

## JJRA-JJDPa Guidance for Law Enforcement Facilities

### **The 2018 JJDPa legislation – H.R. 6964 (Juvenile Justice Reform Act of 2018)**

The reauthorized JJDPa is named, the Charles Grassley Juvenile Justice and Delinquency Prevention Program. It creates a new focus on data-driven evidence-based or promising prevention programs. This new JJDPa legislation was signed into law on December 13, 2018 and went into effect in FY19 starting 10-1-18.

#### **Detain or Confine:**

As defined in the current regulation, “detain or confine” means to hold, keep, or restrain a person such that he is not free to leave, *except that a juvenile held by law enforcement 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 is not detained or confined within the meaning of this definition.*

Examples of being Detained and Confined:

1. A juvenile placed in a cell within an adult jail or lockup, whether or not the cell door is locked.
2. A juvenile placed in an unlocked room within the secure perimeter of an adult jail or lockup or a juvenile detention center.
3. A juvenile left in a secure booking area after being photographed and fingerprinted.
4. A juvenile being processed in a secure booking area where an un-secure booking area is available within a facility.
5. A juvenile handcuffed to a stationary rail in an unlocked lobby area of an adult jail or lockup.
6. A juvenile handcuffed to a stationary object in any area of the facility.
7. A juvenile placed in a room that contains egress doors with unapproved delayed egress devices or approved delayed egress devices with a delay of more than 30 seconds.

#### **Facility Definitions:**

The term “**Adult Jail or Lockup**” means a locked facility that is used by a State, unit of local government, or any law enforcement authority to detain or confine adults--

- A. pending the filing of a charge of violating a criminal law;
- B. awaiting trial on a criminal charge; or
- C. convicted of violating a criminal law.

An “**Institution**” is a secure facility that is used by law enforcement or criminal justice authority to detain or confine juveniles or adult inmates:

- A. accused of having committed a delinquent or criminal offense,
- B. awaiting adjudication or trial for the delinquent or criminal offense, or
- C. found to have committed a delinquent or criminal offense.

A “**Collocated facility**” is defined in the regulation, 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) or beyond specialized services such as medical care, food service, laundry, maintenance and engineering.

**Secure law enforcement facilities** must include construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. If the area in which a juvenile is being detained does not contain construction fixtures designed to physically restrict the movements of an individual (cells, locked rooms, cuffing rings or benches, etc), the Jail Removal and Separation requirements do NOT apply.

**Non-secure facilities** are buildings that are completely non-secure, with no means to detain or confine a person do not meet the statutory standard of a “locked facility,” and would not be classified as jails or lock-ups.

Historically, OJJDP interpreted the statutory term, “jail or lockup for adults” to include the entirety of a law enforcement building where juveniles or others may be detained or confined, including both secure and non-secure areas. That is no longer the case. Under JJRA, the facility can be divided in secure and non-secure areas within the facility. If there is a dedicated, non-secure area at a secure facility, that area can be recognized as a non-secure part of the facility. Because non-secure areas of an otherwise secure law enforcement agency do not meet the statutory standard of a “locked facility,” such areas would be separately classified as non-secure and would not be considered as a part of the jail or lock-up. Similarly, law enforcement buildings that are completely non-secure, do not meet the statutory standard of a “locked facility,” and would not be classified as jails or lock-ups.

ex. If a facility has a 30 sec, or less, delayed egress door, it is NOT a secure facility.

ex. A facility that is only staff secured is NOT a secure facility.

ex. A building with a perimeter fence with an unobstructed exit that allows a juvenile to completely leave the facility and their property, would NOT be a secure facility.

A delinquent, status or non-offender who has been detained in a law enforcement building that is wholly non-secure OR in the non-secure portion of a jail or police agency, would not violate the jail removal core requirement. An accused delinquent offender detained in a law enforcement building that is wholly non-secure OR in the non-secure portion of a jail or police agency would not be subject to the 6-hour rule.

JJRA Core Requirements do not apply to non-secure facilities.

### **Rules and Regulations under each of the Three JJDP Core Protections:**

#### **1. 42 U.S.C. §5633 (a)(11) Deinstitutionalization of Status Offenders (DSO) .....**

provides that juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult.....and non-offenders who are aliens, or alleged to be dependent, neglected, abused, shall not be placed in secure detention or correctional facilities.

Congress recognizes that there are exceptions.

1. Status offenders may be held in a secure juvenile detention center for up to 24 hours for processing, which includes: identification, release to parent, awaiting transfer to a more appropriate juvenile facility, awaiting a court appearance or immediately following an initial court appearance. The 24-hour period excludes weekends and legal holidays. The weekend begins at the close of court on Friday and ends with the opening of court on the next business day.
2. Juveniles who have committed a violation of the Youth Handgun Safety Act
3. Juveniles held in accordance with the Interstate Compact on Juveniles as enacted by the State are excluded from the DSO requirement completely.

**DSO applies to secure juvenile detention or correctional facilities, and could include other secure facilities, such as law enforcement facilities, with mechanisms for securely detaining or confining a juvenile but it must also be a residential facility.** Residential means equipped with beds, cots, or other sleeping quarters and has the capacity to provide for overnight accommodations for juveniles or adults who are accused of committing or who have committed an offense. (Adult Jails and Lockups usually do not meet these requirements, however, the residential requirement doesn't have to be a juvenile residential area).

An undocumented alien (non-offender) that is held securely pursuant to State law would be a violation of JJDP. An undocumented alien held pursuant to Federal Authority, such as **Department of Homeland Security (DHS) or Immigration and Customs Enforcement (ICE)**, pursuant to a written contract or agreement with a federal agency would not be a JJDP violation.

**2. 42 U.S.C. §5633: (a)(12) - Sight and Sound Separation (Separation)** – states that status offenders and non-offenders will not be detained or confined in any institution in which they could have contact with adult inmates (including trustees). **This would apply in any facility such as a law enforcement facility, a secure court-holding facility, or a secure juvenile detention or correctional facility that have the means to securely hold juveniles, and to secure juvenile detention or correctional facility, or a collocated facility, if they have any trustees that work the grounds or building maintenance.** Secure custody status occurs when a juvenile offender is detained and confined in a locked room or area, placed in a cell, or

secured to a stationary object. Separation must be accomplished architecturally or through policies and procedures in all secure areas of a facility. In addition, S&S only applies in the secure AREAS in the facility.

The term “**contact**” is defined to include any physical or sustained sight and sound contact between juvenile offenders and adult offenders, including inmate trustees, **in secure custody**. Sight contact is further defined to include clear visual contact with adult offenders within close proximity. Sound contact is further defined as direct oral communication between adult offenders and juvenile offenders.

### **The definition of “Adult Inmate” and Sight and Sound issues for juveniles over 18**

The Reauthorization of the JJDP Act, which goes into effect October 1, 2019, includes a revised definition of Adult Inmate; see (B):

(26) the term ‘adult inmate’—

(A) means an individual who—

(i) has reached the age of full criminal responsibility under applicable State law; and

(ii) has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense; and

(B) does not include an individual who—

(i) at the time of the offense, was younger than the maximum age at which a youth can be held in a juvenile facility under applicable State law; and

(ii) was committed to the care and custody or supervision, including post placement or parole supervision, of a juvenile correctional agency by a court of competent jurisdiction or by operation of applicable State law.

**3. 42 U.S.C. §5633 (a)(13) – Jail Removal:** ..... provides that no juvenile shall be detained or confined in any jail or lockup for adults (excluding those delinquents that are held under the 6 hour hold exception). **For the Jail Removal requirement to be implicated, the juvenile must be detained within a facility meeting the definition of a Jail or Adult Lockup (a secure facility which has environmental or construction features in place that could be used to detain or confine a person).**

**Jail Removal Exception - Six-Hour Hold Exception:** The JJDP Act allows for those juveniles accused of committing delinquent offenses to be detained in an adult jail or lockup for up to a total of 6 hours for processing or release, while awaiting transfer to a juvenile facility, or during which period they make a court appearance. Time may be divided between pre- and post-court periods. For example, a juvenile may be held for 2 hours prior to a court hearing and an

additional 4 hours afterwards. No sight or sound contact with adult inmates is permitted during this period.

A juvenile placed in a cell alone should be checked on every 15 minutes.

### **Juveniles Treated as Adults (see (11)(B))**

Under the new H.R.6964 (JJRA of 2018) Sec. 223 (34 U.S.C. 11133) (a)

**(11)(A)** in accordance with rules issued by the Administrator, provide that a juvenile shall not be placed in a secure detention facility or a secure correctional facility, if—

(i) the juvenile is charged with or has committed an offense that would not be criminal if committed by an adult, excluding—

(I) a juvenile who is charged with or has committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar State law;

(II) a juvenile who is charged with or has committed a violation of a valid court order issued and reviewed in accordance with paragraph (23); and

(III) a juvenile who is held in accordance with the Interstate Compact on Juveniles as enacted by the State; or

(ii) the juvenile—

(I) is not charged with any offense; and

(II)(aa) is an alien; or (bb) is alleged to be dependent, neglected, or abused; and

**(B)** require that—

(i) not later than 3 years after the date of enactment of the Juvenile Justice Reform Act of 2018, unless a court finds, after a hearing and in writing, that it is in the interest of justice, **juveniles awaiting trial or other legal process who are treated as adults for purposes of prosecution in criminal court and housed in a secure facility—**

(I) shall not have sight or sound contact with adult inmates; and

(II) except as provided in paragraph (13), may not be held in any jail or lockup for adults;

(ii) in determining under clause (i) whether it is in the interest of justice to permit a juvenile to be held in any jail or lockup for adults, or have sight or sound contact with adult inmates, a court shall consider—

(I) the age of the juvenile;

(II) the physical and mental maturity of the juvenile;

(III) the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;

(IV) the nature and circumstances of the alleged offense;

(V) the juvenile's history of prior delinquent acts;

(VI) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and

(VII) any other relevant factor; and

(iii) if a court determines under clause (i) that it is in the interest of justice to permit a juvenile to be held in any jail or lockup for adults—

(I) the court shall hold a hearing not less frequently than once every 30 days, or in the case of a rural jurisdiction, not less frequently than once every 45 days, to review whether it is still in the interest of justice to permit the juvenile to be so held or have such sight or sound contact; and

(II) the juvenile shall not be held in any jail or lockup for adults, or permitted to have sight or sound contact with adult inmates, for more than 180 days, unless the court, in writing, determines there is good cause for an extension or the juvenile expressly waives this limitation;

Transferred, Waived, or Certified Juveniles - If criminal charges have been filed against a juvenile in a court exercising criminal jurisdiction, the Jail Removal requirement does not apply. State statute allows for a youth to be detained in a youth detention center awaiting the outcome of their direct file legal process in adult court.

## FREQUENTLY ASKED QUESTIONS

### Answered by Office of Juvenile Justice Delinquency Prevention

**Q. Is an Adult Offender who is on parole, probation, or has been released (basically no longer confined), no longer considered an Adult Inmate.**

A. Correct.

**Q. When a juvenile is in an unlocked room, in an unlocked building, but isn't allowed to leave the building because an officer will stop them, is that juvenile being detained?**

A. For the purposes of determining whether the jail removal and/or separation requirement has been implicated, and whether a violation has occurred, states must determine whether the juvenile has been "detained or confined," as defined in the Formula Grant Program regulation at 28 C.F.R. § 31.304(q). For the jail removal requirement to be implicated, the juvenile must be detained within a jail or lockup for adults, as defined at 34 U.S.C. § 11103(22) (e.g., a "locked facility" and not a non-secure area of a building). If the area of the building in which the juvenile is being detained does not contain construction fixtures

designed to physically restrict the movements of an individual (e.g., cells, locked rooms, cuffing rails or benches) the jail removal and separation requirements don't apply.

**Q. Police arrested four people for armed robbery: two are 17 years old (which makes them adults in Wisconsin) and the other two were juveniles (under 17 years old). The police took them to a municipal lockup for booking and placement in separate, individual cells. As co-defendants, are they required to be sight and sound separated?**

A. The 17-year-olds are adult inmates who must be sight and sound separated from juvenile detainees who are under juvenile court jurisdiction.

**Q. Police remove two brothers from a university football game for underage drinking. They have a processing room on the main level of the stadium. One is 16 years old and the other is 19 years old. Once the 16 year old was booked, the police put him in a locking holding room by himself. Because both of the brothers were drunk, they got upset that they were separated. The adult inmates remain in the larger prisoner processing room. As siblings, may they be detained together?**

A. The 19-year-old is an adult inmate who must be sight and sound separated from juvenile detainees under juvenile court jurisdiction, including his brother.

**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 within 30 seconds, 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 JJDP. Please note that the definition of “jail or lockup for adults” includes that it must be a “locked facility.”

**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 an adult jail or lockup, 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: 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. DSO violations can only occur in a residential facility.

**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 JJDP A 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 JJDP 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 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.” Also, a DSO violation can only occur in a residential facility.

**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 a 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.