaluating rules affecting children should be significantly broadened beyond the expertise currently available within DOJ. According to the Preliminary Plan, “Department-wide leadership of the group will also ensure sufficient independence from the components responsible for writing and implementing the Department’s regulations.” There are relatively few offices within DOJ that have significant youth expertise, and most of these individuals have direct responsibility for implementing the youth-related regulations. Excluding these individuals from the internal working group and overall process effectively means that persons evaluating regulations related to youth will lack the expertise needed to properly evaluate the regulations. To maintain independence and accountability without sacrificing knowledge of youth needs, we strongly urge DOJ to convene a panel of outside experts or consultants, similar to a peer review process, to assist in making any determinations about rules related to youth.

Recommendation 5: DOJ should implement special procedures (e.g., focus groups) to illicit public comment from youth and families when evaluating rules affecting children. Too often the voices of youth who are involved in the juvenile justice and adult criminal justice systems and their families - as well as other youth and family-serving state systems - are not heard during the development of policy at the federal or state level. These youth and families are the most impacted by the regulations, and yet at present the Preliminary Plan makes no formal effort to solicit their views aside from participation in the generic public comment period.

Ensure Data Availability to Effectively Evaluate Rules

The Preliminary Plan lists nine bullets to consider when evaluating rules to review including: 1) costs or burdens on the public; 2) outdated reporting practices; 3) affects large number of entities or has disproportionate distributional impacts on certain entities; 4) could result in greater new benefits to the public if modified; 5) overlap, duplicate, or conflict with other federal rules; 6) have been in place for a long time so updating may be appropriate; 7) have been overtaken by new technologies

or unanticipated circumstances; 8) could be replaced by other regulatory alternatives; or 9) have been the subject of petitions for rulemaking.

We believe the fourth bullet, “could result in greater new benefits to the public if modified,” should be of primary concern during the retrospective process. Agencies should use retrospective analysis of existing policies as a way to improve the efficacy of their regulatory programs, not as a deregulatory initiative. This means that DOJ should be proactively looking for opportunities to strengthen their regulatory programs to maximize net social benefits. However, effective review of existing regulatory programs depends in part on the availability and quality of data used to assess effectiveness.

Recommendation 6: To properly evaluate the efficacy of rules related to children, particularly rules related to youth housed in adult jails and prisons, we believe that DOJ should be proactive and embark on a data collection program.

The internal working group should specifically meet with officials at the Bureau of Justice Statistics (BJS) and other relevant data collection agencies and research entities to ensure DOJ has the data it needs to properly assess the rule’s impact and efficiency after several years. DOJ should collect data at both the state and federal level on youth in the aggregate and disaggregated by offense, race, ethnicity, sex, disability, geography, English proficiency, delinquency history, age, and whether the case was brought in juvenile or adult court, including data points such as:

- The number of youth arrested for adult offenses;
- The prior record of youth arrested for adult offenses;
- The number and basis for declination of prosecution for youth who were ultimately not prosecuted as adults;
- The number and disposition of cases terminated, including dismissals, guilty pleas, and results at trial;
- The number of youth who were referred back to the juvenile justice system
- The type and form of pretrial detention release;
- The sentences imposed on youth, including type and length of sentences and method of disposition;
- The appeals filed and terminated, and the disposition of appeals;
- The factors used to determine whether to charge a youth under the age of 18 in adult criminal court, including criteria used, who and what evidence is used to make the decision, and who ultimately makes the decision; and
- The final outcomes with youth under the age of 18 charged in adult criminal court, including recidivism rates, where they are housed, and the other programs available to youth in the adult court system, including how these outcomes compare to youth who are retained in the juvenile justice system.

Additional data is also needed to explore the long-term effects of housing youth in adult jails and prisons by comparing juvenile justice facilities and probation to adult criminal justice facilities and probation with regards to:

- The availability, quality, and utilization of age-appropriate services, including educational, health, mental health, and substance abuse, and nutritional services;
- Distance from family, and its effects on youth as compared to adults;

- Disciplinary policies, including isolation, and their effects on youth as compared to adults as well as the availability of separate, age appropriate disciplinary policies for youth in adult facilities;
- The quality and content of staff training, including the availability and utilization of training to deal with the unique needs of juveniles;
- The availability, quality, and utilization of suicide prevention services;
- The availability, quality, and utilization of discharge and re-entry planning as well as access to programs and services before and after the youth's release; and
- The collateral consequences of an adult conviction, such as barriers to federal programs, employment, education, military service, and access to other programming.

Thank you for considering these comments. If you have any additional questions, please contact me at (202) 558-3580 or narya@cfyj.org.

Sincerely,

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