

2095; amended Pub. L. 99-570, title I, §1552(b)(4), Oct. 27, 1986, 100 Stat. 3207-46; Pub. L. 101-647, title II, §241(b)(4), Nov. 29, 1990, 104 Stat. 4813; Pub. L. 103-322, title XXXIII, §330001(h)(10), Sept. 13, 1994, 108 Stat. 2139; Pub. L. 109-162, title XI, §1111(c)(2)(E), Jan. 5, 2006, 119 Stat. 3102.)

## REFERENCES IN TEXT

Section 3796aa-7 of this title, referred to in text, was repealed by Pub. L. 103-322, title IV, §40156(c)(8), Sept. 13, 1994, 108 Stat. 1924.

## PRIOR PROVISIONS

A prior section 3789, Pub. L. 90-351, title I, §811, as added Pub. L. 96-157, §2, Dec. 27, 1979, 93 Stat. 1205, authorized use of available services, prior to repeal by section 609B(e) of Pub. L. 98-473. See section 3788(b) of this title.

A prior section 808 of Pub. L. 90-351, title I, as added Pub. L. 96-157, §2, Dec. 27, 1979, 93 Stat. 1204, amended section 5314 of Title 5, Government Organization and Employees, prior to repeal by section 609B(e) of Pub. L. 98-473.

## AMENDMENTS

2006—Pub. L. 109-162 substituted “the State office responsible for the trust fund required by section 3757 of this title, or the State office described in section 3796aa-7 of this title,” for “the State office described in section 3757 of this title”.

1994—Pub. L. 103-322 substituted “3757” for “3748, 3796o,”.

1990—Pub. L. 101-647 substituted “, 3796o, or 3796aa-7 of this title” for “or 3796o of this title”.

1986—Pub. L. 99-570 inserted reference to section 3796o of this title and “, as the case may be,”.

## EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-162 applicable with respect to the first fiscal year beginning after Jan. 5, 2006, and each fiscal year thereafter, see section 1111(d) of Pub. L. 109-162, set out as a note under section 3750 of this title.

## EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as a note under section 3711 of this title.

### §§ 3789a to 3789c. Repealed. Pub. L. 98-473, title II, § 609B(e), Oct. 12, 1984, 98 Stat. 2093

Section 3789a, Pub. L. 90-351, title I, §812, as added Pub. L. 96-157, §2, Dec. 27, 1979, 93 Stat. 1205, authorized consultations with other Federal, State, and local officials.

Section 3789b, Pub. L. 90-351, title I, §813, as added Pub. L. 96-157, §2, Dec. 27, 1979, 93 Stat. 1205, provided for reimbursement authority and authorized use of grants, contracts, or cooperative agreements under chapter 63 of title 31. See section 3788(c) of this title.

Section 3789c, Pub. L. 90-351, title I, §814, as added Pub. L. 96-157, §2, Dec. 27, 1979, 93 Stat. 1205, provided for employment of services of experts and consultants and appointment of advisory committees. See section 3788(d) to (f) of this title.

## EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

### § 3789d. Prohibition of Federal control over State and local criminal justice agencies; prohibition of discrimination

#### (a) General rule

Nothing in this chapter or any other Act shall be construed to authorize any department, agen-

cy, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or any other criminal justice agency of any State or any political subdivision thereof.

#### (b) Racial imbalance requirement restriction

Notwithstanding any other provision of law, nothing contained in this chapter shall be construed to authorize the National Institute of Justice, the Bureau of Justice Statistics, or the Law Enforcement Assistance Administration—

(1) to require, or condition the availability or amount of a grant upon the adoption by an applicant or grantee under this chapter of a percentage ratio, quota system, or other program to achieve racial balance in any criminal justice agency; or

(2) to deny or discontinue a grant because of the refusal of an applicant or grantee under this chapter to adopt such a ratio, system, or other program.

#### (c) Discrimination prohibited; notice of non-compliance; suspension and restoration of payments; hearing; civil action by Attorney General; private action, attorney fees, intervention by Attorney General

(1) No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this chapter.

(2)(A) Whenever there has been—

(i) receipt of notice of a finding, after notice and opportunity for a hearing, by a Federal court (other than in an action brought by the Attorney General) or State court, or by a Federal or State administrative agency, to the effect that there has been a pattern or practice of discrimination in violation of paragraph (1); or

(ii) a determination after an investigation by the Office of Justice Programs (prior to a hearing under subparagraph (F) but including an opportunity for the State government or unit of local government to make a documentary submission regarding the allegation of discrimination with respect to such program or activity, with funds made available under this chapter) that a State government or unit of local government is not in compliance with paragraph (1);

the Office of Justice Programs shall, within ten days after such occurrence, notify the chief executive of the affected State, or the State in which the affected unit of local government is located, and the chief executive of such unit of local government, that such program or activity has been so found or determined not to be in compliance with paragraph (1), and shall request each chief executive, notified under this subparagraph with respect to such violation, to secure compliance. For purposes of clause (i) a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of chapter 5 of title 5.

(B) In the event the chief executive secures compliance after notice pursuant to subparagraph (A), the terms and conditions with which the affected State government or unit of local government agrees to comply shall be set forth in writing and signed by the chief executive of the State, by the chief executive of such unit (in the event of a violation by a unit of local government), and by the Office of Justice Programs. On or prior to the effective date of the agreement, the Office of Justice Programs shall send a copy of the agreement to each complainant, if any, with respect to such violation. The chief executive of the State, or the chief executive of the unit (in the event of a violation by a unit of local government) shall file semiannual reports with the Office of Justice Programs detailing the steps taken to comply with the agreement. These reports shall cease to be filed upon the determination of the Office of Justice Programs that compliance has been secured, or upon the determination by a Federal or State court that such State government or local governmental unit is in compliance with this section. Within fifteen days of receipt of such reports, the Office of Justice Programs shall send a copy thereof to each such complainant.

(C) If, at the conclusion of ninety days after notification under subparagraph (A)—

(i) compliance has not been secured by the chief executive of that State or the chief executive of that unit of local government; and

(ii) an administrative law judge has not made a determination under subparagraph (F) that it is likely the State government or unit of local government will prevail on the merits; the Office of Justice Programs shall notify the Attorney General that compliance has not been secured and caused to have suspended further payment of any funds under this chapter to that program or activity. Such suspension shall be limited to the specific program or activity cited by the Office of Justice Programs in the notice under subparagraph (A). Such suspension shall be effective for a period of not more than one hundred and twenty days, or, if there is a hearing under subparagraph (G), not more than thirty days after the conclusion of such hearing, unless there has been an express finding by the Office of Justice Programs, after notice and opportunity for such a hearing, that the recipient is not in compliance with paragraph (1).

(D) Payment of the suspended funds shall resume only if—

(i) such State government or unit of local government enters into a compliance agreement approved by the Office of Justice Programs and the Attorney General in accordance with subparagraph (B);

(ii) such State government or unit of local government complies fully with the final order or judgment of a Federal or State court, or by a Federal or State administrative agency if that order or judgment covers all the matters raised by the Office of Justice Programs in the notice pursuant to subparagraph (A), or is found to be in compliance with paragraph (1) by such court; or

(iii) after a hearing the Office of Justice Programs pursuant to subparagraph (F) finds that noncompliance has not been demonstrated.

(E) Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, national origin, or sex in any program or activity of a State government or unit of local government which State government or unit of local government receives funds made available under this chapter, and the conduct allegedly violates the provisions of this section and neither party within forty-five days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may be otherwise available by law, the Office of Justice Programs shall cause to have suspended further payment of any funds under this chapter to that specific program or activity alleged by the Attorney General to be in violation of the provisions of this subsection until such time as the court orders resumption of payment.

(F) Prior to the suspension of funds under subparagraph (C), but within the ninety-day period after notification under subparagraph (C), the State government or unit of local government may request an expedited preliminary hearing on the record in accordance with section 554 of title 5, in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under subparagraph (G), prevail on the merits on the issue of the alleged noncompliance. A finding under this subparagraph by the administrative law judge in favor of the State government or unit of local government shall defer the suspension of funds under subparagraph (C) pending a finding of noncompliance at the conclusion of the hearing on the merits under subparagraph (G).

(G)(i) At any time after notification under subparagraph (A), but before the conclusion of the one-hundred-and-twenty-day period referred to in subparagraph (C), a State government or unit of local government may request a hearing on the record in accordance with section 554 of title 5, which the Office of Justice Programs shall initiate within sixty days of such request.

(ii) Within thirty days after the conclusion of the hearing, or, in the absence of a hearing, at the conclusion of the one-hundred-and-twenty-day period referred to in subparagraph (C), the Office of Justice Programs shall make a finding of compliance or noncompliance. If the Office of Justice Programs makes a finding of noncompliance, the Office of Justice Programs shall notify the Attorney General in order that the Attorney General may institute a civil action under paragraph (3), cause to have terminated the payment of funds under this chapter, and, if appropriate, seek repayment of such funds.

(iii) If the Office of Justice Programs makes a finding of compliance, payment of the suspended funds shall resume as provided in subparagraph (D).

(H) Any State government or unit of local government aggrieved by a final determination of the Office of Justice Programs under subparagraph (G) may appeal such determination as provided in section 3785<sup>1</sup> of this title.

(3) Whenever the Attorney General has reason to believe that a State government or unit of

<sup>1</sup> See References in Text note below.

local government has engaged in or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court. Such court may grant as relief any temporary restraining order, preliminary or permanent injunction, or other order, as necessary or appropriate to insure the full enjoyment of the rights described in this section, including the suspension, termination, or repayment of such funds made available under this chapter as the court may deem appropriate, or placing any further such funds in escrow pending the outcome of the litigation.

(4)(A) Whenever a State government or unit of local government, or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by this subsection, a civil action may be instituted after exhaustion of administrative remedies by the person aggrieved in an appropriate United States district court or in a State court of general jurisdiction. Administrative remedies shall be deemed to be exhausted upon the expiration of sixty days after the date the administrative complaint was filed with the Office of Justice Programs or any other administrative enforcement agency, unless within such period there has been a determination by the Office of Justice Programs or the agency on the merits of the complaint, in which case such remedies shall be deemed exhausted at the time the determination becomes final.

(B) In any civil action brought by a private person to enforce compliance with any provision of this subsection, the court may grant to a prevailing plaintiff reasonable attorney fees, unless the court determines that the lawsuit is frivolous, vexatious, brought for harassment purposes, or brought principally for the purpose of gaining attorney fees.

(C) In any action instituted under this section to enforce compliance with paragraph (1), the Attorney General, or a specially designated assistant for or in the name of the United States, may intervene upon timely application if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

(Pub. L. 90-351, title I, § 809, formerly § 815, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1206; renumbered § 809 and amended Pub. L. 98-473, title II, § 609B(f), (h)), Oct. 12, 1984, 98 Stat. 2093, 2095; Pub. L. 103-322, title XXXIII, § 330001(h)(11), Sept. 13, 1994, 108 Stat. 2139.)

#### REFERENCES IN TEXT

Section 3785 of this title, referred to in subsec. (c)(2)(H), was repealed by Pub. L. 109-162, title XI, § 1155(3), Jan. 5, 2006, 119 Stat. 3114.

#### PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3766 of this title prior to the general amendment of this chapter by Pub. L. 96-157.

A prior section 809 of Pub. L. 90-351, title I, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1204, amended section 5315 of Title 5, Government Organization and Employees, prior to repeal by section 609B(e) of Pub. L. 98-473.

#### AMENDMENTS

1994—Subsec. (c)(2)(H). Pub. L. 103-322 made technical amendment to reference to section 3785 of this title to correct reference to corresponding section of original act.

1984—Subsec. (a). Pub. L. 98-473, § 609B(h)(2), struck out “contained” after “Nothing”.

Subsec. (c). Pub. L. 98-473, § 609B(h)(3), substituted “Office of Justice Programs” for “Office of Justice Assistance, Research, and Statistics” wherever appearing.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 609B(h) of Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

#### § 3789e. Report to President and Congress

Not later than April 1 of each year, the Assistant Attorney General, the Director of the Bureau of Justice Assistance, the Director of the Bureau of Justice Statistics, and the Director of the National Institute of Justice shall each submit a report to the President and to the Speaker of the House of Representatives and the President of the Senate, on their activities under this chapter during the fiscal year next preceding such date.

(Pub. L. 90-351, title I, § 810, formerly § 816, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1209; renumbered § 810 and amended Pub. L. 98-473, title II, § 609B(f), (i), Oct. 12, 1984, 98 Stat. 2093, 2095.)

#### PRIOR PROVISIONS

A prior section 810 of Pub. L. 90-351 was classified to section 3788 of this title prior to repeal by section 609B(e) of Pub. L. 98-473.

#### AMENDMENTS

1984—Pub. L. 98-473, § 609B(i), substituted requirement of individual reports by certain officials of listed agencies to the President and the Speaker of the House and President of the Senate for former subsec. (a) through (e) provisions which included requirement of an annual report on or before March 31 of each year to the President and Committees on the Judiciary of the Senate and the House, including description of scope of coverage; report covering receipt and compilation of evaluations, statistics, and performance reports, comprehensive statistics, analyses, and findings respecting attainment of described objectives; plan for collection, analysis, and evaluation of data for measurement of progress in prescribed and additional areas, definition of “comprehensive statistics” and “reasonably expected contribution”; attainment of reasonably expected contribution in prescribed and added areas; and data collection, including minimum duplication.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 609B(i) of Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98-473, set out as an Effective Date note under section 3711 of this title.

#### TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106-113, set out as a note under section 3741 of this title.