



U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

Washington, D.C. 20531

To: State Agency Directors
Juvenile Justice Specialists
State Compliance Monitors
State Advisory Group Chairs

From: Robert L. Listenbee 
Administrator, OJJDP

Date: July 15, 2014

Subject: Revised Guidance on Jail Removal and Separation Core Requirements

On June 17, 2014, I notified those in attendance at OJJDP's Core Requirements Compliance Training that OJJDP is revising its guidance on the Jail Removal and Separation Core Requirements of the Juvenile Justice and Delinquency Prevention Act (JJJPA). This memorandum is to provide you with a summary of the information discussed and to invite your input.

Section 223(a)(12) of the JJJPA – the “separation” core requirement--provides, in part, that juveniles “will not be *detained or confined* in any institution in which they have contact with adult inmates.” Section 223(a)(13) – the “jail removal” core requirement -- provides, in part, that “no juvenile will be *detained or confined* in any jail or lockup for adults” (subject to certain exceptions).

The terms “detained” and “confined” have been understood to be synonymous with being in “secure custody.” However, the plain meaning of “detain,” consistent with the Fourth Amendment of the U.S. Constitution, means that the person allegedly detained was not free to leave.^[1] Consistent with the Fourth Amendment, OJJDP's position is that “detained” means a person is not free to leave and/or that, under the circumstances, a reasonable person would believe that he or she is not free to leave the police station or any other holding facility. Conversely, if, in view of all the circumstances surrounding the incident, a reasonable person would believe that he *is* free to leave, he has not been detained.^[2]

[1] E.g., *United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

[2] E.g., *United States v. Bradley*, 923 F.2d 362, 365 (5th Cir. 1991).

OJJDP's goal is to promote the well-being of young people and limit their contact with the justice system. We recognize this may require changes in state monitoring practices and compliance reporting. Specifically, it means states will need to monitor, collect data, and report violations of all juveniles who are detained or confined in nonsecure custody.

While states are asked to begin collecting and reporting on these data as soon as possible, OJJDP plans to phase in this requirement and wants input from states before determining a specific timeline. The phased-in approach will include a series of listening sessions with state compliance monitors and juvenile justice specialists to understand the training, guidance and other resources needed to support the implementation of the revised guidance. More details will be provided at the upcoming State Juvenile Justice Specialists call scheduled for July 16, 2014.

States are encouraged to submit their questions in writing so that OJJDP can provide the best assistance in beginning to make the transition under the new guidance. Questions should be emailed to: JJDPACoreRequirementsFAQ@usdoj.gov