



Michigan Guide to Compliance With Laws Governing The Placement of

JUVENILES IN SECURE FACILITIES

THE JUVENILE JUSTICE
& DELINQUENCY
PREVENTION ACT

THE MICHIGAN COMMITTEE ON JUVENILE JUSTICE:

The following persons, listed by community, have been appointed by the Governor to the Michigan Committee on Juvenile Justice:

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The Michigan Committee on Juvenile Justice (MCJJ) is responsible for administration of the federal Juvenile Justice and Delinquency Prevention Act of 2002 in the state. MCJJ oversees disbursement of federal funds for juvenile programs and directs compliance monitoring efforts. Members of the MCJJ are committed to the betterment of the juvenile justice system in Michigan.

This material does not constitute a legal opinion. The material is provided for educational and informational purposes only and is not intended to be used as specific legal advice. The law frequently changes and legal matters are fact specific. Viewers of this information who wish to obtain a legal opinion should obtain legal counsel for this purpose and should not act upon this information without seeking legal counsel.

THE JUVENILE JUSTICE & DELINQUENCY PREVENTION ACT

**DEINSTITUTIONALIZATION
OF STATUS OFFENDERS**

**ADDRESS DISPROPORTIONATE
MINORITY CONTACT**

IT'S THE LAW

**REMOVAL OF JUVENILES FROM
ADULT JAILS & LOCKUPS**

**SIGHT & SOUND SEPARATION
OF JUVENILES FROM ADULT
DETAINEES**

REQUIREMENTS OF THE JJDP A

The federal Juvenile Justice and Delinquency Prevention Act (JJDP A) was adopted by the United States Congress in 1974. The goals of the Act are to help state and local governments prevent and control juvenile delinquency and to improve the juvenile justice system. Through the 2002 reauthorization, the JJDP A establishes four core protections with which participating states must comply to receive grants under the Act:

1. Deinstitutionalization of Status Offenders (DSO Requirement).

Juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult (i.e., status offenders), must not be placed in secure juvenile facilities or in facilities designed to incarcerate adults.

2. Separation of juveniles from adult offenders (Separation Requirement).

Juveniles alleged to be or found to be delinquent as well as status offenders and nonoffenders, may not be detained or confined in any institution in which they have contact with adult inmates.

3. Removal of juveniles from adult jails and lockups (Jail Removal Requirement).

The JJDP A states that “no juvenile shall be detained or confined in any jail or lockup for adults . . .” The following are exceptions to this requirement:

- a. Juveniles accused of delinquent (criminal) offenses may be locked for up to six hours for processing.
- b. An accused or adjudicated delinquent may be locked for up to six hours before and six hours after a court appearance.
- c. The jail removal requirement does not apply to juveniles formally waived or transferred to adult court and against whom felony charges have been filed.

4. Disproportionate minority contact (DMC Requirement). If a state identifies a disproportionate number of minority youth having contact with the juvenile justice system, then an assessment must occur, along with an intervention plan.

Monitoring and Reporting. The Act requires participating states to monitor compliance with the JJDP A by conducting site visits to law enforcement and juvenile facilities. States are further required to compile and report statistical information regarding detentions of juveniles in those facilities.

STATUS OFFENDERS



A status offender is a juvenile who has been charged with or adjudicated for conduct that would not be a crime if committed by an adult. Examples of status offenses are truancy, curfew violations, incorrigibility, and running away.

In addition, underage alcohol offenses are considered to be status offenses for federal compliance purposes, even though state or local law may consider them delinquent offenses. The rationale for this classification is that not all adults, but rather a select group based on age, may be charged with possession/consumption of alcohol.

NOTE: Offenses such as "operating under the influence of alcohol," which are criminal offenses for all adults, would be considered delinquent (criminal) offenses for juveniles as well.

Placement in adult facilities. Under federal regulations, status offenders may not be held in a secure manner in an adult jail or lockup at any time. These juveniles may be detained in a nonsecure area of an adult jail or lockup for processing while awaiting transportation to a nonsecure shelter care facility or a juvenile detention center, or while awaiting release to a parent or guardian.

Placement in juvenile facilities. The JJDPa provides that a status offender may not be securely detained in a juvenile detention or correctional facility unless the youth has violated a valid court order. (See #4 in Questions and Answers section for further information on valid court orders.)

CRIMINAL OFFENDERS



Under federal regulations, a juvenile charged with a delinquent (criminal) offense may be securely detained (locked) in an adult jail or lockup only under the following exceptional circumstances:

1. Accused delinquents may be locked for up to six hours to allow time for identification, investigation, processing, release to parents/guardians or transfer to a juvenile facility or to court. Sight and sound separation from adult prisoners is required.
2. Accused or adjudicated delinquents held pursuant to a court appearance may be locked up to six hours before and up to six hours after the hearing to facilitate the hearing process and transport to placement. Sight and sound separation from adult prisoners is required. (NOTE: Adjudicated delinquents may not be held for any length of time in adult jails or lockups as disposition.)
3. Juveniles formally waived or transferred to adult court and against whom felony charges have been filed may be locked in an adult jail or lockup.* Juveniles "designated" for an adult trial in family court on felony level charges may be locked once probable cause has been determined by the court.

NOTE: For purposes of calculating time for the six hour exception, the clock starts when the juvenile is placed in a locked setting or is handcuffed to a stationary object. Once the clock starts, it cannot be turned off, even if the juvenile is briefly removed from the locked setting.

NONSECURE CUSTODY

A juvenile in law enforcement custody is considered to be in nonsecure custody if the following criteria are met:

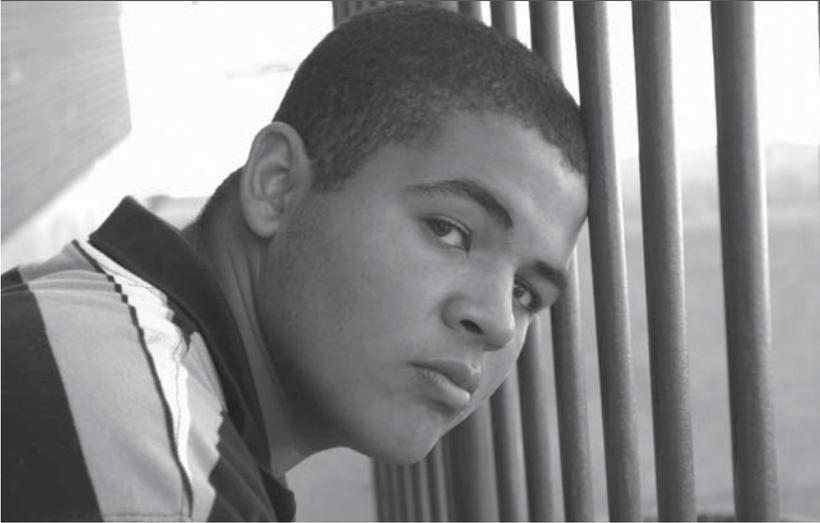
1. The area where the juvenile is held is an unlocked multipurpose area such as a lobby, office, or interview room.
2. The juvenile is not physically secured to a handcuffing rail or other stationary object.
3. The area is not designed or intended to be used for residential purposes.
4. The juvenile is held only long enough to complete identification, investigation, processing, release to parents/guardians or transfer to a juvenile facility or to court.
5. The juvenile is under continuous visual supervision by a law enforcement officer or facility staff.



In addition, the following would be considered nonsecure custody.

1. A juvenile who is handcuffed, but not to a stationary object.
2. A juvenile being processed through a secure booking area. If the juvenile is under visual supervision and remains in the booking area only long enough for photographing, fingerprinting or a breathalyzer test, the juvenile is not considered to be in secure detention.
3. A juvenile placed in a secure police vehicle for transportation.
4. A juvenile placed in a room that contains doors with delayed egress devices that have been approved in writing by the authority having jurisdiction over fire codes. In no case shall this delay exceed 30 seconds.

SECURE DETENTION



Secure detention or confinement status has occurred within a jail or lockup when a juvenile is physically detained or confined in a locked room, set of rooms, or a cell. Secure detention or confinement may result either from being placed in such a room or enclosure and/or from being physically secured to a cuffing rail or other stationary object. The following are examples of situations that would be considered secure custody status:

1. A juvenile placed in an unlocked room, but within the secure perimeter of a jail or lockup.
2. A juvenile handcuffed to a cuffing rail in any area of an adult jail or lockup.
3. A juvenile placed in a cell within an adult jail or lockup, whether or not the cell door is locked.
4. A juvenile placed in a room that contains doors with unapproved delayed egress devices or approved delayed egress devices with a delay of more than 30 seconds.

QUESTIONS & ANSWERS:

The following information provides responses to some of the most frequently asked questions concerning confinement of juveniles.

1. What is a status offender?

A status offender is different from a “delinquent” or criminal-type offender. A status offender is a person whose behavior is against the law because of his or her status as a minor. Common examples of status offenses are truancy, incorrigibility, curfew violations, and being a runaway. None of these behaviors are against the law for adults because adults have no obligation to stay at home, attend school, or obey parents. [See page 5 for further information on status offenders.]

2. What are the federal restrictions on detentions of status offenders in adult jails or lockups?

Adult jails and lockups cannot hold status offenders in a secure manner at any time. These juveniles may be held in a nonsecure area of an adult jail or lockup for processing, while awaiting transportation to an appropriate juvenile facility, or while awaiting release to a parent/guardian.

3. What are the federal restrictions on detentions of status offenders in secure juvenile facilities?

The JJDPa provides that a status offender who is not under the court’s jurisdiction for a criminal (delinquent) offense may not be detained in secure juvenile detention or correctional facilities. There may be rare situations, however, where detention for a brief period of time may be necessary for investigative/identification purposes or to arrange for appropriate shelter care placement. Under such circumstances, federal regulations allow a facility to hold an accused status offender for up to 24 hours (exclusive of weekends and holidays) prior to an initial court appearance and for an additional 24 hours (exclusive of weekends and holidays) immediately following such court appearance.

Pursuant to MCL 712A.15(3), a juvenile taken into custody for being an alleged status offender and who is not under the court’s jurisdiction for a criminal (delinquent) offense must not be detained in any secure juvenile detention facility unless the court finds that the juvenile willfully violated a court order and the court finds that there is no less restrictive alternative. Similarly, the JJDPa permits an exception in that status offenders who have violated a “valid court order” may be securely detained in a juvenile facility.

QUESTIONS & ANSWERS:

4. What is the “valid court order” exception under the JJDPA?

A “valid court order” is a court order given by a family court judge to a juvenile brought before the court. The juvenile must have been provided full due process rights. For the “valid court order” exception to apply, the following actions must occur when a status offender is taken into custody.

- An appropriate public agency must be notified that the juvenile is held in custody for violating the order. (For example, a police department taking the juvenile into custody must make appropriate notifications.)
- Not later than 24 hours during which the juvenile is held, the juvenile must receive an in-person interview. (For example, a social worker may interview a juvenile during a youth facility intake process to determine the immediate needs of the juvenile.)
- Not later than 48 hours during which the juvenile is held, the person conducting the interview must submit an assessment to the court regarding the immediate needs of the juvenile. (A copy of the intake interview, including a needs assessment, could be provided to the court to fulfill this requirement.)
- Not later than 48 hours during which the juvenile is held, the court shall conduct a hearing to determine if there is reasonable cause to believe the juvenile violated the order and to determine the appropriate placement of the juvenile pending disposition of the alleged violation.

5. When is a detainee considered to be in secure detention or “lodged” in a facility designed to incarcerate adults (i.e., jail or lockup)?

“Lodged” or “locked” for purposes of determining compliance means being locked in a cell or room inside the facility, or handcuffed to a cuffing rail or other stationary object. A juvenile may be escorted into a secure area briefly for processing purposes without being considered “lodged” or “locked.” (See pages 7 and 8 for further information on the distinctions between secure and nonsecure detention.)

6. What constitutes sight and sound separation from adult prisoners?

Sight and sound separation of juveniles from adult prisoners must be achieved in all secure areas of a law enforcement facility. Federal regulations define contact to include any physical or sustained sight or sound contact. Sight contact is defined as clear visual contact between adult inmates and juveniles within close proximity to each other. Sound contact is defined as direct verbal communication between adult inmates and juvenile offenders.

QUESTIONS & ANSWERS:

Sight and sound separation of juveniles from adult prisoners may be accomplished architecturally or through policies such as time phasing the use of an area to prohibit simultaneous use by juveniles and adult inmates. Brief and inadvertent or accidental contacts between juvenile offenders in a secure custody status and adult inmates do not constitute violations of JJDPA requirements.

Michigan law states that if an individual under 17 years of age has been taken into custody and is awaiting the arrival of parent, guardian, or custodian, that individual shall be “completely isolated so as to prevent verbal, visual, or physical contact with any adult prisoner.” MCL 712A.14[1]; MSA 27.3178 [598.14[1]].

7. When is a detainee considered “adjudicated”?

“Adjudicated” or “adjudication” refers to the status of pending charges. If a trial has not been held, or if the detainee has not admitted to charges in court, he or she is not considered “adjudicated.” Existence of a court order authorizing placement in jail or lockup does not automatically mean the detainee has been adjudicated. Courts issue many temporary orders before cases are adjudicated.

8. Under Michigan law, the court may order a juvenile aged 15 or older locked in a secure adult facility for up to 30 days if considered a menace to other children or if the juvenile may not otherwise be safely detained [MCL 712A.16(1)]. Is this allowable under federal regulations?

Under federal regulations, a juvenile may not be locked in a facility designed to incarcerate adults unless the juvenile has been transferred or waived to adult court and is charged with a felony. A delinquent youth under the jurisdiction of family court may only be held in an adult facility for six hours for processing or for six hours before and six hours after a court hearing.

A delinquent youth held for a longer period of time would be considered a federal violation. Federal regulations also prohibit the transfer of a delinquent youth from a juvenile facility to an adult jail or lockup for disciplinary reasons.

9. If individuals aged 17 or over are locked in adult facilities by authority of family division court orders, must such individuals be separated from adult prisoners?

Under Michigan law, family courts can maintain jurisdiction over some individuals up to age 21 on delinquency matters. Once reaching the age of 17, these individuals may be jailed but must be held in a room or ward separate and apart from adult criminals. MCL 712A.16(2)[c].

QUESTIONS & ANSWERS:

However, a juvenile under family court jurisdiction who is convicted of criminal contempt of court and who was at least 17 years of age when the contempt was committed, may be sentenced up to 93 days in jail. He or she need not be lodged separate and apart from adult prisoners. MCR 3.928(C).

10. If a juvenile has been waived to adult court via the traditional waiver process, may the juvenile be locked in an adult jail or lockup?

Under Michigan law, a juvenile waived to adult court by a family division judge is considered an adult after the waiver decision and may be detained in the same manner as an adult criminal defendant. He or she need not be kept separate from adults after waiver. However, until the waiver takes place, the juvenile must be held sight and sound separately from adult prisoners. He or she may be locked for up to six hours for processing or awaiting the waiver hearing.

11. May juveniles who are waived to adult court via automatic or prosecutorial waiver be lodged in jail?

Under Michigan law, if a juvenile at least 14 years of age is charged with a specified offense, the prosecutor may elect to proceed in adult court rather than family court. If the juvenile cannot be safely detained in a juvenile facility, he or she may be lodged in jail pending trial in adult court. A juvenile who has been waived by automatic (prosecutorial) waiver counts as a federal violation if the time between locking and release (or arraignment) is more than six hours. Michigan law requires that the juvenile must be kept separate and apart from adult detainees if held in jail prior to disposition. After conviction, both federal regulations and state law allow the adult court to order the individual locked in jail without requiring separation.

12. May a juvenile whose case has been designated for adult trial in family court be confined in an adult jail?

After a preliminary examination, a juvenile whose case has been designated may be locked in an adult facility if the juvenile is charged with a felony offense. The juvenile must be held sight and sound separately from adult prisoners. Prior approval from the sheriff is required.

Pursuant to federal requirements, a juvenile charged with a misdemeanor offense whose case has been designated for adult trial in family court may only be held in an adult facility for six hours for processing or for six hours before and six hours after a court hearing. The juvenile must be held sight and sound separately from adult prisoners. A juvenile adjudicated for a misdemeanor offense may not be locked in an adult facility as disposition.

	State Law	Authority	Federal Requirements	Authority
Status Offense Cases	An alleged status offender may not be locked in a secure adult facility unless under court jurisdiction for a felony.	MCL 712A.15(5)	A status offender may not be locked in a secure adult facility.	42 USC 5633 Sec. 223 (a)[11](A)
Delinquency Cases	Court may order a juvenile aged 15 years or older locked in a secure adult facility if considered a menace to other children or if the juvenile may not otherwise be safely detained. Such detention may not exceed 30 days unless longer detention is needed for service of process. The juvenile must be held sight/sound separately from adult prisoners.	MCL 712A.16(1) MCL 764.27a(2)	A juvenile may be locked in a secure adult facility for a maximum of 6 hours for identification, processing, release to parents, or transfer to a juvenile facility. The juvenile may be locked up to 6 hours before and 6 hours after a court hearing to facilitate the court process and transport to placement. The juvenile must be held sight/sound separately from adult prisoners.	42 USC 5633 Sec. 223 (a)[12](A) Sec. 223 (a)[13] 28 CFR 31.303 (e)[2] 28 CFR 31.303 (d)[1](I) 28 CFR 31 [Federal Register V.61 No. 238]
Designated Cases	<p>Prior to preliminary exam, the rules for delinquency cases apply.</p> <p>After preliminary exam, a juvenile charged with a felony may be locked in a county jail. Prior approval of the sheriff is required. The juvenile must be physically separated from adult prisoners pursuant to MCL 764.27a(3) and held sight and sound separately from adult prisoners pursuant to MCR 3.953(G).</p> <p>Court may impose any sentence upon a juvenile that could be imposed upon an adult convicted of the same offense. The sheriff must be consulted, and federal requirements must be met.</p>	<p>MCL 764.27a(3) MCR 3.953(G) MCL 712A.2(g)</p> <p>MCL 712A.18(1)(m) MCL 712A.18(16)</p>	<p>Prior to preliminary exam, the rules for delinquency cases apply.</p> <p>After preliminary exam, a juvenile charged with a felony may be locked in an adult facility with no requirement for separation from adult prisoners. If the juvenile is charged with a misdemeanor, then rules for delinquency cases apply.</p> <p>A juvenile convicted of a felony may be locked in an adult facility with no requirement for separation from adult prisoners. For a juvenile convicted of a misdemeanor, the rules for delinquency cases apply.</p>	<p>42 USC 5633 Sec. 223 (a)[13] 28 CFR 31.303 (e)(2)</p> <p>42 USC 5633 Sec. 223 (a)[13] 28 CFR 31.303 (e)(2)</p>

	State Law	Authority	Federal Requirements	Authority
Automatic Waiver Cases	<p>Prior to arraignment, court may order a juvenile locked in an adult facility if no juvenile facility is available and he/she may not otherwise be safely detained. Juvenile must be kept physically separate from adult prisoners.</p> <p>Following arraignment, court may order a juvenile locked in adult facility if he/she is a menace to others or may not otherwise be safely detained. The juvenile must be kept physically separated from adult prisoners.</p> <p>After conviction, court may order juvenile locked in adult facility without requirement for separation from adult prisoners.</p>	<p>MCR 6.907(B)</p> <p>MCR 6.909(B)(2),(4)</p> <p>MCL 764.27a (3)</p>	<p>Prior to arraignment, the rules for delinquency cases apply.</p> <p>Following arraignment, a juvenile charged with a felony may be locked in an adult facility. Separation from adult prisoners is not required.</p> <p>A juvenile convicted of a felony may be locked in an adult facility with no requirement for separation from adult prisoners. For a juvenile convicted of a misdemeanor, the rules for delinquency cases apply.</p>	<p>42 USC 5633 Sec. 223 (a)(13)</p> <p>28 CFR 31.303 (e)(2)</p> <p>42 USC 5633 Sec. 223 (a)(13)</p> <p>28 CFR 31.303 (e)(2)</p>
Traditional Waiver Cases	<p>Prior to waiver, the rules for delinquency cases apply.</p> <p>Following waiver, a juvenile may be locked in the same manner as an adult criminal defendant. Separation from adult prisoners is not required.</p>	<p>MCR 3.950(E)(2)</p>	<p>Prior to waiver, the rules for delinquency cases apply.</p> <p>Following waiver, a juvenile charged with a felony may be locked in an adult facility. Separation from adult prisoners is not required.</p> <p>A juvenile convicted of a felony may be locked in an adult facility with no requirement for separation from adult prisoners. For a juvenile convicted of a misdemeanor, rules for delinquency cases apply.</p>	<p>42 USC 5633 Sec. 223 (a)(13)</p> <p>28 CFR 31.303 (e)(2)</p> <p>42 USC 5633 Sec. 223 (a)(13)</p> <p>28 CFR 31.303 (e)(2)</p>

Resources for juvenile justice system personnel who are seeking additional information regarding Michigan state law and requirements of the federal Juvenile Justice and Delinquency Prevention Act.

Federal Requirements

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the U.S. Department of Justice is the federal entity responsible for overseeing compliance with requirements of the Juvenile Justice and Delinquency Prevention Act (JJDP). OJJDP staff have provided a guidance manual outlining the requirements of the Act. Section 2 of the manual addresses regulations for the detention of juveniles in adult jails and lockups, while Section 3 discusses detentions in juvenile facilities. Further information is available and individual sections of the manual may be downloaded by accessing the following Web site: www.ojjdp.ncjrs.org/compliance/index.html

Michigan State Law

The Michigan Judicial Institute (MJJI) is a training division of the State Court Administrator's Office of the Michigan Supreme Court. The MJJI has published the Juvenile Justice Benchbook: Delinquency & Criminal Proceedings. The book contains 25 chapters and, among other topics, addresses the custody and detention of juveniles. This information is available at www.courts.michigan.gov/mjji. The Juvenile Justice Benchbook may be accessed under Publications.

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For questions about Michigan's compliance monitoring process or for more information on the Juvenile Justice and Delinquency Prevention Act please contact:

Paul Elam
Compliance Monitor
Public Policy Associates, Inc.
119 Pere Marquette
Suite 1C
Lansing, MI 48912
Office: 517-485-4477
Cell: 517-303-6528
Fax: 517-485-4488
E-mail: pelam@publicpolicy.com

Jeanette Scroggins
Juvenile Justice Manager
Federal Grants Unit
Bureau of Juvenile Justice
235 S. Grand Ave., Ste. 403
Lansing, MI 48909
Office: 517-335-3541
Fax: 517-373-2799
E-mail: ScrogginsJ@michigan.gov