

**LAW ENFORCEMENT AND OTHER
AGENCIES' RESPONSIBILITIES UNDER
THE JUVENILE JUSTICE AND
DELINQUENCY PREVENTION ACT**

**A Guide for Compliance with
Federal and State Laws Governing
the Placement of Juveniles
in Secure Facilities**



Arkansas Coalition for Juvenile Justice

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The Arkansas Coalition for Juvenile Justice furnishes this information handbook as a guide for use in making decisions concerning the secure holding of juveniles. It is provided to Arkansas law enforcement and other agencies and their personnel to assist the state in maintaining compliance with the federal Juvenile Justice and Delinquency Prevention (JJDP) Act (42 U.S.C. 5601) and state laws regarding juveniles.

The Division of Youth Services in the Department of Human Services, the state agency designated to administer federal JJDP Act funds, distributes this handbook as part of its continuing commitment to the principles of the JJDP Act.

If you have questions about the information contained herein, or if you need more information about Arkansas' JJDP Act programs, please contact:

Division of Youth Services JJDP Unit
700 Main Street, 5th Floor
Little Rock, Arkansas 72201
Phone 501-683-2664
Elbert Grimes,
Assistant Director,
Division of Youth Services
Email elbert.grimes@arkansas.gov

Office of Juvenile Justice and
Delinquency Prevention
810 7th Street, NW
Washington, DC 20531

Visit the OJJDP Compliance Monitoring Web page at
<http://ojjdp.ncjrs.gov/compliance/index.html>

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Arkansas' Responsibilities under the JJDP Act

The federal JJDP Act was first enacted in 1974 by the U.S. Congress to establish a comprehensive national effort to reduce delinquency and improve the juvenile justice system. It has since evolved to reflect the needs of the states and territories and to promote best practices with juveniles. States that participate under the Act and receive grant funds through its provisions must comply with the core requirements of the Act, which are listed in the following pages.

As a participant under the Act, Arkansas has a continuing, comprehensive system in place to monitor all facilities in the state that have the capacity to hold juveniles securely; and the results of that compliance monitoring are reported annually to the federal Office of Juvenile Justice and Delinquency Prevention.

Under terms of the JJDP Act, the amount of grant funds Arkansas receives can be reduced significantly if the state's facilities do not maintain full compliance.

Core Requirements of the JJDP Act

1. Deinstitutionalization of Status Offenders

Under no circumstances may a juvenile status offender (e.g., a runaway, truant, underage drinker, minor in possession of alcohol or tobacco, curfew violator) or non-offender (abused or neglected juvenile, or juvenile solely in need of mental health services) be placed in secure custody. When a juvenile is picked up on a warrant, failure to comply or failure to pay a fine where the original offense is a status offense, the juvenile remains a status offender and may not be held securely.

Exception: Arkansas juvenile code allows an exception whereby, if a juvenile's original offense was a status offense and a valid court order so directs, the youth may be held in secure detention, though not in an adult jail or adult lockup.

Why is the removal of juveniles from adult jails the right thing to do?

- Juveniles held with adults for any period of time can easily be victimized.
- Juveniles may be overwhelmed in an adult jail or lockup. Research reports that the suicide rate for juveniles in adult jails and lockups is eight times greater than in a juvenile detention center.
- Adult facilities have neither the staff and programs nor training to best manage juveniles.
- Placing juveniles in jails or lockups does not serve as a deterrent.

2. Sight and Sound Separation

In cases where a juvenile may be legally held in an adult jail or lockup, total sight and sound separation must be maintained between the juvenile and incarcerated adults.

3. Removal of Juveniles from Adult Jails and Lockups

The secure custody of juveniles in adult jails and lockups is prohibited except under very specifically defined and strictly controlled situations. This pamphlet defines those situations where secure custody is allowed.

4. Disproportionate Minority Contact

Requires states to make specific efforts to reduce the rate of contact with the juvenile justice system of juveniles who are members of minority groups if that rate is higher than the rate of contact by white youth. This includes the rate of contact by youth who are detained or confined in secure detention facilities, juvenile correctional facilities, adult jails and adult lockups. This requirement represents a commitment to the equitable treatment of all juveniles regardless of race, ethnicity and culture, and strives to enhance the integrity of the juvenile justice system.

Definition of Secure Custody

As defined under the JJDP Act, secure custody is a situation where a juvenile is not free to leave the building or facility due to construction or hardware fixtures.

Secure custody includes:

- Placing a juvenile in a cell, *whether or not the door is locked*; or
- *Placing a juvenile in a locked room*; or
- Handcuffing the juvenile to a stationary object; or
- Placing the juvenile in a building or facility that has a more secure perimeter.

Definition of Non-secure Custody

As defined under the JJDP Act, if a juvenile is in non-secure custody the core requirements do not apply.

Non-secure custody includes:

- A juvenile who is in a law enforcement vehicle; or
- A juvenile who is handcuffed to him or herself but not to a stationary object; or
- A juvenile who is placed in an unlocked interview room; or
- A juvenile who is placed in a room that is not designated, set aside or used for secure detention purposes.

A juvenile in law enforcement custody is not necessarily in secure custody. Information on juveniles placed in non-secure custody does not need to be recorded on a Juvenile Holding Cell Log.

Deinstitutionalization of Status Offenders (DSO)

The JJDP Act states that status offenders (runaways, truants, underage drinkers, minors in possession of alcohol or tobacco, curfew violators) and non-offenders (juveniles who have committed no status offense and/or are dependent and neglected children and/or juveniles solely in need of mental health services) may never be placed in secure custody.

About Status Offenders/Non-offenders in Custody

When a juvenile is picked up on a warrant, failure to appear or failure to pay a fine, where the original offense is a status offense, the juvenile remains a status offender and may not be held securely.

If a status offender or non-offender is brought to an adult jail or lockup for processing and release, he or she must remain in non-secure custody.

A status offender or non-offender may be in law enforcement custody and not be in “secure custody.” If the juvenile is not placed in a “secure custody” situation (see previous section) and is in “staff secure” custody, no violation occurs. Staff secure custody is defined as providing supervision without placing the juvenile in a building with a secure perimeter or in a cell, or locked room, or cuffing the juvenile to a stationary object.

Violations of DSO

If a status offender or non-offender is placed in secure custody, two core requirements are violated: DSO and Jail Removal. Therefore, one runaway placed in secure custody actually counts as two violations of the JJDP Act on Arkansas’ annual report.

Non-secure Alternatives to Detention

Placing a status offender or non-offender in non-secure custody does not violate the JJDP Act.

- Locate alternative non-secure placement options and supervision services within your community for status offenders and non-offenders. Your county youth services department or a juvenile court intake officer can be of assistance.
- Locate a non-secure area in your facility for status offenders and non-offenders.

Criteria for Non-secure Custody of Juveniles

- The area where the juvenile is held is an unlocked multipurpose area such as a lobby, office, or interrogation room that is not designated, set aside, or used as a secure detention area or is part of such an area; and
- The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody within the facility; and
- The use of the area is limited to providing non-secure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or court; and
- In no event can the area be designated or intended to be used for residential purposes; and
- The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that the juvenile is in non-secure custody.

Is it possible a juvenile held in an adult jail or lockup and in contact with adults may have a basis for a 42 U.S.C. § 1983 civil rights action against a person or agency?

Yes, it is possible. A case in Iowa (Hendrickson v. Griggs: U.S. District Court, 1984) found that § 1983 remedy is available.

Sight and Sound Separation

This requirement of the JJDP Act provides that no juvenile shall be securely detained or confined in any facility in which they could have sight and/or sound contact with incarcerated adults, including adult trustees. Therefore a juvenile being held in an adult jail or lockup must be held out of sight and sound range of, and have no physical contact with, incarcerated adults, including trustees.

No juvenile under public authority may enter a secure section of any jail, lockup or adult correctional facility for the purpose of modifying his or her behavior or as a disposition for any offense. Programs such as “Scared Straight” or “Shape Up” generate violations of this requirement.

The practice of sight and sound separation protects juveniles against physical and verbal abuse, and is supported by organizations that include the American Correctional Association, the National Council of Juvenile and Family Court Judges and the National Sheriffs Association.

Juveniles Brought into a Law Enforcement Facility for Processing

- When juveniles are taken into custody, they may be brought to a law enforcement facility for processing purposes.
- Status offenders and non-offenders may never be held securely. They may be fingerprinted and photographed in a secure booking area, if that is all that is available, provided they are immediately removed from that area once the booking process is completed.
- Delinquents may be placed in secure custody for up to six hours for processing purposes only. (See Removal of Juveniles from Adult Jails and Lockups on pages 10 and 11 for more information on detaining delinquents securely).
- While in secure custody, juveniles must be separated by sight and sound from incarcerated adults, including trustees. Separation may be achieved architecturally or through policies and procedures. Time phasing may be used, and is defined as using the same area to process and detain both juveniles and adults — just not at the same time.

Juvenile Holding Logs – Recording Information

The JJDP Act requires that all participating states develop a plan, procedure and timetable to monitor all adult jails, adult lockups, juvenile detention and correctional facilities, and nonsecure facilities for compliance with the JJDP Act requirements. Compliance affects Arkansas' eligibility for formula grant funding under the Act. A community's compliance affects that community's eligibility for JJDP Act Title V delinquency prevention funding.

It is important that every facility or law enforcement agency that places juveniles in secure custody situations record each secure custody admission by name (or identification number), date of birth, race/ethnicity, gender, the offense for which they were arrested, the admission date and time, the release date and time, the purpose for secure custody and their court appearance time, if applicable. These logs should be submitted to, and reviewed by, the Division of Youth Services JJDP compliance monitor.

Removal of Juveniles from Adult Jails and Lockups

This requirement states that no juvenile may be held in secure custody in a facility that houses an adult jail or lockup. Following are specific exceptions to this requirement:

The Six-hour Rule for Processing and Release

- Juveniles accused of committing a delinquent offense may be held in secure custody up to six hours for the sole purpose of identification, processing, investigation and/or transfer to another facility, home or placement.
- The six-hour clock starts the moment the juvenile is placed in secure custody and cannot be stopped until the juvenile is permanently removed from secure custody.
- During this time period, no sight or sound contact between the juvenile and any adult inmate, including any adult trustee, is permitted.
- The facility must have adequate staff to supervise and monitor the juvenile at all times.

The Six-hour Rule for Court Appearances

- Juveniles accused of, or adjudicated for, committing a delinquent offense may be placed in secure custody for up to six hours prior to a court appearance and for an additional six hours following a court appearance while waiting for transport back to the facility from which they came.
- The secure custody area must be separated by sight and sound from incarcerated adults.

- The purpose of this exception is to allow law enforcement to place juveniles in secure custody who are either waiting for their court appearance or waiting for transport.
- It would be a violation of this exception to place juveniles in secure custody for punitive reasons, or for any other reason not related to a court appearance.

Transfer to or Direct Filing in Adult Court

Once a juvenile's case has been direct filed in or transferred to criminal court for prosecution as an adult, the juvenile is no longer subject to the requirements of the JJDP Act. Law enforcement officials must review and retain a copy of the court order transferring the juvenile to adult court to assure its validity before releasing the juvenile to an adult jail or lockup.

Juveniles under criminal court jurisdiction should be physically segregated from incarcerated adults when held in adult jails (Arkansas Jail Standards Chapter VIII, Section 8-1001 A).

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QUICK REFERENCE

JJDP Act Guidelines for Adult Jails and Lockups

Type of Juvenile Offender

All Juveniles

Non-offender

- No offense, e.g., dependent neglected or juvenile in need of services.
- Includes juveniles picked up on emergency commitments

Accused Status Offender

- A juvenile accused of committing an offense that would not be criminal if committed by an adult (runaway, truant, underage drinking, possession of alcohol or tobacco, curfew violation).
- Includes intoxicated juveniles

Adjudicated Status Offender

- A juvenile found by the court to have committed a status offense.
- Includes juveniles picked up on warrants, failure to appear or failure to pay fine where the original offense is a status offense.

Accused Delinquent Offender

- A juvenile who is accused of committing an offense that would be criminal if committed by an adult.

Adjudicated Delinquent Offender

- A juvenile who has been found by the court to have committed a delinquent offense.

Direct-filed in or Transferred to Adult Court

- A juvenile who has been direct filed in or transferred to adult court on a criminal charge.

JJDP Act Requirements

Must be separated by sight and sound from incarcerated adults and adult trustees.

NEVER IN SECURE CUSTODY

NEVER IN SECURE CUSTODY

NEVER IN SECURE CUSTODY WITHIN ADULT JAIL OR LOCKUP
(Exception: May be held in approved juvenile detention center under a valid court order that so directs.)

Upon arrest, may be placed in secure custody for up to six hours, for processing purposes only. If transferred from a secure facility to court, may be held in a jail or lockup for up to six hours prior to the court appearance and six hours following the court appearance. The purpose of secure holding must be related to the court appearance. Separation from adults must always be maintained.

If transferred from a secure facility to court, may be held in a jail or lockup for up to six hours prior to the court appearance and six hours following the court appearance. The purpose of secure holding must be related to the court appearance. Separation from adults must always be maintained.

NO REQUIREMENTS UNDER THE JJDP ACT AFTER DIRECT FILING OR TRANSFER. Arkansas law requires physical segregation of juveniles from incarcerated adults.