

(i) require persons convicted of a part 1 violent crime to serve not less than 85 percent of the sentence imposed (without counting time not actually served, such as administrative or statutory incentives for good behavior); or

(ii) result in persons convicted of a part 1 violent crime serving on average not less than 85 percent of the sentence imposed (without counting time not actually served, such as administrative or statutory incentives for good behavior);

(B) such State has truth-in-sentencing laws that have been enacted, but not yet implemented, that require such State, not later than 3 years after such State submits an application to the Attorney General, to provide that persons convicted of a part 1 violent crime serve not less than 85 percent of the sentence imposed (without counting time not actually served, such as administrative or statutory incentives for good behavior); or

(C) in the case of a State that on April 26, 1996, practices indeterminate sentencing with regard to any part 1 violent crime—

(i) persons convicted of a part 1 violent crime on average serve not less than 85 percent of the prison term established under the State's sentencing and release guidelines; or

(ii) persons convicted of a part 1 violent crime on average serve not less than 85 percent of the maximum prison term allowed under the sentence imposed by the court (not counting time not actually served such as administrative or statutory incentives for good behavior); and

(2) such State has provided assurances that it will follow guidelines established by the Attorney General in reporting, on a quarterly basis, information regarding the death of any person who is in the process of arrest, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, or other local or State correctional facility (including any juvenile facility) that, at a minimum, includes—

(A) the name, gender, race, ethnicity, and age of the deceased;

(B) the date, time, and location of death; and

(C) a brief description of the circumstances surrounding the death.

(b) Exception

Notwithstanding subsection (a), a State may provide that the Governor of the State may allow for the earlier release of—

(1) a geriatric prisoner; or

(2) a prisoner whose medical condition precludes the prisoner from posing a threat to the public, but only after a public hearing in which representatives of the public and the prisoner's victims have had an opportunity to be heard regarding a proposed release.

(Pub. L. 103-322, title II, §20104, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-16; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; amended Pub. L. 106-297, §2, Oct. 13, 2000, 114 Stat. 1045.)

CODIFICATION

Section was formerly classified to section 13704 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 20104 of Pub. L. 103-322, title II, Sept. 13, 1994, 108 Stat. 1818, related to Federal share matching requirement prior to the general amendment of subtitle A of title II of Pub. L. 103-322 by Pub. L. 104-134.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-297 redesignated par. (1) as subpar. (A) and former subpars. (A) and (B) as cls. (i) and (ii), respectively, redesignated par. (2) as subpar. (B), redesignated par. (3) as subpar. (C) and former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added par. (2).

§ 12105. Special rules

(a) Sharing of funds with counties and other units of local government

(1) Reservation

Each State shall reserve not more than 15 percent of the amount of funds allocated in a fiscal year pursuant to section 12106 of this title for counties and units of local government to construct, develop, expand, modify, or improve jails and other correctional facilities.

(2) Factors for determination of amount

To determine the amount of funds to be reserved under this subsection, a State shall consider the burden placed on a county or unit of local government that results from the implementation of policies adopted by the State to carry out section 12103 or 12104 of this title.

(b) Use of truth-in-sentencing and violent offender incarceration grants

Funds provided under section 12103 or 12104 of this title may be applied to the cost of—

(1) altering existing correctional facilities to provide separate facilities for juveniles under the jurisdiction of an adult criminal court who are detained or are serving sentences in adult prisons or jails;

(2) providing correctional staff who are responsible for supervising juveniles who are detained or serving sentences under the jurisdiction of an adult criminal court with orientation and ongoing training regarding the unique needs of such offenders; and

(3) providing ombudsmen to monitor the treatment of juveniles who are detained or serving sentences under the jurisdiction of an adult criminal court in adult facilities, consistent with guidelines issued by the Assistant Attorney General.

(c) Funds for juvenile offenders

Notwithstanding any other provision of this part, if a State, or unit of local government located in a State that otherwise meets the requirements of section 12103 or 12104 of this title, certifies to the Attorney General that exigent circumstances exist that require the State to expend funds to build or expand facilities to confine juvenile offenders other than juvenile offenders adjudicated delinquent for an act which, if committed by an adult, would be a part 1 vio-

lent crime, the State may use funds received under this part to build or expand juvenile correctional facilities or pretrial detention facilities for juvenile offenders.

(d) Private facilities

A State may use funds received under this part for the privatization of facilities to carry out the purposes of section 12102 of this title.

(e) “Part 1 violent crime” defined

For purposes of this part, “part 1 violent crime” means a part 1 violent crime as defined in section 12101(3)¹ of this title, or a crime in a reasonably comparable class of serious violent crimes as approved by the Attorney General.

(Pub. L. 103-322, title II, §20105, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-17; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; amended Pub. L. 105-277, div. E, §3, Oct. 21, 1998, 112 Stat. 2681-760; Pub. L. 107-273, div. A, title III, §307, Nov. 2, 2002, 116 Stat. 1783.)

CODIFICATION

Section was formerly classified to section 13705 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section. Some section numbers or references in amendment notes below reflect the classification of such sections or references prior to editorial reclassification.

PRIOR PROVISIONS

A prior section 20105 of Pub. L. 103-322, title II, Sept. 13, 1994, 108 Stat. 1818, related to rules and regulations prior to the general amendment of subtitle A of title II of Pub. L. 103-322 by Pub. L. 104-134.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-273 substituted “Use of truth-in-sentencing and violent offender incarceration grants” for “Additional requirements” in heading and amended text generally, substituting provisions relating to use of funds for juveniles in adult prisons or under the jurisdiction of an adult criminal court for provisions relating to additional requirements for grant eligibility.

1998—Subsec. (b). Pub. L. 105-277 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “To be eligible to receive a grant under section 13703 or 13704 of this title, a State shall provide assurances to the Attorney General that the State has implemented or will implement not later than 18 months after April 26, 1996, policies that provide for the recognition of the rights and needs of crime victims.”

§ 12106. Formula for grants

(a) Allocation of violent offender incarceration grants under section 12103

(1) Formula allocation

85 percent of the amount available for grants under section 12103 of this title for any fiscal year shall be allocated as follows (except that a State may not receive more than 9 percent of the total amount of funds made available under this paragraph):

(A) 0.75 percent shall be allocated to each State that meets the requirements of section 12103(a) of this title, except that the United States Virgin Islands, American

Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, if eligible under section 12103(a) of this title, shall each be allocated 0.05 percent.

(B) The amount remaining after application of subparagraph (A) shall be allocated to each State that meets the requirements of section 12103(b) of this title, in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, bears to the average annual number of part 1 violent crimes reported by all States that meet the requirements of section 12103(b) of this title to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made.

(2) Additional allocation

15 percent of the amount available for grants under section 12103 of this title for any fiscal year shall be allocated to each State that meets the requirements of section 12103(c) of this title as follows:

(A) 3.0 percent shall be allocated to each State that meets the requirements of section 12103(c) of this title, except that the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, if eligible under such subsection, shall each be allocated 0.03 percent.

(B) The amount remaining after application of subparagraph (A) shall be allocated to each State that meets the requirements of section 12103(c) of this title, in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, bears to the average annual number of part 1 violent crimes reported by all States that meet the requirements of section 12102(c) of this title to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made.

(b) Allocation of truth-in-sentencing grants under section 12104

The amounts available for grants for section 12104 of this title shall be allocated to each State that meets the requirements of section 12104 of this title in the ratio that the average annual number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made bears to the average annual number of part 1 violent crimes reported by States that meet the requirements of section 12104 of this title to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, except that a State may not receive more than 25 percent of the total amount available for such grants.

(c) Unavailable data

If data regarding part 1 violent crimes in any State is substantially inaccurate or is unavailable for the 3 years preceding the year in which the determination is made, the Attorney Gen-

¹ So in original. Probably should be section “12101(2)”.