

## FREQUENTLY ASKED QUESTIONS

### **Deinstitutionalization of Status Offenders Section 223 (a)(11)(A) of the JJDP Act**

This requirement has been part of the JJDP Act since its inception in 1974. Congress noted that status and non-offenders were being held in adult jails and lockups for long periods of time simply because there were no other placement options. Since these juveniles had not committed a crime they were the first priority to remove from adult jails and lockups.

**Q. *Are accused and adjudicated status offenders the same?***

R. No. There is a grace period for accused status offenders if they are detained in a juvenile detention or correctional facility. They may be detained for up to 24 hours before an initial court appearance and up to 24 hours following an initial court appearance, exclusive of weekends and holidays. This only applies to accused status offenders, not adjudicated (sentenced) status offenders. Adjudicated status offenders must have received all the elements of a Valid Court Order before sentencing, or they are violations. There is no grace period for adjudicated status offenders. Accused and adjudicated status offenders may never be placed in an adult jail or lockup.

**Q. *Does a status offender, after violating a Valid Court Order, become a delinquent?***

R. No, they are not reclassified as a delinquent nor can they be “upgraded” to a delinquent.

**Q. *If possession and/or consumption of alcohol are prohibited by adults (persons between the ages of 18 and 21) are those charges then considered delinquent offenses and not status offenses?***

R. No. Juveniles under the age of 18 who consume or possess alcohol are still considered status offenders under DSO. The compliance monitor can mail you a copy of the OJJDP Legal Opinion, if requested.

**Q. *What is the difference between a non-offender and a status offender?***

R. A non-offender is typically a dependent/neglected or juvenile in custody solely due to mental health reasons whereas a status offender has committed a crime that would not be a crime if committed by an adult (runaway, underage consumption or possession, truancy, curfew violation). A non-offender may not be held in a juvenile detention center under the same “grace” period afforded a status offender, and a non-offender may never be made subject to a Valid Court Order and sentenced to a juvenile detention or correctional facility.

**Q. *Is possession of a firearm by a juvenile a status offense?***

R. Section 922(x) of U.S.C. Title 18 (the Federal Criminal Code) prohibits the possession of a handgun by a juvenile. A juvenile who violates this statute, or a similar State law, is exempted from the DSO requirement. They are not reported as violations of DSO.

**Q. *May a status or non-offender ever be taken to an adult jail or lockup?***

R. Yes. They may be taken to an adult jail or lockup for processing (fingerprints and photo) and then placed in a non-secure area awaiting parent or other responsible adult. They may be booked in a secure booking area if 1) there is no non-secure area available, 2) they are under the officer’s continuous visual supervision, 3) there is sight and sound separation, and 4) they are removed from the booking area immediately following booking.

**Q. *If a status offender (or non-offender) is securely detained in an adult jail or lockup, how is this counted as a violation?***

R. In fact, when a status offender or non-offender is securely detained in an adult jail or lockup it is counted twice, once under the DSO requirement and again under the Jail Removal requirement.

**Q. *If a status offender or non-offender is placed in a cell, but the door is not locked, is that a violation?***

R. OJJDP's opinion is "a cell is a cell is a cell." Therefore, even if the holding cell door is not locked, it is still a violation.

**Q. *Can a status offender be transported to a law enforcement facility?***

R. Yes, status offenders may be transported and processed in an adult jail where continuous visual supervision is provided throughout the booking process. (See previous question) Continued non-secure custody for the purpose of interrogation, contacting parents or arranging another placement must occur outside the secure booking area.

**Q. *Can a juvenile before the court because of a petition for mental health commitment, who is ordered committed for treatment of a mental disorder, be placed in a secure mental health facility for treatment purposes?***

R. It is OJJDP's position that all juvenile non-offenders in any category should not be placed in any secure facility. However, for the purposes of monitoring DSO may be interpreted to include within its scope only juveniles who are before a juvenile, family, or other civil court for reasons, which are unique to the individual's status as a juvenile. In other words, for the purposes of monitoring, a juvenile committed to a mental health facility under State law governing civil commitment of individuals for mental health treatment would be considered as outside the class of juvenile non-offenders defined by DSO in this situation only. It should be perfectly clear that these distinctions for monitoring purposes would not permit placement of status offenders and non-offenders in a secure mental health facility following an adjudication for a status offense or a court finding that the juvenile is a non-offender. The placement of status offenders or non-offenders in such facility for diagnostic purposes is not allowable. A separate civil mental health commitment proceeding would be required before a status offender or non-offender could be placed in a secure facility and, for monitoring purposes, be outside the scope of DSO. Any placement of such status offender or non-offender must occur only after a full due process hearing is undertaken to protect the rights of the child. The State must assure that juveniles alleged to be or found to be status offenders or non-offenders are not committed under state mental health laws to circumvent the intent DSO.

**Q. *At what point does the Judge need to review the non-court, non-law enforcement written report as described in the Valid Court Order?***

R. The Judge must review the written report before the issuance of an order for placement in a secure facility. Please note that this is consistent with Colorado Judicial Rules, not the federal regulation. In 2002, the VCO was substantially changed, however, Colorado still monitors pursuant to our Judicial Rules.

### **Sight and Sound Separation Section 223 (a)(12) of the JJDP Act**

This requirement has been part of the JJDP Act since its inception in 1974. Congress noted that juveniles were being held in adult jails and lockups with adults and were subject to abuse.

**Q. Does a juvenile who is being filed on as an adult need to be separated from adult inmates?**

R. No. Under the JJDP Act and regulations a juvenile who is being filed on as an adult is not afforded any of the protections of the JJDP Act and therefore does not need to be separated. According to Colorado statutes a juvenile in this situation needs to be physically separated from the adult inmates.

**Q. Can juveniles waived to adult court be held with other juveniles?**

R. Yes. Juveniles waived to adult court are considered to be a “swing” group by OJJDP and may be held with either adults or with juveniles providing they have not yet turned 18. Within 6 months of turning 18 they must be removed from juvenile facilities and placed in adult facilities.

**Q. Can juvenile offenders and adult offenders be placed together in non-secure community-based facilities?**

R. Yes. Non-secure community-based facilities do not fall under the JJDP Act.

**Q. How does OJJDP define sight and sound contact?**

R. 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.

**Q. What is a collocated facility?**

R. A collocated facility is a juvenile facility 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). See the Consolidated Formula Grants regulation for more information on the requirements of a collocated facility.

**Q. What is “time-phasing?”**

R. Time phasing is using the same space in an adult jail or lockup for both juveniles and incarcerated adults but not at the same time. Time phasing rules should be included in policies and procedures. Time phasing is used to maintain compliance with separation in facilities that do not have separate areas for juveniles and incarcerated adults.

**Q. If a juvenile and adult commit a crime together, do they need to be separated?**

R. The regulations do not address separation in a patrol car, therefore they can be transported together. Once the juvenile is placed in a secure environment at the adult jail or lockup, separation is required, regardless of whether they committed the crime together.

**Q. Does sight and sound apply when juveniles are being transported with adults?**

R. No, separation does not apply outside of facilities.

**Q. How does the use of trustees apply in determining compliance?**

R. When monitoring for separation supervision or contact with adult trustees constitutes a violation.

**Q. Is separation required in non-secure facilities?**

R. No. None of the core requirements apply in non-secure facilities - only secure facilities.

**Q. *What about Shape Up programs?***

R. Shape Up programs are violations of separation. See OJJDP Guidance Manual or the adult jail and lockup section in this Manual.

**Jail Removal**

**Section 223 (a)(13) of the JJDP Act**

This requirement was added to the JJDP Act during reauthorization in 1980. Congress noted that States were attempting to comply with the separation requirement and consequently, holding juveniles in total isolation for long periods of time. This requirement was added to remove juveniles from adult facilities and detain them in a more appropriate setting.

**Q. *Can a juvenile who will be filed on (but the process is not yet complete) be held in an adult jail or lockup?***

R. No. A juvenile who has been waived to adult criminal court can be detained or confined in an adult jail or lockup only after criminal charges have been filed.

**Q. *Can a status offender who has violated a Valid Court Order be detained in an adult jail or lockup?***

R. No. This type of juvenile may only be detained in a juvenile detention facility.

**Q. *Can a juvenile whose behavior is beyond the control of the juvenile detention center staff be transferred to an adult jail or lockup until they are under control?***

R. No. The juvenile may not be transferred to an adult jail or lockup unless the juvenile, while at the juvenile detention center, is charged with a criminal offense and the juvenile is then held at the adult jail or lockup under one of the three exceptions to the jail removal requirement. This juvenile may not be placed in an adult jail or lockup to “teach them a lesson” or for a cooling off period.

**Q. *Can the 6-hour time period for accused delinquents before and after court be combined?***

R. No. A juvenile may be detained for up to 6 hours before and/or for up to 6 hours after a court appearance. The hours may not be combined or exchanged or traded.

**Q. *When does the 6-hour time clock start and when is it turned off?***

R. The 6-hour clock starts the moment a juvenile is placed in a secure environment. The clock cannot be stopped until the juvenile is permanently removed from the secure environment. The clock does not stop for bathroom breaks, for interviews, for phone calls, etc.

**Q. *Can a Judge sentence a juvenile to an adult jail or lockup?***

R. No. A Judge may never sentence a juvenile to a jail or lockup. They may sentence them to a juvenile detention or correctional facility.

**Q. *In a collocated facility, how do you count a violation of the separation staff rule?***

R. If a facility does not meet the 4 requirements, which in this case it does not meet the separate staff requirement, it reverts to being an adult jail or lockup. Therefore, all juveniles placed in the facility would be subject to the jail removal and separation requirements. Please note that the Collocated Facility Requirements were changed substantially in 2002, however, Colorado still uses the guidance from the 1996 Consolidated Regulation.

## **Compliance Monitoring Section 223 (a)(15) of the JJDP Act**

This requirement charges all participating States to develop a plan and procedure to monitor jails, lockups, juvenile detention and correctional facilities, and non-secure facilities for compliance with the JJDP Act.

### **Q. *What is a secure facility?***

R. A secure facility is one where construction fixtures are designed to physically restrict the movements and activities of juveniles. Included are: secure perimeters, cells, lockable rooms, cuffing to a stationary object.

### **Q. *What does “staff secure” mean?***

R. Physical restriction of movement or activity is provided solely through facility staff. It does not include construction fixtures designed to physically restrict the movements and activities of juveniles who are in custody within; it may establish reasonable rules restricting entrance to and egress from the facility and access to the community which govern the conduct of all facility residents and may use intensive staff supervision or other programmatic intervention strategies.

### **Q. *What is the time frame on the data?***

R. The OJJDP Compliance Monitoring report is due 12/31 of each year and that years data is used to determine funding two years out. OJJDP prefers 12 months of data although you can use 6 months and double it. Some states have attempted to use a one-day sample which is regarded as suspect by OJJDP.

### **Q. *Is a room with a lock on it considered secure?***

R. If a juvenile is placed in a room with a lock on it, even though it is unlocked it is considered secure. An exception is if a department is in only one room and they need to lock it based on the purposes of the room (to keep people away from valuable equipment). If it has the potential to be secure but is never used as a secure room but maybe locked to house equipment and there are policies which state juveniles will never be held there, then it is ok.

### **Q. *If the building perimeter is secure, is a juvenile in the building considered to be in secure custody?***

R. Yes, if the perimeter is secure then a juvenile placed in that building is in secure custody. All the core requirements apply.

### **Q. *Is the booking area considered secure if it is secure?***

R. No. You can book status offenders in a secure booking area and not log them or count as violations of DSO provided you move them out once the booking is completed. See previous question under DSO.

### **Q. *What is the exact time frame on the 6-hour rule?***

R. A delinquent becomes a violation after 6 hours and 1 minute.

### **Q. *When are funds withdrawn if a State is out of compliance?***

R. OJJDP will give states up to 2 years to come into compliance with a requirement. If 2006 data shows non-compliance with DSO then there is a 2 year period to develop a corrective

plan of action. Then the state can use another time period, 6 months is ok, to demonstrate compliance and the funds will be awarded. A state can request that a hold be placed on ineligible funds and they can later show they are in compliance and have the money at that time. OJJDP will use most recent data possible to get a state funding, but, there must be an effective compliance monitoring system in place to back it up.

**Q. *On DSO, when does the clock start?***

R. The first 24 hour clock: A juvenile is brought in at 7 p.m. Monday needs to be released permanently or to go to court by 7 p.m. Tuesday.

Holidays: Only legally recognized holidays, not non-judicial days.

Weekends: Stop the clock at midnight Friday, start the clock at 12:01 a.m. on Monday.

The second 24 hour clock: From the time the juvenile returned to the facility from court.

**Q. *What about time-released locks?***

R. It is considered non-secure if there is a delay of up to 30 seconds. Discuss with the compliance monitor

**Q. *Define what the monitoring universe should consist of, especially what types of public and private facilities, other than detention centers and secure law enforcement facilities, that should be monitored and under what circumstances could they be excluded?***

R. The Identification of the Monitoring Universe refers to identifying all residential facilities which might hold juveniles pursuant to public authority and therefore should be classified to determine if each should be included in the other monitoring tasks. This includes those facilities owned or operated by public or private agencies. A full list should be developed and should include all jails, lockups, detention centers, correctional facilities, group homes, foster homes, and any other secure or non-secure public or private mental health facilities and hospitals, chemical dependency programs, detoxification centers, airports, malls, sporting complexes, court holding facilities, federal facilities (military bases, Native American tribes, INS), temporary holding facilities, collocated facilities, and emergency shelters. Once all facilities are identified, they are classified. In some cases state law may prohibit placement of juveniles in certain facilities, in some cases another state agency regulates the facilities conduct and/or security level. In these cases the facility would need to be classified annually. The facilities remaining that detain juveniles securely, or may by the nature of the facility detain juveniles securely, pursuant to public authority are included in the inspection list.

**Q. *What is "public authority"?***

R. Any officer, or judge, even if they are paid off-time wages. If the officer has the power to arrest and they are working a second job they are still considered public authority.

**Q. *Is electronic monitoring secure or non-secure?***

R. Non-secure.

**Q. *How are Native American facilities monitored?***

R. Native American reservations are included in the Monitoring Universe. If they are receiving Native American pass-through funds, the tribes must agree to attempt to comply with the core requirements. If they are not receiving funds they are treated as any other federal agency and are not required to comply. One of the most effective methods for compliance

is building relationships, offering technical assistance, providing information on liability issues and assisting people in developing a comprehensive juvenile justice strategy.

**Q. *If a city does not have a lockup and contracts with the county to detain juveniles, should the department be part of the universe?***

R. The department should be part of the universe and must be classified annually. The classification process should include an on-site visit periodically to determine if they are still non-secure. If they are non-secure, records do not need to be maintained.

**Q. *How many cases do you need to verify on VCO?***

R. 10%, or, if there are not that many (50) then verify 100%.

**Q. *Do you have to monitor federal facilities?***

R. No. OJJDP is responsible for monitoring those. You do not have to count those facilities in your data either.

**Q. *Are court holding facilities subject to DSO and Jail Removal?***

R. No. They are only subject to separation, provided they meet the criteria for court holding. See Non-Secure regulation, 1988.

**Q. *How do you verify information on logs?***

R. Verification may require that the compliance monitor verify records in several locations. At detention centers you may need to go to the court. At police departments you may need to check in the file or on the radio log.

**Q. *How can I get facilities to fill out logs completely and what is the best way to deal with a site that is not very cooperative?***

R. Facilities report accurate information for several reasons. If completing the logs only adds to their workload but serves no purpose for them seek methods to re-frame the reporting so it provides you with the information you need while enhancing their internal operation.

**Q. *Which agencies should be included in compliance site visits?***

R. All facilities that detain juveniles securely pursuant to public authority should be included in compliance onsite visits. Facilities that do not have secure facilities, but whose status may change due to the nature of their work, should be monitored periodically to ensure they are still non-secure.

**Q. *If a Judge orders a juvenile to jail is that still a violation?***

R. Yes, court orders do not exempt facilities from compliance with the requirements. A juvenile may be held for up to 6 hours before court and 6 hours after court if they are a delinquent. If they are a status offender they may not be held for any period of time. If a Judge sentences a status offender or delinquent to an adult jail or lockup it is a violation. In the case of the status offender it is a violation of DSO and Jail Removal. In the case of the delinquent, it is a violation of Jail Removal.

**Q. *Is it a violation if a juvenile lies about their age and is detained with the adult population until it is later discovered they are really a juvenile?***

R. If a juvenile lies about their age and local law enforcement acts in good faith and corrects the situation immediately upon receipt of accurate information although a violation has

occurred it does not need to be recorded as such. If law enforcement does not correct the situation immediately then a violation should be recorded.

**Q. *Is a juvenile waived to adult court exempt from the requirements?***

R. Yes. The waiver or direct-filing must precede a juvenile's placement in a secure adult facility. OJJDP further requires that the charge be a felony.

**Q. *If a juvenile is in non-secure custody do they need to be logged?***

R. No. See non-secure custody requirements first to make sure the juvenile is really in non-secure custody. If they are not, they should not be listed on the juvenile holding cell log.

**Q. *Who is responsible for the submission and content of the monitoring reports?***

R. The State Planning Agency submits the annual report to OJJDP. It is due December 31 of each year.

**Q. *Is the passage of state legislation sufficient in exempting states from monitoring?***

R. No. Simply because a State has legislation it does not exempt them.

**Q. *Do you have to monitor non-residential facilities for compliance with DSO?***

R. No. For the purposes of monitoring, the requirements of DSO only apply to residential facilities. Non-residential programs such as day care, alternative schools, etc., do not require monitoring under DSO.