

A Guide to Juvenile Detention in Indiana 2009

I. Federal Mandates Regarding Juvenile Detention: The Juvenile Justice and Delinquency Prevention Act

The Juvenile Justice and Delinquency Prevention Act (hereafter the “Act” or the “federal Act”) was enacted in 1974 and re-authorized in 2002. Current reauthorization began in 2007. Senate Bill 3155 was introduced in June, 2008, by Senators Leahy (D-VT), Specter (R-PA, and Kohl (D-WI); and currently has 8 co-sponsors. The legislation was considered and approved by the Senate Judiciary Committee on July 31, 2008. To become law, it must pass through committees in both the House and the Senate, be approved by the full House and Senate, and have any differences in the versions resolved by conference committee. This process is expected to be completed in early 2009. The Act provides funding to participating states to establish alternatives to secure detention, as well as other juvenile justice programs and initiatives. The Office of Juvenile Justice and Delinquency Prevention (OJJDP), the agency of the U.S. Department of Justice that administers the Act, is responsible for promulgating rules and regulations outlining the specific requirements applicable to states receiving funding under the Act.

The Indiana Criminal Institute is the Designated State Agency which is responsible for the planning and administration of the Juvenile Justice and Delinquency Prevention Act funds and for compliance with the Act’s four core mandates. IC 31-37-4-4 provides that any facility that is or has been used to house or hold juveniles shall give a representative or designee of the Indiana Criminal Justice Institute’s compliance monitoring program reasonable access to inspect and monitor the facility to ensure that the requirements of the Juvenile Justice and Delinquency Prevention Act are maintained.

The Act contains four core mandates:

- A. **Deinstitutionalization of Status Offenders (DSO)** requires that juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding juveniles who are charged with or who have committed a violation of possessing a handgun or ammunition for a handgun, juveniles who are charged with or who have committed a violation of a valid court order, and juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the state, shall not be placed in secure detention facilities or secure correctional facilities.

- B. **Separation** requires that juveniles be “sight and sound separated from incarcerated adult persons who have been convicted of a crime or are awaiting trial on criminal charges, including trustees.”
- C. **Jail Removal** prohibits the detention of juveniles in adult jails or lockups with certain exceptions.
- D. **Disproportionate Minority Contact** The state will address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

42 U.S.C. 5633

- A. **Deinstitutionalization of Status Offenders** While the Act mandates the removal of status and other nonoffenders (i.e. CHINS) from secure detention, the rules and regulations provide two basic exceptions, which allow for limited secure detention of status and other nonoffenders.

Under the Indiana Juvenile Code, the status offenses are runaway, truancy, curfew violation, incorrigibility, and illegal possession, consumption, or transportation of alcohol (offenses under Title 7 of the Indiana Code governing alcoholic beverages). I.C. 31-37-2. While it may be argued that alcohol offenses may be charged as a delinquent act under I.C. 31-37-1 (i.e. an act that would be an offense if committed by an adult), it is the long standing opinion and policy of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) that such alcohol offenses are status offenses. Because the time period for which alcohol offenses are considered criminal offenses is very limited, (i.e. 3 years) and the age at which alcohol offenses are not criminal offenses is very broad (i.e. after the age of 21), **alcohol offenses must be classified as status offenses for JJDP Act reporting purposes.** *OJJDP Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002*, January 2007, pg. 21.

An accused status offender may be held in a secure detention or correctional facility for up to twenty-four (24) hours, excluding weekends and holidays, prior to an initial court appearance, and for twenty-four (24) hours, excluding weekends and holidays, following an initial court appearance. 28 C.F.R. Sec.31.303 (f)(2). A status offender so detained must be held in a juvenile facility: a status offender may not be securely held in an adult jail or lockup for any period of time. However, a child accused of a status offense may be held in an unlocked, multipurpose area of an adult jail or lockup like a lobby or report room, but must be kept under continual visual supervision until release.

Adjudicated status and nonoffenders may not be securely detained with the following exception. The OJJDP has implemented a regulation establishing a framework within which adjudicated status offenders who violate valid court orders may be placed in secure facilities. For secure detention to be proper under the **valid court order exception**, the following conditions must be present prior to secure incarceration:

1. The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.
2. The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedure.
3. The juvenile in question must have received adequate and fair warning of the consequences of violation of the order...and such warning must be provided to the juvenile and to his attorney and/or his legal guardian in writing and be reflected in the court record and proceedings.
4. An appropriate public agency shall be promptly notified that the juvenile is held in custody for violating such order.
5. Not later than twenty-four (24) hours during which the juvenile is held, an authorized representative of the public agency shall interview, in person, the juvenile.
6. Not later than forty-eight (48) hours during which the juvenile is held (1) the representative of the public agency shall submit an assessment to the court that issued the order, regarding the immediate needs of the juvenile and (2) the court shall conduct a hearing to determine whether there is reasonable cause to believe that the juvenile violated the order and the appropriate placement of the juvenile pending disposition of the violation alleged.

42 USC 5633.

The Valid Court Order Exception applies only to the extent allowed by state law. Indiana law only permits the secure detention of adjudicated runaways and truants as a dispositional alternative under the rules discussed in Section II.B.1.

While some states' common laws or statutes allow the courts to use traditional contempt power, failure to appear, or probation violation as a basis for secure detention, such status offenders remain status offenders and detention is proper only if the VCO exception process is followed. Therefore, a status offender cannot be

securely detained for being in contempt of court, failing to appear, or violating a term of probation. *OJJDP Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002, January, 2007, pg .24.*

Federal wards held beyond 24 hours in state and local secure detention and correctional facilities pursuant to a written contract or agreement with a federal agency and for the specific purpose of affecting a jurisdictional transfer, or appearance as a material witness, or for return to their lawful residence or county of citizenship must be reported as violations of the DSO Mandate. *OJJDP Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002, January 2007, pg. 22.* Because state and local governments do not have jurisdiction over these juveniles, OJJDP will exclude these violations if their presence creates a noncompliance rate in excess of 29.4 per 100,000 juvenile population. *OJJDP Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002, January, 2007, pg. 23, fn. 13.*

- B. **Separation** The separation mandate applies to juveniles under the jurisdiction of the juvenile court who may, under certain circumstances, be securely held in an adult jail or lockup. The separation mandate provides that juveniles alleged or found to be delinquent...shall not be detained or confined in any institution in which they have contact with adult offenders. 42 U.S.C. 5633. Contact is defined to include any physical or sustained sight and sound contact between juvenile offenders in secure custody and incarcerated adults, including inmate trustees.

- C. **Jail Removal** In 1980, the Act was amended to prohibit the detention of any juveniles in adult jails or lockups by 1988.
 - 1. **Status offenders** Under the jail removal requirements of the Act, status offenders may not be securely detained in an adult jail or lockup for any period of time.

 - 2. **The six (6) hour exception for juveniles alleged to have committed an act that would be a crime if committed by an adult (criminal-type juvenile offenders)** Criminal-type juvenile offenders may only be securely held in an adult jail or lockup for a period of up to six (6) hours upon arrest. 28 C.F.R. Sec. 31.303(e)(2). This exception is limited to the temporary holding of a juvenile for the specific purposes of identification, processing and transfer to other facilities. Criminal-type juvenile offenders may also be securely held in an adult jail or lockup for up to six (6) hours before and six (6) hours after a court hearing to facilitate the hearing process and transport to placement. 28 C.F.R. Sec. 31.303(e)(2). “Any such holding of a juvenile criminal-type offender must be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, and in no case overnight. Even where such a temporary holding is permitted, the ...separation requirement would operate to prohibit the

accused juvenile criminal-type offender from being in sight or sound contact with an adult offender during this brief holding period.” 50 Fed.Reg. 25,554 (1985).

3. **How the Six (6) Hour Period is Calculated** Federal law provides that the six (6) hour period begins when an accused criminal-type juvenile offender is placed in a locked setting, including a locked room, cell, lockup, or set of rooms inside a facility used for detention purposes or handcuffed to a stationary object. Once the clock begins to run, it may not be tolled (stopped), even if the child is temporarily removed from locked status. If a child is locked in one jurisdiction and then transported to another, the clock begins to run when the child is initially locked. The receiving jurisdiction does not get an additional six (6) hour period upon receiving the child.

The following do **not** cause the clock to begin:

- placing a child in a locked police car;
- handcuffing a child to him/herself; or
- placing a child in an unlocked area or room.

Nothing in federal law or Indiana law seems to prevent the transportation of children with adult offenders, although departmental regulations, policy considerations, and prudential concerns may weigh against this practice in many instances.

4. **Juveniles Under Adult Court Jurisdiction** The jail removal mandate also exempts “those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such jurisdiction has been invoked through the filing of criminal felony charges.” 28 C.F.R.Sec.31.303(e)(2). This exception is expressly limited to juveniles under criminal court jurisdiction facing **felony** charges. Therefore, juveniles under adult criminal court jurisdiction facing misdemeanor charges cannot be held in an adult jail or lockup for more than six (6) hours upon arrest.
5. **Adjudicated Juveniles** Under the federal Act, neither adjudicated status offenders nor adjudicated criminal-type offenders may be held in an adult jail or lockup for any period of time. 28 C.F.R.Sec.31.303(f)(5).

D. **Remedy** Federal courts have addressed the question of whether a state’s participation in the Juvenile Justice and Delinquency Prevention Act confers enforceable rights upon those intended to benefit from the Act.

42 U.S.C. Section 1983 provides a cause of action for deprivation, under color of state law, of any rights, privileges or immunities secured by the Constitution or laws of the United States. That is, violations of federal statutes, as well as constitutional violations, are actionable if (1) the statute creates enforceable “rights, privileges or immunities,” and (2) Congress has not foreclosed such enforcement in the enactment itself. Wilder v. Virginia Hospital Ass’n, 496 U.S. 498, 508 (1990).

The Court in Horn by Parks v. Madison County Fiscal Court, 22 F.3d 653 (6th Cir. 1994) held that the Juvenile Justice and Delinquency Prevention Act creates a federally secured right and that Congress has not foreclosed private enforcement. Thus, a juvenile that was detained in violation of the federal Act was entitled to seek relief through a private cause of action under 42 U.S.C. Section 1983. Here the Court reached a result contrary to the ruling in Doe v. McFaul, 599 F.Supp. 1421, 5 (S.D.Ohio 1984). In Doe v. McFaul, the Juvenile Justice and Delinquency Prevention Act was found not to give rise to an implied right of action. However, the Court in Horn Parks v. Madison County Fiscal Court found the ruling in Doe v. McFaul to be unreliable due to subsequent instructive Supreme Court decisions.

II. Indiana Law

A. Pre-Adjudication Detention

1. Status Offenders

A child alleged to be a delinquent child for an act that would not be a crime if committed by an adult is referred to as a “status offender” (not a statutory term, but used for convenience). Under Indiana’s juvenile code, “status offenses” include runaway, truancy, curfew violation, incorrigibility, and illegal possession, consumption or transportation of alcohol (offenses under Title 7 of the Indiana Code governing alcoholic beverages). I.C. 31-37-2.

A child alleged to have committed a “status offense” (or a “CHINS,” i.e. a child in need of services) may not as a general rule be held in a secure facility. The only exception is that alleged runaways may be securely detained in a **juvenile detention facility** for twenty-four (24) hours, excluding Saturdays, Sundays, and nonjudicial days, before and twenty-four (24) hours, excluding Saturdays, Sundays, and nonjudicial days, immediately after the child's initial court appearance. I.C. 31-37-7-3. Neither a status offender nor a CHINS may be securely detained in an adult jail or lockup for any period of time. I.C. 31-37-7-1.

I.C. 31-31-8-2 defines a “juvenile detention facility” as a secure facility that is used only for the lawful custody and treatment of juveniles and meets state standards and licensing requirements as provided by the department of correction rule 210 IAC 6, or is located on the same grounds or in the same building as an adult jail or lockup and meets the following four (4) criteria:

- Total separation between juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact among juvenile and adult residents in the respective facilities. Where space is used for both juveniles and adults, time-phasing of such use is acceptable if the arrangement precludes haphazard or accidental contact among juvenile and adult residents at all times. Sleeping or other living areas may not be shared under any circumstances.
- Total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities. Program activities may not be shared by juveniles and adult residents. However, program space, equipment and other resources may be used by both juvenile and adult residents subject to above section.
- The administration and security functions of the juvenile detention program must be vested in separate staff who, if the staff serve both populations, are trained to serve a juvenile population. Security and other direct care staff may not be used to serve the adult jail at the same time or during the same tour of duty that security and other direct care staff serve in the juvenile detention facility. Specialized services staff such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contact occurs under conditions of separation of juveniles and adults, can serve both.
- The facility meets state standards and licensing requirements as provided in department of correction rule 210 IAC 6. The architectural and operational configuration of the juvenile facility must assure total separation.

Indiana law differs from the federal Act in that the Act allows any accused “status offender” to be held in a secure juvenile detention facility for up to twenty-four (24) hours, excluding weekends and holidays, prior to an initial court appearance and for twenty-four (24) hours, excluding weekends and holidays, following an initial court appearance. 28 C.F.R. Sec. 31.303(f)(2). Therefore, the federal Act would permit children accused of curfew violation,

truancy, incorrigibility, or alcoholic beverage code violations to be held in a juvenile detention facility for such twenty-four (24) hour periods. But Indiana law is narrower, limiting the exception to children accused of runaway only. The federal Act and Indiana law are consistent in forbidding accused “status offenders” from being held in an adult jail or lockup for any period of time.

2. Criminal-Type Offenders

A child alleged to be a delinquent child for an act that would be a crime if committed by an adult, except an act committed by a person over whom the juvenile court lacks jurisdiction under I.C. 31-30-1-4, may be held in an adult jail or lockup in limited instances. I.C. 31-37-7-2 limits detention in an adult jail or lockup to six (6) hours upon arrest for the limited purposes of identification, processing, interrogation, transfer to a juvenile detention facility, or release to parents. A child so detained “must be restricted to an area of the facility in which the child has no more than haphazard or incidental sight or sound contact with persons charged with, imprisoned for or incarcerated for crimes.” I.C. 31-37-7-2. If a child is held in a part of the facility which is not locked, such as a lobby or administrative area where persons are free to leave, the six (6) hour rule does not apply.

The federal Act differs from Indiana law in that under the federal Act, juveniles may be securely detained in an adult jail or lockup for up to six (6) hours before and up to six (6) hours after a court hearing, 28 C.F.R. Sec. 31.303 (e)(2), while Indiana law allows the secure detention of juveniles in an adult jail or lockup only for up to six (6) hours upon arrest.

B. Post-Adjudication Detention

1. Status Offenders—Indiana’s Valid Court Order Exception

The dispositional alternatives available to the juvenile court upon adjudicating a child a delinquent child depend upon the acts upon which the adjudication is based. Generally, secure placement may not be ordered as a dispositional alternative for status offenders unless the child was found to have violated a court order with respect to a previous adjudication of runaway or truancy and modification of disposition is being requested. I.C. 31-37-22-5 and I.C. 31-37-22-6. In these cases, the child must have been previously placed in shelter care or other place of residence for runaway, or failed to comply with the compulsory school attendance laws **and** have received a written warning of the consequences

of violation of placement (in the case of runaway) or a violation of the court's order to attend school (in the case of truancy). In each case, the written warning must be a part of the records of the hearing, and the child must not have been held in a juvenile detention facility for more than twenty-four (24) hours, excluding Saturdays, Sundays, and legal holidays, before the modification hearing. The practical effect of this rule is that if such a child is detained for Violation of Probation, he/she must have a modification hearing within twenty-four (24) hours or be released pending further modification proceedings. If such a child is detained beyond this twenty-four (24) hour period, the court loses its discretion to commit the child to the department of correction or other secure placement. See R.A. v. State, 770 N.E.2d 376 (Ind.Ct.App. 2002).

The key here is that the "prior written warning" exception allowing secure placement requires that a new act of runaway follow a qualifying previous runaway adjudication or a new act of truancy follow a qualifying previous truancy adjudication. See I.C. 31-37-22-5 and 31-37-22-6 for the full list of criteria which must be met for secure detention to be available as a placement in such cases.

Indiana law does not contain the interviews and assessment requirements that were added in 2002 to the federal Act's Valid Court Order Exception discussed previously in Section I.A. Therefore, Indiana law does not comply with the federal Act.

2. Criminal-Type Offenders

Time limits also play an important part in juvenile detention as a dispositional alternative for criminal-type offenders. A criminal-type offender less than seventeen (17) years of age may be confined in a juvenile detention facility as a disposition for the lesser of ninety (90) days or the maximum time which the child could have received if convicted as an adult offender. A child at least seventeen (17) years of age may be confined in a juvenile detention facility as a disposition for the lesser of one hundred twenty (120) days or the maximum the child could have received if convicted as an adult offender. I.C. 31-37-19-6. A person eighteen (18), nineteen (19), or twenty (20) years of age who has been adjudicated a delinquent for an act committed before his/her eighteenth birthday may only receive the dispositional alternatives available under the juvenile code (i.e. secure detention in a juvenile facility) because he/she remains under juvenile court jurisdiction. Thus, under Indiana law, eighteen (18), nineteen (19) or twenty (20) year olds under juvenile court jurisdiction may not be securely detained in an adult jail or lockup.

In addition, if a child, as part of a dispositional decree, is confined in a juvenile detention facility for more than thirty (30) days, the facility must comply with the standards set forth in I.C. 31-37-19-21:

- 1) The facility provides to delinquent children a program that includes recreation, education, counseling, and health care.
- 2) The program provides services and treatment to:
 - a. meet the individual needs of the delinquent child;
 - b. involve the delinquent child's family if possible; and
 - c. provide transitional services for delinquent children returning to the community from placement.
- 3) The program must be administered and operated by staff who are qualified through education and training to provide rehabilitation and treatment.
- 4) The juvenile detention facility must meet the state standards and licensing requirements established by 210 IAC 6.

I.C. 31-37-19-8 makes it clear that “a child may not be sent to a juvenile detention facility that fails to meet standards established by law,” regardless of the length of the confinement imposed by dispositional order.

III. Miscellaneous Detention Issues

A. Alcohol Offenses

I.C. 31-37-2-6 specifically categorizes underage consumption or possession of alcohol as a “status offense” if the child is under eighteen (18) years old. Thus, no child alleged to be a delinquent because of underage transportation, consumption or possession of alcohol may be securely detained **anywhere for any period of time**, including a juvenile detention facility, adult jail or lockup. See I.C. 31-37-7-1. Nor may a child who has been adjudicated delinquent for minor transportation, consumption or possession of alcohol be committed to the Department of Correction. I.C.31-37-19-1.

B. “Direct File” Cases and Waived Juveniles

Under Indiana law, certain persons under the age of eighteen (18) years, but at least sixteen (16) years of age, are excluded from juvenile court jurisdiction because they are alleged to have committed one or more of a series of acts listed in I.C. 31-30-1-4 (or any offense which may be joined with those offenses under I.C. 35-34-1-9(a)(2)). These offenses are sometimes called “direct file” or “automatic adult jurisdiction” offenses. Neither is a statutory term, but rather a term used for convenience. The “direct file” offenses are **FELONY**: attempted murder; murder; kidnapping; rape; criminal deviate

conduct; robbery if committed while armed with a deadly weapon or which results in bodily or serious bodily injury; carjacking; criminal gang activity; criminal gang intimidation, carrying a handgun without a license, **if charged as a felony**; children and firearms, **if charged as a felony**; dealing in a sawed-off shotgun, and several drug offenses if there has been a previous drug conviction or juvenile adjudication. I.C. 31-30-1-4. Juvenile court jurisdiction is also excluded for subsequent felony offenses if a juvenile has been waived to adult criminal court through a waiver proceeding. Under Indiana law, juveniles charged with such offenses may be held in an adult jail or lockup.

Waiver, by contrast, is a proceeding which originates in the juvenile court. Children awaiting waiver are detainable in juvenile facilities only. Once the juvenile court enters a waiver order transferring jurisdiction to the adult court, then the child is detained in an adult jail, which is proper under Indiana law.

The federal Act excepts from the jail removal mandate only those juveniles under adult criminal court jurisdiction which has been invoked through the filing of FELONY charges. 28 C.F.R. Sec. 31.303(e)(2). Indiana law (I.C. 31-30-3-2; I.C. 31-30-3-3) allows for waiver of juveniles to adult court only on felony charges. Thus, under both state law and the federal act, the ONLY juveniles who may be held in an adult jail are those who are under adult court jurisdiction by virtue of a direct file felony offense or by virtue of waiver to adult court on a felony charge.

C. Remedy

The proper remedy for failure to comply with the requirements of the detention provisions in the Indiana Juvenile Code is release of the child from the illegal custody. Therefore, a child who is securely detained in violation of Indiana law may seek a writ of Habeas Corpus. See Matter of Tacy, 427 N.E.2d 919 (Ind.Ct.App. 1981). It may be preferable first to seek a review of detention by the detaining court; under I.C. 31-37-6-8, a child detained may petition the juvenile court for an additional detention hearing, at which time the appropriate relief could be requested.