



# Interstate Commission for Juveniles

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## Memorandum

**To:** All ICJ Offices

**From:** Ashley Lippert, Executive Director  
Richard L. Masters, General Counsel

**Date:** May 20, 2010

**Re:** Notice of Clarification of OJJDP Policy on Secure Detention of Runaways

In response to a request by the ICJ National Office, please see the attached legal opinion clarifying current federal law and policy regarding the secure detention of runaways, under the Interstate Compact for Juveniles from Hon. Kathi L. Grasso, Senior Juvenile Justice Policy and Legal Advisor, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

This opinion, and the cited portions of the U.S. Code and OJJDP policy, clarify that it is permissible under federal law and policy for ICJ Compact Administrators to temporarily detain runaways under the ICJ in order to secure their safe return to the jurisdictions where they reside or where other appropriate custody exists.

As cited in this opinion, the relevant provisions of both the reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDPA), 42 U.S.C. 5633 (a) and the excerpt from the *OJJDP Guidance Manual for Monitoring Facilities Under the JJDPA of 2002* clearly provide an exemption for secure detention for out-of-state runaway youth held under the ICJ. In addition, this opinion indicates that the pending version of the reauthorization bill currently under consideration by the U.S. Congress does not change the status of the above referenced exemption.

Compact offices should also take note of the concerns expressed by Ms. Grasso in calling our attention to the proposed Valid Court Order (“VCO”) exemption 'phase out' and the growing trend, evidenced by this proposal, which suggests that alternatives to secure detention and correctional placements need to be identified for status offenders, including runaways, as this aspect of juvenile compact administration is considered going forward.

Please direct any further inquiries in this regard to the national office.

Dear Ashley:

You have sought OJJDP guidance on behalf of the Interstate Commission for Juveniles (ICJ). You asked OJJDP to confirm for you whether the attached OJJDP policy as presented by John Wilson, then Acting OJJDP Administrator, in 1994 is still in effect as it relates to out-of-state runaway youth who are held in a receiving state pursuant to the Interstate Compact on Juveniles. I have conferred with OJJDP leadership and staff on your question. We have concluded that this policy is no longer in effect as it relates to the subject population.

### **The JJDPA**

The Juvenile Justice and Delinquency Prevention Act (JJDPA) was reauthorized, effective 2003. It was modified and created an exemption to the deinstitutionalization of status offenders (DSO) core requirement to permit the subject population to be held in secure detention. The current JJDPA DSO provisions are as follows:

#### **42 U.S.C. 5633(a):**

**11)** shall, in accordance with rules issued by the Administrator, provide that--

**(A)** juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding--

**(i)** juveniles who are charged with or who have committed a violation of [section 922\(x\)\(2\) of Title 18](#) or of a similar State law;

**(ii)** juveniles who are charged with or who have committed a violation of a valid court order; and

**(iii) juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State (emphasis added);**

shall not be placed in secure detention facilities or secure correctional facilities; and

**(B)** juveniles--

**(i)** who are not charged with any offense; and

**(ii)** who are--

**(I)** aliens; or

**(II)** alleged to be dependent, neglected, or abused;

shall not be placed in secure detention facilities or secure correctional facilities;

*(From Westlaw, 5/13/10)*

### **The OJJDP Guidance Manual for Monitoring Facilities Under the JJDP A of 2002**

OJJDP's 2007 Guidance Manual provides the following in Section 3.2 (this manual is currently being reviewed for possible revisions; we anticipate that this guidance will remain the same in light of current law):

“Out-of-state runaways securely held beyond 24 hours solely for the purpose of being returned to proper custody in another state in response to a warrant or request from a jurisdiction in the other state or pursuant to a court order must be reported as violations of the DSO requirement. Juveniles held pursuant to the Interstate Compact on Juveniles enacted by the state are excluded from the DSO requirements in total.”

### **The Reauthorization of the JJDP A**

As we previously discussed, the U.S. Congress is considering the reauthorization of the JJDP A. The Senate Judiciary Committee has passed S. 678 which includes provisions that provide for a phase-out of the Valid Court Order (VCO) exemption to DSO. Approximately four weeks ago, the House Committee on Education and Labor held a hearing on the JJDP A reauthorization. We anticipate the introduction of a counterpart House bill.

Although the current version of S. 678 does not appear to change the above-stated exemption for secure detention for out-of-state runaway youth held in accordance with the Interstate Compact on Juveniles, it is important for the ICJ to be aware of the proposed phase-out of the VCO as it reflects a growing trend that alternatives to secure detention and correctional placements need to be identified for status offenders, including runaways. The U.S. Department of Justice has issued a “views” letter to Senator Leahy, Chairman of the Senate Judiciary Committee, in support of S. 678, including its provisions relevant to the phase-out of the VCO. Also, the National Council of Juvenile and Family Court Judges recently supported a resolution in support of the ultimate elimination of the VCO.

Assuming the JJDP A is reauthorized with the VCO phase-out, and sufficient appropriations, OJJDP will provide training and technical assistance to the states to facilitate the VCO phase-out. We will highlight evidence-based and promising approaches to responding to the needs of status offenders, including runaways, and their families. We would anticipate conferring with our colleagues at USHHS' Youth Services Bureau, the federal agency that oversees the implementation of runaway and homeless youth programs to gather information about best practices. As part of these efforts, we would be interested in working with the Interstate Commission for Juveniles (ICJ) to provide judges and others with insights on alternatives to placement in secure correctional and detention facilities for out-of-state runaways. It may be appropriate at a

future date for OJJDP to convene a meeting with you and others to learn more about the Commission's work and identify potential collaborative activities.

In light of the earlier statement regarding OJJDP policy, it may not be necessary for us to convene a conference call on Friday, the 21<sup>st</sup> as tentatively planned. However, if you believe a conference call is in order, please let me know.

Of course, do not hesitate to let me know if you have any questions regarding this memo or other matters.

Kathi

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