

/* 42 USC 3751 follows which provides federal funds for fighting drugs. The section mandates that states adopt HIV testing for defendants convicted of sex crimes. In reviewing the state statutes you'll see that the coercive effects have worked. */

3751. Description of drug control and system improvement grant program

(a) It is the purpose of this subpart [42 USC 3751 et seq.] to assist States and units of local government in carrying out specific programs which offer a high probability of improving the functioning of the criminal justice system, with special emphasis on a nationwide and multilevel drug control strategy by developing programs and projects to assist multijurisdictional and multi-State organizations in the drug control problem and to support national drug control priorities.

(b) The Director of the Bureau of Justice Assistance (hereafter in this part [42 USC 3750 et seq.] referred to as the "Director") is authorized to make grants to States, for the use by States and units of local government in the States, for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.) and to improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders. Such grants shall provide additional personnel, equipment, training, technical assistance, and information systems for the more widespread apprehension, prosecution, adjudication, and detention and rehabilitation of persons who violate these laws, and to assist the victims of such crimes (other than compensation), including:

(1) demand reduction education programs in which law enforcement officers participate;

(2) multijurisdictional task force programs that integrate Federal, State, and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination, intelligence, and facilitating multijurisdictional investigations;

(3) programs designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories, and cannabis cultivations;

(4) providing community and neighborhood programs that assist citizens in preventing and controlling crime, including special programs that address the problems of crimes committed against the elderly and special programs for rural jurisdictions;

(5) disrupting illicit commerce in stolen goods and property;

(6) improving the investigation and prosecution of white-collar crime, organized crime, public corruption crimes, and fraud against the government with priority attention to cases involving drug-related official corruption;

(7) (A) improving the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator programs, gang-related and low-income housing drug control programs;

(B) developing and implementing antiterrorism plans for deep draft ports, international airports, and other important facilities;

(8) career criminal prosecution programs including the development of proposed model drug control legislation;

(9) financial investigative programs that target the identification of money laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training, and financial information sharing systems;

(10) improving the operational effectiveness of the court process, by expanding prosecutorial, defender and judicial resources, and implementing court delay reduction programs;

(11) programs designed to provide additional public correctional resources and improve the corrections system, including treatment in prisons and jails, intensive supervision programs, and long-range corrections and sentencing strategies;

(12) providing prison industry projects designed to place inmates in a realistic working and training environment which will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;

(13) providing programs which identify and meet the treatment needs of adult and juvenile drug-dependent and alcohol-dependent offenders;

(14) developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes;

(15) (A) developing programs to improve drug control technology, such as pretrial drug testing programs, programs which provide for the identification, assessment, referral to treatment, case management and monitoring of drug dependent offenders, enhancement of State and local forensic laboratories, and

(B) criminal and justice information systems to assist law enforcement, prosecution, courts, and corrections organization (including automated fingerprint identification systems);

(16) innovative programs that demonstrate new and different approaches to enforcement, prosecution, and adjudication of drug offenses and other serious crimes;

(17) addressing the problems of drug trafficking and the illegal manufacture of controlled substances in public housing;

(18) improving the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse, and abuse of the elderly;

(19) drug control evaluation programs which the State and local units of government may utilize to evaluate programs and projects directed at State drug control activities;

(20) providing alternatives to prevent detention, jail, and prison for persons who pose no danger to the community; and

(21) programs of which the primary goal is to strengthen urban enforcement and prosecution efforts targeted at street drug sales.

(c) Each program funded under this section shall contain an evaluation component, developed pursuant to guidelines established by the National Institute of Justice, in consultation with the Bureau of Justice Assistance. The Director of the Bureau of Justice Assistance may waive this requirement when in the opinion of the Director:

(1) the program is not of sufficient size to justify a full evaluation report; or

(2) the program is designed primarily to provide material resources and supplies, such as laboratory equipment, that would not justify a full evaluation report.

(June 19, 1968, P. L. 90-351, Title I, Part E, Subpart 1, 501, as added and amended Nov. 18, 1988, P. L. 100-690, Title V, Subtitle C, Ch 1, 5104, Title VI, Subtitle C, Part 1, 6091(a), 102 Stat. 4301, 4329.)

(As amended Nov. 29, 1990, P. L. 101-647, Title VI, Subtitle A, 601(b), 104 Stat. 4823.)

Section 3752. Eligibility

The Bureau is authorized to make financial assistance under this subpart [42

USC 3751 et seq.] available to a State to enable it to carry out all or a substantial part of a program or project submitted and approved in accordance with the provisions of this subpart [42 USC 3751 et seq.].

(June 19, 1968, P. L. 90-351, Title I, Part E, Subpart 1, 502, as added Nov. 18, 1988, P. L. 100-690, Title VI, Subtitle C, Part 1, 6091(a), 102 Stat. 4331.)
Section 3753. State applications

(a) To request a grant under this subpart, the chief executive officer of a State shall submit an application within 60 days after the Bureau has promulgated regulations under this section, and for each subsequent year, within 60 days after the date that appropriations for this part are enacted, in such form as the Director may require. Such application shall include the following:

(1) A statewide strategy for drug and violent crime control programs which improve the functioning of the criminal justice system, with an emphasis on drug trafficking, violent crime, and serious offenders. The strategy shall be prepared after consultation with State and local officials with emphasis on those whose duty it is to enforce drug and criminal laws and direct the administration of justice and shall containDD

(A) a definition and analysis of the drug and violent crime problem in the State, and an analysis of the problems in each of the counties and municipalities with major drug and violent crime problems;

(B) an assessment of the criminal justice resources being devoted to crime and drug control programs at the time of the application;

(C) coordination requirements;

(D) resource needs;

(E) the establishment of statewide priorities for crime and drug control activities and programs;

(F) an analysis of the relationship of the proposed State efforts to the national drug control strategy; and

(G) a plan for coordinating the programs to be funded under this part with other federally funded programs, including State and local drug abuse education, treatment, and prevention programs.

(2) A certification that Federal funds made available under the formula grant of this subpart will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for law enforcement activities.

(3) A certification that funds required to pay the non-Federal portion of the cost of each program and project for which such grant is made shall be in addition to funds that would otherwise be made available for law enforcement by the recipients of grant funds.

(4) An assurance that the State application described in this section, and any amendment to such application, has been submitted for review to the State legislature or its designated body (for purposes of this section, such application or amendment shall be deemed to be reviewed if the State legislature or such body does not review such application or amendment within the 30-day period beginning on the date such application or amendment is so submitted).

(5) An assurance that the State application and any amendment thereto was made public before submission to the Bureau and, to the extent provided under State law or established procedure, an opportunity to comment thereon was provided to citizens and to neighborhood and community groups.

(6) An assurance that following the first fiscal year covered by an application and for each fiscal year thereafter, a performance evaluation and assessment report concerning the activities carried out pursuant to this section will be submitted to the Bureau.

(7) A provision for fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records that the Bureau shall prescribe to assure fiscal control, proper management, and efficient disbursement of funds reviewed under this section.

(8) An assurance that the applicant shall maintain such data and information and submit such reports in such form, at such times, and containing such data and information as the Bureau may reasonably require to administer other provisions of this subpart.

(9) A certification that its programs meet all the requirements of this section, that all the information contained in the application is correct, that there has been appropriate coordination with affected agencies, and that the applicant will comply with all provisions of this subpart and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Bureau and shall be executed by the chief executive or such other officer of the applicant qualified under regulations promulgated by the Office.

(10) A certification that the State is undertaking initiatives to reduce, through the enactment of innovative penalties or increasing law enforcement efforts, the demand for controlled substances by holding accountable those who unlawfully possess or use such substances.

(11) An assurance that the State has established a plan under which the State will provide without fee to the Immigration and Naturalization Service, within 30 days of the date of their conviction, notice of conviction of aliens who have been convicted of violating the criminal laws of the State and under which the State will provide the Service with the certified record of such a conviction within 30 days of the date of a request by the Service for such record.

(b) Within 30 days after the date of enactment of this part, the Director shall promulgate regulations to implement this section (including the information that must be included and the requirements that the States must meet) in submitting the applications required under this section.

(June 19, 1968, P. L. 90-351, Title I, Part E, Subpart 1, 503, as added Nov. 18, 1988, P. L. 100-690, Title VI, Subtitle C, Part 1, 6091(a), 102 Stat. 4331.) (As amended Nov. 29, 1990, P. L. 101-649, Title V, Subtitle A, 507(a), 104 Stat. 5050; Dec. 12, 1991, P. L. 102-232, Title III, 306(a)(6), 105 Stat. 1751.)

Section 3754. Grant limitations

(a) A grant made under this subpart may not:

(1) for fiscal year 1991 appropriations be expended for more than 75 per centum; and

(2) for any subsequent fiscal year appropriations be expended for more than 75 per centum;

of the cost of the identified uses for which such grant is received to carry out any purpose specified in section 502 [42 USC 3752], except that in the case of funds distributed to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) for any such program or project, the amount of such grant shall be equal to 100 percent of such cost. The non-Federal portion of the expenditures for such uses shall be paid in cash.

(b) Not more than 10 percent of a grant made to an eligible State under section 506 [42 USC 3756] may be used for costs incurred to administer such grant.

(c) States and units of local government or combinations thereof are authorized to use a grant made under section 506 [42 USC 3756] for the expenses associated with participation in the State and Local Task Force Program established by the Drug Enforcement Administration.

(d) States and local units of government are authorized to use a grant made

under section 506 [42 USC 3756] for the expenses associated with conducting the evaluations required under section 501(c) of this part [42 USC 3751(c)].

(e) The non-Federal portion of the cost of such program or project shall be in cash. State and local units of government may use cash received under the equitable sharing program to cover the non-Federal portion of the costs of programs funded under section 506 [42 USC 3756].

(f) Except for grants awarded to State and local governments for the purpose of participating in multijurisdictional drug task forces, no funds may be awarded under this subpart to a grant recipient for a program or project for which funds have been awarded under this title [42 USC 3711 et seq.] for 4 years (in the aggregate), including any period occurring before the effective date of this subsection.

(June 19, 1968, P. L. 90-351, Title I, Part E, Subpart 1, 504, as added Nov. 18, 1988, P. L. 100-690, Title VI, Subtitle C, Part 1, 6091(a), 102 Stat. 4333.)
(As amended Nov. 21, 1989, P. L. 101-162, Title II, 211, 103 Stat. 1006; Nov. 5, 1990, P. L. 101-515, Title II, 207, 104 Stat. 2119; Nov. 29, 1990, P. L. 101-647, Title VI, Subtitle A, 601(a), 104 Stat. 4823; Oct. 28, 1991, P. L. 102-140, Title I, 108, 109, 105 Stat. 794.)

Section 3755. Review of State applications

(a) The Bureau shall provide financial assistance to each State applicant under this subpart to carry out the programs or projects submitted by such applicant upon determining that

(1) the application or amendment thereto is consistent with the requirements of this subpart; and

(2) before the approval of the application and any amendment thereto the Bureau has made an affirmative finding in writing that the program or project has been reviewed in accordance with this subpart.

(b) Each application or amendment made and submitted for approval to the Bureau pursuant to section 503 [42 USC 3753] shall be deemed approved, in whole or in part, by the Bureau not later than 45 days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

(c) Grant funds awarded under this subpart shall not be used for land acquisition or construction projects, other than penal and correctional institutions.

(d) The Bureau shall not finally disapprove any application, or any amendment thereto, submitted to the Director under this section without

first affording the applicant reasonable notice and opportunity for reconsideration.

(June 19, 1968, P. L. 90-351, Title I, Part E, Subpart 1, 505, as added Nov. 18, 1988, P. L. 100-690, Title VI, Subtitle C, Part 1, 6091(a), 102 Stat. 4333.)

Section 3756. Allocation and distribution of funds under formula grants
(a) Of the total amount appropriated for this part [42 USC 3750 et seq.] in any fiscal year, the amount remaining after setting aside the amount required to be reserved to carry out section 511 of this title [42 USC 3761] shall be set aside for section 502 [42 USC 3752] and allocated to States as follows:

(1) \$500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and

(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.

(b)

(1) Each State which receives funds under subsection (a) of this section in a fiscal year shall distribute among units of local government, or combinations of units of local government, in such State for the purposes specified in section 501(b) [42 USC 3751(b)] that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

(2) In distributing funds received under this part among urban, rural, and suburban units of local government and combinations thereof, the State shall give priority to those jurisdictions with the greatest need.

(3) Any funds not distributed to units of local government under paragraph (2) shall be available for expenditure by the State involved.

(4) For purposes of determining the distribution of funds under paragraphs (1) and (2), the most accurate and complete data available for the fiscal year involved shall be used. If data for such fiscal year are not available, then the most accurate and complete data available for the most recent fiscal year preceding such fiscal year shall be used.

(c) No funds allocated to a State under subsection (a) or received by a State

for distribution under subsections (b) and (c) may be distributed by the Director or by the State involved for any program other than a program contained in an approved application.

(d) If the Director determines, on the basis of information available during any fiscal year, that a portion of the funds allocated to a State for that fiscal year will not be required or that a State will be unable to qualify or receive funds under section 502 [42 USC 3752], or that a State chooses not to participate in the program established under such section, then such portion shall be awarded by the Director to urban, rural, and suburban units of local government or combinations thereof within such State giving priority to those jurisdictions with greatest need.

(e) Any funds allocated under subsection (a) or (e) that are not distributed under this section shall be available for obligation under subpart 2 [42 USC 3760 et seq.].

(f)

(1) For any fiscal year beginning more than 2 years after the effective date of this subsection:

/* The effect of this section of the law is that states which do not adopt testing of those convicted of sex crimes for HIV and provide counseling to the victims will lose most funding. */

(A) 90 percent of the funds allocated under subsection (a), taking into consideration subsection (e) but without regard to this subsection, to a State described in paragraph (2) shall be distributed by the Director to such State; and

(B) 10 percent of such amount shall be allocated equally among States that are not affected by the operation of subparagraph (A).

(2) Paragraph (1)(A) refers to a State that does not have in effect, and does not enforce, in such fiscal year, a law that requires the State at the request of the victim of a sexual act:

(A) to administer, to the defendant convicted under State law of such sexual act, a test to detect in such defendant the presence of the etiologic agent for acquired immune deficiency syndrome;

(B) to disclose the results of such test to such defendant and to the victim of such sexual act; and

(C) to provide to the victim of such sexual act counseling regarding HIV disease, HIV testing, in accordance with applicable law, and

referral for appropriate health care and support services.

(3) For purposes of this subsection

(A) the term "convicted" includes adjudicated under juvenile proceedings; and

(B) the term "sexual act" has the meaning given such term in subparagraph (A) or (B) of section 2245(1) of title 18, United States Code.

(June 19, 1968, P. L. 90-351, Title I, Part E, Subpart 1, 506, as added Nov. 18, 1988, P. L. 100-690, Title VI, Subtitle C, Part 1, 6091(a), 102 Stat. 5334.) (As amended Nov. 21, 1989, P. L. 101-162, Title II, 212, 103 Stat. 998, 1006; May 25, 1990, P. L. 101-302, Title III, 320(c)(1), 104 Stat. 248; Nov. 29, 1990, P. L. 101-647, Title XVIII, 1804, 104 Stat. 4851.)