An Overview of the Juvenile Justice and Delinquency Prevention Act and the Valid Court Order Exception

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The Juvenile Justice and Delinquency Prevention Act (JJDPA) is a landmark piece of federal legislation that created massive reform and continues to set best practices for the care and custody of children involved in the juvenile system. Last approved by Congress in 2002, reauthorization of this successful law is now three years overdue.

The newest version of the bill poses significant changes to some provisions of the JJDPA, including to the core requirement of deinstitutionalization of status offenders (DSO). This amendment would require states to implement a three-year phase out of the valid court order (VCO) exception and return to the original intent of the DSO requirement. These changes are necessary to protect the rights of juveniles and to address the increasing use of secure detention for youth charged with status offenses.

The goal of this article is to provide an introduction to the JJDPA and a basic understanding of the DSO core requirement and the VCO exception.

Juvenile Justice and Delinquency Prevention Act (JJDPA)

The JJDPA was passed by Congress in 1974 to improve the juvenile justice system and support state and local efforts at delinquency prevention. The Act created the Office of Juvenile Justice and Delinquency Prevention in the U.S. Department of Justice and gave states access to federal grants for delinquency

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intervention and prevention programs. Currently, fifty-five U.S. states and territories receive JJDPA grants.

In its first incarnation, the JJDPA set out two core requirements: separation of juveniles from incarcerated adults and deinstitutionalization of status offenders (DSO). The 1977 reauthorization increased and expanded the DSO and separation requirements and placed an emphasis on treatment rather than detention.

By 1992, the JJDPA was amended to include additional requirements to make the four core requirements still present in the law today: sight and sound separation, jail removal, disproportionate minority contact and deinstitutionalization of status offenders. Congress last reauthorized the JJDPA in November 2002 and those provisions took effect in October 2003.

In order to be eligible for federal grants under the JJDPA, states must comply with all four of the core requirements. If the state remains in full compliance they receive their full grant amount. For every core requirement where the state demonstrates non-compliance, the state loses 20% of annual federal grant funding. If a state is found to be out of compliance, it must use 50% of the remaining JJDPA funds on addressing the non-compliant areas.


6. Juvenile Justice and Delinquency Act Amendments of 1992, Pub. L. No. 102-586, 106 Stat. 4982 (1992) § 1. This article focuses solely on the core requirement of deinstitutionalization of status offenders. It is important to note a basic explanation of the other three core requirements.

The second core requirement aims to ensure complete “sight and sound” separation of children from adult offenders in jails and lockups when such detention is unavoidable. Sight and sound separation requires that detained youth have no contact with adult inmates. This includes visual, verbal and physical contact.

Jail Removal is the third core requirement and is designed to eliminate the confinement of juveniles in adult jails and lockups. With a few exceptions, juveniles cannot be detained or confined in an adult facility for more than six (6) hours.

Determining whether minority youths are represented in the juvenile justice system in greater proportion than their proportion in the general population, and take action to address such racial inequality is the fourth core requirement of the Act and is also known as Disproportionate Minority Contact (DMC). For example, in a city where African Americans are 25% of the total youth population but represent 33% of the youth in the juvenile justice system, this minority group is disproportionately represented and the JJDPA Act requires that the state address this issue.


9. Id.


Arkansas is currently out of compliance in both the DSO and the jail removal requirements. In terms of state finances, this means that Arkansas should receive $600,000 but receives only $360,000. Half of Arkansas’ remaining JJDPA funds must now be spent addressing issues in the DSO and jail removal areas.

To ensure compliance and oversee distribution of funds, the JJDPA calls for the creation of two separate groups: a state advisory group (SAG) and a lead state agency. In Arkansas, the SAG is the Arkansas Coalition for Juvenile Justice and the lead state agency is the Arkansas Department of Human Services (ADHS).

Over the past several Congressional sessions, reauthorization bills have been introduced in both the House and the Senate that update and strengthen the JJDPA. These bills have sought to improve conditions in juvenile correctional facilities and emphasized rehabilitation and access to services that have been shown to reduce recidivism through community based programming. Regrettably, the last bill was proposed in the 111th Congress and did not make it out of committee.

Deinstitutionalization of Status Offenders

Prior to the enactment of the JJDPA, status offenders were often incarcerated in secure facilities alongside those who had committed crimes. In establishing the DSO requirement in the 1974 JJDPA, Congress recognized that status offenses should be treated differently than crimes and delinquent acts.

The DSO requirement, section 223(a)(11) of the JJDPA, provides that juveniles who are charged with, or who have committed offenses that would not be criminal if committed by an adult, or such non-offenders as dependent and neglected children shall not be placed in secure detention or correctional facilities. A secure facility is defined as one where the juvenile is not free to leave due to hardware or construction fixtures.

In Arkansas, status offense matters are called “family in need of services” or “FINS”. FINS are cases where the juvenile evidences behavior that includes, but is not limited to, habitual truancy, habitual disobedience, or running away. Dispositions in FINS matters can include counseling, removal of the minor from the home, community service, fines and detention.
According to statistics compiled by the National Center for Juvenile Justice, approximately 70% of status offense cases involved juveniles between ages fourteen and sixteen. Examples of status offenses include: running away, truancy, violating curfew, and possessing tobacco. These youth are typically brought to the attention of the juvenile system due to issues controlling their behavior rather than concerns about their safety or the public’s safety.

Status offenders, who often have unmet educational or mental health needs, should receive the necessary services though community-based agencies rather than the juvenile justice system. Research on delinquency identified secure detention as a risk factor for future delinquent behavior, exposing otherwise non-delinquent kids to negative influences and social stigma.

Valid Court Order Exception

In 1980, the DSO requirement was revised to include the Valid Court Order (VCO) exception. The VCO exception allows courts to hold status offenders in secure facilities if they are found to have violated a direct order from the court.

This provision was added in response to juvenile and family court judges’ concerns that the DSO provisions limited their ability to effectively deal with chronic status offenders. Many argued that detention could be an effective tool to ensure compliance with court orders. The VCO exception was revised in 1992 to ensure that due process requirements were met for juveniles facing detention under this provision.

A valid court order is a court order given by a juvenile judge to a juvenile who was brought before the court and made subject to such order. Prior to the issuance of an order, the juvenile must have been afforded the full due process rights guaranteed by the U.S. Constitution.

Section 223(a)(23) of the JJDPA provides that the State must have law or legal precedent that allows for the secure detention of status offenders who violate valid court orders. Juvenile Code Section 9-27-336(a)(2)(A) allows for the VCO exception to be ap-

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27. Id.

This code section requires that: the juvenile must have been brought before the court and made subject to the order, the juvenile received full due process rights, the juvenile must be separated from juveniles charged or held for acts of delinquency and the detention must not occur in any facility utilized for the incarceration of adults.

Additionally, the State must train court and facility staff in VCO procedures, must annually review a minimum of 10% of all VCO cases to ensure that VCO standards are met and must report those cases that do not meet the standards. In 2008, Arkansas had 192 reported violations of the DSO requirement. Arkansas continues to improve in this area, reporting only 11 violations of the DSO requirement. However, Arkansas had a total of 1,464 uses of the VCO, meaning that 1,464 status offenders were detained in Arkansas in 2010 for violating a court order.

The United States is currently split on the use of the VCO exception. Twenty-five U.S. states and territories no longer allow or use the VCO exception while thirty continue to allow the incarceration of status offenders. In these thirty jurisdictions, including Arkansas, ODDJP reports that VCO is used approximately 12,000 times per year.

Even while the VCO exception remains in place in Arkansas, practitioners can promote best practices. They should seek to enforce the intent of the JJDPA to keep juveniles out of the system and encourage community-based alternatives over detention. Defense attorneys, judges, prosecutors, and others all have a part in ensuring that our juveniles receive the services they need in the least restrictive means available.

Educate Yourself on the JJDPA and Current Research on Juveniles

The information provided in this article is merely an introduction to the JJDPA and the DSO core requirement. The DSO and VCO regulations of the JJDPA provide additional guidance to those working with status offenders.

Of particular importance are the procedures and timelines for detaining a status offender. The procedures are outlined in the JJDPA but are also reflected in the state code. Familiarity with both is absolutely necessary.

In addition to the JJDPA and the Arkansas Juvenile Code, research on adolescent development can be extremely useful. Recent Su-
Supreme Court cases such as *Roper v. Simmons*, *Graham v. Florida*, and *J.D.B. v. North Carolina* demonstrate the court’s willingness to acknowledge that human development should be considered in determinations of culpability. *Roper*, a case banning the juvenile death penalty, cited research that adolescents take greater risks than adults and are highly influenced by their peers.

Research such as that used in these Supreme Court cases turns the focus from punishing the behavior of the juvenile to identifying and resolving the cause of that behavior. Changing the focus can help put the status offender’s behavior into context and identify strategies and services that will assist the minor.

**Ensure that Due Process Requirements are Met**

Juveniles charged with violation of a VCO must have received adequate and fair warning of the consequences of violating the order at the time it was issued. The warning must be in writing and reflected in the court’s record and proceeding. A hearing must be held within twenty-four hours of the juvenile’s placement in detention to determine if there is probable cause to believe that the juvenile violated the order. If probable cause is found, a violation hearing must then be conducted within seventy-two hours, excluding weekends and holidays, and the juvenile must be availed of all due process rights prior to and during the hearing.

The OJJDP developed a checklist to determine whether a valid court order exception can be claimed. All parties to the system can utilize this tool to ensure the protection of the juvenile’s rights, and compliance with the JJ-DPA.

The checklist is available in the Appendix to this article and at: http://www.ojjdp.gov/compliance/VCO_Checklist.pdf.

**Advocate for Alternatives to Detention**

Detention does not resolve the underlying factors that lead some juveniles to commit status offenses. Factors such as family dynamics, educational issues, trauma, mental health issues and peer group influences are the typical links to the cause of status offenses. Detention can exacerbate these issues and cause additional problems for the juvenile beyond status offenses.

42. *Id.*
44. *Id.*
The first step is to get to know the juvenile and understand his or her situation. Good interviewing of the minor and the minor’s family are an excellent start. One should consider utilizing experts from other fields such as social work, psychology or counseling to assist in the assessment of the minor. Whether as the juvenile’s representative, the judge or the prosecutor in the case, the key is to understand what is going on in the juvenile’s life. The juvenile’s needs, abilities and limits should control what outcomes are utilized.

The original JJDPA recognized this and its legislative intent should be argued to the court during any VCO hearing.

Finally, in order to advocate for alternative to detention, you must be familiar with the programs and resources available in your area.

**Conclusion**

The Valid Court Order Exception was intended to be just that, an exception. However, data indicates that this “exception” is often misused and overused, leading to the detention of thousands of status offenders. The VCO exception is not a best practice for juveniles in the system and judges that once supported its addition to the JJDPA now support its elimination. In March 2010, the National Council for Juvenile and Family Court Judges voted to support the elimination of the VCO exception as proposed in the JJDPA’s reauthorization.

Advocates and others involved in the juvenile system can and should continue to fight for the reauthorization of the JJDPA. Look to state agencies such as the Arkansas Coalition for Juvenile Justice as well as national organizations such as OJJDP for leadership and resources.

Even without the official passing of an amended JJDPA, Arkansas judges should follow suit and phase out this out of date practice and look to alternatives to detention for status offenders. With increased resources and training, the state can make needed changes to ensure that no status offender is unnecessarily incarcerated.

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47. See http://www.ncjfcj.org/content/view/1318/347/.
Valid Court Order Checklist

For the purpose of determining whether a valid court order exception can be claimed, all of the following conditions must be present:

1. _____ Was the juvenile brought before a court of competent jurisdiction?

2. _____ Did the court order regulate future conduct of the juvenile?

3. _____ Did the juvenile receive adequate and fair warning of the consequences of violation of the order at the time it was issued?

4. _____ Was the warning provided to the juvenile and to his attorney and/or to his legal guardian in writing?

5. _____ Was the warning reflected in the court record and proceedings?

6. _____ Was there a judicial determination, based on a hearing, that there was probable cause to believe the juvenile violated the court order?

7. _____ Was the probable cause hearing held within 24 hours of the juvenile's placement in secure detention, excluding weekends and holidays?

8. _____ Was the violation hearing conducted within 72 hours, excluding weekends and holidays?

9. _____ Prior to issuance of the court order, and during the violation hearing, were the following due process rights provided?

   _____ The right to have the charges against the juvenile in writing served upon him in a reasonable time before the hearing;

   _____ The right to a hearing before a court;

   _____ The right to an explanation of the nature and consequences of the proceedings;

   _____ The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

   _____ The right to confront witnesses;

   _____ The right to present witnesses;
The right to have a transcript or record of the proceedings; and

The right of appeal to an appropriate court.

10. At the violation hearing, did the judge determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community? This determination, if it results in a disposition of secure confinement (commitment to a secure facility), must be informed by a written report to the judge that reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and, determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by a public agency other than a court or law enforcement agency.

If all of the above conditions are present, and the juvenile status offender is found in a violation hearing to have violated a valid court order, the juvenile may be held in a secure detention or correctional facility, but not an adult jail or lockup. However, a nonoffender such as a dependent or neglected child, cannot be placed in a secure detention or correctional facility for violating a valid court order.