

CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION[428]

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CHAPTER 1
FUNCTIONS

428—1.1(216A) Definitions. As used in this chapter:

“*Administrator*” means the administrator of the division of criminal and juvenile justice planning.

“*Criminal and juvenile justice planning advisory council (CJJPAC)*” means the advisory council established in Iowa Code section 216A.132.

“*Division*” means the division of criminal and juvenile justice planning.

“*Juvenile justice advisory council (JJAC)*” means the state advisory group described in P.L. 93-415, Section 223(a)(3), and established through executive order to oversee the administration of the Juvenile Justice and Delinquency Prevention Act (JJPA) formula grants in Iowa.

428—1.2(216A,PL93-415) Function of the division.

1.2(1) The division shall provide staff support to the CJJPAC and the JJAC and shall assist them with the coordination of their efforts. Additionally, the division shall perform functions consistent with the duties and requirements outlined in Iowa Code chapter 216A, subchapter 9, P.L. 93-415 and other relevant federal and state requirements.

1.2(2) The division shall establish and maintain procedures to collect and report all instances of juvenile detention and confinement occurring in the state of Iowa consistent with P.L. 93-415, Section 223(a)(15). The monitoring function shall include the following:

a. The division shall collect relevant self-report information and perform on-site verification of data from jails, police lockups, juvenile detention facilities, state training schools, mental health institutes, locked residential treatment facilities for youth and other secure facilities.

b. Through written agreement, the jail inspection unit of the department of corrections shall provide the division and the specific jails and lockups with certification of their ability to separate juveniles and adults, consistent with P.L. 93-415, Section 223(a)(13).

c. Through written agreement, the department of inspections and appeals shall provide information to the division on holdings relative to P.L. 93-415, Section 223(a)(12)(A), in contracted private facilities that the department of inspections and appeals has authority to inspect.

d. Through written agreement, the department of human services shall provide information to the division on holdings relative to P.L. 93-415, Section 223(a)(12)(A), in state institutions that the department of human services administers.

1.2(3) Inquiries shall be directed to the division, the CJJPAC or the JJAC, Lucas State Office Building, Des Moines, Iowa 50319. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

428—1.3(216A) Function and activity of the CJJPAC. The CJJPAC is established by Iowa Code section 216A.132 and is charged with the responsibility to identify and analyze justice system issues of concern; develop and assist others in implementing recommendations and plans for system improvement; and provide for a clearinghouse of justice system information to coordinate with data resource agencies and to assist others in the use of justice system data. The CJJPAC shall advise the division on its administration of state and federal grants and appropriations and shall carry out other functions consistent with the intent of Iowa Code chapter 216A, subchapter 9.

428—1.4(216A) Function and activity of the JJAC. The JJAC is established through executive order pursuant to P.L. 93-415 to advise the division on juvenile justice issues; make recommendations to the governor and legislature; review and comment on the division’s reporting of Iowa’s compliance with the requirements of P.L. 93-415, Sections 223(a)(12), (13), (14) and (23); advise the division on its administration of state and federal grants and appropriations; supervise the division’s administration of the Juvenile Justice and Delinquency Prevention Act formula grant and Title V delinquency prevention programs established in P.L. 93-415; and carry out other functions consistent with the intent of P.L. 93-415.

428—1.5(216A) CJJPAC and JJAC meetings.

1.5(1) Notice of meetings of the CJJPAC and the JJAC shall be published 24 hours in advance of the meeting and will be mailed to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. Agendas shall be available by mail from the division to any interested persons if requested not less than five days in advance of the meeting. All meetings shall be open to the public, unless a closed session is voted by two-thirds of the entire membership or by all members present for one of the reasons specified in Iowa Code section 21.5. Special or electronic meetings may be called by the chair upon a finding of good cause and shall be held in accordance with Iowa Code section 21.8. CJJPAC or JJAC meetings shall be governed by the following procedures:

a. Persons wishing to appear before the CJJPAC or the JJAC shall submit the request to the respective council not less than five days prior to the meeting. Presentations may be made at the discretion of the respective chair and only upon matters appearing on the agenda.

b. Persons wishing to submit written material shall do so at least five days in advance of the scheduled meeting to ensure that CJJPAC or JJAC members have adequate time to receive and evaluate the material.

c. At the conclusion of each meeting, a time, date and place of the next meeting shall be set unless such meeting was previously scheduled and announced.

d. Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. The chair may request a person using such a device to discontinue its use when it is obstructing the meeting. If the person fails to comply with this request, the presiding officer shall order that person excluded from the meeting.

e. The chair may exclude any person from the meeting for repeated behavior that disrupts or obstructs the meeting.

f. Other meeting protocol and procedures consistent with this subrule and Iowa Code chapter 21 may be established by the CJJPAC or the JJAC through bylaws approved by a majority of the members of the council subject to the bylaws.

1.5(2) Minutes of CJJPAC or JJAC meetings are prepared and are available for inspection at the division office during business hours. Copies may be obtained without charge by contacting the office.

1.5(3) The CJJPAC or JJAC may form committees to carry out those duties as are assigned by the respective council. Meetings of the committees shall conform to the conditions governing the respective full councils as listed in subrule 1.5(1).

These rules are intended to implement Iowa Code chapter 17A, Iowa Code sections 216A.131 to 216A.136, and section 232.190 as amended by 2000 Iowa Acts, Senate File 2429, and Public Law 93-415.

[Filed 3/15/91, Notice 2/6/91—published 4/3/91, effective 5/8/91]

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CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

428—2.1(22) Adoption by reference. The council adopts by reference 421—Chapter 2, Iowa Administrative Code.

428—2.2(22) Custodian of records. The custodian for the records maintained by this division is the division administrator.

These rules are intended to implement Iowa Code chapter 17A and sections 22.11 and 216A.131 to 216A.136.

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CHAPTER 3
JUVENILE JUSTICE YOUTH DEVELOPMENT PROGRAM

[Prior to 3/4/92, see Children, Youth and Families Division, 425—Chapter 7]

[Prior to 7/12/00, see 428—Chapters 3 to 5]

428—3.1(216A,232) Definitions. As used in this chapter:

“*Administrator*” means the administrator of the division of criminal and juvenile justice planning within the department of human rights.

“*Applicant*” means a city, county or other designated eligible entity preparing and submitting an application for funding through this program.

“*Application*” means a request to the division for funding that complies with federal and state requirements.

“*Criminal and juvenile justice planning advisory council (CJJPAC)*” means the advisory council established in Iowa Code section 216A.132.

“*Decategorization*,” as established in Iowa Code section 232.188, means the department of human services’ program whereby approved counties are permitted to pool their allocations of designated state and federal child welfare and juvenile justice funding streams, establish local planning and governance structures, and design and implement service systems that are more effective in meeting local needs.

“*Decategorization governance board*” means the board required to provide direction and governance for a decategorization project, pursuant to Iowa Code section 232.188.

“*Division*” means the division of criminal and juvenile justice planning within the department of human rights.

“*Formula-based allocation*” means a process that uses a formula to determine funding amounts to units of government or local public planning entities on a statewide basis.

“*Grant review committee*” means a committee established by the JJAC, the CJJPAC or the division to review and rank applications for funding. Individuals who are not members of the JJAC or the CJJPAC may serve on this committee.

“*Justice Research and Statistics Association (JRSA)*” is a national nonprofit organization that provides a clearinghouse of current information on state criminal justice research, programs, and publications.

“*Juvenile Accountability Incentive Block Grant (JAIBG)*” means a federally funded program to provide state and local governments funds to develop programs to reduce delinquency, improve the juvenile justice system, and increase accountability for juvenile offenders.

“*Juvenile crime prevention community grants*” means the community grant fund program established in Iowa Code section 232.190 as amended by 2000 Iowa Acts, Senate File 2429, and the federal Title V delinquency prevention program.

“*Juvenile justice advisory council (JJAC)*” means the state advisory group described in P.L. 93-415, Section 223(a)(3), and established through executive order to oversee the administration of the JJDPA formula grants in Iowa.

“*Juvenile Justice and Delinquency Prevention Act (JJDPA)*” means the federal Act, P.L. 93-415.

“*Law enforcement expenditures*” means the expenditures associated with police, prosecutorial, legal, and judicial services, and corrections as reported by the units of local government to the U.S. Census Bureau during the Census of Governments.

“*Local public planning entities*” means entities that have a local governance structure to plan, develop and coordinate services for children and families, and provide for implementation of services for children and families. Examples of local public planning entities include, but are not limited to, units of local government such as cities or counties, decategorization governance boards, community empowerment area boards, and school districts.

“*Office of Juvenile Justice and Delinquency Prevention (OJJDP)*” means the federal office within the U.S. Department of Justice that administers the Juvenile Justice and Delinquency Prevention Act and JAIBG.

“*State juvenile crime enforcement coalition (JCEC)*” means a group of individuals that develops a state plan to achieve the goals of JAIBG. The CJJPAC and the JJAC shall jointly act as the state JCEC.

“*Subgrantee*” means any applicant receiving funds through this program from the division.

“*Title V delinquency prevention grants*” means Title V, Sections 501-506, “Incentive Grants for Local Delinquency Prevention Programs Act,” of the JJDPA.

“*Unit of local government*” means a county, township, city, or political subdivision of a county, township, or city that is a unit of local government as determined by the Secretary of Commerce for general statistical purposes, and the recognized governing body of an Indian tribe that carries out substantial governmental duties and powers.

428—3.2(216A,232) Purpose and goals.

3.2(1) The purpose of the juvenile justice and youth development program is to assist the state in the establishment and operation of juvenile crime prevention programs; provide for greater accountability in the juvenile justice system; implement a results framework that promotes youth development; and comply with the JJDPA core requirements regarding the deinstitutionalization of status offenders, sight and sound separation of adults and juveniles in secure facilities, prohibitions on the use of adult jails to hold juveniles, and the disproportionate confinement of minority youth.

3.2(2) The primary goal of the coordinated juvenile justice and prevention program is to promote positive youth development by helping communities provide their children, families, neighborhoods, and institutions with the knowledge, skills, and opportunities necessary to foster healthy and nurturing environments that support the growth and development of productive and responsible citizens. Other specific goals of this program are to reduce youth violence, truancy, involvement in criminal gangs, substance abuse and other delinquent behavior.

428—3.3(216A,232,PL93-415) Program funding distribution. The division shall distribute funds available for this program through the following methods:

1. Competitive grants.
2. Formula-based allocations.
3. Sole source contracts.

Funding through any of these methods may be on an annual or multiyear basis.

428—3.4(216A,232,PL93-415) Competitive grants.

3.4(1) Application announcement. The administrator of the division shall announce through public notice the opening of any competitive grant application process. The announcement shall provide potential applicants with information that describes eligibility conditions, purposes for which the program funding shall be available, application procedures, and all relevant time frames established for proposal submittal and review, grant awards, and grant expenditure periods.

3.4(2) Preapplication. The division may request potential applicants to submit a preapplication summary of their proposal. If a preapplication is required, the division shall provide all potential applicants with sufficient information detailing the extent of the preapplication and the criteria for review. Preapplications received in a timely manner shall be presented to the grant review committee for screening. The committee shall use the same ranking system for each preapplication. It shall be based on the criteria provided to the applicant through the division activities specified in subrule 3.4(1). Applicants shall be notified in writing of the screening decisions.

3.4(3) Content of applications. Required elements of the applications shall be published in the request for applications and shall be based on a point system established by the division that reflects the requirements of federal and state funding sources. The division shall develop the application and selection criteria.

3.4(4) Application review and selection process. The division shall conduct a preliminary review of each application to ensure that the applicant is eligible and the application is complete. All applications that are submitted in a timely manner by eligible applicants and contain the necessary information shall be presented to the grant review committee. Members of the grant review committee shall review

each application and shall assign numerical scores to each application using criteria and point values established by the division and listed in the request for applications. The rank order of scores assigned to the applications by the review committee shall be the basis for funding recommendations for each application reviewed. The grant review committee shall forward their funding recommendations for approval and final award decisions pursuant to rule 428—3.7(216A,232,PL93-415). Decisions to make final awards shall be consistent with applicable state and federal program requirements.

3.4(5) *Conflict of interest.* Persons shall not serve on the grant review committee or otherwise participate personally through decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which funds administered by the division are used when, to the person's knowledge, the person or a member of the person's immediate family, a partner, an organization in which the person is serving as an officer, director, trustee, partner, or employee or any person or organization with whom the person is negotiating or has any arrangement concerning prospective employment, or has a financial interest of less than an arms-length transaction. If a person's agency or organization submits an application, the person shall not be present when the grant review committee's recommendations are acted upon by the JJAC or the CJJPAC.

428—3.5(216A,232,PL93-415) Formula-based allocations.

3.5(1) *Funding recipients.* Only units of local government and local public planning entities may be considered eligible applicants to receive funding through this distribution method. The determination of which units of local government and local public planning entities are eligible applicants shall be made according to the state or federal law or regulation that makes funding available to the division for this distribution method. When such a determination is not established in law or regulation, the administrator shall make the determination with the advice of the CJJPAC and the JJAC.

3.5(2) *Formula to determine individual allocation amounts.* Allocation amounts to individual units of local government or local public planning entities shall be calculated according to the state or federal law or regulation that makes funding available to the division for this distribution method. When an allocation formula for funding to be distributed by the division is not established in this chapter or other law or regulation, the division shall calculate allocations based on a formula determined by the administrator. The formula shall be based on the number of children residing in the respective areas and may also be based on poverty rates, delinquency rates and other data relevant to child and family well-being. Application materials provided to the eligible units of local government or local public planning entities shall specify the formula used to calculate the allocation.

3.5(3) *Application procedures and requirements.*

a. Each unit of local government or local public planning entity that is eligible to be an applicant for funds pursuant to 3.5(1) shall be contacted by the division and provided an application that must be completed by the applicant prior to the applicant's receipt of the allocation.

b. The application may require the submission of a comprehensive plan to prevent and reduce juvenile crime that reflects the purposes and goals in rule 428—3.2(216A,232) and that structures the coordination and collaboration of other relevant community programs and activities. Evidence of such coordination and collaboration may be required to include assurances and documentation that the plan for this program was developed to include, or be an integral part of, other areawide plans related to, for example, child welfare, substance abuse, health, or education.

c. The application may require documentation that the application was completed with the participation of representatives from, for example, law enforcement, county attorneys, county and city governments, and health, human services, education and community service agencies.

d. The application may also require the applicant to certify and make assurances regarding policies and practices related to, but not limited to, funding eligibility, program purposes, service delivery and planning and administration capacities.

e. Each notified applicant shall submit the required information by the deadline established and announced by the division. The division reserves the right to extend the deadline.

f. Following its receipt and approval of a completed application, the division shall offer the applicant a contract authorizing the obligation of funds. These rules and all applicable state and federal laws and regulations shall become part of the contract by reference.

3.5(4) Allocations declined, waived or combined.

a. As allowed by federal or state law, when an eligible local public planning entity or unit of local government declines to submit an application for funds, such funds shall be retained by the division to be reallocated among all participating units of local government or local public planning entities or to be otherwise distributed for the development of services that have a statewide impact.

b. As allowed by federal or state law, the division may permit an eligible unit of local government to waive its right to a direct allocation and request that its allocation be awarded to and expended for its benefit by a larger or contiguous unit of local government or local public planning entity. A written waiver shall be required from the unit of local government that waives its right to a direct allocation and names a requested unit of local government or local public planning entity to receive and expend the funds. The unit of local government or local public planning entity receiving the funds must agree, in writing, to accept the redirected funds, to carry out all planning and application requirements and to serve as the fiscal agent for receiving the waived allocation. The division's instructions to eligible applicants shall describe the procedures required to implement this subrule.

c. As allowed by federal or state law, the division may permit applicants to enter into regional coalitions by planning for and utilizing combined allocations from the participating units of local government or local public planning entities. A unit of local government or local public planning entity shall serve as the applicant and fiscal agent for purposes of carrying out planning and application requirements, and for receiving the allocation and obligating and expending funds for the benefit of the combined units. The division's instructions to eligible applicants shall describe the process to implement this subrule.

428—3.6(216A,232,PL93-415) Sole source contracts. The division may determine, because of the nature of a certain problem or desired programmatic response, that a competitive grant or formula-based allocation process would not be the most appropriate or expeditious process through which to award funds. In such cases, the division may seek out a potential subgrantee with which it can develop a sole source contract for services. The division shall be alert to organizational conflicts of interest and noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. The division's awarding and administration of any sole source contract shall be governed by all relevant state and federal laws and regulations.

428—3.7(216A,232,PL93-415) Program funding sources and related provisions.

3.7(1) Sources of funding for this program may include juvenile crime prevention community grants, JJDPa formula grants, JAIBG funds and other funds made available to the division for the purpose of this program. The division may combine funding from these federal and state appropriations and grant programs to distribute through any of the methods outlined in 428—3.3(216A,232,PL93-415).

3.7(2) Juvenile crime prevention community grants.

a. These funds, when available, shall be distributed according to the provisions of 428—3.5(216A,232,PL93-415).

b. The decategorization governance boards established in Iowa Code section 232.188 shall be the eligible recipients of these funds.

c. The administrator may approve applications for these funds except that the JJAC may exercise approval authority over those applications that will be funded in whole or in part with federal Title V delinquency prevention grants.

d. The CJPAC and the JJAC shall advise the division on its administration of these funds.

3.7(3) JJDPa formula grants.

a. The JJAC shall determine the amounts of these funds, when available, that are to be distributed according to the provisions of 428—3.3(216A,232,PL93-415).

b. The JJAC shall determine any specific purposes for which this funding shall be distributed through the provisions of 428—3.4(216A,232,PL93-415) and 428—3.6(216A,232, PL93-415).

c. The JJAC may review and exercise approval authority over any applications for these funds distributed through the provisions of 428—3.4(216A,232,PL93-415).

d. The administrator may approve applications for these funds when distributed through the provisions of 428—3.5(216A,232,PL93-415) and 428—3.6(216A,232, PL93-415).

3.7(4) Determination of JAIBG funding amounts to be distributed when available.

a. OJJDP determines the amount of JAIBG funds that the division will distribute to units of local government through the provisions of 428—3.5(216A,232,PL93-415).

b. The state JCEC may determine an amount and the purposes of JAIBG funds to be distributed through the provisions of 428—3.4(216A,232,PL93-415) and 428—3.6(216A,232,PL93-415) and the amount of JAIBG funds to be distributed to local public planning entities through the provisions of 428—3.5(216A,232,PL93-415).

3.7(5) JAIBG funding for units of local government.

a. Each year JAIBG funding is available, the division shall conduct a review of state and local juvenile justice expenditures to determine the primary financial burden for the administration of juvenile justice within the state of Iowa. If, after conducting this review, the state's financial burden in the program purpose areas is greater than 50 percent of the expenditures, the division may request OJJDP's approval to distribute to units of local government a lower percentage of the available funding than the percentage initially established by Congress for units of local government. The division shall consult with units of local government or organizations representing such units prior to submitting such a request.

b. The JAIBG allocations for individual units of local government shall be determined by a formula set by Congress which is based on a combination of law enforcement expenditures for each unit of local government and the number of Uniform Crime Report Part 1 violent crime reports by each unit of local government. Two-thirds of each unit of local government's allocation will be based on the law enforcement expenditure data and one-third will be based on the reported violent crime data, in the same ratio to the aggregate of all other units of general local government in the state.

c. To apply the formula set by Congress, the division shall use data collected by the U.S. Census Bureau pertaining to law enforcement expenditures and the Federal Bureau of Investigation pertaining to reported Part 1 violent crime, as compiled by the JRSA, and the department of public safety (DPS) of the state of Iowa.

d. If data, as compiled by JRSA, indicates that units of local government have not reported law enforcement expenditures, or have reported only partial law enforcement expenditures, the division may request complete law enforcement expenditure reports directly from the affected units of local government to determine the correct allocation. If no additional information is received from local units of government within 15 calendar days after requesting such expenditure reports, the division shall use the data as presented by JRSA.

e. If data, as compiled by JRSA, indicates that units of local government have not reported crime data to the DPS or have reported only partial crime data, the division may request complete violent crime data directly from the affected units of local government to determine the correct allocation. If no additional data is received from local units of government within 15 calendar days after requesting such data, the division shall use the data as presented by JRSA.

f. No unit of local government shall receive an allocation that exceeds 100 percent of the law enforcement expenditures of such unit as reported to the Census Bureau.

g. In order to qualify for JAIBG funds, a unit of local government's allocation must be \$5,000 or more. If, based on the formula, the allocation for a unit of local government is less than \$5,000 during a fiscal year, the amount shall be distributed by the division to the local decategorization governance board for those areas encompassing the unit of local government, as described in subrule 3.7(6).

3.7(6) JAIBG funding for local public planning entities. In any year in which JAIBG funds are available and the state JCEC determines an amount of these funds to be distributed through the provisions of 428—3.5(216A,232,PL93-415), the division may make such funds available to local decategorization governance boards. The division shall calculate allocations to each of the decategorization governance

boards based on the number of children aged 5 to 17 years residing in the respective areas. The most recent available population data for children aged 5 to 17 years shall be used to calculate the allocations. In any year in which the division makes JAIBG funds available to local decategorization governance boards, the division shall make funds available to any county that is not participating in decategorization. The division shall calculate allocations to each county that is not participating in decategorization based on the number of children aged 5 to 17 years residing in the respective areas. The most recent available population data for children aged 5 to 17 years shall be used to calculate the allocations.

3.7(7) Other funds. When funds other than those provided for in subrules 3.7(2) through 3.7(6) are made available to the division for the purposes of this program, the division shall distribute such funds through the provisions of this chapter. With the advice of the JJAC and the CJJPAC, the division shall, consistent with applicable state and federal law and regulation, determine the distribution methods, eligible applicants and any allocation formulas to be used when making such funding available.

428—3.8(216A,232) Appeals.

3.8(1) Applicants choosing to appeal funding decisions must file a written appeal with the administrator within ten calendar days of the postmarked date of the written notification of the program's funding decisions.

3.8(2) All letters of appeal shall clearly state the reason(s) for the appeal and evidence of the reason(s) stated. Reason(s) for appeal must be based on a contention that the rules and procedures governing the funding process have not been applied properly. All appeals must clearly state in what manner the division failed to follow the rules of the selection process as governed by these administrative rules or procedures outlined in the application materials provided to all applicants by the division. The letter of appeal must also describe the remedy being sought.

3.8(3) If an appeal is filed within the ten calendar days, the division shall not enter into a contract with any applicant involved in the application process being appealed until the administrator has reviewed and decided on all appeals received in accordance with the criteria in subrules 3.8(1) and 3.8(2). The division administrator shall consider the information submitted by the appellant and relevant information from division staff when conducting the review. The review shall be conducted as expeditiously as possible so that all funds can be distributed in timely manner.

3.8(4) The decision of the division administrator shall represent the final division action for the purpose of implementing Iowa Code chapter 17A.

428—3.9(216A,232) Contract agreement.

3.9(1) *Contract offer.* Applicants shall be notified in writing of the division's intent to fund, contingent upon the funds available. The administrator shall have flexibility in determining which state and federal funds shall be utilized in awards and allocations to subgrantees. These rules and all applicable state and federal laws and regulations become a part of the contract by reference.

3.9(2) *Preaward negotiation.* The applicant may be requested to modify the original application in the negotiation process. The division reserves the right to fund all or part of the applicant's application.

3.9(3) *Withdrawal of contract offer.* If the applicant and the division are unable to successfully negotiate a contract, the division may withdraw the award offer and redistribute program funds in a manner consistent with the provisions of rule 428—3.14(216A,232).

3.9(4) *Contract modifications.* The subgrantee or the division may request a modification or revision of the contract.

3.9(5) *Reimbursement of expenditures.* Funds are to be spent to meet program goals as provided in the contract. Expenditures shall be reimbursed pursuant to regular reimbursement procedures of the state of Iowa.

428—3.10(216A,232) Contract termination.

3.10(1) *Termination by subgrantee.* The contract may be terminated by the subgrantee at any time during the contract period by giving 30 days' notice to the division.

3.10(2) Termination by the division.

a. The division may terminate a contract upon ten days' notice when the subgrantee or any of its subcontractors fail to comply with the grant award stipulations, standards or conditions. The division may terminate a contract upon 30 days' notice when there is a reduction of funds by executive order.

b. Termination for convenience. The performance of work under the agreement may be terminated by the division in accordance with this clause in whole or, from time to time, in part whenever the division shall determine that such termination is in the best interest of the state. The division shall pay all reasonable costs associated with the agreement that the subgrantee has incurred up to the date of termination. The division shall not pay for any work that has not been done prior to the date of termination.

c. Termination for default. If the subgrantee fails to fulfill its obligations under this agreement properly or on time, or otherwise violates any provision of this agreement, the division may terminate the agreement by written notice to the subgrantee. The notice shall specify the acts of commission or omission relied on as cause for termination. All finished or unfinished products and services provided by the subgrantee shall, at the option of the division, become the state's property. The division shall pay the subgrantee fair and equitable compensation for satisfactory performance prior to receipt of notice of termination.

3.10(3) Responsibility of subgrantee at termination. Within 45 days of the termination, the subgrantee shall supply the division with a financial statement detailing all costs up to the effective date of the termination.

428—3.11(216A,232) Required reports.

3.11(1) Expenditure claim reports shall be required from subgrantees on provided forms. The division, pursuant to regular reimbursement procedures of the state of Iowa, shall reimburse subgrantees for actual expenditures specified in the approved budget.

3.11(2) Quarterly reports on program outcomes, program status and financial status shall be required from subgrantees on provided forms.

3.11(3) Other reports, including audit reports prepared by independent auditors, may be required by the division and specified in the request for applications or contract to assist in the monitoring and evaluation of programs.

3.11(4) Failure to submit required reports by the due date shall result in suspension of financial payments to the subgrantee by the division until such time as the reports are received. No new awards shall be made for continuation programs where there are delinquent reports from prior grants.

428—3.12(216A,232) Subgrantee records. Financial records, supporting documents, statistical records and all other records pertinent to the program shall be retained by the subgrantee in accordance with the following:

3.12(1) Records for any project shall be retained for three years after final closeout and audit procedures are completed and accepted by the division.

3.12(2) Representatives of the state auditor's office and the division shall have access to all books, accounts, documents, and other property belonging to or in use by a subgrantee pertaining to the receipt of funds under these rules.

428—3.13(216A,232) Allowable costs and cost restrictions.

3.13(1) Grant funds from this program shall be used to support only those activities and services specified and agreed to in the contract between the subgrantee and the division. The contract shall identify specific cost categories against which all allowable costs must be consistently charged.

3.13(2) Funds appropriated for this program shall not be expended for supplantation of federal, state, or local funds supporting existing programs or activities. Instructions for the application and acceptance of competitive grants, formula-based allocations, and sole source contracts may specify other cost limitations including, but not limited to, costs related to political activities, interest costs, fines, penalties, lawsuits or legal fees, and certain fixed assets and program equipment.

428—3.14(216A,232) Redistribution of funds. The division reserves the right to recapture and redistribute awarded funds based upon projected expenditures if it appears that funds shall not be expended by a subgrantee according to the conditions of the subgrantee's contract. Recaptured funds may be granted by the administrator to other applicants or subgrantees for services and activities consistent with the purposes and goals of the program.

428—3.15(216A,232) Compliance with state and federal laws. In acceptance of a grant, the subgrantee shall agree to comply with all applicable state and federal rules and laws including, but not limited to, the JJDP.

428—3.16(216A,232) Immunity of state and agencies. The subgrantee shall defend and hold harmless the state and any federal funding source for the state from liability arising from the subgrantee's performance or attempted performance of its contract, and the subgrantee's activities with subcontractors and all other third parties.

These rules are intended to implement Iowa Code chapter 17A, Iowa Code sections 216A.131 to 216A.136, and section 232.190 as amended by 2000 Iowa Acts, Senate File 2429, and Public Laws 93-415 and 105-119.

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CHAPTER 4
JUVENILE CRIME PREVENTION
COMMUNITY GRANT FUND

Rescinded IAB 7/12/00, effective 6/22/00

CHAPTER 5
JUVENILE ACCOUNTABILITY INCENTIVE
BLOCK GRANT PROGRAM (JAIBG)

Rescinded IAB 7/12/00, effective 6/22/00

CHAPTER 6
DECLARATORY ORDERS

428—6.1(17A) Adoption by reference. The division of criminal and juvenile justice planning hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(designate agency)”, insert “division of criminal and juvenile justice planning”.
2. In lieu of the words “(designate office)”, insert “Division of Criminal and Juvenile Justice Planning, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
3. In lieu of the words “(AGENCY NAME)”, insert “DIVISION OF CRIMINAL AND JUVENILE JUSTICE PLANNING”.
4. In lieu of the words “_____ days (15 or less)”, insert “10 days”.
5. In lieu of the words “_____ days” in subrule 6.3(1), insert “20 days”.
6. In lieu of the words “(designate official by full title and address)”, insert “Administrator, Division of Criminal and Juvenile Justice Planning, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
7. In lieu of the words “(specify office and address)”, insert “Division of Criminal and Juvenile Justice Planning, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
8. In lieu of the words “(agency name)”, insert “division of criminal and juvenile justice planning”.
9. In lieu of the words “(designate agency head)”, insert “administrator”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 7
PETITIONS FOR RULE MAKING

428—7.1(17A) Adoption by reference. The division of criminal and juvenile justice planning hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(designate office)”, insert “Division of Criminal and Juvenile Justice Planning, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.

2. In lieu of the words “(AGENCY NAME)”, insert “DIVISION OF CRIMINAL AND JUVENILE JUSTICE PLANNING”.

3. In lieu of the words “(designate official by full title and address)”, insert “Administrator, Division of Criminal and Juvenile Justice Planning, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 8
AGENCY PROCEDURE FOR RULE MAKING

428—8.1(17A) Adoption by reference. The division of criminal and juvenile justice planning hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(commission, board, council, director)”, insert “administrator”.
2. In lieu of the words “(specify time period)”, insert “one year”.
3. In lieu of the words “(identify office and address)”, insert “Administrator, Division of Criminal and Juvenile Justice Planning, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
4. In lieu of the words “(designate office and telephone number)”, insert “the administrator at (515)242-5823”.
5. In lieu of the words “(designate office)”, insert “Division of Criminal and Juvenile Justice Planning, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
6. In lieu of the words “(specify the office and address)”, insert “Division of Criminal and Juvenile Justice Planning, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
7. In lieu of the words “(agency head)”, insert “administrator”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 9
WAIVER RULES

428—9.1(17A) Definition. The term “waiver” as used in this chapter means a prescribed waiver or variance from a specific rule or set of rules of this division applicable only to an identified person on the basis of the particular circumstances of that person.

428—9.2(17A) Scope of chapter. This chapter creates generally applicable standards and a generally applicable process for granting individual waivers from rules adopted by the division in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law purports to govern the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this chapter with respect to any waiver from that rule.

428—9.3(17A) Applicability. This chapter applies only to waivers of those rules of the division that are within the exclusive rule-making authority of the division. This chapter shall not apply to rules that merely define the meaning of a statute, or other provisions of law or precedent, if the division does not possess statutory authority to bind a court, to any extent, with its definition.

428—9.4(17A) Compliance with law. The division may not issue a waiver under this chapter unless (1) the legislature has delegated authority sufficient to justify the action; and (2) the waiver is consistent with statute and other provisions of law. No waiver may be granted under this chapter from any mandatory requirement imposed by statute.

428—9.5(17A) Criteria for a waiver. The division may issue an order, in response to a completed petition or on its own motion, granting a waiver from a rule adopted by the division, in whole or in part, as applied to the circumstances of a specified person, if the division finds that the waiver is consistent with rules 9.3(17A) and 9.4(17A) of this chapter, that the waiver would not prejudice the substantial legal rights of any person, and either that:

1. The application of the rule to the person at issue does not advance, to any extent, any of the purposes for the rule or set of rules; or
2. The following criteria have been met:
 - The application of the rule or set of rules to the person at issue would result in an undue hardship or injustice to that person; and
 - The waiver on the basis of the particular circumstances relative to the specified person would be consistent with the overall public interest.

In determining whether a waiver would be consistent with the public interest, the division administrator shall consider whether, if a waiver is granted, the public health, safety, and welfare will be adequately protected by other means that will ensure a result that is substantially equivalent to full compliance with the rule.

428—9.6(17A) Division discretion. The final decision to grant or deny a waiver shall be vested in the division administrator. This decision shall be made at the discretion of the division upon consideration of relevant facts.

428—9.7(17A) Burden of persuasion. The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion to grant a waiver based upon the criteria contained in rule 9.5(17A) of this chapter.

428—9.8(17A) Contents of petition. A petition for a waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is requested and the case number of any related contested case.
2. A description and citation of the specific rule or set of rules from which a waiver is requested.

3. The specific waiver requested, including a description of the precise scope and operative period for which the petitioner wants the waiver to extend.

4. The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the petitioner and the division relating to the activity affected by the proposed waiver, including any notices of violation, contested case hearings, or investigative reports relating to the activity within the last five years.

6. Any information known to the requester relating to the division's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge of the waiver request to furnish the division with information relevant to the waiver.

428—9.9(17A) Additional information. Prior to issuing an order granting or denying a waiver, the division may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative from the division to discuss the petition and surrounding circumstances.

428—9.10(17A) Notice. The division shall acknowledge the petition upon receipt. The division shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the division may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the division attesting to the fact that notice has been provided.

428—9.11(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver of a rule or set of rules filed within a contested case and shall otherwise apply to division proceedings for a waiver only when the division so provides by rule or order or is required to do so by statute or other binding law.

428—9.12(17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative time period of a waiver if one is issued.

428—9.13(17A) Conditions. The division may condition the granting of the waiver on such conditions that the division deems to be reasonable and appropriate in order to achieve the objectives of the particular rule in question through alternative means.

428—9.14(17A) Time for ruling. The division shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, then the division may grant or deny the petition at the time the final decision in that contested case is issued.

428—9.15(17A) When deemed denied. Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division. However, the division shall remain responsible for issuing an order denying a waiver as required by rule 9.12(17A).

428—9.16(17A) Service of orders. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

428—9.17(17A) Record keeping. Subject to the provisions of Iowa Code section 17A.3(1) “e,” the division shall maintain a record of all orders granting and denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and copies distributed to members of the administrative rules review committee upon request. All final rulings shall also be available for inspection by the public at the division office during regular business hours.

428—9.18(17A) Cancellation of a waiver. A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the division issues an order finding any of the following:

1. The person who was the subject of the waiver order withheld from the division or knowingly misrepresented to the division material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means of ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order has been demonstrated to be insufficient, and no other means exists to protect the substantial legal rights of any person; or
3. The subject of the waiver order has failed to comply with all of the conditions contained in the order.

428—9.19(17A) Violations. A violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

428—9.20(17A) Defense. After the division issues an order granting a waiver, the order shall constitute a defense, within the terms and the specific facts indicated therein, for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

428—9.21(17A) Appeals. Appeals within the division from a decision granting or denying a waiver shall be in accordance with Iowa Code chapter 17A and division rules. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver request, unless a different time is provided by rule or statute.

These rules are intended to implement Executive Order Number 11 and Iowa Code section 17A.9A.

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