

State Compliance
Frequently Asked Questions

Q: What was the impetus for issuing new guidance on the meaning of “detain or confine”?

A: The Office of Juvenile Justice and Delinquency Prevention’s (OJJDP’s) goal is to promote the well-being of young people and limit their contact with the justice system. We can achieve this by requiring states to provide the protections outlined in the Juvenile Justice and Delinquency Prevention Act (JJDP A) of 1974, as amended. The purpose of the new guidance is to bring the standard for compliance with the separation and jail removal requirements into alignment with the statutory language. This, in turn, provides fuller protection to juveniles.

Q: How will states/jurisdictions assess whether or not youth are free to leave non-secure environments? What criteria will Compliance Monitors use?

A: The core requirements do not apply in non-secure buildings or non-secure areas of a law enforcement agency. The deinstitutionalization of status offenders (DSO) requirement applies only in secure detention or secure correctional facilities. The separation requirement applies only in secure facilities in which juveniles might have contact with adult inmates. The jail removal requirement applies only in adult jails and lockups which, by definition, are locked facilities.

Q: Currently, states are monitoring facilities to ensure that juveniles are not in *secure custody* in adult jails and lockups. How does the states’ monitoring activity need to change?

A: The jail removal requirement applies only in jails or lockups for adults which are, by definition, locked facilities. If a juvenile is in the non-secure area of a facility, he is not within the jail or lockup, and the jail removal requirement does not apply.

Q: The definition of “detain or confine” in the partial rule does not appear to reflect the intent of the drafters of the JJDP A.

A: The U.S. Supreme Court has made clear that in determining the meaning of a statute, one must first look to the plain language of the statute. “The starting point in discerning congressional intent... is the existing statutory text.”¹ When the language of a statute is plain and unambiguous, as is the term “detain or confine,” reference to legislative intent is unwarranted.² The JJDP A refers to “detain or confine” and not to “securely detain or confine.”

¹ *Lamie v. U.S. Trustee*, 540 U.S. 526, 527, 124 S. Ct. 1023 (2004), citing *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 119 S.Ct. 755 (1999).

² *Dellmuth v. Muth*, 491 U.S. 229, 109 S. Ct. 2397, 2401 (1989)

Q: Do regulations carry the same weight as policies?

A: Regulations promulgated pursuant to the requirements of the Administrative Procedures Act (APA) are generally afforded greater deference by courts than agency policies that have not been published for notice and comment in the Federal Register. Where regulations and/or policy are inconsistent with the underlying authorizing statute (such as the JJDPa), however, the statute must be followed.

Q: Does the definition of “detain or confine” change states’ ability to temporarily detain juveniles in an adult jail or lockup for processing?

A: No. A juvenile accused of a non-status offense may be detained in a jail or lockup for adults for up to six hours during processing, and in other limited circumstances described in the JJDPa. The 6-hour clock would start as soon as the juvenile was first detained, i.e., not free to leave the jail. Any instance in which an accused delinquent offender is detained other than pursuant to the exceptions described in the jail removal requirement, or in which an adjudicated delinquent offender, a status offender or a non-offender is detained in an adult jail or lockup for any length of time would result in an instance of non-compliance with the jail removal requirement.

Q: If a facility has a 30-second delayed egress door, is that considered a secure or non-secure facility?

A: If a facility has delayed egress doors that allow individuals to leave the facility, it is not a secure facility.

Q: If a Police Department or Sheriff’s Department is entirely non-secure, has no ability to confine any age group using architecture or stationary objects (cuffing benches), are these facilities no longer considered an Adult Jail or Adult Lockup?

A: The partial rule does not change the definition of what is considered a jail or lockup for adults under the JJDPa. Please note that the definition of “jail or lockup for adults” includes that it must be a “locked facility.”

Q: Given the new definition of “detain or confine,” are we to count as violations juvenile status offenders detained in a juvenile-only facility but not secured to an immovable object or placed in a cell?

A: If the facility meets the statutory definition of secure juvenile detention or secure juvenile correctional facility, these would be violations of the DSO requirement, if juveniles are placed there, and if none of the DSO exceptions apply. As long as no adult inmates are detained in the facility, there can be no separation violation. If the facility does not meet the statutory definition of a jail or lockup for adults, there can be no instance of non-compliance with the jail removal requirement.

Q: Is detention of status offenders awaiting a court appearance in court holding facilities considered a violation of jail removal under the partial rule?

A: A court holding facility is not considered a jail or lockup for adults, and the jail removal requirement does not apply. However, instances of non-compliance with the separation requirement can occur in any court holding facility in which a juvenile who is detained or confined has contact with an adult inmate.

Q: Does the jail removal requirement apply when juveniles are being transported from one place to another?

A: The jail removal requirement applies only when a juvenile is in a jail or lockup for adults. It does not apply while a juvenile is being transported – i.e., is in a vehicle. If, however, the juvenile is detained or confined in a jail or lockup for adults prior to or following transport, the jail removal requirement applies during the time the juvenile is in the jail or lockup. If a juvenile is detained or confined in a secure facility in which he has contact with an adult inmate, prior to or following transport, it will result in an instance of non-compliance with the separation requirement.

Q: At one law enforcement facility there is an unlocked multi-purpose area that is not secure. If youth are in that area would that be considered a violation?

A: If the juvenile has not been placed within a secure detention or secure correctional facility, there can be no instance of non-compliance with the DSO requirement. If the juvenile is not detained or confined within a “jail or lockup for adults,” defined, in part, as a “locked facility,” there can be no instance of non-compliance with the jail removal requirement. An instance of non-compliance with the separation requirement can occur only when a juvenile is detained within a secure facility such that he has contact with adult inmates.

Q: Will accused status offenders detained non-securely in jails or lockups be counted as a DSO violation in addition to a jail removal violation?

A: If a juvenile is detained non-securely, the core requirements do not apply.

Q: Will holding a juvenile non-securely in a lockup solely for the purpose of awaiting release to a parent or other responsible party be permitted?

A: If the juvenile is being held non-securely, the core requirements do not apply.

Q: If a juvenile is detained in the lobby or other non-secure area of a law enforcement facility, does the jail removal requirement apply?

A: The jail removal requirement applies only in an adult jail or lockup defined, in part, as a “locked facility.” Thus, if a juvenile is detained or confined within a non-secure area of a facility, he is not within the jail or lockup, and there can be no instance of non-compliance with the jail removal requirement.

Q: If a juvenile is brought to an unlocked law enforcement facility without secure holding capabilities (e.g., cells, cuffing rings, cuffing rails) would this be an instance of non-compliance with the jail removal requirement?

A: The jail removal requirement applies only in a facility that meets the JJDPA definition of an adult jail or lockup, defined, in part, as a “locked facility.” If a juvenile is detained within a non-secure area, he is not within a jail or lockup for adults.

Q: Would a missing person’s report issued by parents or legal guardians constitute implied consent to hold a juvenile?

A: The definition of “detain or confine” does not include a situation in which a juvenile is held solely for the purpose of returning him to his parent(s) or guardian(s).

Q: Does the definition of “detain or confine” alter states’ ability to securely detain juveniles pursuant to the Interstate Compact on Juveniles?

A: The definition of “detain or confine” does not affect a state’s ability to place a status offender in a secure detention or secure correctional facility pursuant to the Interstate Compact on Juveniles.

Q: When a building contains a jail and a non-secure administrative area, and juveniles are taken only to the administrative (non-secure) side of the building, must the facility maintain a log of the juvenile’s time in the non-secure area?

A: No. If the juvenile is detained only in a non-secure area of a facility, the core requirements do not apply and there is no need to maintain logs on juveniles held there.

Q: If a police department consists primarily of an open patrol room area with a cuffing bench and two offices that don’t lock from the outside, would this be considered a secure facility such that juvenile holding logs must be kept?

A: The area with a cuffing bench is a secure facility and the facility must maintain logs for juveniles held there. If juveniles are brought directly to the offices that don’t lock, and which are not within a facility with a secure perimeter, they may be considered non-secure, and the facility need not keep logs on juveniles detained there.

Q: Can a juvenile be deemed to be in secure custody within a facility classified as non-secure, or are non-secure facilities exempt from the JJDPA Core Requirements?

A: The core requirements apply only in secure facilities. The DSO requirement applies only in secure detention facilities and secure correctional facilities. The separation requirement applies only in institutions (secure facilities). The jail removal requirement applies only in jails or lockups for adults, defined, in part, as “locked” facilities.

Q: If a court house does not have a secure holding area, and a juvenile is brought into an area of a courtroom (such as a jury box) to wait for their hearing, would it be a separation violation if an adult inmate's hearing is taking place in that courtroom?

A: If the juvenile is not in secure custody (detained within a secure facility), there can be no separation violation.

Q: Must states report on status offenders placed in a secure detention or secure correctional facility under the Youth Handgun Safety Act exception to the DSO requirement?

A: No. States need not report the number of juveniles placed in accordance with the Youth Handgun Safety Act exception.

Q: Must states report on juvenile offenders detained for offenses related to the purchase, possession or distribution of alcohol?

A: Minor-in-possession of alcohol offenses are within the category of delinquent offenses and must be reported accordingly.

Q: Must states report violations in court holding facilities?

A: Yes, states must report violations in court holding facilities.

Q: If a juvenile is held in protective custody in a non-secure area of a jail or lockup pending return to a parent or guardian or while awaiting transfer to a child welfare or social service agency, is it a jail removal violation if he is held for more than six hours?

A: No, if the juvenile is being held in a non-secure area, the core requirements do not apply. In addition, if he is being held solely pending return to a parent or guardian or while awaiting transfer to a child welfare or social service agency he is not detained, and the core requirements do not apply.

Q: Why is OJJDP now advising that Scared Straight, Shock Incarceration, and similar programs, may not result in instances of noncompliance with the core requirements?

A: Although not all shock incarceration-type programs result in instances of noncompliance with the core requirements, OJJDP discourages the use of such programs.

Q: What is the state's obligation to document and report adjudicated status offenders held in secure juvenile facilities on the sole basis of voluntary enrollment in a rehabilitative diversion program and who may withdraw from participation in the program at any time?

A: If the juvenile is free to terminate his participation in the program at any time – i.e., is free to leave – he has not been detained and the core requirements do not apply.

Q: Must a state count as a separation violation when a juvenile provides false information indicating that he is an adult during an arrest for the commission of a criminal offense, if he is subsequently detained in contact with adults? In this situation, law enforcement personnel immediately implemented sight and sound separation of the juvenile from adult inmates upon discovering that the individual was in fact a juvenile.

A: No. If law enforcement personnel have acted in good faith upon the juvenile's representation that he was an adult, and had no reason to believe that he was, in fact, a juvenile, the state need not report this as a separation violation so long as the juvenile was immediately sight and sound separated from adult inmates upon discovering that he was a juvenile.

Q: Under the definition of "detain or confine" can juveniles who are runaways, abandoned, endangered due to mental illness, homelessness, or drug addiction, or are victims of sex trafficking or other crimes, be held for an indefinite period of time, as long as they are held "solely for the purpose of returning them to their parent or guardian or pending their transfer to the custody of a child welfare or social service agency?"

A: Although under the current regulatory definition of "detain or confine" there is no limit on how long a state may hold a juvenile who is being held while awaiting reunification with a parent or guardian, or pending transfer to the custody of a child welfare or social service agency, OJJDP expects that states will ensure that juveniles not be held in a secure facility any longer than is absolutely necessary. OJJDP intends to amend the regulatory definition of "detain or confine" to indicate that in order for a juvenile not to be detained or confined while being held solely for the purpose of returning him to his parent or guardian or pending his transfer to the custody of a child welfare or social service agency he must be held for no more than 24 hours (excluding weekend and legal holidays).

Q: Can juveniles who are being held solely for the purpose of returning them to their parent or guardian or pending their transfer to the custody of a child welfare or social service agency, be held in any type of facility, including secure ones (e.g., an adult jail)?

A: Although the regulation does not specifically require that juveniles held under these circumstances must be held in a non-secure area, OJJDP expects that states will continue the best practice of holding them non-securely. OJJDP intends to amend the definition of "detain or confine" to clarify that in order for a juvenile not to be detained or confined, he must be held non-securely.

- Q: Can law enforcement question a victim of human trafficking who is being held non-securely while awaiting transfer of custody to a parent or to a social services agency without it resulting in an instance of noncompliance with the jail removal requirement?**
- A:** If law enforcement is holding a juvenile *non-securely*, the core requirements do not apply.
- Q: Has a juvenile who is charged with, and processed for a delinquent offense, and is subsequently held only until he can be returned to parents or transfer to a child welfare or social services agency, been detained?**
- A:** An accused delinquent offender may be held for processing for no more than 6 hours. Once booking has been completed, if the juvenile is subsequently held solely pending reunification with a parent or guardian, or for while awaiting transfer to the custody of a child welfare or social services agency, he is not being detained.
- Q: If a status offender is held in an adult jail pending transfer to a parent or social services agency, will that result in an instance of noncompliance with DSO?**
- A:** If a status offender is held in an adult jail solely for the purpose of reuniting him with a parent or guardian, or pending transfer to a child welfare or social services agency, he is not detained, nor has he been “placed.”
- Q: Does the 6-hour exception apply in non-secure facilities?**
- A:** No. The “6-hour exception” applies only in jails and lockups for adults which, by definition, are “locked” facilities.
- Q: Must a state count it as a DSO violation when the state detains in a secure detention facility or a secure correctional facility an juvenile who is not in the United States legally but is otherwise a non-offender (i.e., has not been charged with, or been adjudicated as having committed, an offense)?**
- A:** A juvenile alien who is a non-offender and is detained in a state facility under a written contract with a federal agency, and pursuant to federal authority, has not been “placed” in the facility by the state and is in federal – rather than state – custody. Thus the DSO requirement does not apply.
- Q: Must a state count it as a core requirement violation when the state detains a tribal youth status offender in a secure detention facility or secure correctional facility, at the request of an Indian tribe?**
- A:** When a state detains a tribal youth in a secure detention facility or secure correctional facility under a written agreement or contract with a tribe and pursuant to tribal authority, the state need not count it as a DSO violation.