

**State of South Dakota**  
*Council of*  
*Juvenile Services*

**State Fiscal Year 2016**  
**Annual Report**



## *Message from the Chairperson:*

The Council of Juvenile Services (Council) oversees the State's participation in the Juvenile Justice and Delinquency Prevention Act Formula Grants Program and is required to make an annual report to the Governor and Legislature on the State's progress in meeting the requirements of the Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974, as amended. The Council is also responsible, pursuant to SDCL 1-15-30(8), for making an annual report to the Governor, Chief Justice, and the Legislature on the status of Children in Need of Supervision (CHINS). This report serves to meet both of these reporting requirements.

The Council has worked diligently over the past thirteen years to enhance juvenile justice services in the state and prides itself in the following value statements which guide their work in assisting the State in meeting the requirements of the Formula Grants Program and in making improvements to South Dakota's juvenile justice system.

The following pages of the Annual Report are a condensed summary of the accomplishments over the past year. I believe you will be proud of the critical and relevant work that has been done in our State since South Dakota came into compliance with the JJDP in 2003. Furthermore, Federal Fiscal Year 2016 Formula Grant Application was submitted and approved by the Office of Juvenile Justice and Delinquency Prevention. This grant will provide \$400,336 for juvenile justice planning and projects in South Dakota for the next few years. If you find you would like more information regarding the Council's achievements over the past years or regarding the Formula Grant Program, please review the comprehensive Three-Year Plan located electronically on the Department of Corrections webpage: [doc.sd.gov](http://doc.sd.gov).

I thank you for your support and I look forward to working with you on behalf of South Dakota's children.

Very Best Regards,



*Council of Juvenile Services Members at the  
Close of State Fiscal Year (SFY) 2016*

Betty Oldenkamp, Chair

Beth O'Toole, Vice Chair

Taniah Apple

Nancy Allard

Dadra Avery

Kim Cournoyer

Austin Biers

Keegan Binegar

Kristi Bunkers

Judge Karen Jefferies

Sheriff Mike Leidholt

Renee Gallagher

Jacob Kabrud

Judge Steven Jensen

Amy Lake-Harmon

Aaron McGowan

Sara McGregor-Okroi

Vanessa Merhib

Lyndon Overweg

Marissa Surrounded

Carol Twedt

Virgena Wieseler



## *Council of Juvenile Services Value Statements*

The Council of Juvenile Services values that all children shall:

- Receive developmentally and culturally appropriate services.
- Have the same access to needed services regardless of family income, geography, gender, race, disability, or jurisdiction.
- Have the right to be safe in the community in which they live.
- Receive evidence-based services consistent with the needs of the child in the least restrictive community-based environment available.
- Demonstrate accountability in the development and provision of services for the youth along with parents, communities, and the juvenile justice system
- Receive early intervention services that are evidence-based.
- Receive services that are family-based and family-centered.
- Receive culturally appropriate justice which is essential to effectively address Disproportionate Minority Contact.
- Have access to early and effective legal representation, including an assessment of competence and a timely and just legal process.

## *Council of Juvenile Services Overview*

- The Council of Juvenile Services (Council) was established to fulfill the responsibilities of a state advisory group as directed by **Section 223(a)(3) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974** and as outlined under **SDCL 1-15-30**.
- The Council was developed under **SDCL 1-15-30**, to serve as the principal juvenile justice planning entity for the State of South Dakota's participation in the Formula Grants Program of the JJDP Act. The Council reviews juvenile justice policy, advises and advocates on juvenile justice issues, and strives to keep South Dakota in compliance with the requirements of the Formula Grant Program authorized by the federal JJDP Act. State Fiscal Year (SFY) 2016 represents the **thirteenth year** of the State's renewed participation in the Formula Grants Program.
- In SFY 2016, the **Council met three times** and approved the Formula Grant State Three-Year Plan Application for FFY 2016. The State **Three-Year Plan** can be found on the DOC grant webpage at [doc.sd.gov/about/grants](http://doc.sd.gov/about/grants).

## *JJDPA CORE REQUIREMENTS*

The JJDPA, as amended, establishes four core requirements with which participating states and territories must comply in order to receive juvenile justice funding under the JJDPA.

- **Deinstitutionalization of Status Offenders (DSO)**

The removal of status offenders and non-offenders from secure juvenile detention and correctional facilities, jails, and lockups for adult offenders.

- **Sight and Sound Separation**

Providing separation between adults and juveniles in secure setting.

- **Jail Removal**

The removal of juveniles from adult jails and lockups.

- **Disproportionate Minority Contact (DMC)**

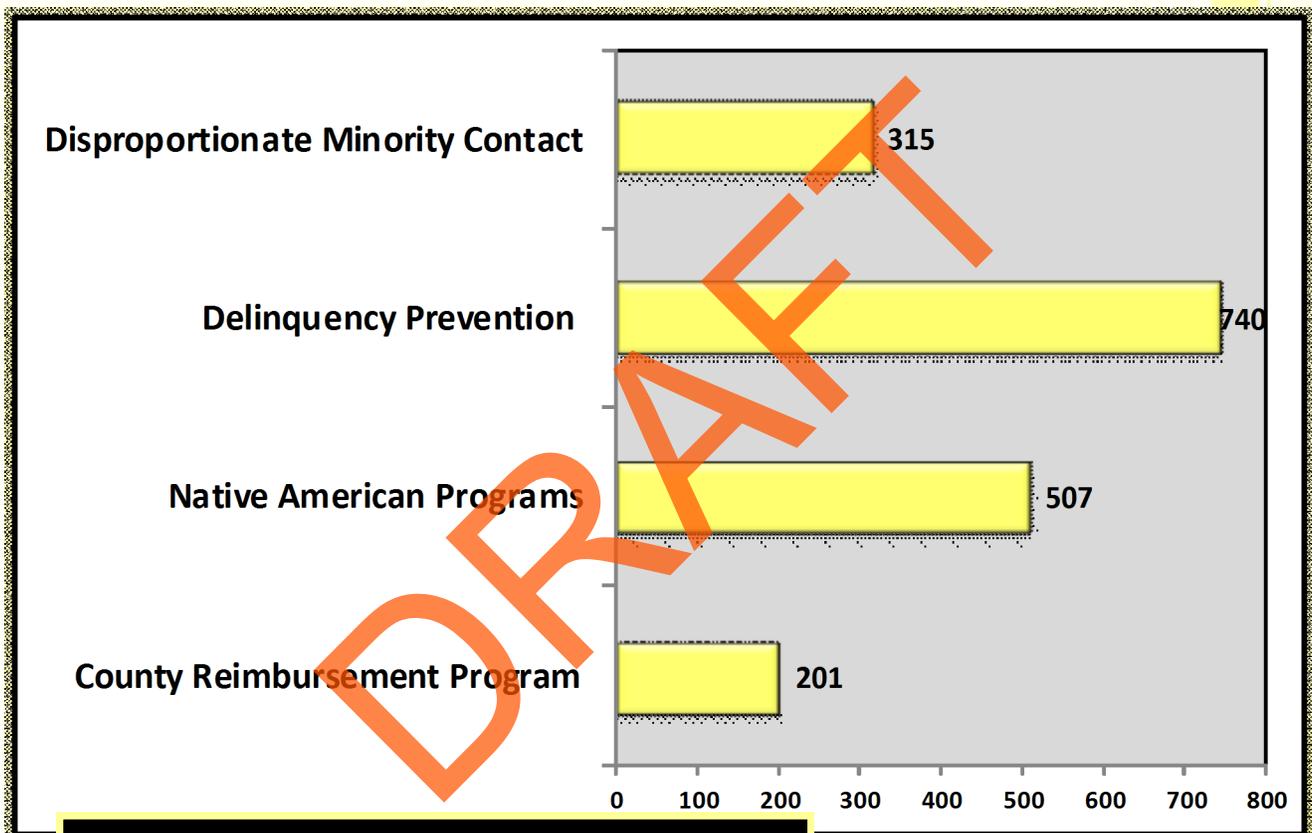
The reduction of minority over-representation where it exists within the juvenile justice system.

## *Formula Grant Programs and Expenditures*

The table below outlines the amount of federal fiscal year (FFY) 2011 and FFY2012 Formula Grant Funds spent during SFY2016 and a description of how the funds were utilized.

Program Area	SFY2016	Description
Council of Juvenile Services	\$9,591.35	Quarterly Meetings and Annual Report
Planning and Administration	\$23,511.76	Formula Grant Staff at the Department of Corrections (DOC)
Compliance Monitoring	\$27,246.77	Formula Grant Staff at the DOC
Deinstitutionalization of Status Offenders (DSO)/Sight and Sound Separation/Jail Removal	\$51,065.94	County Reimbursement Program
Native American Programs	\$38,377.67	3 Local Subgrants
Delinquency Prevention	\$155,459.16	3 Local Subgrants and Evaluation Services, and Curriculum
Disproportionate Minority Contact (DMC)	\$88,566.26	2 Local Subgrants and Formula Grant Staff at the DOC
<b>Total:</b>	<b>\$393,818.91</b>	

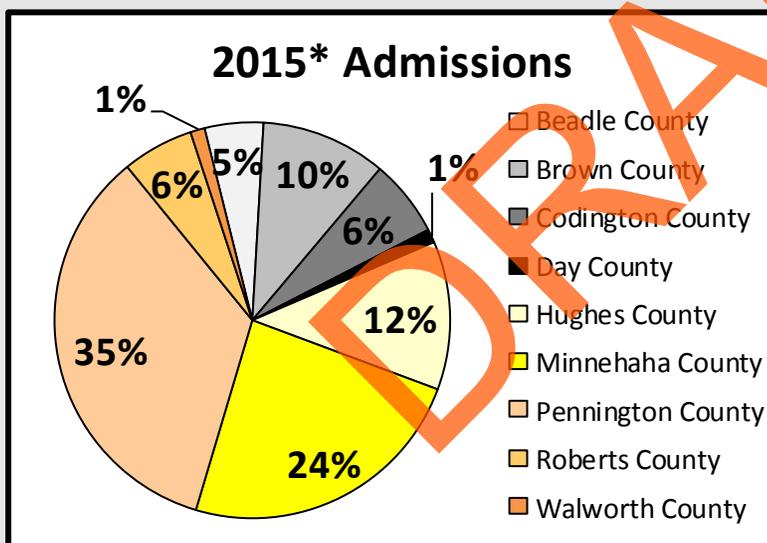
## Youth Served During SFY2016



**1,763 Total Youth Served**

## Compliance Monitoring

- States participating in the JJDP A Formula Grants Program must provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to ensure that the core requirements are met at each step within the juvenile justice system.
- The South Dakota Compliance Monitoring System is set up in order to ensure that the juveniles of the state are being held in appropriate placement according to state and federal law and can be found in South Dakota's Compliance Manual at:  
<http://doc.sd.gov/documents.about/grants/ComplianceMonitoringManuelMarch2009.pdf>.

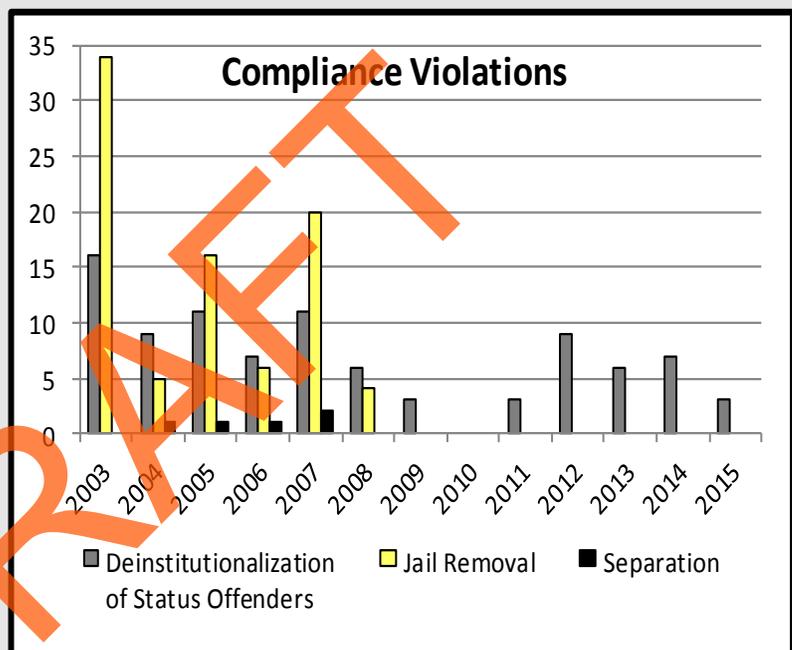


- The chart to the left shows how the **1,542 admissions** during the time period of 1/1/2015 – 9/30/2015 were reported by juvenile facility.
- **59%** of admissions were reported from the regional detention centers in **Minnehaha and Pennington Counties**.
- **Hughes County** was the next highest with **12%** of the admissions followed by **Brown County** at **10%**.

\*Reporting Period for 2015 was 1/1/2015 - 9/30/2015

## Compliance Violations

- Monitoring of facilities for the reporting period of January 1, 2015 – September 30, 2015 resulted in South Dakota’s DSO violation rate of 1.53/100,000 youths, which places the State in compliance with de minimis exceptions due to the rate being under 29.5.
- There were no jail removal or separation violations in the 2015 reporting period resulting in findings of full compliance for both requirements.

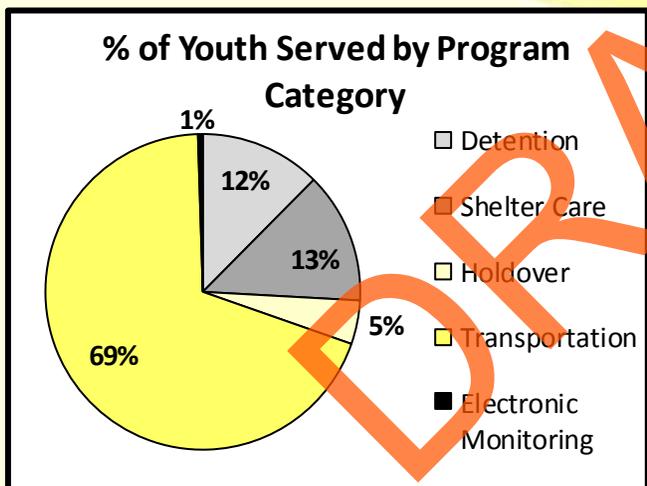


Incidents of noncompliance have decreased significantly since SD started working to come into compliance in 2003. In 2015, there were three DSO Violations which is a 99.7% decrease since 2002, the year before SD renewed its participation with the Formula Grants Program.

## *DSO, Jail Removal, and Separation*

Since 2005, a reimbursement system has been in place to provide financial support to counties and arresting entities that lack appropriate temporary custody options for youth. It has been the goal of the Council to work to eventually decrease dependence on the reimbursement programs and to help counties and arresting entities develop alternatives to detention and alternative funding sources.

During SFY2016, a total of **\$51,065.94** was reimbursed to **fifteen counties and arresting entities** for services rendered to a total of **201 youth**.



- The chart to the left shows how the **201 youth served** during SFY2016 were reimbursed by program category.
- **69%** of the youth claimed by counties and arresting entities for reimbursement were from **transporting the youth** to and from approved juvenile facilities outside of their jurisdiction.
- **Shelter care** reimbursement was used **slightly more than detention with 13%** of the reimbursements being for shelter care youth.

More information regarding the program can be located at: <http://doc.sd.gov/about/grants/compliance.aspx>

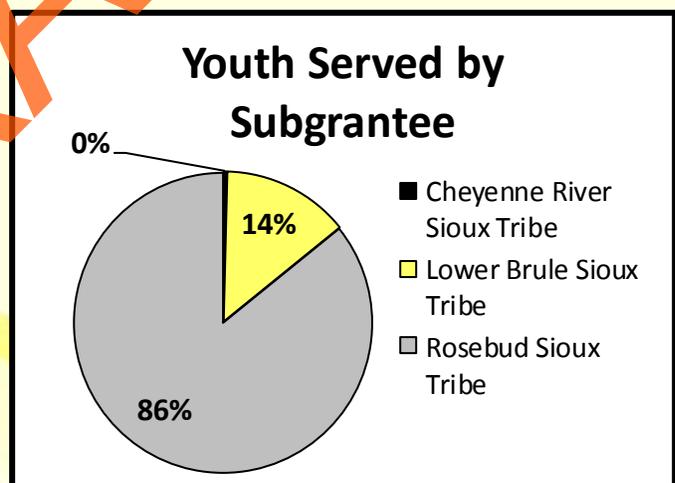
## Native American Programs

The Formula Grants Program requires participating states to pass on a specified portion of their funds to Native American Tribes who provide their own law enforcement. The amount South Dakota was required to pass with their FFY2012 Formula Grant award was **\$32,184**. Under the FFY2012 award, **\$38,377.67** was passed through to Native American Tribes.

In SFY2016, the Council allocated three awards for the following projects:

- **Cheyenne River Sioux Tribe:** Juvenile Probation Officer
- **Lower Brule Sioux Tribe:** Juvenile Beading Program
- **Rosebud Sioux Tribe:** Delinquency prevention projects at the detention center and in the community

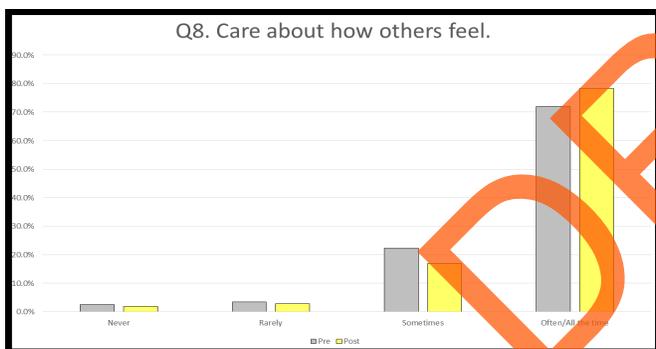
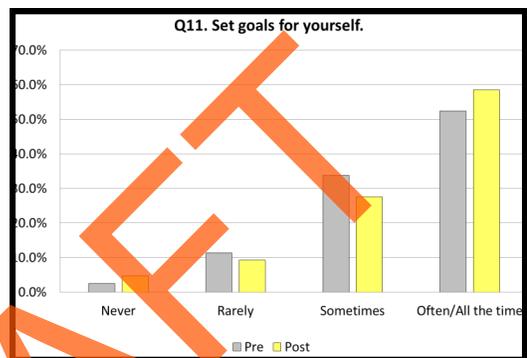
- The chart to the right shows where the **507 youth** were served during SFY2016
- **86%** of the youth were served through the programs run by **Rosebud Sioux Tribe**.
- **Cheyenne River Sioux Tribe** did not start serving youth until the end of the award due to turnover in their probation officer position.



# Delinquency Prevention

Starting in SFY2014, the Council decided to focus on implementing prevention and early intervention programs. The three school districts of **Aberdeen, Watertown, and Meade County** implemented their second year of services during SFY2016 through the implementation of the evidence based programs “Project SUCCESS” and “Positive Action”.

The following charts are questions from the pre and post tests that demonstrate success within the programs across the three sites.

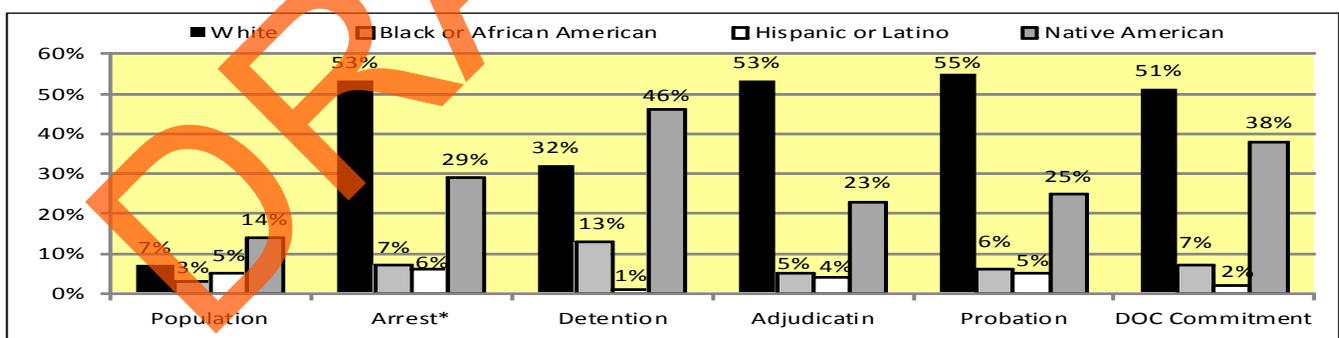


## Disproportionate Minority Contact

States are responsible for ongoing monitoring of the juvenile justice system for overrepresentation of minority youths for any group that comprise at least 1% of a jurisdiction's juvenile population. The staff of the Formula Grants Program complies DMC data, oversees local DMC awards, and works with local entities to develop plans for DMC reduction.

In SFY2016, the Council utilized funding under the DMC Program to support two \$35,000 projects. in **Minnehaha County** utilized their award to implement **Functional Family Therapy** for minority families. **Pennington County** utilized the award to hire a **DMC Case Manager** to connect with families and ensure they are aware of court dates and problems they may encounter including transportation, scheduling, or lack of medical coverage.

The **most recent DMC data** compiled to date reflects the measurement of juvenile justice system activity from **CY2015**. The chart below displays the stages with the **largest disparities** include arrest, detention, adjudication, probation, and commitment to the DOC for the races with the greatest amount of disproportionality at each stage.



## *Children in the Juvenile Justice System*

South Dakota’s juvenile justice system impacts thousands of youths and their families annually. The table provides a summary of juvenile justice, child protection activities, and alcohol and drug services as referenced in the 2010-2016 South Dakota Kids Count Factbook Publications provided by the DOC and the SD Department of Social Services.

	SFY 2012	SFY 2013	SFY 2014	SFY 2015	SFY 2016
Adjudicated Action	4,868	4,533	4,311	4,050	
Non-Adjudicated Action	1,090	828	1,013	705	
New DOC Commitments*	284	276	240	205	118
Child Abuse & Neglect Initial Assessments (Children)	6,820	4,499	4,736	4,764	
Children Requiring a Safety Response	1,927	1,541	1,458	1,362	
Alcohol and Drug (juvenile admission to treatment)	1,388	1,083	1,069	924	

\* DOC commitment data is provided by the DOC juvenile COMS data system implemented on 6/23/2011. Data only accounts for the number of new juveniles who receive a disposition of commitment to DOC. These numbers do not include youths already under the jurisdiction of the DOC who are remanded following a new adjudication.

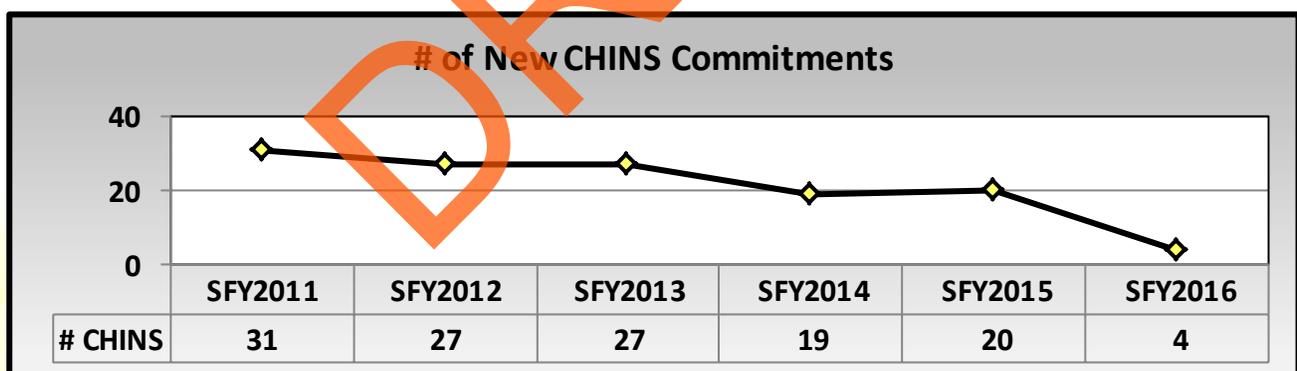
Adjudicated Action— Action that occurs as the result of the filing of a CHINS or delinquent petition in formal court. These actions include petition sustained, petition not sustained, petition dismissed, suspended imposition of adjudication, transfer to adult court, and interstate compact to South Dakota.

Non-Adjudicated Action— Action that is referred to another agency or handled by court services as an informal diversion as an alternative to adjudication. The non-adjudicatory actions do not include those diversions initiated by State’s Attorneys.

## Children In Need of Supervision

Children in Need of Supervision (CHINS) are low risk and high needs youth who historically were often placed in secure detention or committed to the DOC due to lack of appropriate alternatives. There is a concern whether commitment to the DOC is the appropriate manner in which to provide residential services to CHINS. An interagency team, as required by SDCL 26-8B-6, provides a written finding regarding placement that includes the least restrictive placement corresponding with the best interests of the child for CHINS committed to DOC. The council recognized the importance of service provisions to CHINS and in conjunction with the Unified Judicial System, supports the Probation Support Program to provide access to needed services for youths on probation supervision.

The chart below page was obtained from DOC and identifies CHINS commitments to the DOC during SFY2011 through SFY2016. The chart shows that there has been a significant decrease in the commitment of CHINS following efforts to bring the state into compliance with the JJDPa and through the implementation of statewide juvenile justice reform.



The opinions, findings, and conclusions or recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the Department of Justice.

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U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

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Office of the Administrator

Washington, D.C. 20531

December 5, 2016

MEMORANDUM

TO: State Agency Directors  
State Advisory Group Chairs  
Juvenile Justice Specialists  
Compliance Monitoring Coordinators  
Disproportionate Minority Contact Coordinators

FROM: Robert L. Listenbee   
Administrator, OJJDP

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On behalf of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), I would like to extend our thanks to everyone who submitted comments on the Proposed Rule issued for public comment on August 8, 2016. OJJDP received approximately 300 pages of comments from 72 respondents at the close of the October 7, 2016 deadline. These comments are currently undergoing internal review, and we will continue to address them through the formal rulemaking process, but will immediately implement the following policy changes prior to the publication of a final rule.

To that end, we recently updated the [\*OJJDP Policy: Monitoring of States Compliance with the Juvenile Justice and Delinquency Prevention Act\*](#) document, which was originally posted on the OJJDP website on October 30, 2015. The guidance contained within that policy established the requirements that states submit their Annual Compliance Reports by January 31, and data must be received from 100% of facilities required to submit compliance data.

- Based on significant feedback from several states, **OJJDP is extending the deadline—from January 31 to February 28—for states to submit their Annual Compliance Reports. In addition, states may request an extension for 1 additional month—to March 31—if they can show good cause for the extension.**

- A number of states also commented on the current guidance that requires them to collect data from 100 percent of the facilities required to report compliance data. Based on those comments, **OJJDP has modified this requirement so that states must report data for 85 percent of their facilities and show how they would extrapolate and report, in a statistically valid manner, data for the remaining 15 percent of their facilities.**
- Finally, while not contained within the aforementioned Compliance Policy document, OJJDP requires states to collect compliance data reflecting the “detain and confine” guidance. OJJDP has provided written guidance on this issue but has had no opportunity to provide states with meaningful training and/or technical assistance that would enhance their ability to fully understand (1) the data that they need to collect and (2) what types of facilities need to report. For this reason, OJJDP is concerned that the majority of states will submit fiscal year 2016 compliance monitoring reports that will not contain data reflective of the “detain or confine” guidance. **Therefore, OJJDP will not require states to submit fiscal year 2016 compliance data that reflect this guidance.** OJJDP asks states that collected this data to disaggregate the data for this reporting period, which will ensure OJJDP is reviewing consistent data from all states. OJJDP will provide training in early 2017 on this issue and guidance on when all states must collect and report data based on the “detain and confine” guidance.

Thank you for the outstanding work you do each day to ensure that all youth are treated safely and with the respect that everyone deserves.



**U.S. Department of Justice**

Office of Justice Programs

*Office of Juvenile Justice and Delinquency Prevention*

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*Office of the Administrator*

*Washington, D.C. 20531*

## **OJJDP Policy:**

# **Monitoring of State Compliance with the Juvenile Justice and Delinquency Prevention Act**

**Effective Date:** This policy will be fully effective beginning with the Fiscal Year 2017 funding compliance determinations based on data that states are currently collecting (for the period covering 10/1/15–9/30/16), which is due to OJJDP February 28, 2017.

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A critical purpose of the Title II, Part B, Formula Grant Program authorized under sections 221-223 of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) is to encourage states to protect the nation's youth from certain harmful conditions in the justice system. The Office of Juvenile Justice and Delinquency Prevention (OJJDP), charged with administering the Formula Grant Program, envisions a nation where children are healthy, educated, and free from violence. If they come into contact with the juvenile justice system, the contact should be rare, fair, and beneficial to them. To that end, OJJDP is committed to protecting youth who come into contact with the juvenile and adult justice systems. As part of its responsibilities, OJJDP awards grants pursuant to the Formula Grant program, to support states<sup>1</sup> in achieving and maintaining compliance with the protections of the JJDP Act.

States must comply with the 28 state plan requirements described in section 223(a) of the JJDP Act in order to receive a Formula Grant award. These 28 state plan requirements are prerequisites for receipt of funding. If a state does not meet these prerequisites, then either its application will not be funded at all or alternatively, its application would be funded with a 100% withholding condition prohibiting the state from accessing the Formula Grant award until necessary changes occur to bring it into compliance.

Within the 28 state plan requirements, there are four requirements that are deemed to be “core” because a state’s annual Formula Grant funding is reduced by 20% for each requirement with which a state is determined to be out of compliance. These core requirements are:

- (1) deinstitutionalization of status offenders (DSO) (section 223(a) (11);
- (2) separation of juveniles from adult inmates (separation) (section 223(a) (12);
- (3) removal of juveniles from adult jails and lockups (jail removal) (section 223(a) (13); and
- (4) addressing disproportionate minority contact (DMC) (section 223(a) (22).

This policy describes the information that states must submit to demonstrate compliance with the core requirements and that ensures that each participating state maintains an adequate system of monitoring as required in section 223(a)(14) of the JJDP Act. This policy also details the steps that OJJDP will undertake when conducting annual compliance determinations based on data submitted by the state and when assessing the adequacy of state monitoring systems. The procedures that states should use to implement this policy will be detailed in OJJDP’s Compliance Procedures Manual, which is currently in development.

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<sup>1</sup> The term “state” refers to any state of the United States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands.

Other existing Office of Justice Programs (OJP) and OJJDP policies and procedures detail guidance for administering the Formula Grant Program and ensuring that grant funds are safeguarded and used for their intended purposes ([DOJ Financial Guide](#)).

**I. Annual Compliance Monitoring Determinations**

Using fiscal year compliance monitoring information and data submitted by the state by February 28 of each year, unless granted an extension,<sup>2</sup> as part of the state’s Title II Formula Grant application, OJJDP will conduct a comprehensive assessment and make a determination of whether the state is in compliance with each of the four core requirements. The comprehensive assessment will include verification of the data submitted, an analysis of the data submitted by the state to evaluate compliance with each of the four core requirements, and a review to assess the adequacy of internal controls over the state’s compliance monitoring process for collecting and reporting compliance monitoring data. As summarized in the table below, final compliance determinations will be made by May 31 each year and will affect the state’s Title II B Formula Grant award that will be awarded by September 30 of that fiscal year.

Table

1: Annual Compliance Monitoring Determinations Timeline

Step	Due Date	Illustrative Example
<b>Reporting Period</b>	October 1 – September 30	10/1/15 -9/30/16
<b>Compliance Data Due</b>	February 28 <sup>3</sup> (covering previous Federal fiscal year)	2/28/17
<b>Determination Letters Issued</b>	No later than May 31 (covering previous Federal fiscal year)	5/31/17
<b>State Appeals Due</b>	Within 30 days of receipt of determination	6/30/17
<b>Projected Issuance of Title II Solicitation</b>	March 30	3/30/17
<b>Projected Due Date of Title II Grant Applications (State Plans)</b>	June 30	6/30/17
<b>Projected Award Date</b>	No later than September 30	9/30/17

**A. Title II Grant Application Requirements**

In order to receive Title II Formula Grant awards, states are required to submit a Title

<sup>2</sup> Please see Section 3 – Reporting Period and Due Date on page 5.

<sup>3</sup> OJJDP is in the process of updating the Formula Grant Regulations. The current Formula Grant Regulations indicate that compliance data is due by December 31.

II Formula Grant application. The grant application includes: (1) a comprehensive Three-Year Plan or annual update in years two and three of the three-year cycle, and (2) annual compliance data and supporting documentation.

This section identifies the materials states participating in the Formula Grant Program must submit through OJP's Grant Management System (GMS) as part of its Title II Formula Grant application, as well as the compliance monitoring data and plans submitted by the reporting deadline of each year through OJJDP's Compliance Reporting System to be considered for Title II funding. OJJDP requires all of the requested information to inform OJJDP's assessment of state compliance with the core requirements and ultimately OJJDP's funding determinations. A state's failure to submit the required information to OJJDP by the deadline may result in the loss of Title II Part B funding for the relevant year.

### **1. Three -Year Plan and Annual Update**

In the first fiscal year of the three-year cycle, states must submit (as part of the Title II grant application submitted through OJP's GMS) a comprehensive Three-Year Plan. The Three-Year Plan is updated annually to report on any new or modified state programs, projects, and activities. More specifically, states must submit a Three-Year Plan that, among other things:

- addresses the Formula Grant Program requirements [required by Section 223(a) of the JJDP Act and OJJDP's Formula Grant regulations 28 CFR 31.303(c); 28 CFR 31.303(d); 28 CFR 31.303(e); and 28 CFR 31.303(j)];
- provides for an adequate system of monitoring adult jails, lockups, secure detention facilities, secure correctional facilities, and non-secure facilities to ensure that states are in compliance with the DSO, Separation, and Jail Removal requirements,
- provides a system for the annual reporting of the results of such monitoring to the OJJDP Administrator [Section 223(a)(14) of the JJDP Act, and 28 CFR 31.303(f)];
- addresses the DSO, Separation, and Jail Removal requirements, including a narrative that indicates how the state meets—or does not meet—criteria for compliance with *de minimis* exceptions where the state's rate of noncompliance exceeds established regulatory limits; and
- addresses the DMC requirement, including a narrative that indicates how the state is implementing, or planning to implement, the five-phase OJJDP DMC Reduction Model (Identification, Assessment/Diagnosis, Intervention, Evaluation, and Monitoring).

## **2. Compliance Data and Supporting Documentation**

Annually, through OJJDP's Compliance Reporting System, states must submit facility data for DSO, Separation, and Jail Removal.<sup>4</sup> States must provide data for 85% of facilities required to report data, and demonstrate how they would extrapolate and report, in a statistically valid manner, data for the remaining 15% of facilities. A state that fails to comply with this requirement will be presumed to have an inadequate system of monitoring. As such, the state may have receipt of its formula grant funding withheld, or may be deemed ineligible for a formula grant award. In addition, that state may also be scheduled to receive an immediate field audit or other actions as noted in Section III.B.

Compliance data and supporting documentation must include:

- A complete list of facilities required to report data;
- A list of all co-located facilities in the state;
- A list of all facilities that the state has monitored (in the relevant compliance year);
- A list of all facilities reporting data;
- A list of all facilities required to report data that have not actually reported, along with a plan for obtaining information from these facilities;
- A list of facilities in which core requirement violations occurred, with the number and type of violation identified;
- A list of facilities in which incidents occurred for which the state utilized the Valid Court Order (VCO) exception, including data on the number of incidents at each facility;
- An explanation of how the state verifies that the criteria for using the VCO exception have been satisfied (where applicable);
- Supporting materials that document the state's implementation of the five-phase OJJDP DMC Reduction Model (Identification, Assessment/Diagnosis, Intervention, Evaluation, and Monitoring);
- Relative Rate Index (RRI) tables for the state and for at least three local jurisdictions (pre-approved<sup>5</sup> by OJJDP). If the juvenile justice system is administered at the state level (not county or local level), only statewide RRI tables are required. In these cases, the state must provide citations to state law or relevant legal support to demonstrate that courts, detention, correction, and other secure confinement facilities are administered at the state level; and
- A copy of the state's compliance monitoring manual.

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<sup>4</sup> Subsequent to submission of the annual compliance monitoring data, states will be required to submit copies of record data/logs from a sample of facilities. OJJDP will contact the state to make this request once the facilities have been selected.

<sup>5</sup> OJJDP's Compliance Procedures Manual (in development) will detail the pre-approval process.

### **3. Reporting Periods and Due Date**

Annual compliance monitoring submissions are due from the state by February 28 of each year and must cover the previous Federal fiscal year. In addition, states may request an extension for one additional month, to March 31, if they can show good cause for the extension. As described above, the data report must be accompanied by all applicable narratives and any supporting documentation if compliance is proposed to be achieved under a *de minimis* exception (if applicable). OJJDP will only accept and review data to demonstrate compliance from the states from the applicable reporting period. A state's failure to submit the required information to OJJDP by the deadline may result in the loss of Title II Part B funding for the relevant year.

### **4. State Certification**

The state bears the burden of ensuring that its submitted compliance data and supporting materials are complete and fully address the requirements for OJJDP compliance determinations. The state will be required to certify that the information submitted to OJJDP for compliance determination purposes is valid and accurate. This certification is done as part of the electronic submission through OJJDP's Compliance Reporting System and must be completed by the head of the designated state agency authorized to apply for Title II Formula Grant funds.

If OJJDP determines that the state has provided inaccurate data rendering invalid an earlier compliance determination that a state was in compliance, OJJDP will pursue measures to recoup any funds awarded to the state to which it was not entitled. In addition, if OJJDP believes that a state has submitted false data, OJJDP will notify the Department of Justice, Office of the Inspector General, regarding the possible submission of false data, and the receipt of federal funding as a result of the false data, pursuant to 18 U.S.C. § 1001 and/or the False Claims Act.

## **B. Annual OJJDP Compliance Determination Assessment**

Using the compliance monitoring information and data submitted by the state, OJJDP will conduct a comprehensive assessment and make a determination of whether the state is in compliance with each of the four core requirements. The comprehensive assessment will include verification of the data submitted by the state, an analysis of the data submitted by the state to evaluate compliance with each of the four core requirements, and a review to assess the adequacy of internal controls over the state's compliance monitoring process for collecting and reporting compliance monitoring data.

## 1. Compliance Data Verification

OJJDP will conduct a verification of compliance data by reviewing the data from a representative sample of records. This will be done through a randomized, stratified sampling process based on each state's list of facilities monitored for compliance. The sample will consist of at least one of each facility type in the state's monitoring universe (adult lockup or jail, court holding facility, juvenile correctional facility, detention center, etc.), and will reflect the proportional makeup of the universe's different facility types. As noted earlier, once this sample is identified, OJJDP will contact the state and the state will be required to submit copies of record data/logs from the sampled facilities.

To ensure that compliance determinations are completed timely, the state is expected to provide the documentation requested within the timeframes specified by OJJDP at the time of request. An inadequate or untimely response from the state during this verification process may result in an immediate field audit or other actions as noted in Section III.B.

## 2. Compliance Data Analysis

Using an objective, data-driven process, OJJDP will conduct an analysis of the compliance data submitted by the state to support compliance determination recommendations for DSO, Separation, Jail Removal, and DMC. This process will also assist OJJDP in identifying areas in which training and technical assistance to a state are needed. Detailed below are the criteria used as part of the analysis.<sup>6</sup>

Table 2: Core Requirement Criteria

Core Requirement	Criteria
Deinstitutionalization of Status Offenders	As detailed in the policy and criteria for <i>de minimis</i> exceptions published in the January 9, 1981 <u>Federal Register</u> (46 FR2566)
Separation	OJJDP Formula Grants Regulation, 28 CFR 31.303(f)(6)(ii)
Jail removal	OJJDP Formula Grants Regulation, 28 CFR 31.303(f)(6)(iii) and criteria for <i>de minimis</i> exceptions
Disproportionate Minority Contact	OJJDP Formula Grants Regulation, 28 CFR 31.303(j),(k)  OJJDP's DMC Reduction Model (Identification, Assessment/Diagnosis, Intervention, Evaluation, and Monitoring).

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<sup>6</sup> OJJDP is in the process of updating the Formula Grant Regulations. The current Formula Grant Regulations will remain in effect, except where it is inconsistent with the JJDP Act, until it is withdrawn or superseded by updated Formula Grant Regulations.

### **3. Assessments of the Adequacy of the State Monitoring System**

As part of the annual compliance determination process, OJJDP will conduct an annual review to assess the adequacy of internal controls over the state's compliance monitoring process for collecting and reporting compliance monitoring data. Based upon a review of the state's monitoring compliance manual and other information submitted with the Title II Formula Grant application, OJJDP will review the state's:

- (1) Monitoring authority
- (2) Monitoring timetable
- (3) Compatibility with federal definitions
- (4) Policies and procedures for:
  - Identifying facilities to be included in the monitoring universe;
  - Classifying facilities included in the monitoring universe;
  - Inspecting facilities included in the monitoring universe;
  - Collecting and verifying facility compliance data monitoring;
  - Addressing identified instances of non-compliance with the four core requirements; and
  - Addressing barriers faced in implementing an adequate compliance monitoring system

### **4. OJJDP Administrator Final Compliance Determinations**

Based on a review of the state's compliance data with supporting materials and the compliance monitoring information the OJJDP Administrator will issue correspondence no later than May 31 regarding final compliance determinations, including, as necessary, specific details regarding why a state was determined to be out of compliance with any of the four core requirements or the required compliance monitoring system. The final compliance determinations made by May 31 will affect the state's Title II B Formula Grant award that will be awarded by September 30 of that fiscal year.

### **C. Out of Compliance Determinations and Denials of Funding**

A state's Formula Grant funding will be reduced by 20% for each core requirement with which OJJDP has determined a state to be out of compliance. In addition, a state subject to any such reduction is ineligible to receive *any* of its remaining formula grant award unless one of two conditions are met:

- (1) The state agrees in writing, to submit a separate plan and budget as a condition of its award and to expend 50% of its remaining formula award for that fiscal year to achieve compliance with any core requirement with which it was found to be out of compliance or

- (2) By the time of its grant award, the Administrator determines that the state has both:
- i. achieved substantial compliance with all core requirements with which it was found to be out of compliance and
  - ii. made through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance with the core requirements with which it was found to be out of compliance within a reasonable time.

For states to utilize option (2) the state must request and be granted a waiver of option (1) by the OJJDP Administrator. The request must be in writing and must be supported by documentation that addresses the two elements noted above in (2). Specific guidance regarding this process will be included in the OJJDP Compliance Procedures Manual, which is currently under development.

**D. Appeals of Out of Compliance Determinations or Denials of Funding**

Pursuant to 28 C.F.R. Part 18, a state that has been notified by OJJDP that it is out of compliance with one or more of the core requirements with an attendant reduction in funding, or a state that has been notified of a denial or suspension of Formula Grant funding for failure to provide for an adequate system of monitoring may appeal such suspension or denial of, funding to the Office of the General Counsel for the Office of Justice Programs. The appeal request must be filed consistent with 28 C.F.R. § 18.5(c) which, as of the date of the implementation of this policy, requires that it be submitted in writing, within 30 calendar days of receipt of notification of the noncompliance determination or denial of funding.

Table 3: Appealable Decisions

OJJDP Decision	Appealable
Denial of formula grant funding for failure to provide for an adequate system of monitoring	Yes
Suspension of funds for failure to provide for an adequate system of monitoring	Yes
Reduction of funds for being out compliance with one or more of the core requirements	Yes

**II. Oversight and Technical Assistance**

OJJDP will provide training and technical assistance to assist states in complying with the requirements of the Formula Grant Program. In addition, OJJDP will conduct field audits to assess the adequacy of states’ compliance monitoring systems.

**A. Training and Technical Assistance**

OJJDP administers a comprehensive program of training and technical assistance (TTA) for states and localities covering an array of substantive areas in juvenile justice

and system improvement. OJJDP TTA is provided by subject matter experts (SMEs) from both the OJJDP staff and the larger juvenile justice field. TTA addressing core requirements includes both on-site and virtual assistance, and is designed to assist states and localities to achieve and maintain compliance with the four core requirements. States can request TTA at any time, and OJJDP staff will also identify states in which TTA should be prioritized, if for example, OJJDP's assessment of the adequacy of a state's monitoring system (see Section I.B.3) identifies needed improvements.

## **B. Field Audits**

OJJDP will conduct field audits on a rotating schedule. The purpose of the field audits is to confirm state compliance monitoring activity and practices through direct on-site observation and file review, and to identify needed areas for technical assistance. OJJDP anticipates, with available funding and resources, that every state will receive a field audit every three years. Additional field audits may be conducted if, but not limited to the following circumstances:

- a state is unable to provide adequate documentation upon request to allow OJJDP to verify the accuracy of submitted compliance data (see Section I.B.);
- a desk review uncovers issues which must be addressed on-site;
- other information is received by OJJDP indicating potential or actual issues or concerns related to compliance with any of the core requirements; or the assessment of the state's monitoring system reveals inadequacies (see Section I.B.3). An example would be if the state fails to provide data for 85% of facilities required to report data, and demonstrate how they would extrapolate and report, in a statistically valid manner, data for the remaining 15% of facilities.

If the field audit reveals significant inadequacies in a state's monitoring system, or the state does not respond adequately or timely during the field audit process, the state may be subject to other actions as noted in Section III.B. The state will be notified of the outcome of the field audit in writing and will have the opportunity to respond.

## **III. Applicability**

### **A. Effective Date**

This Policy shall be fully effective beginning with the Fiscal Year 2017 funding compliance determinations based on data that states are currently collecting (for the period covering 10/1/15 – 9/30/16), which is due to OJJDP February 28, 2017.

## **B. Integrity and Accountability**

If OJJDP receives information that raises valid concerns regarding the integrity of a state's compliance monitoring system, or if OJJDP determines that a state has an inadequate monitoring system; is out of compliance with one or more of the four core requirements; fails to comply with the other requirements of the state plan described in section 223(a); or does not respond adequately or timely to a request from OJJDP, the state may be subject to:<sup>7</sup>

- Reduction in funding by 20% for each core requirement with which a state is determined to be out of compliance.
- Ineligibility for a Title II Formula Grant Award.
- Automatic freezing of funds until identified deficiencies have been resolved.
- Designation as a Department of Justice (DOJ) High Risk Grantee for all DOJ grants until identified deficiencies have been resolved.
- Suspension or termination of funding, if appropriate, pursuant to established procedures in 28 C.F.R. Part 18. If OJP determines – through a field audit or based on other verified information – that a state received funding to which it was not entitled, there are various civil and criminal actions that may be considered which could include, but are not limited to, recouping the improperly awarded funds.

Also, as previously stated, if OJJDP determines that the state has provided inaccurate data rendering invalid an earlier compliance determination that a state was in compliance, OJJDP will pursue measures to recoup any funds awarded to the state to which it was not entitled. In addition, if OJJDP believes that a state has submitted false data, OJJDP will notify the Department of Justice, Office of the Inspector General, regarding the possible submission of false data, and the receipt of federal funding as a result of the false data, pursuant to 18 U.S.C. § 1001 and/or the False Claims Act.

## **C. Adherence to this Policy**

Extensions of deadlines, and exceptions to other administrative requirements in this policy, may be granted only by the OJJDP Administrator, and only when otherwise consistent with OJP policy. No waivers of statutory or regulatory requirements may be granted, even by the OJJDP Administrator, unless such a waiver is expressly authorized by statute or regulation.

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<sup>7</sup> Table 3 in Section I.B.5 indicates which OJJDP actions may be appealed.

**ISSUED:**

A handwritten signature in black ink, appearing to be 'R. Listenbee', written over a horizontal line.

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**Robert L. Listenbee  
Administrator  
OJJDP**

12/5/2016

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**Date**