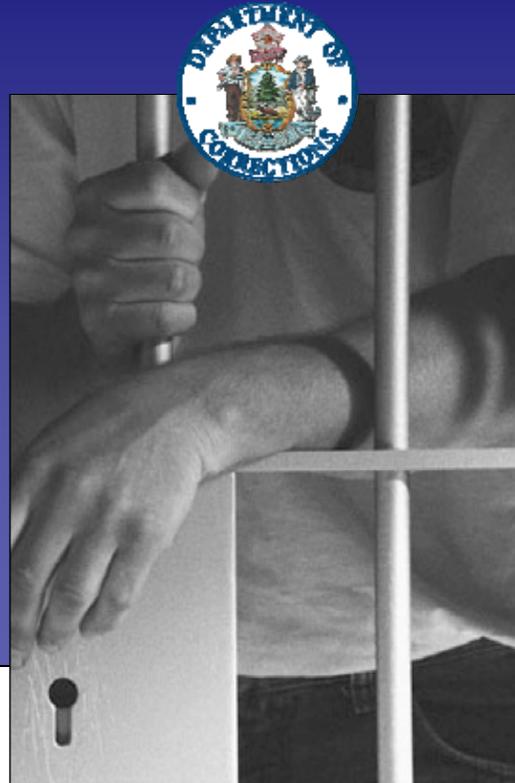


LAW ENFORCEMENT'S RESPONSIBILITIES
UNDER THE JUVENILE JUSTICE AND
DELINQUENCY PREVENTION (JJDP) ACT



A LAW ENFORCEMENT GUIDE FOR COMPLIANCE
WITH FEDERAL
AND STATE LAWS GOVERNING THE PLACEMENT OF
JUVENILES IN SECURE FACILITIES

Maine Juvenile Justice Advisory Group

January 2008

The information contained in this pamphlet is provided to law enforcement in an effort to assist Maine in maintaining compliance with the federal Juvenile Justice and Delinquency Prevention (JJDP) Act (42 U.S.C. 5601) and state laws regarding juveniles. The Maine Juvenile Justice Advisory Group (JJAG) provides this information as a guide when making decisions concerning the secure holding of juveniles. The Department of Corrections (DOC), the state agency designated to administer the federal JJDP Act funds, distributes this pamphlet as part of its continuing commitment to the principles of the JJDP Act.

If you have any questions about the information contained in this pamphlet, or for more information on the Maine JJDP Act program, please contact:

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Go to <http://ojjdp.ncjrs.org>, click on Programs, click on More Programs, click on Formula Grants Program, go to Funding, click on Compliance Monitoring Manual.

Maine's Responsibilities Under the JJDP Act

The federal JJDP Act was enacted by the U.S. Congress to establish a comprehensive national effort to reduce delinquency and improve the juvenile justice system. It continually evolves to reflect the needs of the states and to promote best practices with juveniles. States that participate in and receive grant funds through the JJDP Act (as Maine does) must comply with the core requirements of the Act as listed below. As a participant state, Maine has a comprehensive system in place to monitor all facilities that have the capacity to hold juveniles securely and reports its compliance status annually to the Office of Juvenile Justice and Delinquency Prevention. The amount of the grant funds allocated to Maine through the JJDP Act may be reduced if full compliance is not maintained.

Core Requirements of the JJDP Act

1. Deinstitutionalization of Status Offenders

Under no circumstance may juvenile status offenders (e.g., a runaways, truants, underage drinkers, minors in possession of alcohol or tobacco, curfew violators) or non-offenders (abused or neglected juveniles, or juveniles solely in need of mental health services) be placed in secure custody in an adult jail or lockup. When a juvenile is arrested on a warrant for failure to appear, fails to pay a fine or fails to comply with a court order where the original offense is a status offense, the juvenile remains a status offender and may not be held securely. [Maine Juvenile Code Title 15 Sections 3103 and 3501]

2. Sight and Sound Separation

In cases where a juvenile may be legally held in an adult jail or lockup, total sight and sound separation must be maintained between the juvenile and incarcerated adults. Pursuant to 34-A M. R. S. A. Section 1208 the Maine Department of Corrections must inspect and approve any secure holding cell/rooms/cuffing rails where juveniles may be detained. The Department has also developed standards, procedures and reporting requirements for these locations. The Compliance Monitor for Juvenile Services will assist you in developing Policies and Procedures if desired.

3. Removal of Juveniles from Adult Jails and Lockups

The secure custody of juveniles in adult jails and lockups is prohibited except under very specifically defined and strictly controlled situations as described in the OJJDP Act and the Maine Juvenile Code Title 15 Section 3203-A (7)(A). This pamphlet defines those situations where secure custody is allowed.

4. Disproportionate Minority Contact

The JJDP Act of 2002 requires states to “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” (see section 223(a)(22)). This includes the rate of contact by youth that are detained or confined in secure detention facilities, juvenile correctional facilities, adult jails and adult lockups. This requirement represents a commitment to the equitable treatment of all juveniles regardless of race, ethnicity and culture, and strives to enhance the integrity of the juvenile justice system.

Why is the removal of juveniles from adult jails the right thing to do?

- Juveniles held with adults for any period of time can easily be victimized.
- Juveniles may be overwhelmed in an adult jail or lockup.
Research reports that the suicide rate for juveniles in adult jails and lockups is 8 times greater than in a juvenile detention center.
- Adult facilities have neither the staff, programs nor training to best manage juveniles.
- Placing juveniles in jails or lockups does not serve as a deterrent.

What is Secure Custody?

As defined under the JJDP Act and the Maine Juvenile Code, secure custody is a situation where a juvenile is not free to leave the building or facility due to construction or hardware fixtures.

Secure custody includes:

- Placing a juvenile in a cell, whether or not the door is locked; or
- Placing a juvenile in a locked room; or
- Handcuffing the juvenile to a stationary object; or
- Placing the juvenile in a building or facility that has a secure perimeter.

Information on juveniles placed in secure custody must be recorded on a Juvenile Holding Cell log for compliance monitoring purposes.

Secure Custody means a juvenile is not free to leave due to construction or hardware fixtures.

A juvenile in law enforcement custody is not necessarily in secure custody.

What is Non-secure Custody?

As defined under the JJDP Act, if a juvenile is in non-secure custody the requirements do not apply.

Non-secure custody includes:

- Placing a juvenile in a law enforcement vehicle; or
- Handcuffing a juvenile to him or herself but not to a stationary object; or
- Placing a juvenile in an unlocked interview room; or
- Placing a juvenile in a room that is not designated, set aside or used for secure detention purposes.

Information on juveniles placed in non-secure custody does not need to be recorded on a Juvenile Holding Cell log.

Deinstitutionalization of Status Offenders

Placement of Status Offenders in Adult Jails or Lockups

Status offenders (runaways, truants, underage drinkers, minors in possession of alcohol or tobacco, curfew violators) and non-offenders (juveniles who have committed no status offense and/or are dependent and neglected children and/or juveniles solely in need of mental health services) may never be placed in secure custody. When a juvenile is arrested on a warrant for failure to appear, fails to pay a fine or fails to comply with a court order where the original offense is a status offense, the juvenile remains a status offender and may not be held securely.

If a status offender or non-offender is brought to an adult jail or lockup for processing and release, they must remain in non-secure custody.

What about status offenders and non-offenders who are in law enforcement custody?

A status offender or non-offender may be in law enforcement custody and not be in “secure custody.” If the juvenile is not placed in a “secure custody” situation (see previous section) and is in “staff secure” custody, no violation occurs. Staff secure custody is defined as providing supervision without placing the juvenile in a building with a secure perimeter, or in a cell, or locked room, or cuffing the juvenile to a stationary object.

Status offenders and nonoffenders may not be placed in secure custody

What constitutes a violation of DSO?

If a status offender or non-offender is placed in secure custody, two core requirements are violated: DSO and Jail Removal. Therefore, one runaway placed in secure custody actually counts as two violations of the JJDP Act on Maine’s annual report.

What are the Non-Secure Alternatives?

Placing a status offender or non-offender in non-secure custody does not violate the JJDP Act.

- Locate alternative non-secure placement options and supervision services within your community for status offenders and non-offenders through a JCCO or DHHS.
- Locate a non-secure area in your facility for status offenders and non-offenders.

Status offenders and non-offenders may not be placed in secure custody.

Criteria for Non-Secure Custody

- The area where the juvenile is held is an unlocked multipurpose area such as a lobby, office, or interrogation room that is not designated, set aside, or used as a secure detention area or is part of such an area; and
- The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody within the facility; and
- The use of the area is limited to providing non-secure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or court; and
- In no event can the area be designated or intended to be used for residential purposes; and
- The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that the juvenile is in non-secure custody.

Is it possible that a juvenile held in an adult jail or lockup and in contact with adults may have a basis for a 42 U.S.C. § 1983 civil rights action against a person or agency?

Yes, it is possible. A case in Iowa (Hendrickson v. Griggs: U.S. District Court, 1984) found that § 1983 remedy is available.[42 U.S.C. § 1983 Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.]

Sight and Sound Separation

The JJDP Act provides that no juvenile shall be securely detained or confined in any facility in which they could have sight and/or sound contact with incarcerated adults, including adult trustees. Therefore, a juvenile being held in an adult jail or lockup must be separated from sight and sound contact, and have no physical contact, with incarcerated adults, including trustees. [Maine Juvenile Code Title 15 Section 3203-A 7(A)(1)(2)] No juvenile under public authority may enter a secure section of any jail, lockup or adult correctional facility for the purpose of modifying their behavior or as a disposition for any offense. Programs such as "Scared Straight" or "Shape Up" generate violations of this requirement. The practice of sight and sound separation protects juveniles against physical and verbal abuse, and is supported by the following state and national organizations: the American Correctional Association, the National Council of Juvenile and Family Court Judges, and the National Sheriffs Association.

Juveniles Brought into a Law Enforcement Facility for Processing

- When juveniles are taken into custody, they may be brought to a law enforcement facility for processing purposes.
- Status offenders may never be held securely. They may be fingerprinted and photographed in a secure booking area, if that is all that is available, provided they are immediately removed from that area once the booking process is completed. Non-offenders will be processed per Title 15 Section 3501 (Interim Care). Fingerprints may not be taken and only the information that is necessary to return the juvenile to his or her residence may be obtained (Section 3501-9).
- Delinquents may be placed in secure custody for up to 6 hours for processing purposes only. (See Removal of Juveniles from Adult Jails and Lockups for more information on detaining delinquents securely).
- While in secure custody, juveniles must be sight and sound separated from incarcerated adults, including trustees. Separation may be achieved architecturally or through policies and procedures. Time phasing may be used, and is defined as using the same area to process and detain both juveniles and adults, just not at the same time.

Monthly Juvenile Holding Report—Recording Information

The JJDP Act requires that all participating states develop a plan, procedure and timetable to monitor all adult jails, adult lockups, juvenile detention and correctional facilities, and non-secure facilities for compliance with the JJDP Act and Maine State law. (Pursuant to 34-A M. R. S. A. Section 1208 the Maine Department of Corrections must inspect and approve any secure holding cell/rooms/cuffing rails where juveniles may be detained.)

Compliance affects Maine's eligibility for formula grant funding under the Act. A community's compliance affects their eligibility for JJDP Act Title V delinquency prevention funding.

It is important that every facility or law enforcement agency that places juveniles in secure custody situations record each secure custody admission by name, (or identification number), date of birth, race/ethnicity, gender, the offense for which they were arrested, the admission date and time, the release date and time, the purpose for secure custody and their court appearance time, if applicable. These reports must be submitted to the Department of Corrections and reviewed by the DOC compliance monitor monthly.

REMOVAL OF JUVENILES FROM ADULT JAILS AND LOCKUPS

This requirement states that no juvenile may be held in secure custody in a facility that houses an adult jail or lockup. Following are specific exceptions to this requirement:

The 6-Hour Rule for Processing and Release

- Juveniles accused of committing a delinquent offense may be held in secure custody up to 6 hours for the sole purpose of identification, processing, investigation and/or transfer to another facility, home or placement.
- The 6-hour clock begins the moment the juvenile is placed in secure custody and cannot be stopped until the juvenile is permanently removed from secure custody.
- During this time period, no sight or sound contact between juveniles and adult inmates, including adult trustees, is permitted.
- The facility must have adequate staff to supervise and monitor the juvenile at all times.

The 6-Hour Rule for Court Appearances

- Juveniles accused of, or adjudicated for, committing a delinquent offense may be placed in secure custody for up to 6 hours prior to a court appearance and for an additional 6 hours following a court appearance while waiting for transport back to the facility from which they came.
- The secure custody area must be sight and sound separated from incarcerated adults.
- The purpose of this exception is to allow law enforcement to place juveniles in secure custody who are either waiting for their court appearance or waiting for transport.
- It would be a violation of this exception to place juveniles in secure custody for punitive reasons, or for any other reason not related to a court appearance.

Transfer or Direct Filing to Adult Court

Once a juvenile has been transferred to criminal court as an adult, the juvenile is no longer subject to the requirements of the JJDP Act.

**Juvenile Justice and Delinquency Prevention Act
Guidelines for Adult Jails and Adult Lockups**

TYPE OF JUVENILE OFFENDER	JJDP ACT REQUIREMENTS
<p>ALL JUVENILES</p>	<p>Must be sight and sound separated from adult inmates including trustees. [No juvenile shall enter under public authority into a secure setting or secure section of any jail, lockup or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g., Shock Incarceration, Scared Straight or Shape Up).</p>
<p>NON-OFFENDER</p> <ul style="list-style-type: none"> ■ Non-offense, e.g., dependent and/or neglected or juvenile in need of mental health services. ■ Includes juveniles picked up on emergency commitments. 	<p>NEVER IN SECURE CUSTODY WITHIN AN ADULT JAIL OR LOCKUP.</p>
<p>ACCUSED STATUS OFFENDER</p> <ul style="list-style-type: none"> ■ A juvenile accused of committing an offense that would not be criminal if committed by an adult (runaway, truant, underage drinker, possession of alcohol or tobacco, curfew violation) ■ Includes intoxicated juveniles. 	<p>NEVER IN SECURE CUSTODY WITHIN AN ADULT JAIL OR LOCKUP.</p>
<p>ADJUDICATED STATUS OFFENDER</p> <ul style="list-style-type: none"> ■ A juvenile found by the court to have committed a status offense ■ Includes juveniles picked up on warrants, FTA, or FTP where the original offense is a status offense. 	<p>NEVER IN SECURE CUSTODY WITHIN AN ADULT JAIL OR LOCKUP.</p>
<p>ACCUSED DELINQUENT OFFENDER</p> <ul style="list-style-type: none"> ■ A juvenile who is accused of committing an offense that would be criminal if committed by an adult. 	<p>Upon arrest, may be placed in secure custody for up to 6 hours, for processing purposes only. If transferred from a secure facility to court, may be held in a jail or lockup for up to 6 hours prior to the court appearance and for 6 hours following the court appearance. The purpose of secure holding must be related to the court appearance. Separation from adults must always be maintained.</p>
<p>ADJUDICATED DELINQUENT OFFENDER</p> <ul style="list-style-type: none"> ■ A juvenile who has been found by the court to have committed a delinquent offense. 	<p>Upon arrest, may be placed in secure custody for up to 6 hours, for processing purposes only. If transferred from a secure facility to court, may be held in a jail or lockup for up to 6 hours prior to the court appearance and for 6 hours following the court appearance. The purpose of secure holding must be related to the court appearance. Separation from adults must always be maintained.</p> <p>If transferred from a secure facility to court, may be held in a jail or lockup for up to 6 hours prior to the court appearance and for 6 hours following the court appearance. Separation from adults must always be maintained</p>
<p>TRANSFERRED TO ADULT COURT</p> <ul style="list-style-type: none"> ■ Juvenile who has been transferred to adult court on a criminal charge. 	<p>NO REQUIREMENT UNDER THE JJDP ACT AFTER TRANSFER TO ADULT COURT.</p>