



**CAMPAIGN OF THE NATIONAL JUVENILE JUSTICE & DELINQUENCY
PREVENTION COALITION**

www.act4jj.org

Juvenile Justice and Delinquency Prevention Act (JJDP A)

FAQ: 2018 Reauthorization
[Public Law 93–415; 88 Stat. 1109](#)

BACKGROUND: Since the reauthorization of the JJDP A in December 2018, the Act 4 JJ Coalition has been preparing information for the field that summarizes the new changes to the Act. This FAQ is a summary of questions that have been asked during our presentations; the answers cite directly back to current law. **These responses in no way constitute legal advice. The new provisions of the law are subject to the regulatory process through the Office of Juvenile Justice and Delinquency Prevention, in the U.S. Department of Justice.** Act 4 JJ Coalition will continue to monitor the Federal Register for postings on any formal rulemaking regarding the new law.

GENERAL DEFINITIONS

- Q** Do we still refer to the legislation as the JJDP A or do we refer to it as the Juvenile Justice Reform Act of 2018?
- A** The Act itself is the JJDP A and should continue to be referred to as such. The legislation that amended it was the Juvenile Justice Reform Act of 2018. The U.S. Statute for the law is 34 U.S. Code Chapter 11101-11103.
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**SIGHT & SOUND/JAIL REMOVAL
CORE REQUIREMENT**

- Q** Under the new law, transferred youth (young persons under 18 charged as adults with a criminal offense) will be moved to a juvenile facility, but does this implicate sight and sound separation for those youth in that facility charged under delinquency/juvenile jurisdiction?
- A** No. The new law defines an adult inmate as:

“(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;”

34 U.S.C. 11103(26).

*Please note: Question stated young persons under age 18. This is true in every state except GA, MI, TX & WI who still have established 17 as the age of criminal responsibility.

Q Is there any protection for youth being held in adult jails to NOT be held in isolation in order to meet the sight and sound core protection?

A Under regulations for a different Federal law, the Prison Rape Elimination Act, the Youthful Inmate Standard requires agencies to make "best efforts to avoid placing youthful inmates in isolation to comply" with sight and sound separation requirements. 28 CFR § 115.14.

Q Regarding the jail removal core protection for youth, is this separate from youth that have been waived to adult court and found guilty in criminal proceedings?

A The jail removal core protection only applies to youth who have been transferred to the adult criminal justice system pre-trial. 34 U.S.C. 11133(11)(B)(i).

Q Where are the new exceptions to the new jail removal core protection explained?

A The exception to the broadened jail removal requirement occurs when a court holds a hearing and finds that keeping a minor in an adult facility is “in the interest of justice.” To determine whether detaining a youth in an adult jail is in the interest of justice, the court must weigh seven factors: (1) the person’s age; (2) their physical and mental maturity; (3) their present mental state, including whether they present an imminent risk of self-harm; (4) the nature and circumstances of the charges; (5) the youth’s history of delinquency; (6) the relative ability of the available adult and juvenile facilities to both meet the needs of the individual but to protect the public and other youth in their custody; and (7) “any other relevant factor.”

If the court concludes that the balance of these factors points in favor of detaining the youth in an adult facility, the court must hold a hearing once every 30 days (45 for rural jurisdictions) to review whether the placement in an adult jail is still in the best interest of

justice. Furthermore, even when it is in the interest of justice, the youth cannot be held in an adult facility for more than 180 days total, unless the court finds good cause for an extension or if the youth waives the 180-day maximum. Further guidance on this exception is the responsibility of OJJDP. 34 U.S.C. 11133(11)(B)(i)-(iii).

Q What does this law mean for juveniles that are already incarcerated as an adult with a life sentence?

A The Act does not impact juvenile life without parole sentences.

Q Do we know if the hearing that must be held every 30-45 days to determine if a youth who is being charged as an adult and detained in jail must be conducted by a juvenile court judge?

A The law states the hearing needs to be held by “a court”. It does not clarify the court. 34 U.S.C. § 11133(a)(11)(B)(iii)(I).

DEINSTITUTIONALIZATION OF STATUS OFFENDERS CORE REQUIREMENT

Q Will states be limited to holding status offenders on a VCO to 7 days effective October 1, 2019? Is there language allowing states to request implementation time?

A Changes related to the core requirements will take effect *no earlier* than the start of Fiscal Year 2020 (October 1, 2019). In the Act, there is no exception or phase-in time included.

Q If a youth violates a VCO for a second time, can they be detained if the VCO process is properly followed again?

A Under these circumstances, a new court order would need to be issued. The order would have to be made after the first one was violated. The same order cannot be used to hold a youth multiple times. The Act states, “the court may not issue a second or subsequent order described in subclause (I) relating to a status offender unless the status offender violates a valid court order after the date on which the court issues an order described in Subclause (I);...” 34 U.S.C. § 11133(a)(23)(C).

Q What is the limit on the number of days a youth can be held on VCO?

A The Act states, a court must hold a hearing within 48 hours “to determine whether there is reasonable cause to believe that such status offender violated such order; and the appropriate placement of such status offender pending disposition of the violation alleged;...”. 34 U.S.C. § 11133(a)(23)(C) If secure placement is used, the court is required to issue a written order stating the reasons why it is being used and how long it will be used, not to exceed seven (7) days. 34 U.S.C. § 11133(a)(23)(C)-(D).

Q For those states that stopped using the VCO, what are they doing as an alternative?

- A A variety of alternatives to incarceration are being used across the country. Examples of alternatives that communities have implemented can be found here:
<http://www.modelsforchange.net/reform-areas/status-offense-reform/index.html>
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RACIAL AND ETHNIC DISPARITIES (RED)

CORE REQUIREMENT

- Q How many ethnicities will states have to track with RED?
- A The Act states ethnicity “as defined by the U.S. Census Bureau”. Currently, the U.S. Census Bureau only classifies Hispanic/non-Hispanic under its definition of ethnicity. 34 U.S.C. § 11133(a)(23)(C).
- Q With the fourth JJCPA core protection changing from DMC to RED, does that mean the “DMC” acronym is no longer in use?
- A Yes, the 2018 edits changed the name of the fourth core requirement to Racial and Ethnic Disparities. The term Disproportionate Minority Contact no longer appears in the Act.
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STATE ADVISORY GROUP MEMBERSHIP

- Q For youth members, does the Act’s language, “under age 28” mean 28 years and younger, or up until age 28?
- A The Act requires that the youth member “shall be under the age of 28 at the time of initial appointment.” 34 U.S.C. § 11133(a)(3)(iv).
- Q In the new SAG membership categories section, are only federally recognized tribes eligible or are state recognized tribes also eligible?
- A The membership applies to [federally recognized](#) Indian tribes and Alaskan Native organizations that have “a law enforcement function, as determined by the Secretary of the Interior in consultation with the Attorney General.” 34 U.S.C. § 11133(18).
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TECHNICAL ASSISTANCE

- Q What are the criteria and procedures for the funding for legal representation of youth?
- A The Act permits states to use Title II funds for programs that ensure youth have access to legal representation and that support access to publicly supported, court-appointed legal counsel that are trained to represent youth. Such programs are not permitted to exceed 2 percent of the total Title II allocation. 34 U.S.C. § 11133(a)(9)(G).
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DATA COLLECTION & REPORTING

- Q** Do states have to make their compliance data public?
- A** Three-year plans and data that is included in those plans will need to be publicly posted. 34 U.S.C. § 11133(a).
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FUNDING

- Q** Now that the Runaway and Homeless Youth (RHY) is under the Act, will that be tied to compliance with the core requirements? For example, is there potential to lose RHY funding if the state is not in compliance with JJDPA?
- A** No. RHY has always been part of JJDPA, under Title III (34 US Code Chapter 11201-11281); however, it is not administered by the Department of Justice. It is administered and appropriated through the U.S. Department of Health & Human Services. Title II is the only funding tied to compliance with the Act.
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OTHER

- Q** Any changes to how JJDPA exempts out of state runaways?
- A** Youth held in accordance with the Interstate Compact continue to be exempt from the DSO requirement and can be held in accordance with the compact to return them to their home state. 34 U.S.C. § 11133(a)(11)(A)(i)(III).
- Q** Are there any new laws that will directly affect transgender youth?
- A** No. The JJDPA did not provide any protections specifically for transgender youth.