



Valid Court Order Exception



Frequently Asked Questions

Pursuant to the Juvenile Justice Reauthorization Act (JJRA) of 2018

- 1) Does a youth have to be adjudicated as a status offender in order to be eligible for secure detention?
 - Youth **accused** of committing a status offense may be held in detention for up to 24 hours, excluding weekends and legal holidays, without a VCO Exception.
 - However, for placements between 24 hours and seven days, as allowed by the VCO Exception, a youth must have already been formally adjudicated (during the current term of probation) for a status offense and made subject to a valid court order regulating future behavior.
 - Prior to the issuance of the valid court order the youth must have received the full due process rights guaranteed by the Constitution of the United States. These are:
 - The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;
 - The right to a hearing before a court;
 - The right to an explanation of the nature and consequences of the proceeding;
 - The right to legal counsel, and the right to have such counsel appointed by the court if indigent;
 - The right to confront witnesses;
 - The right to present witnesses;
 - The right to have a transcript or record of the proceedings; and
 - The right of appeal to an appropriate court.
 - Further, the youth must have received adequate and fair warning of the consequences of violation of the order at the time it was given. The warning must be provided to the youth and to the youth's attorney and/or legal guardian in writing and be reflected in the court record and proceedings.
- 2) Can the required warning occur pre-adjudication? An example would be a warning given to a youth who is under jurisdiction for abuse/neglect who subsequently commits, and is adjudicated for, a status offense?

The required warning should be provided to the youth and the youth's attorney and/or legal guardian, and included in the court order, when formally adjudicated for a status offense. The VCO Exception applies only to previously adjudicated status offenders who commit additional status offenses in violation of their valid court order. A non-offender, such as a dependent or neglected child, cannot be placed in secure detention or correctional facilities for violating a valid court order. Additionally, adjudicated status offenders accused of committing technical violations are also ineligible for the Valid Court Order Exception.



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3) When does the clock start for the new seven (7) day detention rule - at the initial point of entry into detention or following the 24-hour reasonable cause hearing? Does the seven day limit include weekends and legal holidays?

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has informed us the seven day timeframe begins when the youth is initially detained at the juvenile detention center. “Detained or Confined” under federal regulation is implicated when the youth is “not free to leave” a secure facility. For most, if not all, juvenile detention centers, this will occur when the youth enters the facility. Screening and time awaiting a placement decision count toward the VCO Exception timeframes.

At this time we have been advised by OJJDP to include weekends and legal holidays in the seven day limit. Additional clarification has been sought from OJJDP and they are reportedly reviewing the matter. The DPS will update the field when there is additional direction.

4) What does an “Assessment” include?

The term itself is not new, however, there was no definition included in the JJDP Act. As written in the JJRA, however, “the term ‘assessment’ includes, at a minimum, an interview and review of available records and other pertinent information—

- A) By an appropriately trained professional who is *licensed or certified* by the applicable State in the mental health, behavioral health, or substance abuse fields; and
- B) which is designed to identify significant mental health, behavioral health, or substance abuse treatment needs to be addressed during a youth's confinement;”

A sample assessment form has been developed by the DPS and attached to this FAQ. These forms are also available separately upon request from the Juvenile Justice Compliance Monitor.

5) Who is eligible to be an “authorized representative” to complete the in-person interview and assessment?

Within the context of the JJRA, the appropriate public agency placing the youth in detention will be responsible for ensuring the in-person interview and assessment are completed/submitted within the required timeframes *by an appropriately trained professional who is licensed or certified by the State in the mental health, behavioral health, or substance abuse fields.*



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6) Within the JJRA, what elements must now be included in the court order?

For status offenders detained pursuant to the Valid Court Order (VCO) Exception the court must conduct a hearing to determine:

- whether there is reasonable cause to believe a status offender violated their valid court order; and
- the appropriate placement of the youth pending disposition of the violation. If the court determines the status offender should be placed in a secure detention facility or correctional facility for violating such order, the court shall issue a written order that--
 - identifies the valid court order that has been violated;
 - specifies the factual basis for determining that there is reasonable cause to believe that the status offender has violated such order;
 - includes findings of fact to support a determination that there is no appropriate less restrictive alternative available to placing the status offender in such a facility, with due consideration to the best interest of the juvenile;
 - specifies the length of time, not to exceed 7 days, that the status offender may remain in a secure detention facility or correctional facility, and includes a plan for the status offender's release from such facility; and
 - may not be renewed or extended;

A sample court order including these elements is attached. Additionally, the Office of State Courts Administrator is developing a form. Courts may also adapt existing orders as long as the above elements are included.

7) How detailed does the plan for release from the facility have to be?

At a minimum, the plan should include: how the needs identified in the assessment (as completed by a licensed/certified agency representative) will be addressed, to whom the juvenile will be released, and when the youth will be released from the secure facility, not to exceed 7 days from when the youth entered the detention.

8) How do we make sure status offenders do not remain in secure detention or correctional facilities longer than allowed?

The JJRA requires procedures be in place to ensure status offenders held pursuant to a VCO Exception do not remain in custody longer than 7 days or the length of time authorized by the court, whichever is shorter. As juvenile detention and correctional facilities are subject to instances of non-compliance (violations), it is incumbent to have written policy and procedures to identify these youth and have them removed within the allowed timeframes.