

Chapter 28. Colorado Rules of Juvenile Procedure
Part Three. Delinquency

Rule 3.8. Status Offenders

Juveniles alleged to have committed offenses which would not be a crime if committed by an adult (i.e., status offenses), shall not be detained for more than 24 hours excluding non-judicial days unless there has been a detention hearing and judicial determination that there is probable cause to believe the juvenile has violated a valid court order. A juvenile in detention alleged to be a status offender and in violation of a valid court order shall be adjudicated within 72 hours exclusive of non-judicial days of the time detained. A juvenile adjudicated of being a status offender in violation of a valid court order may not be disposed to a secure detention or correctional placement unless the court has first reviewed a written report prepared by a public agency which is not a court or law enforcement agency. The report shall address the juvenile's behavior and the circumstances which brought the juvenile before the court and shall assess whether all less restrictive dispositions have been exhausted or are clearly inappropriate. The court is not bound by the recommendations contained in the report. Nothing herein shall prohibit the court from ordering the placement of juveniles in shelter care where appropriate, and such placement shall not be considered detention within the meaning of this rule. Juveniles alleged to have violated C.R.S. 18-12-108.5 or adjudicated delinquent for having violated C.R.S. 18-12-108.5 are exempt from the provisions of this rule.

COMMITTEE COMMENT

The reference to "valid court orders" is taken from the federal Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974, as amended, which is found at 42 U.S.C.A. 5601-5751. The Office of Juvenile Justice and Delinquency Prevention in April, 1995, issued final regulations to implement that portion of the of the JJDP, as amended in 1992, which addresses the detention and secure confinement of status offenders. These regulations, which are found at 28 C.F.R. 31.303 (f)(3) set forth the legal requirements for issuing of "valid court orders," the violation of which by a status offender may, in certain circumstances, authorize juvenile courts to detain and/or commit such youth to secure confinement. The appendix to these rules contains a form for issuing a valid court order and a form order for making a secure placement disposition for violation of a valid court order.

The Committee's intent in drafting this rule is not to encourage more frequent use of detention for status offenders. The Committee recognizes that Congress and the OJJDP assumed that courts would exhibit self-restraint and exercise the valid court order exclusion only in cases of status offenders who chronically fail to follow court orders. The Colorado supreme court in *In the Interest of J.E.S.*, 817 P.2d 508 (Colo. 1991) quoted from *In Re Ronald S.*, 9 Cal. App. 3D 866, 138 Cal. Rptr. 387 (1977) to comment on the use of secure confinement for status offenders.

Certainly not all [status offenders] need to be placed in secure facilities. However, some do and in these cases the juvenile court judge must have the authority to detain in a secure facility--if status offenders are to remain in the juvenile court. 69 Cal. App. 3d at 875, 138 Cal. Rptr. at 393.

Ohio Representative Ashbrook, who sponsored the valid court order amendment, stated that without the amendment courts would be limited in their ability to work with youths who continually flout the will of the court and that it would make "helping that young person much more difficult." (126 Cong. Rec. H. 10 10932). Ashbrook contemplated that the valid court order exception would primarily be used to provide treatment rather than punishment.

The Committee recommends that the Courts adopt this benevolent approach and use the valid court order exception to ensure that secure placements are used only for recalcitrant status offenders.

Runaways who are in violation of their probation do not fall under this rule.

ANNOTATIONS

Source: Entire rule and committee comment added and adopted June 12, 1997, effective January 1, 1998; committee comment corrected November 19, 1997; committee comment amended and adopted December 14, 2000, effective January 1, 2001.

SPECIAL FORM INDEX

Form 1. Valid Court Order for Status Offenders.

Form 2. Secure Placement as Disposition for Violation of Valid Court Order.

Form 1. VALID COURT ORDER FOR STATUS OFFENDERS.

In the Juvenile Court of _____ County, State of Colorado

Court Address:

THE PEOPLE OF THE STATE OF COLORADO

In the Interest of:

Child(ren)

and Concerning

Parent(s)/Guardian(s)

This matter comes before the Court in the exercise of its jurisdiction provided by C.R.S. 19-1-104 upon petition _____ concerning the above-named child. This matter was heard before the Honorable _____, Judge of the Juvenile Court of _____ County, Colorado as an adjudicatory hearing on the above-cited petition which alleges that said child is a status offender as that term is defined in In the Interest of J.E.S., 817 P.2d 508 (Colo. 1991) and 28 CFR Sec. 31.304(h).

I. A. Personally before the Court were:

B. Before the Court on service of process were:

C. Counsel present for the child was:

D. Upon testimony of the witnesses, the evidence received, reports received, statements and

arguments of counsel, and the entire record, the Court finds:

- ___ that the child has within a reasonable time been served with a written copy of the charges;
 - ___ that the child has been informed he/she has the right to a hearing on the matter before the court;
 - ___ that the child has been informed of the nature of this proceeding and the possible consequences associated with it;
 - ___ that the child has been informed that he/she has a right to legal counsel and that counsel can be appointed at no charge to the child if the child is indigent and can not afford counsel;
 - ___ that the child has been informed that he/she has the right to call witnesses in his/her own behalf and to confront and cross-examine witnesses against him/her;
 - ___ that the child has been informed that he/she has a right to have a transcript or record of this proceeding;
 - ___ that proof beyond a reasonable doubt exists that said child is guilty as charged of the allegations contained in the petition for the following reasons:
 - ___ that the future conduct of the child should be regulated by requiring the child to do _____
(and) (or) prohibiting said child from _____
 - ___ that the child was warned that the child could be sanctioned for violating this order and such sanction could include placement in a secure detention or correctional facility;
 - ___ that a written copy of this order should be provided to the child, the child's attorney, and the child's legal guardian;
 - ___ that the child was informed that he/she has a right to appeal this order;
- within the meaning of the Colorado Children's Code.

II.. IT IS, THEREFORE ORDERED:

1. That _____ is hereby prohibited from doing the following:
_____ until _____ or until this injunction is modified or eliminated by subsequent court order.
2. That _____ is hereby required to do the following:
_____ until _____ or until this mandatory injunction is modified or eliminated by subsequent court order.
3. That the child shall immediately accompany _____ and receive a copy of this order.
4. That the clerk office shall mail a copy of this order to _____, the child's attorney

and to _____, the child's legal guardian.

5. It is further ordered:

Entered this _____ day of _____, 20____.

JUDGE

Amended and adopted by the Court, June 28, 2001, effective July 1, 2001.

Form 2. SECURE PLACEMENT AS DISPOSITION FOR VIOLATION OF VALID COURT ORDER.

IN THE JUVENILE COURT OF _____ County, State of Colorado

THE PEOPLE OF THE STATE OF COLORADO

In the Interest of:

Child(ren)

and Concerning

Parent(s)/Guardian(s)

This matter comes before the Court in the exercise of its jurisdiction provided by C.R.S. 19-1-104 upon petition _____ concerning the above-named child. This matter was heard before the Honorable _____, Judge of the Juvenile Court of _____ County, Colorado on the petition which alleges that said child is in violation of a valid court order issued by this court on the _____ day of _____ 20____. Said child was previously adjudicated guilty on petition _____ and is a status offender as that term is defined in In the Interest of J.E.S., 817 P.2d 508 (Colo. 1991) and 28 CFR Sec. 31.304(h).

I. A. Personally before the Court were:

B. Before the Court on service of process were:

C. Counsel present for the child was:

D. Upon testimony of the witnesses, the evidence received, reports received, statements and arguments of counsel, and the entire record, the Court finds:

_____ that the child has within a reasonable time been served with a written copy of the charges;

_____ that the child has been informed he/she has the right to a hearing on the matter before the court;

_____ that the child has been informed of the nature of this proceeding and the possible consequences associated with it;

_____ that the child has been informed that he/she has a right to legal counsel and that counsel can be appointed at no charge to the child if the child is indigent and can not afford counsel;

_____ that the child has been informed that he/she has the right to call witnesses in his/her own behalf and to confront and cross-examine witnesses against him/her;

_____ that the child has been informed that he/she has a right to have a transcript or record of this proceeding;

_____ that a probable cause hearing or adjudicatory hearing was held on the _____ day of _____ 20__ at _____ a.m./p.m. which is within 24 hours, excluding weekends and holidays, of the juvenile's placement in secure detention which occurred at _____ a.m./p.m. on the _____ day of _____ 20__;

_____ that this violation hearing is within 72 hours, excluding weekends and holidays, of the juvenile's placement in secure detention which occurred on the _____ day of _____ 20__;

_____ that proof beyond a reasonable doubt exists that said child has violated the valid court order issued by the court on the _____ day of _____ 20__, in the following respects:

_____ that the court has reviewed the written report prepared by _____, a public agency independent of the court and law enforcement, has reviewed the account provided therein of the juvenile's behavior and the circumstances which brought the juvenile before the court, and has reviewed the assessment of whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate;

_____ that there is no less restrictive alternative appropriate to the needs of the juvenile and the community;

_____ that the juvenile should be placed _____ to best serve the interests of the juvenile and the community;

_____ that the child was informed he/she has a right to appeal this order;

within the meaning of the Colorado Children's Code.

II. IT IS, THEREFORE ORDERED:

1. That _____, who violated a valid court order, is placed _____ as the disposition of this court.

2. It is further ordered:

Entered this _____ day of _____, 20__.

JUDGE

Amended and adopted by the Court, June 28, 2001, effective July 1, 2001.