



GOVERNOR'S JUVENILE JUSTICE COMMISSION

TONY EVERS, GOVERNOR
JENNIFER GINSBURG, CHAIR

May 19, 2020

The Honorable Tony Evers
Governor of Wisconsin

Dear Governor Evers,

As you are aware, the Governor's Juvenile Justice Commission (GJJC), re-created by Executive Order #43, serves as the State Advisory Group (SAG) to the Governor and the Legislature on matters critical to juvenile justice, under the [Federal Juvenile Justice and Delinquency Prevention Act \(JJDPA\)](#). The GJJC is comprised of juvenile justice professionals, including law enforcement, corrections professionals, attorneys, judges, mental health practitioners, and non-profit organizations dedicated to youth programming. The GJJC also includes justice involved youth members and individuals with experience in the juvenile justice system.

In this capacity, the GJJC is alerting the Governor's office and all Juvenile Justice Stakeholders, including legislative liaisons, juvenile court judges, and appropriate department heads and county officials of compliance issues relating to JJDPA provisions of the Deinstitutionalization of Status Offenders (DSO). A status offender is a youth charged with or who has committed an offense that would not be a criminal offense if committed by an adult. Status offenses in Wisconsin include habitual truancy, ordinance violations, Children in Need of Protection or Services under Chapter 48 and Juveniles in Need of Protection or Services under Chapter 938.

Wisconsin is a participating state, under the JJDPA, and in order to maintain compliance and receive federal [Title II Formula funds](#), it is necessary to determine if Wisconsin law is consistent with the DSO provisions, and if current court practices are consistent with the same.

The changes within the JJDPA impact Wisconsin law and practice. Wisconsin law currently allows juvenile court judges to detain some status offenders up to 10 days or longer for a violation of a valid court order. The federal DSO provision in the JJDPA restricts the use of detention for status offenders for more than 7 days in a juvenile detention facility for violation of a valid court order.

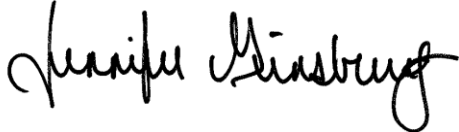
The GJJC recommends the following to address potential compliance issues with the JJDPA:

- I. Recommend that juvenile court judges restrict all temporary placement orders to no more than 7 days in a juvenile detention facility, that cannot be extended, for any status offender.
- II. Recommend that juvenile court judges restrict all sanction orders to no more than 7 days in a juvenile detention facility for juvenile status offenders (ordinance violators, municipal court violators and habitual truant violators).
- III. Recommend changes to Wisconsin legislation to bring the state into compliance by limiting detention of status offenders in a juvenile detention facility to no more than 7 days for temporary custody orders and sanctions under Chapter 48 and Chapter 948 or by eliminating the use of the DSO.

This letter serves as an alert for Wisconsin juvenile court judges to ensure that the use of detention for status offenders aligns with the DSO provision within the JJDPa. If these recommendations are not followed, the state jeopardizes federal Title II Formula funding.

The GJJC welcomes the opportunity to advise the Governor, Legislature, and other state agencies to ensure that Wisconsin law reflects federal requirements. For additional information on provisions of the JJDPa, please see the included addendum. The GJJC supports the provisions of the JJDPa and will continue to educate stakeholders on policies and practices that best support youth and families involved in the youth justice system.

Sincerely,

A handwritten signature in black ink, reading "Jennifer Ginsburg". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Ginsburg".

Jennifer Ginsburg, MSSW, LCSW
Governor's Juvenile Justice Commission Chair, on behalf of the Commission

cc: Wisconsin Legislature
Wisconsin Juvenile Court Judges
Attorney General Josh Kaul
DHS Secretary Andrea Palm
DOC Secretary Kevin Carr
DCF Secretary Emilie Amundson
DPI State Superintendent Carolyn Stanford Taylor

Attachments:

Addendum to GJJC Deinstitutionalization of Status Offenders (DSO) Recommendations
GJJC Commissioner List



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Addendum to GJJC Deinstitutionalization of Status Offenders (DSO) Recommendations

Additional Information of Juvenile Justice Delinquency and Prevention Act (JJDA) Provisions as amended by the Juvenile Justice Reform Act (JJRA) of 2018:

Juvenile Justice Delinquency Prevention Act (JJDA) Full Text:

[Juvenile Justice Delinquency Prevention Act \(JJDA\)](#)

Office of Juvenile Justice and Delinquency (OJJDP) Fact Sheet:

[Key Amendments to the Juvenile Justice and Delinquency Prevention Act \(JJDA\) Made by the Juvenile Justice Reform Act \(JJRA\) of 2018](#)

§11133. State plans

(a) Requirements

In order to receive Title II Formula funds, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs, projects, and activities.

In accordance with regulations which the Administrator shall prescribe, such plan shall—

What follows are 33 subsections that must be included in each state's plan. Of concern are the subsections that have been amended and/or contain new provisions relating to DSO. The relevant portions appear to be as follows:

(11) (A) in accordance with rules issued by the Administrator, provide that a juvenile shall not be placed in a secure detention facility or a secure correctional facility, if—

(i) the juvenile is charged with or has committed an offense that would not be criminal if committed by an adult, excluding—

- (I) a juvenile who is charged with or has committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar State law;
- (II) a juvenile who is charged with or has committed a violation of a valid court order issued and reviewed in accordance with paragraph (23); and
- (III) a juvenile who is held in accordance with the Interstate Compact on Juveniles as enacted by the State; or

(ii) the juvenile—

- (I) is not charged with any offense; and
- (II) (aa) is an alien; or (bb) is alleged to be dependent, neglected, or abused; and

Note: (11) is amended but previous language contained similar provisions.

Addendum to GJJC Deinstitutionalization of Status Offenders (DSO) Recommendations

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Also relevant is:

(23) provide that if a juvenile is taken into custody for violating a valid court order issued for committing a status offense--

- (A) an appropriate public agency shall be promptly notified that such juvenile status offender is held in custody for violating such order;
- (B) not later than 24 hours during which such juvenile is so held, an authorized representative of such agency shall interview, in person, such juvenile status offender; and
- (C) not later than 48 hours during which such juvenile status offender is so held—
 - (i) such representative shall submit an assessment to the court that issued such order, regarding the immediate needs of such juvenile status offender; and (ii) such court shall conduct a hearing to determine—
 - (I) whether there is reasonable cause to believe that such juvenile status offender violated such order; and
 - (II) the appropriate placement of such juvenile status offender pending disposition of the violation alleged; and
 - (iii) if such court determines the status offender should be placed in a secure detention facility or correctional facility for violating such order—
 - (I) the court shall issue a written order that—
 - (a) identifies the valid court order that has been violated;
 - (b) specifies the factual basis for determining that there is reasonable cause to believe that the status offender has violated such order;
 - (c) 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;
 - (d) 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
 - (e) may not be renewed or extended; and
 - (I) the court may not issue a second or subsequent order described in subclause (I) relating to a status offender unless the status offender violates a valid court order after the date on which the court issues an order described in subclause (I); and
- (D) there are procedures in place to ensure that any status offender held in a secure detention facility or correctional facility pursuant to a court order described in this paragraph does not remain in custody longer than 7 days or the length of time authorized by the court, whichever is shorter;

Current Wisconsin law allows for placement of juvenile status offenders in a juvenile detention facility under limited circumstances.

Temporary physical placement. A juvenile may be held in a juvenile detention facility under Wis. Stat. § 938.208. The only provisions that allows placement of a status offender are:

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- (3) Protective custody. The juvenile consents in writing to being held in order to protect him or her from an imminent physical threat from another and such secure custody is ordered by the court in a protective order.
- (4) Runaway from nonsecure custody. Probable cause exists to believe that the juvenile, having been placed in nonsecure custody by an intake worker under Wis. Stat. § 938.207 or by the court under Wis. Stat. § 938.21 (4), has run away or committed a delinquent act and no other suitable alternative exists.

A corresponding provision in Chapter 48 applies to children in Wis. Stat. § 48.208 (3) and (4).

Disposition. Chapter 48 and Chapter 938 do not allow for the disposition of a status offender to include a juvenile detention facility or a secure correctional placement. See Wis. Stat. § 48.345 and Wis. Stat. § 938.345.

Violation of a valid court order (sanction). A child subject to a disposition under Chapter 48 cannot be subject to a sanction for violation of a court order, but the court has the authority to modify a disposition, change a placement or extend an order.

A juvenile “status offender” under Chapter 938 that violates a valid court order is subject to sanctions under s. 938.355 in the following situations:

- A juvenile adjudicated for a civil law or ordinance can be sanctioned under Wis. Stat. § 938.355(6)(a)1. and placed in a juvenile detention facility for up to 10 days for a violation of a valid court order.
- A juvenile adjudicated in municipal court for violation of a municipal ordinance who violates the order of the municipal court can be sanctioned to a juvenile detention facility for up to 10 days if the municipal court petitions the Juvenile Court under 938 for imposition of the sanction. Wis. Stat. § 938.355(6) (an)1.
- A juvenile adjudicated in need of protection or services upon whom the court has imposed a sanction that commits a second or subsequent violation of a valid court order can be charged with contempt and found delinquent and subject to any disposition under Wis. Stat. § 938.34 including placement in a juvenile detention facility.
- A juvenile adjudicated in violation of a municipal ordinance or as a juvenile in need of protection or services as habitually truant that violates a valid court order may be placed in a juvenile detention facility for up to 10 days Wis. Stat. § 938.355(6m)(a) if authorized by a resolution of the county board.
- A juvenile that has been adjudicated in need of protection or services that violates a valid court order cannot be placed in a juvenile detention center pursuant to Wis. Stat. § 938.355(6)(a)2.

Conclusion: Wisconsin statutes that allow for temporary physical placement and sanctions for status offenders are not consistent with Subsection 23, as current statutes allow for a maximum sanction of 10 days in a juvenile detention facility and do not limit the number of days for temporary physical placement in a juvenile detention facility. Wisconsin statutes should reflect the federal DSO provisions, limiting the use of detention to 7 days or less for status offenders, to comply with the JJDPa and receive federal Title II Formula funds.



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Wisconsin Governor's Juvenile Justice Commissioner List

May 19, 2020

1. Secretary Emilie Amundson, Department of Children and Families
Designee: Shelby McCulley, Bureau of Youth Services Director
2. Judge Carl Ashley, Milwaukee Circuit Court
3. Monika Audette, Barron County Restorative Justice Program Operations Leader
4. Samuel Benedict, Former Regional Attorney Manager, State Public Defender's Office, Waukesha
5. Secretary Kevin Carr, Department of Corrections
Designee: Ron Hermes, Division Administrator of Juvenile Corrections
6. Jennifer Ginsburg, Executive Director, Safe Harbor Child Advocacy Center
7. Ben Gonring, Assistant State Public Defender, Madison
8. Jessica Jimenez, Youth Member
9. Thomas Mann, Former JusticePoint Representative
10. Sharlen Moore, Youth Justice Milwaukee Director
11. Tweed Shuman, Sawyer County Board Chairman, Lac Courte Oreilles Tribal Council Member
12. David Steinberg, La Crosse County Juvenile Detention Superintendent
13. Melinda Tempelis, Outagamie County District Attorney
14. Charles Tubbs, Sr., Director, Dane County Emergency Management
15. Revelle Warren, Milwaukee Constituent Services Director, Office of the Governor
16. Sean Wilson, Smart Justice Statewide Organizer, ACLU of Wisconsin
17. Marcus Williams, Youth Member
18. Youth Leadership Team Member, Department of Children and Families
19. Youth Leadership Team Member, Department of Children and Families