

Guidance for Data Collection and Reporting for Minors in Possession of Alcohol
April 28, 2011

[Panelists]

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[Host]

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[Michelle]

Good Afternoon everyone, on behalf of the Office of Juvenile Justice and Delinquency Prevention, I'd like to welcome you to today's webinar, *Guidance for Data Collection and Reporting for Minors in Possession of Alcohol*. In a few minutes you will hear from Jeff Slowikowski, Acting Administrator for the Office of Juvenile Justice and Delinquency Prevention and Rafe Madan, General Counsel for the Office of Justice Programs. You will only be able to hear today's webinar, which was designed to disseminate information regarding this topic out to the field. Questions received during the pre-webinar registration phase are integrated in the webinar discussion today. If you are having difficulty hearing us, please feel free to follow the directions on the PowerPoint and dial the number being displayed on the screen. For technical support, please contact PGI technical support for assistance during the webinar. At the conclusion of this webinar, there will be contact information for you to follow up or ask additional questions in addition to a link to respond to an evaluation survey. The link to the survey will pop-up when you close out of the webinar. Now, let's hear from Jeff Slowikowski.

[Introduction and Welcome]

[Jeff]

Good Afternoon, this is Jeff Slowikowski, Acting Administrator for the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Thank you for joining us this afternoon. Before we get started, I'd like to introduce my co-presenter Rafe Madan General Counsel for the Office of Justice Programs. In a few minutes, Rafe will tell you more about the guidance we are here to talk about today.

[Background]

In October of 2010, I issued a memo to the field regarding legal guidance from the Office of the General Counsel regarding the Deinstitutionalization of Status Offenders and Jail Removal core requirements as they apply to juveniles accused of or adjudicated for minor in possession of alcohol offenses, or MIP offenses. At that time, I indicated that OJJDP was seeking a statutory amendment –or “legislative fix” --to the Juvenile Justice and Delinquency Prevention Act to include MIP offenses as status offenses. Unfortunately, we were unable to get the “legislative fix,” and therefore OJJDP issued another memo in March of this year. That memo indicated that this guidance will require a change in how States report their DSO and Jail Removal violation data to OJJDP.

We are holding this webinar today to talk about this memo, and to guide you on data collection and reporting requirements regarding MIP offenses specific to the DSO and Jail Removal core requirements of the Juvenile Justice and Delinquency Prevention Act. Following this webinar, we will also send out specific guidance through the State Compliance Monitors and Juvenile Justice Specialists listservs.

First I'll let Rafe Madan talk about legislation regarding this guidance.

[Legislation]

[Rafe]

Thank you, Jeff and thanks to all of you for participating in the webinar today.

Section 223(a) (11) (A) of the JJDPA, the deinstitutionalization of status offenders core requirement ("DSO"), prohibits the placement in secure detention of "juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult[.]"

Offenses "that would not be criminal if committed by an adult" are generally referred to as status offenses.

When it was enacted in 1974, the JJDPA law was understood to afford juveniles who were charged with or who violated alcohol possession laws certain protections under the Act.

[Legislation continued]

Because of federal legislation precipitating states' raising the minimum drinking age to 21, adults aged 18-20 may be charged with violating alcohol possession laws in all 50 states and the District of Columbia.

Therefore, underage alcohol offenses cannot be categorized as "offense[s] that would not be criminal if committed by an adult." They are, in fact, criminal offenses when committed by some adults.

For this reason, underage alcohol offenses are not "status offenses" under the JJDPA, and juveniles charged with such offenses are not included in a state's DSO violation rate.

[State vs. Federal Law]

[Jeff]

Since we have been discussing this issue, several questions have come in and we will address them at this time.

[Question # 1 – State vs. Federal Law]

The first question is, should States that treat MIP offenses as status offenses under state law include such offenses in determining DSO and Jail Removal violations?

I'm going to ask Rafe to answer this.

[Answer # 1 – State vs. Federal Law]

[Rafe]

No. As discussed earlier, MIP offenses are not status offenses under the JJDPA. As stated above, section 223(a)(11)(A) of the JJDPA applies to “juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult.” In order to identify DSO violations, States must identify which offenses, under state law, would not be criminal if committed by an adult; juveniles charged with such state offenses are protected by the DSO provision of the JJDPA. Offenses that, under state law, would be criminal if committed by an adult are not protected by the DSO provision of the JJDPA.

[Question # 2 – Guidance for Law Enforcement and Corrections]

[Jeff]

Thank you for that response. The next question is, what written guidance should the State provide to law enforcement, jails, lockups and juvenile facilities?

[Answer # 2 – Guidance for Law Enforcement and Corrections]

The October and March memos I sent out can both be shared with law enforcement to explain the background on this issue. In addition, OJJDP developed a step-by-step instruction guide that will be posted on the OJJDP website in the next few days.

[Question # 3 - Why Now and Why MIPs of Alcohol]

Why is OJJDP issuing this guidance right now, and why is it only specific to MIPs of alcohol? Again, I’ll let Rafe answer the question.

[Answer # 3 – Why Now and Why MIPs of Alcohol]

[Rafe]

A State raised a question about alcohol in the context of compliance monitoring. We never considered the question directly; and in trying to answer the state, we discovered there were things about the law that we never considered before, and the law simply governs what we have to do.

[Question # 4 – Blood Alcohol Level]

[Jeff]

Thank you Rafe. The next question is, what about States that have lower DUI blood alcohol level thresholds based on age and would offenses based on these thresholds be “status offenses?”

[Answer # 4 – Blood Alcohol Level]

[Rafe]

If a state has any law that makes an offense of conduct that would not be criminal if committed by an adult, such an offense is a status offense, as described under the JJDPA.

[Question # 5 – MIP of Tobacco?]

[Jeff]

And finally what about laws against minors having possession of tobacco and are these still considered “status offenses” under the new guidance?

[Answer # 5 – MIP of Tobacco]

[Rafe]

If a State has a law that prohibits the possession of tobacco by an adult (i.e., an 18 year old), it is not a status offense, and juveniles who violate that law are not covered by DSO.

[What States Need to do]

[Jeff]

Thank you Rafe. So now, what do States need to do in light of this guidance? This means that States will have to reassess the MIP alcohol violations you reported or plan to report under Deinstitutionalization of Status Offenders or DSO and Jail Removal. OJJDP is asking that you disaggregate any alcohol MIP violations, and report these to OJJDP separately from other DSO and Jail Removal violations. Similar to the handgun exception, OJJDP is still asking that you collect and report these data to us, even though they are not considered violations.

The following steps will help to ensure that you submit your data in the format needed for OJJDP to make its compliance determinations.

In order for OJJDP to ensure that compliance determinations are made in a timely manner, we will need you to submit your information to OJJDP by June 30, 2011.

[Steps to Disaggregate the Data]

I'm going to give you the steps you need to disaggregate your DSO data. If any violations reported were based on MIP offenses, identify how many. That number will be subtracted from your total number of violations. Of that number, identify how many, if any, were held in adult jails or lockups?

[Steps to Disaggregate the Data continued]

Of that number held in jails or lockups, how many were accused, as opposed to adjudicated offenders? Of that number of accused offenders, how many were detained or confined pursuant to the 6 hour exception referenced above or pursuant to the rural exception referenced above? This number will be subtracted from your total number of Jail Removal violations.

[Steps to Revise the Data]

Once you have disaggregated the data, you will need to review the admitting offense data for all facility types, adult and juvenile, to determine what juveniles fall into the categories listed above. For those of you that reported juveniles charged with or who committed an MIP offense as violations of DSO or Jail Removal in the reports you submitted for the 2012 Formula Grant eligibility, you will need to resubmit those reports, even if disaggregating the data does not substantially change the DSO and/or Jail Removal rate of compliance. A revised report is required as we compare compliance violation rates year to year.

Those states who have not reported any MIP alcohol violations must submit a letter to OJJDP stating that the already submitted data report did not include MIP alcohol violations under DSO and/or Jail Removal violations. No other action is needed in these cases.

[In Conclusion]

As I mentioned above, States should continue to collect and report violations based on MIP offenses similarly to the way they collect and report handgun data. OJJDP will continue to work with Congressional staff to amend the JJDP Act to include MIP alcohol offenses as status offenses. To help you revise your compliance data we have also prepared a step-by-step instruction guide that will be sent out next week. We will also post the guidance on the OJJDP website.

[Future Directions]

As always, OJJDP believes, as a matter of policy, that juveniles accused or adjudicated of certain MIP offenses should never be securely detained in any adult or juvenile facility. We are committed to pursuing a statutory amendment to include MIP offenses as status offenses. We will advise you of any changes, as data collection and reporting requirements for MIPs of alcohol may again change in the future. OJJDP is here to help you do your jobs.

[For More Information Contact]

As you review the step-by-step instruction guide on our website and have questions, please contact Elissa Rumsey, OJJDP's Compliance Coordinator, here information is listed here on the slide. Thank you again for joining the webinar and remember to stay on an additional five minutes once closing out of the webinar to respond to the evaluation survey.