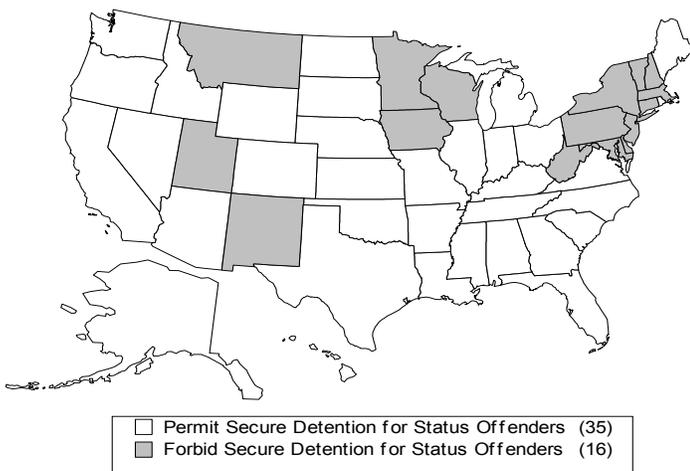


What is the Valid Court Order Exception to Secure Detention for Status Offenders?

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Secure Detention for Status Offenders



*WI permits secure detention for habitual truant who violates a court order

The 2011 Code of Federal Regulations for the Juvenile Justice and Delinquency Prevention Act defines “status offender” as: a juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

The 2011 Federal Regulations define “valid court order” as: a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word “valid” permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the

Constitution of the United States.

To be eligible for federal funding under the Juvenile Justice and Delinquency Prevention Act, states are required to remove status offenders from detention facilities and instead offer prevention, diversion, and treatment alternatives.

Originally, the Act prohibited the detention of status offenders, including juveniles found in contempt of court. In 1980, the Act was amended to permit states to incarcerate status offenders for violations of a valid court order. The rationale for creating this exception to the Act’s original prohibition against incarcerating status offenders is basically protection and deterrence.

The federal valid court order exception to secure detention for status offenders permits holding such a status offender in secure detention beyond the 24-hour grace period allowed by OJJDP monitoring policy. The status offender can be held for protective purposes or to assure the status offender’s appearance at the violation hearing. Such a status offender can be held for at least 72 hours. A status offender alleged or found to have violated a valid court order may be held only in a secure juvenile detention or a correctional facility, and not in an adult jail or lockup.

Currently, the following 16 states prohibit secure detention for all status offenders, including those who have violated a valid court order: Connecticut, Delaware, Iowa, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Utah, Vermont, West Virginia, and Wisconsin.

However, Wisconsin law permits secure detention for a habitual truant who violates a court order. Wisconsin law defines a habitual truant as a pupil who is absent from school without an acceptable excuse for 5 or more school days.

In the 2011 legislative session, South Carolina has introduced (but not yet enacted) a Bill that would attempt to avoid unconstitutional levels of overcrowding in facilities operated by the state Department of Juvenile Justice. The proposed Bill would authorize the Department to release enough juveniles committed to its custody for a status offense or for contempt of a status offense so that the number of juveniles in the Department’s custody would not exceed the number of housing units or beds available to properly house such status offenders.

(Proposed 2011 South Carolina Senate Bill 323.)

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