

STATUS OF COURT - ORDERED DETENTION
OF JUVENILE STATUS OFFENDERS

126813

U.S. Department of Justice
National Institute of Justice

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As defined by federal law, juveniles are youths under 18 years of age. Those who come in contact with the juvenile justice system generally fall into one of two broad categories: delinquents and status offenders. Delinquents are juveniles who have either been charged with or convicted of a criminal offense. Status offenders are juveniles who are accused of or have committed an offense which would not be a crime if committed by an adult, such as running away from home, truancy, curfew violation, or unruly behavior.

The Juvenile Justice and Delinquency Prevention Act of 1974 (JJJPA), as amended (42 U.S.C. 5601), established the federal policy that status offenders should not be held in secure detention or correctional facilities and established the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to implement the act. A subsequent amendment to the act established conditions under which states could place such juveniles in secure facilities. The Anti-Drug Abuse Act of 1988 required the General Accounting Office to report on states' use of the new conditions to detain status offenders. Our review is still in process and therefore, the information discussed is not necessarily the official view of GAO.

We collected nationally available data from juvenile justice experts and federal agencies, sent a questionnaire to state officials, and reviewed case files for status offenders detained

in 1989 at juvenile detention facilities in Cincinnati, Ohio; Johnson City, Tennessee; and Salt Lake City, Utah. (See appendix I for a more detailed discussion of our approach).

SUMMARY

States, with OJJDP assistance are taking actions to comply with the act's goal of keeping status offenders out of secure detention facilities. States are amending their statutes, revising their regulations, and changing their secure detention practices for status offenders. While states continue to detain status offenders in secure facilities, overall states reported significant reductions in the number of status offenders detained, by almost 95 percent since participating in the program. In addition, using the provisions of the amendment, in 1988 24 states detained about 5,000 juveniles, with 5 states accounting for 73 percent.

OJJDP conducted a series of audits that identified problems with states' compliance monitoring systems. Since then, most states reported taking corrective action to conform to the grant regulations.

Federal regulations do not require that procedural protections guaranteed to status offenders be documented in court records, with one exception. However, the lack of documentation does not

necessarily mean that the juvenile judges did not provide the juveniles with their procedural protections.

BACKGROUND

The JJDP Act established goals to divert juveniles from the traditional juvenile justice system, and improve the quality of juvenile justice in the United States. The act also established OJJDP in the Department of Justice to provide federal resources, leadership, and coordinate assistance to state and local governments in meeting the act's goals. However, the act does not supersede state law in the area of juvenile justice. Rather, it provides policy guidance and monetary assistance to meet congressional goals. Therefore, the juvenile justice system remains a state responsibility.

Under the act status offenders are not to be held in secure detention or correctional facilities.¹ This is referred to as the deinstitutionalization of status offenders (DSO). Under the act, status offenders who have not violated a court order shall not be held in secure detention facilities. In practice, OJJDP policy allows for a grace period of 24 hours where accused status offenders may be held in short term secure custody for

¹The act defined a "secure detention facility" as any public or private residential facility that includes construction fixtures designed to physically restrict the movements or activities of juveniles or others.

investigative purposes or to allow return to the juvenile's parents. However, any detention for longer than 24 hours is a violation of the DSO mandate.

Formula Grant Program

Under the act, OJJDP administers a formula grant program that is designed to assist participating states to improve their juvenile justice systems. Those states wishing to participate apply to OJJDP for an annual grant of funds to be used primarily for local juvenile justice programs. In fiscal year 1990, OJJDP distributed approximately \$48 million in grants on the basis of each state's juvenile population. In fiscal year 1990, 48 states, the District of Columbia and 7 trust territories received grant funds.

Non-participating states are also eligible to receive federal grant funds, but OJJDP distributes the funds directly to local public and private non-profit agencies, thereby precluding state control. As of October 1, 1990, Wisconsin and South Dakota did not participate in the grant program.

OJJDP developed regulations to implement the act. Participating states must conform to OJJDP regulations governing the program, and on an annual basis demonstrate that they are in compliance with federal regulations in order to be eligible for grant

funds. States demonstrate their progress towards DSO through annual monitoring reports submitted to OJJDP on the number of institutionalized status offenders. OJJDP regulations, for the purpose of full compliance, recognize that some status offender detention will occur and do not consider states that have low rates of noncompliance to be in violation of the law. OJJDP calculated a threshold rate of noncompliance that is considered legally insignificant, or "de minimis". States with violation rates below this de minimis threshold, which is 29.4 per 100,000 juvenile population, OJJDP considers to be in compliance with the act.

Valid Court Order Amendment

The 1980 amendment to the act allowed juvenile judges to detain status offenders in secure facilities when juveniles fail to follow a judge's court order. The amendment applied the term "valid court order" (VCO) to the order that the status offender failed to obey. To comply with the requirements of the amendment, states must adopt legislation or uniform court rules permitting the secure detention of status offenders under certain conditions. The amendment effectively established the VCO as an exception to the DSO mandate by allowing states to detain in secure detention facilities status offenders who violate the judges' orders and still remain in compliance with the act.

Under the amendment, status offenders have due process rights. OJJDP regulations contain procedural protections to ensure that status offenders receive such protections as the right:

- to have the charges against the juvenile served in writing a reasonable time before the hearing;
- to a hearing before a court;
- to an explanation of the nature and consequences of the proceeding;
- to legal counsel, and the right to have such counsel appointed by the court if indigent;
- to confront and present witnesses;
- to have a transcript or record of the proceedings;
- to appeal the judgment to an appropriate court;
- to receive adequate and fair warning of the consequences of violating the court order at the time the judge issued it. Such warning must be (1) provided in writing to them and to their attorneys and/or to their legal guardians in writing and (2) be reflected in the court record and proceedings; and
- to have the judge determine at the hearing that incarceration is the least restrictive appropriate alternative.

In addition, the juvenile, if detained prior to a final disposition of the case, must have a hearing before a judge within the 24 hour grace period.

Valid Court Order Process

The "valid court order" is a process, in which a judge² must find that the juvenile committed a status offense, and place the juvenile under a court order regulating the juvenile's future conduct (e.g., attend school, obey parents, follow rules of probation). Also, the judge must warn the juvenile of the consequences of violating the court order and afford the juvenile all applicable procedural protections. If these steps are properly followed the court order would comply with the federal definition of a VCO.

If the juvenile is subsequently accused of violating the conditions of the VCO by committing additional status offense behavior, a juvenile judge must determine that 1) the original VCO met all the criteria, 2) the juvenile violated the conditions of the VCO, and 3) the juvenile received all due process protections during the judicial hearings. Once so determined, the judge may incarcerate the juvenile in a secure detention facility for an unlimited period of time.

² Some juvenile courts delegate judicial authority to officials such as referees, commissioners, and magistrates. So long as state law or local court rule permit these officials to assert the courts's jurisdiction over status offenders, federal policy allows these officials the same authority as judges to issue valid court orders.

States must ascertain and verify, as part of their annual monitoring report submitted to OJJDP, that all juveniles detained in secure facilities on the basis of having violated a VCO were afforded their procedural protections prior to incarceration as required by the regulations. In its report to OJJDP on the number of detained status offenders, states may exclude those status offender who it detained for violating a VCO. By excluding the VCO cases, states are able to meet their de minimis rate and thereby comply with the DSO mandate.

Valid Court Order Use

According to OJJDP data through December 1988, the most recent year on which OJJDP has complete statistics, 37 states reported VCO exclusions at least once, and 14 states reported VCO exclusions in each year between 1985 and 1988. In 1988, 24 states reported 4,990 VCO exclusions. OJJDP accepted 4,280 of them from 19 states. The five states with the highest accepted VCOs accounted for about 85 percent, of which Ohio had 56 percent.

States Juvenile Justice Systems

States have implemented their own approaches to deal with juvenile delinquents and non-criminal juvenile offenders. Most juvenile courts are county or city based, with judges appointed

or elected by and accountable to the local community. Some juvenile justice experts have characterized the nation's juvenile justice system as a patchwork quilt of different objectives, laws, and detention practices.

State approaches to DSO have also varied. OJJDP's DSO regulations allowed states to implement programs as they desired. As a result, the state programs and approaches are diverse.

STATES REPORT STATUS OFFENDER DETENTION HAS DECLINED

States participating in the OJJDP formula grants program report that they have decreased the number of deinstitutionalization violations since joining the program. States reported that in 1988 they had cumulatively reduced their status offender detention about 94 percent.

The U.S. Census Bureau's Juvenile Detention and Correctional Facility Census, a respected source of information on juvenile detention, shows that status offender detention between the 1977 and 1987 surveys has declined at juvenile detention centers and training schools (post-adjudicatory institutional placement facilities) operated by state and local governments. However, these numbers may not accurately reflect status offender detention. For example, responses may not be consistent because

of differences in the definition of a status offender (e.g., some state laws characterize status offense behavior as delinquent offenses).

STATES' COMPLIANCE WITH OJJDP REGULATIONS HAS IMPROVED

OJJDP's audits of state compliance monitoring identified numerous errors in state reporting practices. As of June 1990 OJJDP has audited 46 states, mostly in 1987. We analyzed and tabulated the results of the OJJDP audits, and found that the majority of problems identified by OJJDP related to weaknesses in data collection. For example, OJJDP recommended that:

- 22 states improve their data collection procedures;
- 30 states improve their data verification procedures;
- 29 states revise their procedures for identifying detention facilities; and
- 20 states change their procedures related to the length of secure detention.

We surveyed the states to determine their response to the OJJDP audits. States reported that they are making procedural changes to bring their compliance monitoring systems into conformity with federal regulations.

As a result of the audits, all 46 states that OJJDP audited reported that they have either begun or completed action to improve their monitoring procedures. Some of these actions were in response to OJJDP recommendation and other actions states

initiated on their own without OJJDP making a recommendation. For example, 23 states improved their data verification procedures in response to OJJDP's recommendation. At the same time, 40 states took action to improve their monitoring systems on their own initiative.

OJJDP's audits identified practices in some states that were not consistent with federal regulations for properly claiming VCO exclusions. For example, the audits identified 25 states that would not be able to claim the VCO exclusion without first changing some of their procedures, such as limiting the detention of status offenders to the 24 hour grace period or passing legislation adopting the federally specified procedural protections. As a result, 10 states have had their VCO exclusions disallowed by OJJDP since the audits began. Five states whose reported VCO exclusions OJJDP disallowed have made changes in either their laws or regulations to meet federal regulations for VCO exclusions. For example, the Missouri state legislature passed legislation guaranteeing to status offenders a hearing within the 24 hour grace period following placement in a secure detention facility. Utah revised its statewide monitoring system in response to the audit in order to distinguish delinquency cases from VCO cases.

After identifying a potential problem in complying with the DSO mandate, Ohio's state advisory group established a committee to

recommend ways to ensure compliance with the DSO mandate. Because Tennessee was concerned about not being in compliance with the DSO mandate, it passed legislation so that it would comply with OJJDP regulations.

PROCEDURAL PROTECTIONS NOT ALWAYS

PROVIDED OR DOCUMENTED

Although the states, working with OJJDP, have made progress in meeting the act's DSO mandate,

- OJJDP assumed but did not verify that juveniles actually received the required procedural protections when states mandate such protections, and
- court records do not document that judges provide juveniles their procedural protections.

Protections Are Assumed

Status offenders detained on the basis of having violated a VCO are to be provided procedural protections. OJJDP does not require states using the VCO exclusion to verify in each instance that status offenders received all the required procedural protections. OJJDP assumes for the purpose of compliance monitoring that the protections were afforded so long as states have a law, regulation, or court ruling granting juveniles all the procedural protections. For example, since Ohio, Tennessee, and Utah have laws that provide status offenders the right to present and question witnesses, OJJDP does not require the state

to monitor that this right was exercised each time youths are detained for violating a VCO. As a result, neither OJJDP nor the state can be assured that youths receive their rights.

Juvenile Court Documentation of
Protections Generally Not Required

OJJDP regulations do not require full documentation of procedural protections in court records. The regulations specify that only the protection regarding warning the juvenile of the consequences of violating the judge's order be reflected in the court record and proceedings. While the remaining procedural protections must be afforded before a state can properly claim a VCO, OJJDP regulations do not require supporting documentation for them in court records. State monitors are responsible for determining if the protections were afforded.

Difficulty in Verifying and
Documenting Procedural Protection

OJJDP and state officials pointed out problems in verifying and documenting that the juveniles had received their procedural protection. According to OJJDP officials, its policy of not requiring states claiming the VCO exclusion to verify that status offenders received their procedural protections is based on practical considerations. An OJJDP official stated that it would

be impossible for a state to actually verify that all rights were afforded to each status offender coming before a juvenile court because of the volume of cases and the number of juveniles.

Another OJJDP official explained that because access to juvenile records is limited by the courts, some state agencies do not have access to all detention facility or court records. Access to court records in such situations for status offender detention is dependent upon the court. In such cases, state officials have to rely on detention center and jail personnel to report juvenile detention information, and therefore cannot always gain access to the data to verify its accuracy. He stated that OJJDP therefore allows some latitude to state monitors to ensure that state laws are carried out.

One state does not guarantee that the juvenile receive the right to be warned of the consequences of violating a VCO and have the warning be reflected in the court records and proceedings, despite being required by OJJDP regulation. State monitors do not verify in all cases that juveniles were actually afforded this protection. They said that it is not practical given the large numbers of VCO cases in the state.

OJJDP's audits of state compliance monitoring systems found that 24 states do not have adequate enforcement authority over local juvenile officials who do not follow federal and state regulations. When authority for juvenile courts is based at the

local level, state juvenile justice officials who are responsible for implementing OJJDP regulations and reporting violations cannot always compel local officials to comply with federal mandates. For example, OJJDP's audit stated that a state's statutes had no sanction provisions to enforce or correct either the DSO mandate or the separation of juveniles and adults. Likewise, OJJDP's audit stated another state had no enforcement mechanism for the removal of juveniles from jails because each local circuit court has total authority over jailing and locking up juveniles.

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OBJECTIVES, SCOPE, AND METHODOLOGY

The Anti-Drug Abuse Act of 1988 required GAO to analyze court ordered detention of status offenders.

To learn about federal laws and regulations we met with officials from OJJDP and the Office of Justice Programs. To better understand how OJJDP assists states in improving their monitoring practices we met with contractors from Community Research Associates. We explored the availability of juvenile justice data and status offender policy with researchers from the National Center for Juvenile Justice, the Rand Corporation, the University of Michigan's Center for the Study of Youth Policy, University of Southern California's Social Science Research Institute, the National Center on Institutions and Alternatives, and the National Council on Crime and Delinquency. To obtain the perspective from child advocate groups we met with the Director of the Youth Law Center and the President of the National Coalition of State Advisory Groups. We also met with the President of the National Council of Juvenile and Family Court Judges to obtain their perspective on status offender detention. Finally, to learn about the varied state juvenile justice practices, we met with state or local juvenile justice officials in Arizona, California, Colorado, the District of Columbia, Maryland, Ohio, Tennessee, Virginia, and Utah.

We developed a national perspective on status offender juvenile detention through the use of a questionnaire to determine juvenile justice policy and practices including use of court ordered detention. We mailed our questionnaire on March 23, 1990, to juvenile justice specialists in all 50 states and the District of Columbia. We received 51 responses. We did not verify the accuracy of their responses. When we had questions about certain responses, however, we followed up with telephone calls for clarification.

We reviewed OJJDP audits of states' compliance monitoring systems conducted between 1986 and 1988 to determine the extent of problems in monitoring systems. Some responses from this content analysis were cross-referenced with results from the questionnaires to determine the number of states that had taken corrective action in response to the audits. We did not evaluate the quality of the OJJDP audits.

We used OJJDP data collected from reports provided by state monitors to present information on VCO claims by all states, and on states' DSO violation rates for those states participating in the formula grants program between 1983 to 1988. OJJDP officials stated that data prior to their audits was not verifiable.

To obtain a more complete picture of how the VCO exclusion is being used, we conducted case studies in Ohio, Tennessee, and Utah. We judgmentally selected the states after considering factors such as the number of VCO claims reported by the states and whether OJJDP had generally approved the state's monitoring system.

To understand the use of court ordered detention of status offenders within the three states, we reviewed case files and interviewed local officials at one detention center in each state. We selected the detention center within each state that, according to state officials, had the highest number of VCO claims in the state. The three detention centers we visited were: Hamilton County Youth Center in Cincinnati, Ohio; Upper Eastern Tennessee Regional Juvenile Detention Center in Johnson City, Tennessee; and the Salt Lake County Detention Center in Salt Lake City, Utah. We analyzed 31 case files from three of the courts that use the Upper Eastern Tennessee facility, covering all the status offenders that were detained by court order for 1989. Similarly, in Salt Lake County, we examined 26 cases of status offenders detained by court order, covering all of 1989. In Hamilton County, we reviewed records for three randomly selected days in 1989, and identified 35 cases on which we collected data.

Results from these cases at each detention center are representative of status offense cases at that center but are not necessarily representative of either state or national cases. Therefore, the results should not be projected.