

## **Section 3**

### **Monitoring for Compliance: Juvenile Facilities**

#### **3.1 Definitions Related to Juvenile Facilities**

**Juvenile Facility.** A secure juvenile detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders. The term “State training school” is also used for juvenile correctional facilities.

**Secure Custody.** As used to define a detention or correctional facility, this term includes residential facilities with construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings (including rooms and buildings that contain alarm devices that prevent departure), fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff (i.e., staff secure).

Also considered secure are those facilities that contain doors with delayed egress devices that have not received written approval by the authority having jurisdiction over fire codes and/or fire inspections in the area in which the facility is located. The egress delay must never exceed the time delay allowed by the fire code applicable to the area in which the facility is located, and the maximum time delay allowed must be specified on the written approval. Facilities that contain devices that exceed a 30-second delay are always considered secure, even though local code may allow for a longer time delay.<sup>1</sup>

#### **3.2 Compliance With Deinstitutionalization of Status Offenders**

**Prohibitions on the Secure Holding of Status Offenders.** The JJDP Act provides that status offenders, nonoffenders, and civil-type offenders not be detained or confined in secure detention or correctional facilities. There may be rare situations, however, where short-term secure custody of accused juveniles may be necessary. For example, detention in a juvenile facility for a brief period of time prior to formal juvenile court action for investigative purposes, for identification purposes, or for the purpose of allowing return to the juvenile's parents or guardian may be necessary. Detention for a brief period of time under juvenile court authority may also be necessary in order to arrange for appropriate shelter care placement. Therefore, OJJDP regulations allow a facility to hold an accused status offender or nonoffender in a secure juvenile detention facility for up to 24 hours, exclusive of weekends and legal holidays, prior to an initial court appearance and for an additional 24 hours, exclusive of weekends and legal holidays,

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<sup>1</sup> This is the maximum delay allowed by the National Fire Protection Association, as published in the *Life Safety Code Handbook*. It should be noted that for these devices to be used, the *Life Safety Code Handbook* dictates that other requirements must be met, such as the existence of an approved supervised automatic sprinkler system.

immediately following an initial court appearance. Status offenders who fail to appear for court hearings remain status offenders; they cannot be upgraded to delinquent status for their failure to appear.

There is no grace period for securely holding adjudicated status offenders, nonoffenders, and civil-type offenders. These juveniles cannot be held in secure juvenile detention or correction facilities unless all the conditions of the valid court order provision or the handgun possession exception have been met. Adjudicated juveniles who are nonoffenders or civil-type offenders may not be held in secure juvenile detention facilities under any circumstances.

**Status Offender.** A status offender is a juvenile who has been charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. The following are examples of status offenses:

- Truancy.
- Violations of curfew.
- Runaway.
- Possession and/or consumption of tobacco products.
- Possession and/or consumption of alcohol: This offense is considered a status offense, even though State law or local ordinance may classify it as a delinquent offense.<sup>2</sup>

**Nonoffender.** A nonoffender is a juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct of the juvenile. These cases are referred to by many names including Children in Need of Services (CHINS), Children in Protective Services (CHIPS), and Families in Need of Services (FINS).

**Civil-Type Offender.** A juvenile offender who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic violations and noncriminal fish and game violations.

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<sup>2</sup> With regard to underage alcohol offenses, in many States it is a criminal offense for any person 18 to 20 years old to consume or possess alcoholic beverages. Because this time period is limited (i.e., 3 years) and the age at which this is not a criminal offense is very broad (i.e., after the age of 21), these alcohol offenses must be classified as status offenses if committed by a juvenile. However, criminal alcohol offenses that apply to all adults (e.g., public intoxication) may be classified as delinquent offenses.

**Youth Handgun Safety Act Exception.** The Youth Handgun Safety Act (18 U.S.C. 922(x)) prohibits possession of a handgun by a minor under the age of 18. There are exceptions to this act such as using a handgun in a gun safety course or hunting under the supervision of an adult. Because the Youth Handgun Safety Act applies only to juvenile offenders and handgun possession, in most cases, would not be a crime if committed by an adult, it fits the definition of a status offense. However, the Violent Crime Control and Law Enforcement Act of 1994, Subtitle B, Youth Handgun Safety, amended the JJDP Act to provide that juveniles who violate United States Code, Title 18, Section 922(x), or a similar State law can be placed in secure detention or secure correctional facilities without violating the DSO requirement. Because of this exception to the JJDP Act, violations of the Youth Handgun Safety Act or a similar State law can be considered either status offenses punishable by detention or confinement or delinquent offenses. The number of these offenders held securely must be reported to OJJDP in the State's annual monitoring report.

**Out-of-State Runaways.** Out-of-State runaways securely held beyond 24 hours solely for the purpose of being returned to proper custody in another State in response to a want, warrant, or request from a jurisdiction in the other State or pursuant to a court order must be reported as violations of the deinstitutionalization of status offenders requirement.<sup>3</sup>

**Federal Wards.** The JJDP Act states that "...alien juveniles in custody...shall not be placed in secure detention facilities or secure correctional facilities." Federal wards held beyond 24 hours in State and local secure detention and correctional facilities pursuant to a written contract or agreement with a Federal agency and for the specific purpose of affecting a jurisdictional transfer, or appearance as a material witness, or for return to their lawful residence or country of citizenship must be reported as violations of the deinstitutionalization of status offenders requirement.<sup>4</sup>

**Valid Court Order (VCO) Exception.** In the 1980 amendments to the JJDP Act, Congress enacted a provision intended to address concerns that the DSO mandate deprived juvenile court judges of a significant option in handling certain chronic status offenders. This modification of the JJDP Act was meant to be applied sparingly to the small number of status offenders that "continually flout the will of the court."

The exception provides that status offenders found to have violated a Valid Court Order (VCO) may be securely detained in a juvenile detention or correctional facility. Because the JJDP Act does not provide substantive legal authority to a State, where State legislation currently prohibits

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<sup>3</sup> OJJDP will exclude these violations if their presence creates a noncompliance rate in excess of 29.4 per 100,000 juvenile population.

<sup>4</sup> Because State and local governments do not have jurisdiction over these juveniles, OJJDP will exclude these violations if their presence creates a noncompliance rate in excess of 29.4 per 100,000 juvenile population.

the secure confinement of status offenders who violate a VCO, legislative amendment would be required if a State wanted to have the ability to confine status offenders who violate VCOs.

Although some States' common laws or statutes allow the courts to use traditional contempt power to upgrade a status offender to a delinquent offender, a juvenile held for violating a VCO remains a status offender, and the VCO process must be followed. As status offenders, juveniles who violate a VCO cannot be held in an adult jail or lockup for any length of time.

For the purpose of determining whether a VCO exists and a juvenile has been found to be in violation of that valid order, all of the following conditions must be present prior to secure incarceration:

- i. The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one that regulates future conduct of the juvenile. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.
- ii. The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing that observed proper procedures.
- iii. The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued, and such warning must be provided to the juvenile and to the juvenile's attorney and/or legal guardian in writing and be reflected in the court record and proceedings.
- iv. All judicial proceedings related to an alleged violation of a VCO must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law or to ensure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juvenile may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile alleged or found in a violation hearing to have violated a valid court order may be held only in a secure juvenile detention or correctional facility and not in an adult jail or lockup.

- v. Prior to and during the violation hearing the following full due process rights must be provided:
  - a. The right to have the charges against the juvenile in writing served upon him/her in a reasonable time before the hearing;
  - b. The right to a hearing before a court;
  - c. The right to an explanation of the nature and consequences of the proceeding;
  - d. The right to legal counsel and the right to have such counsel appointed by the court if indigent;
  - e. The right to confront witnesses;
  - f. The right to present witnesses;
  - g. The right to have a transcript or record of the proceedings; and
  - h. The right of appeal to an appropriate court.
  
- vi. In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (found in numbers i, ii, and iii listed above) existed and that the applicable due process rights (found in number v) were afforded the juvenile. In the case of a violation hearing, the judge must obtain and review a written report that reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order, determines the reasons for the juvenile's behavior, and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency other than a court or law enforcement agency.
  
- vii. A nonoffender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a VCO.

If the conditions of the VCO process are not met, each juvenile held over the 24-hour limit must be counted as a violation of the DSO requirement. OJJDP has developed a checklist that may be used by juvenile courts to demonstrate compliance with the VCO provision. This VCO checklist can be found in appendix H.

To demonstrate compliance with the VCO process, the State must report in its annual compliance monitoring report the total number of status offenders held in any secure detention or correctional facility pursuant to the VCO provision. The State must have a system in place to verify whether court orders used to hold status offenders in juvenile detention centers comply with the conditions listed above. At a minimum, the State must randomly verify 10 percent of all juvenile cases held securely because of violating a VCO. If a system is not in place to monitor compliance with the conditions of the VCO process, all uses of the VCO provision must be reported as violations of DSO.

## Summary of the Valid Court Order (VCO) Process

Juvenile commits a status offense such as truancy, runaway, curfew, or minor in possession of alcohol. (The VCO provision cannot be used for nonoffenders such as dependent or neglected children.)

If held, the juvenile can be placed in the following facilities:

- A juvenile detention center for up to 24 hours, exclusive of weekends and holidays, or,
- A nonsecure facility.

The juvenile cannot be held in an adult jail or lockup for any length of time.

The juvenile is brought before a court of competent jurisdiction for the issuance of a Valid Court Order.

The order must include:

- An order regulating the future conduct of the juvenile,
- Warning of the consequences of violating the VCO,
- Warning provided in writing to the juvenile, parents, and attorney,
- Warning reflected in court record and proceedings, and,
- Juvenile must be advised of all due process rights.

After its issuance, the juvenile violates the conditions of the Valid Court Order.

The juvenile cannot be held in an adult jail or lockup for any length of time.

If held, the juvenile can be placed in a juvenile detention center if the juvenile has a probable cause hearing within 24 hours (exclusive of weekends and holidays) of being placed in detention.

If probable cause was established, the juvenile can continue to be held in a juvenile detention center if the juvenile has a violation hearing within 72 hours (exclusive of weekends and holidays) of being placed in detention. The violation hearing must include the following:

- The juvenile must be advised again of all due process rights,
- There must be a judicial determination that the juvenile violated the valid court order, and,
- There must be a judicial determination that there is no less restrictive alternative available. This determination must be based on a written report prepared by a public agency other than a court or law enforcement agency. The written report must include the following three items:
  1. A review of the behavior of the juvenile,
  2. A determination of the reasons for that behavior, and,
  3. A determination that all other dispositions other than secure detention are inappropriate.

If all of the items listed above were satisfied and during the violation hearing the juvenile was found to have violated the conditions of the VCO, the juvenile can be held in a juvenile detention center for as long as the juvenile court deems appropriate. The juvenile cannot be held in an adult jail or lockup for any length of time.

### 3.3 Compliance With Jail Removal

A collocated facility is a juvenile facility that is located in the same building as an adult jail or lockup or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered related when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water, and sewer). Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with the collocated facility criteria (see section 4).

### 3.4 Compliance With Separation

Juveniles alleged to be or found to be delinquent, status offenders, and nonoffenders cannot have contact with incarcerated adults, including inmate trustees. Contact is defined to include any physical or sustained sight and sound contact. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders.

It is important to note that the separation requirement prohibits a State from transferring adult offenders to a juvenile correctional authority for placement in a juvenile facility. For example, an adult could not be transferred to a juvenile detention center to alleviate overcrowding in an adult jail.

Inmate trustees who perform maintenance or other duties at a juvenile detention center or juvenile training school must be sight and sound separated from the juvenile detainees at all times. Separation may be accomplished architecturally or through policies and procedures such as time phasing the use of an area to prohibit simultaneous use by juveniles and adults. The State must monitor all juvenile detention facilities and juvenile training schools for separation.

**Transferred, Waived, or Certified Youth.** A juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court may be detained or confined in a juvenile correctional facility or juvenile detention center with other juveniles who are under the jurisdiction of the juvenile court. This is not a violation of the separation requirement because the youth is not a juvenile “alleged to be or found to be delinquent” (he or she has been charged with a criminal, not a delinquent act) and the youth is not an “adult person” incarcerated because he/she has been convicted of a crime or is awaiting trial on criminal charges. Once the transferred, waived, or certified youth becomes an adult, however, he or she must be transferred to an adult facility within 6 months.

**Adults Under the Jurisdiction of the Juvenile Court.** An adult held for a delinquency proceeding can be held in a juvenile detention center or a juvenile training school. For example, if a 17-year-old juvenile committed a burglary and was charged with this delinquent offense at age 18, he or she could be held in a juvenile detention center. This does not violate the separation requirement because the 18-year-old adult has not been “convicted of a crime or is awaiting trial on criminal charges.”

### **3.5 Facility Reporting Requirements**

States must compile and report compliance monitoring data annually to the Administrator of OJJDP. Section 223(a)(15) of the JJDP Act requires that States have an adequate system of monitoring for compliance with the core protections. As part of this system, facilities must collect data on juveniles held and report the data to the State. The State must conduct regular onsite visits to monitor the facilities and verify reported data. To demonstrate compliance with the JJDP Act, secure juvenile detention or correctional facilities must report the following:

1. Dates covered by the reporting period, as designated by the State monitoring agency.
2. The total number of accused status offenders and nonoffenders, including out-of-State runaways and Federal wards, held securely for longer than 24 hours (exclusive of weekends and legal holidays) prior to an initial court appearance and for an additional 24 hours (exclusive of weekends and legal holidays) immediately following an initial court appearance. Exclude those juveniles held pursuant to the Valid Court Order provision or pursuant to the Youth Handgun Safety Act or a similar State law. Of this total number, report how many of the violations were:
  - a. Out-of-State runaways.
  - b. Federal wards.
3. The total number of adjudicated status offenders and nonoffenders, including out-of-State runaways and Federal wards, held securely for any length of time, excluding those held pursuant to the Valid Court Order provision or pursuant to the Youth Handgun Safety Act.
4. The total number of juveniles not separated from adult criminal offenders.
5. The total number of juveniles detained in State-approved collocated facilities that were not separated from the management, security, or direct care staff of the adult jail or lockup.

6. The State monitoring agency is also required to collect the following:
  - a. The total number of status offenders held in any secure detention or correctional facility pursuant to the VCO provision. Each use of the VCO provision that does not comply with the VCO process must be reported as a DSO violation above if the juvenile was held for more than 24 hours.
  - b. The total number of juvenile offenders held pursuant to the Youth Handgun Safety Act.
  - c. The total number of juvenile offenders placed in facilities that are:
    - i. Not near their home community.
    - ii. Not the least restrictive appropriate alternative.
    - iii. Not community-based.

Note: To gather data for the disproportionate minority confinement requirement, the State may request the race of each juvenile offender brought to the facility.

## Summary of the JJDP Act: Juvenile Detention or Correctional Facilities

	<b>Secure Juvenile Detention or Juvenile Correctional Facility</b>
<b>Alleged juvenile status offender or nonoffender</b>	Secure hold limited to 24 hours prior to and 24 hours after an initial court appearance (excluding weekends and holidays).
<b>Alleged juvenile status offender accused of violating a Valid Court Order</b>	Juvenile must have a probable cause hearing within 24 hours of being placed in detention. Juvenile must have a violation hearing within 72 hours of being placed in detention. Time limits are excluding weekends and holidays. There is no time limit after the violation hearing.
<b>Adjudicated juvenile status offender</b>	Secure holding prohibited
<b>Juvenile status offender adjudicated for violating a Valid Court Order</b>	No restrictions on holding
<b>Alleged juvenile delinquent</b>	No restrictions on holding
<b>Adjudicated juvenile delinquent</b>	No restrictions on holding
<b>Juvenile transferred to criminal court and charged with a misdemeanor</b>	No restrictions on holding
<b>Juvenile transferred to criminal court and convicted of a misdemeanor</b>	No restrictions on holding
<b>Juvenile transferred to criminal court and charged with or convicted of a felony</b>	No restrictions on holding
<b>Adult accused of or convicted of a criminal offense</b>	Secure holding prohibited