

New JJDPa Tip Sheet – April 2019

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: A Brief Review

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.* Holding a juvenile that is awaiting transport to a court or detention facility is NOT included in this exception.

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.

Detained delinquent, status or non-offenders who have contact with adult inmates in a non-secure facility OR in the non-secure portion of any other entity, would not violate the separation core requirement.

“Placed or placement” has occurred when an accused status offender is detained and confined in a secure correctional facility for juveniles or a secure detention facility for juveniles:

- For 24 hours (excluding weekends and holidays) or more before an initial court appearance.
- For 24 hours (excluding weekends and holidays) or more following an initial court appearance.
- For 24 hours (excluding weekends and holidays) or more for investigative purposes.

Facility Definitions

The term “jail or lockup for adults” 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.

The term, “secure detention facility” means any public or private residential facility which,

- A. includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility, and
- B. is used for the temporary placement of any juvenile who is accused having committed an offense or of any other individual accused of having committed a criminal offense.1518

The term, “secure correctional facility” means any public or private residential facility which,

- A. includes correctional fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility, and
- B. is used for the temporary placement after adjudication and disposition of any juveniles who has been adjudicated of having committed an offense or of any individual convicted of a criminal offense.

Secure mental health and substance abuse treatment facilities generally do not meet the statutory definition of a secure juvenile detention or correctional facility. Those that do not meet the definition do NOT need to be monitored for DSO.

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.

“Secure” facilities 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.

ex. If a facility has a 30 sec 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.

Miscellaneous facility information:

1. If the facility is secure, then Sight and Sound separation, would apply, but is only applicable in the secure area.
2. If a facility is classified as non-secure, then detained and confined regulations on juvenile holding would not apply because a secure facility is defined as having construction features designed to restrict movement.
3. Secure mental health and substance abuse treatment facilities that are NOT used for detention or correctional purposes, but instead to provide mental health of substance abuse treatment for juveniles generally (including those under court jurisdiction) do not meet the definition of a secure detention or correctional facility and need NOT be monitored for compliance with DSO requirement.
4. A facility that does not hold adults securely, cannot be classified as an Adult Jail or Lock-up.
5. A staff secure facility is a non-secure facility.
6. Facilities included in the monitoring universe, but do not fall under the classifications of Adult Jail and Lockup, an Institution (such as a Court-holding facility), or a Secure Juvenile Detention or Correctional facility, must be spot-checked.
7. Collocated facilities need to receive an on-site monitoring visit every year.
8. The term “Isolation” means any instance in which a youth is confined alone for more than 15 minutes in a room or cell, and does not include:
 - a. confinement during regularly scheduled sleeping hours,
 - b. separation based on a treatment program approved by a licensed medical or mental health professional,
 - c. confinement or separation that is requested by the youth, or
 - d. the separation of the youth from a group in a unlocked setting for the limited purpose of calming.

A change under the new JJDPa allows facilities to be classified by areas in the facility and not just as a facility. If there is a dedicated, non-secure area at a secure facility, that area can be recognized as a non-secure facility.

Rules and Regulations Under Each of the Three JJDPa 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 an initial 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 with mechanisms for securely detaining or confining a juvenile but it must also be a residential facility (Adult Jails and Lockups usually do not meet these requirements, however, the residential requirement doesn't have to be a juvenile residential area).

A Non-offender, such as a D&N juvenile, cannot be placed in a secure juvenile detention facility unless it is as a sanction for contempt of court.

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 facilities such as court-holding facilities, law enforcement facilities that have the means to securely hold juveniles, and to secure juvenile detention facilities if it is a collocated facility or 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 in a secure custody status and adult offenders, including inmate trustees. 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 new 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.

In Colorado, there have been a couple of questionable Sight and Sound Separation situations that have lingered for several years. With the change in the definition of “Adult Inmate”, the questions have finally been answered.

Example 1.

- Juvenile is placed in a secure juvenile detention or correctional for committing a delinquent act, turns 18, and then while still in custody commits a felony.
- This individual is then convicted of the felony and is sentence to 90 days in adult jail.
- He completes his 90 day sentence and is released from adult jail.
- He still has time to serve from his juvenile sentence, and is sent back to juvenile detention or corrections to complete that sentence.
- At this time, he is no longer an Adult Inmate because he is out of the custody of the adult jail, lock-up, or prison system, therefore Sight and Sound Separation is not an issue. Sight and Sound Separation refers to the separation of detained or confined juveniles from adult inmates (in custody). These 2 different populations must be kept separate while in secure custody to provide protection to the juvenile.

Example 2.

- a juvenile (under age 18) commits a criminal offense and it is decided they will be tried in an adult criminal court,
- the juvenile is convicted of the crime but is sentenced to a youth correctional facility,

- once this juvenile turns 18, they must be removed from youth corrections and transferred to an adult facility within 6 mos of their 18th birthday.

Individuals in Colorado are considered an adult at the age of 18. However, individuals that commit a crime when they are between the ages of 10-17 can be committed by the court to the care of the Division of Youth Services (DYS) and remain in placement with the DHS until their 21st birthday.

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 Jail or Adult Lockup.** The Booking exception is still applicable until OJJDP says it isn't.

Section 223(a)13 “no juvenile shall be detained or confined in any jail or lockup for adults...”

- An understanding of a jail or lockup that encompasses only the secure portions of the building is, therefore, consistent with both statute and regulation.
- All secure areas of a law enforcement agency (assuming common administrative control) are presumptively included as a part of a single jail or lockup. This includes those areas with cuffing fixtures.
- 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.
- 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.

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.

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. Only time spent at the secure jail or lockup counts towards the 6 hour limit. 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.

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.