

**The Incarceration of Status Offenders Under The Valid Court Order
Exception to the Juvenile Justice and Delinquency Prevention Act**

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Pat Arthur, Senior Attorney
National Center for Youth Law
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**Status Offenses & The Juvenile Justice and Delinquency Prevention
Act: The Exception that Swallowed the Rule**

The Juvenile Justice and Delinquency Prevention Act (JJDP), 42 U.S.C. Sec. 5601 *et seq.*, was passed by Congress in 1974. It authorizes federal formula grants to states complying with the four core mandates of the Act:

The *deinstitutionalization of status offenders*

The separation of juvenile and adult offenders

The removal of juveniles from adult jails

The reduction of disproportionate minority contact

A primary purpose of the JJDP, last reauthorized in 2002, is to encourage states to provide alternative, non-custodial approaches to the treatment of status offenders. A basic premise underlying the Act is that secure confinement is neither appropriate nor necessary to address the troubled behaviors of youth committing status offenses.

A *status offense* is conduct that is unlawful only because of the age of the offender. Common status offenses include running away, skipping school, breaking curfew, incorrigibility, and disorderly conduct. Prior to the JJDP, minors who engaged in acts that would not be unlawful if committed by an adult could be, and often were, incarcerated for non-criminal behaviors by juvenile and family court judges exercising protective supervision over the child.

In 1974, Congress sought to encourage states to “decriminalize” status offenses by enacting the JJDP. The Act, as originally enacted, prohibited the detention of status offenders, including children who were found in contempt of court orders entered in dependency or other non-delinquency proceedings. But in 1980, in response to family and juvenile court judges’ frustration with their inability to enforce orders perceived to be in a child’s offenders in secure confinement for violations of a valid court order. 42 U.S.C. Sec. 223(11).

Under the “valid court order exception,” runaway youth and other status offenders may be incarcerated, without jeopardizing federal funding, for violations of court orders entered in dependency or children in need of supervision proceedings that prohibit the child from engaging in specified status offense behaviors, such as running away from home or a foster care

placement.

Use of the valid court order exception has, over time, substantially undermined the Act's original goal of reducing the use of secure detention to punish status offenders. In fact, the number of court petitioned juvenile status offense cases more than doubled nationwide between 1985 and 2004. Puzzanchera, Charles. *Trends in Juvenile Justice System's Response to Status Offending: OJJDP Briefing Paper*. Pittsburg, PA: National Center for Juvenile Justice, 2007 (prepared for the U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention).

During 2004, thirty years since the Act's initial prohibition on the incarceration of status offenders, more than 400,000 youth were arrested or held in custody for status offenses. *OJJDP Statistical Briefing Book*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2006. According to one study, approximately one-third of all youth in secure detention are being detained for technical probation violations or status offenses. Austin, James, Johnson, Kelly D., and Weitzer, R., *Alternatives to Secure Detention and Confinement of Juvenile Offenders*. Juvenile Justice Bulletin. Washington D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, December 2002.

In Washington State, after the legislature passed the "Becca Bill," permitting the detention of status offenders in secure and semi-secure facilities, the number of youth placed in detention for status offenses increased by 835 percent. Pitman, M., *The Becca Bill: A Step Towards Helping Washington Families*, Gonzaga Law Review 34, 1998-1999, at 405.

Girls are disproportionately incarcerated for status offenses. One recent study shows that 61 percent of all petitioned runaway status offender cases were girls, and that girls served twice the amount of detention time for status offenses compared to boys. Snyder, H. and Sickmund, M. *Juvenile*

Offenders and Victims: 2006 National Report. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 2006, at 191.

Application of the valid court order exception to punish youth with imprisonment for status offenses varies among states. Most of the states that permit the incarceration of juveniles committing status offenses in violation of a valid court order follow the JJDP process and procedural timeline for the use of the exception. (Pre-hearing detention is limited to 24-hours, excluding non-judicial days, and an adjudicatory hearing to determine if the youth has violated the court order must occur within 72-hours.) This timeline, however, provides no guidance with respect to the amount of time a child may be held in secure custody for violating a court order.

Some states limit the number of days a youth may be confined pursuant to the valid court order exception. For example, the Washington State Legislature has limited the amount of imprisonment time that may be imposed for violations of child in need of supervision orders to 7 days. *See* Wash. Rev. Code Ann. Sec. 13.32A.250. But even when statutory limitations are imposed on the duration of confinement, courts may incarcerate youth for lengthier indeterminate periods for violating protective child in need of supervision or dependency orders pursuant to the court's inherent or criminal contempt powers, provided procedural protections are afforded. *See e.g., In re A.K.*, 162 Wash. 2d 632, 174 P.3d 11 (2007) (30-60 days in detention imposed on girls for repeatedly running away from foster placements, pursuant to the inherent contempt powers of the court, even though the Washington legislature limited the remedial sanction for contempt to 7 days.)

Several states limit application of the valid court order exception to certain types of status offenses. For example, Kentucky exempts violators of

curfew laws from secure detention (KRS Sec. 610.625) and Indiana allows the detention of only truants and runaways under the valid court order exception (IC 31-37-22-6).

Only a few states explicitly prohibit the secure confinement of status

offenders in all circumstances, including for violations of a valid court order. In Connecticut, for example, the Legislature has eliminated use of the valid court order exception entirely. *See* Ct. Gen. Stat. Sec. 46b-148 (“No child whose family has been adjudicated as a family with service needs in accordance with section 46b-149 may be processed or held in a juvenile detention center as a delinquent child, or be convicted as a delinquent, solely for the violation of a valid order which regulates future conduct of the child that was issued by the court following such an adjudication.”) New York also does not allow secure detention for violations of valid court orders entered in person in need of supervision proceedings. *See* N.Y. Family Court Act Sec. 720(2); *see also*, *In the Matter of Jennifer G.*, 26 A.D. 3d 437, 437-438 (N.Y. App. Div. 2d Dept. 2006)(upholding the constitutionality of this provision of the Family Court Act).

The Alabama Legislature recently prohibited the commitment of status offenders to the State Department of Youth Services, responding to data indicating that 40 percent of all youth in *state* custody were serving time for probation violations and status offenses. *See* Ala. Code Sec. 12-15-208 (Alabama Juvenile Justice Act of 2008).

The reauthorization of the JJDPA is currently pending before Congress. This presents an opportunity to seek the elimination of the valid court order exception to the status offender provisions of the Act. For more information about reauthorization go to: <http://www.act4jj.org/>

The attached graphs show: 1) the number of juveniles on a single day in 2006 in residential placements for committing a status offense (by state), and 2) the total number of juveniles across the nation in residential placements for committing a status offense during the period 1997-2006.