

The Federal Juvenile Justice and Delinquency Prevention Act vs. Minnesota Statutes and Rules of Juvenile Procedure

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Dana Swayze

Juvenile Justice Analyst
Minnesota Statistical Analysis Center

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Executive Summary

The federal Juvenile Justice and Delinquency Prevention Act (JJDP A) of 2002 requires that states monitor their juvenile justice system for *Four Core Protections* for youth in order to be eligible for certain federal crime prevention/intervention funding. Three of the protections are related to monitoring the system for the appropriate use of secure detention facilities for accused and adjudicated youth. Specifically, the act requires:

1. The deinstitutionalization of non-offenders and status-level offenders from secure facilities;
2. The removal of delinquent youth from adult jails and police lockups;
3. And that juveniles be sight and sound separated from adult inmates whenever they are held in the same facility.

Minnesota has long participated in monitoring correctional facilities and juvenile justice system procedures for compliance with the Juvenile Justice and Delinquency Prevention Act. Nevertheless, the requirements for processing youth under Minnesota Statutes, Administrative Rules, and Court Rules of Juvenile Procedure do not always seamlessly align with the requirements of the act.

The Minnesota Department of Public Safety Office of Justice Programs (OJP), as the recipient and administrator of federal funds allocated to Minnesota through the JJDP A, has elected to explore the aforementioned resources to identify where state law and practice is in concert with, or in conflict with, the JJDP A. **This document describes what steps would need to occur for Minnesota Statute and Rule to come into full alignment with the JJDP A. This document does not assess the impact these changes may have on justice system practitioners and resources. Not all findings are recommendations.**

This document provides a detailed account of the requirements of the JJDP A as described in *The Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002*. Included are federal offender definitions, facility classifications, and allowable holding practices for non-delinquents, delinquents and youth facing certification as adults.

The requirements of the JJDP A are then compared to the definitions, facility classifications and allowable holding practices that are presently in Minnesota Statutes related to delinquency and child protection, court rules of procedure, and administrative rules. Where Minnesota is in alignment and in conflict with the JJDP A are highlighted and a steps for Minnesota to come into alignment with the act are named.

The Juvenile Justice and Delinquency Prevention Act, through its Core Protections, is intended to help states institutionalize policies and procedures that promote public safety and protect juvenile non-offenders and delinquents. Most of these protections are related to ensuring the appropriate use of secure detention for accused and adjudicated youth. Minnesota, through statutes, rules and court procedures has implemented many of the recommendations and protections of the JJDP A.

Minnesota can continue to better protect and serve youth and ensure federal funding for prevention and intervention in the future with on-going movement toward full compliance with the JJDP A. The following sections are a compilation of all the statute, rule and enforcement opportunities detailed in the report, listed by each Core Protection. It is the hope that juvenile justice policy makers, leadership, practitioners, and advocates can prioritize these tasks, investigate the potential effects of these changes, and move forward with recommendations for state level action.

I. The Deinstitutionalization of Status Offenders Requirement (DSO)

1. Clarify in Statute or Rule where non-delinquent federal wards and undocumented youth are to be detained. The JJDPa requires that these holds be non-secure. If they must be secure, they may only be in a juvenile facility and cannot exceed 24 hours exclusive of weekends and holidays.
2. Consider decriminalizing fish and game violations committed by youth, currently charged as Misdemeanors.
3. Minnesota Statutes, section 260C.181 is in direct conflict with the JJDPa in that it allows, under certain conditions, juvenile non-offenders to be held in adult jails or lockups. Minnesota Statutes, section 260C.181 must be amended to remove secure adult facilities as a place to detain juvenile non-offenders.
4. For full compliance with the JJDPa, Minnesota Statutes, section 260C.181 would need to be amended to clarify that the use of secure juvenile detention for all non-offenders (CHIPS youth) must be limited to 24 hours exclusive of weekends and holidays.
5. Modify the Minnesota Rules of Juvenile Delinquency Procedure to implement the JJDPa procedural safeguards for youth held in secure detention on contempt of court (*Hammergren Warning*) to include an interview within 24 hours and an immediate needs of the child assessment report.
6. Ensure that non-offenders securely held in adult or juvenile detention appear in court or are transferred to the “least restrictive setting to meet the child’s health and welfare” within 24 hours of admission exclusive of weekends and holidays. This could potentially be enforced by the DOC Inspection and Enforcement Unit.

II. Jail Removal Requirement

1. Modify Minnesota Statutes, section 260B.181, subd. 4 to state that youth in adult facilities who required continued detention must be moved to a juvenile facility consistent with Minnesota Statutes, section 260B.178, subd. 2. Eliminate the statement that continued detention can occur in an adult facility for up to 8 days. Allowing secure detention in an adult facility beyond 24 hours is in violation of the JJDP.
2. Request that the DOC license adult facilities for only 6 hours if there is a secure juvenile alternative in their county, even if the county is outside a metropolitan statistical area. This is consistent with the federal Rural Removal Exception guidelines.
3. The JJDP allows youth certified as adults to be held in a secure juvenile facility until the age of majority plus six months. Minnesota Statute presumes that youth certified as adults will serve their sentence in an adult facility, including pending an appeal of their Certification. Minnesota could modify the statutes to allow certified youth to serve their sentence in a juvenile facility until they are age 18 and six months, if that were the most appropriate placement, and still be in compliance with the JJDP.

III. Sight and Sound Separation Requirement

1. Minnesota Statutes and/or Administrative Rules ought to be more specific in their definition of “contact” to prohibit clear visual contact and direct oral communication between adult and juvenile inmates in non-residential areas of secure facilities. This would apply to Minnesota Statutes, sections 260B.181 and 260C.181 and also the Administrative Rules for adult jails and lock-ups.
2. Minnesota Administrative Rules related to court holding facilities ought to specifically state that sight and sound separation must occur in secure court holding areas, rather than being presumed under jail rules.

For questions, comments or corrections to this document, please contact Dana Swayze, Juvenile Justice Analyst at dana.swayze@state.mn.us.

Introduction to the Act

The federal Juvenile Justice and Delinquency Prevention Act (JJDP A) of 2002 requires that states monitor their juvenile justice system for *Four Core Protections* for youth in order to be eligible for certain federal crime prevention/intervention funding. Three of the protections are related to monitoring the system for the appropriate use of secure detention facilities for accused and adjudicated youth. Specifically, the act requires:

1. The deinstitutionalization of non-offenders and status-level offenders from secure facilities;
2. The removal of delinquent youth from adult jails and police lockups;
3. And that juveniles be sight and sound separated from adult inmates whenever they are held in the same facility.

A fourth protection, which will not be addressed in this document, requires that states monitor their juvenile justice system for the over-representation of youth from communities of color, known as Disproportionate Minority Contact (DMC).

Purpose of Report

Minnesota has long participated in monitoring correctional facilities and juvenile justice system procedures for compliance with the Juvenile Justice and Delinquency Prevention Act. Nevertheless, the requirements for processing youth under Minnesota Statutes, Administrative Rules, and Court Rules of Juvenile Procedure do not always seamlessly align with the requirements of the act.

The Minnesota Department of Public Safety Office of Justice Programs (OJP), as the administrator of federal funds allocated to Minnesota through the JJDP A, has elected to explore the aforementioned resources to identify where state law and practice is in concert, or in conflict, with the JJDP A.

This document is intended to guide OJP and system stakeholders in identifying and prioritizing state-level juvenile justice policy issues. It is not intended as a legal resource for practitioners or justice system involved persons. The contents of this publication are not to be used as a foundation for legal practice and are not to replace consultation with the full text of Minnesota Statutes and Rules.

This document describes what steps would need to occur in order for Minnesota to come into full alignment with the JJDP A. This document does not assess the impact these changes may have on justice system practitioners and resources. Not all findings are recommendations.

Resources Cited

The primary information resources used in this exploration are:

- *The Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002* published by OJJDP (2007).
<http://www.wyo-wcca.org/vertical/Sites/%7BD4F54A77-0532-458E-A3AB-D04D95A25F6D%7D/uploads/%7B29DF47D3-8184-4BA4-BC15-9F9ED76B3E4B%7D.PDF>
- 2009 Minnesota Statutes as published by the Minnesota Revisor of Statutes.
- 2009 Administrative Rules as published by the Minnesota Revisor of Statutes.
<https://www.revisor.mn.gov/pubs/>
- *Minnesota Rules of Delinquency Procedure* as published by the Minnesota Judicial Branch (2008).
http://www.mncourts.gov/Documents/0/Public/Rules/JuvDelinqRules_eff_1-1-08.pdf
- *Rules of Juvenile Protection Procedure* as published by the Minnesota Judicial Branch (2009).
http://www.mncourts.gov/Documents/0/Public/Clerks_Office/Juv_Prot_Rls_Eff_%208-1-09.pdf
- *Minnesota Judges Juvenile Protection Benchbook*. (2004). State Court Administrator's Office, Court Services Division.
<http://www.courts.state.mn.us/?page=178>
- *ICJ Rules* (2009). Interstate Commission for Juveniles.
<http://www.juvenilecompact.org/LinkClick.aspx?fileticket=hvMqJ-56kQk%3d&tabid=648>
- Minnesota Bureau of Criminal Apprehension: CriMNet Division. (2010). Minnesota Criminal Justice Statute Service (MNCJSS). <https://webservices.crimnet.state.mn.us/statute/>
- Red Lake Band of Chippewa Indians Tribal Code. (2010). Juvenile Code Chapter 700: General Provisions. <http://www.rlnn.com/main/RLTCdC700Print.html>

Protection 1: Deinstitutionalization of Status and Non-Offenders

Definitions

The first Core Protection afforded youth under the JJDPa is the *Deinstitutionalization of Status Offenders (DSO)* requirement. This protection states that youth who are dependent, neglected, abused, aliens, civil-type offenders, or who are charged with or have committed an offense that would not be criminal if committed by an adult (“status offenses”), ***shall not be placed in secure detention facilities or secure correctional facilities (CM § 1.1).***

JJDPa: Non-Offender/Status Offender Definitions

The JJDPa acknowledges two types of non-delinquent youth: **Non-offenders** who have committed no illegal acts and **status offenders** whose behavior is illegal because they are under age 18. These behaviors, if committed by an adult would not be illegal. *The following definitions are taken from the Federal Compliance Manual Section 2.1:*

Civil-type juvenile offender. A juvenile offender who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic violations and noncriminal fish and game violations.

Federal Ward. A juvenile who is in the custody of the federal government. Such juveniles would include undocumented immigrant youth and those youth in the custody of the Bureau of Indian Affairs.

Non-offender. A non-offender is a juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct of the juvenile. These cases are referred to by many names including Children in Need of Services (CHINS), Children in Protective Services (CHIPS), and Families in Need of Services (FINS).

Status offender. A juvenile offender who has been charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. The follow are examples of status offenses:

- Truancy
- Violations of curfew
- Running away
- Underage possession and/or consumption of tobacco products
- Underage alcohol offenses¹

¹ While the federal Compliance Manual lists underage alcohol offenses as “status offenses”, it is often the case that only alcohol offenses by those under age 18 qualify. Alcohol possession and use by adults age 18-20 are crimes punishable under state criminal statutes and are not treated as status offenses.

Minnesota: Non-Offender/Status Offender Definitions

The range of youth who are classified as non-offenders and status offenders under the JJDPa are governed primarily by two chapters in Minnesota Statutes:

1. **Children in Need of Protection or Services;** and
2. **Juvenile Petty Offenders.**

The term “status offense” does not exist in Minnesota Statutes or Rules of Procedure, though the term may be in use among practitioners to describe acts by minors that are illegal by virtue of their age.

Children in Need of Protection or Services

Most youth defined by the JJDPa as non-offenders and status offenders are included in the statutory definition of a **Child in Need of Protection or Services (CHIPS)**. These youth are governed by Minnesota Statutes, chapter 260C (Child Protection) and the *Rules of Juvenile Protection Procedure (Minn. R. Juv. Prot. P.)*.

Within the **definition of CHIPS youth** (Minn. Stat. § 260C.007) are: abused and neglected youth, habitual truants, runaways, youth found in dangerous surroundings, youth who have engaged in prostitution, youth who are incompetent or mentally deficient to proceed in delinquency hearings, and youth who commit delinquent acts before the age of 10.

The Rules of Juvenile Protection Procedure state that these youth are to be adjudicated as Children in Need of Protection or Services—they are not adjudicated delinquent. Court procedures, dispositional options and records handling are different for CHIPS as compared to Delinquency matters.

If the court makes a finding that the statutory grounds set forth in a petition alleging a child to be in need of protection or services are proved, the court shall:

- (a) **adjudicate the child as in need of protection or services** and proceed to disposition...
(*Minn. R. Juv. Prot. P. 40.01*)

There are a variety of other statutes that inform the processing of CHIPS youth including Minnesota Statutes 260A (Truancy); 260.751 to 260.835 (Minnesota Indian Family Preservation Act); 260.515 (Interstate Compact for Juveniles); 260.51 (Interstate Compact on Juveniles); and 260.851 (Interstate Compact on the Placement of Children). Generally, Minnesota’s definitions of non-delinquent youth align with those described in these interstate compacts.

Juvenile Petty Offenses

Rather than status offenders, youth who have committed certain offenses illegal for persons under age 18 are defined as **Juvenile Petty Offenders**. Petty offenses are governed by Minnesota Statutes, chapter 260B (Delinquency) and the *Rules of Delinquency Procedure (Minn. R. Juv. Del. P.)*.

Within the **definition of Juvenile Petty Offenders** (Minn. Stat. § 260B.007) are juvenile alcohol offenses, juvenile controlled substance offenses (possession of small amount of marijuana), tobacco violations, and violation of local ordinances which by its terms prohibits conduct by a child under the age of 18 years which would be lawful conduct if committed by an adult (ie. curfew).

It should be noted that persons aged 18-20 in Minnesota who consume or possess alcohol are not juvenile petty offenders, rather they are adults who may be charged with a criminal misdemeanor.

In addition, certain non-violent acts that would be considered misdemeanors if committed by an adult are also classified as petty offenses when committed by youth. These offenses are referred to as misdemeanor-level juvenile petty offenses. As it relates to misdemeanor-level juvenile petty offenses, a youth's prior record in the juvenile justice system determines whether the offense will be treated as a misdemeanor or a petty offense. If a youth has previously been found guilty of a misdemeanor, gross misdemeanor, or felony offense, or has been found guilty of two or more prior misdemeanor-level petty offenses, the youth may be charged with a misdemeanor instead of a petty misdemeanor (Minn. Stat. § 260B.007, subd. 16(c)(4)).

Most traffic offenses, low level theft, disorderly conduct, disturbing the peace, and low level property damage are examples of offenses which can, and often are, handled as misdemeanor-level petty offenses rather than as misdemeanors. There are, however, some misdemeanors which are exempt from being reduced to a misdemeanor-level petty offense at any time. These offenses include domestic assault, violation of harassment or restraining orders, arson and indecent exposure. (See Minn. Stat. § 260B.007, subd 16 for a complete list of excluded Misdemeanor offenses).

True petty offenses are behaviors that are illegal for minors but not for adults (tobacco, alcohol offenses, and curfew violations). These are never elevated to misdemeanors nor do they count against youth in their criminal history as it relates to calculating two or more prior misdemeanor level petty offenses.

Youth accused of petty offenses have many of the same procedural safeguards that accused delinquents receive. However, the detention and dispositional options available for petty offenders as compared to delinquent youth are considerably fewer. Youth who are have been found guilty of or have admitted to a petty offense are not adjudicated delinquent.

- Youth who have been found to have committed a juvenile petty offense are **adjudicated as a "juvenile petty offenders"** *not* adjudicated as delinquent youth (Minn. Stat. § 260B.235, subd. 1).

The Minnesota Bureau of Criminal Apprehension (BCA) CriMNet Division maintains the Minnesota Criminal Justice Statute Service (MNCJSS). This on-line search tool allows users to enter an offense category or penalty level and receive a list of all pertinent statutes. According to MNCJSS, there are 970 Minnesota Statute subdivisions that can be prosecuted as Juvenile Petty Offenses (JPO) or Misdemeanor-level Juvenile Petty Offenses.

Juvenile Traffic and Water Traffic Offenses

Juvenile Traffic Offenses and Water Traffic Offenses are governed by Minnesota Delinquency Statute, section 260B.225 and the *Rules of Delinquency Procedure*. Under this statute, a “major traffic offense” is any violation of a state or local traffic law, ordinance, or regulation, or a federal, state or local water traffic law.

The juvenile court has original jurisdiction over the following traffic matters:

- all juveniles age 15 and under alleged to have committed any traffic offense; and
- 16- and 17-year-olds alleged to have committed any major traffic offense, *except that the adult court has original jurisdiction over:*
 - *Petty Traffic Misdemeanors;*
 - *Driving While Impaired.*

Minnesota Statutes, section 260B.225 subd. 9 makes clear that violations of road and water traffic are not delinquency matters unless the vehicle use was also criminal in nature. If there was a delinquency connected to the traffic offense, all due process afforded accused delinquents would apply.

A child who commits a major traffic offense shall not be adjudicated delinquent. Furthermore, subdivision 10 states that “the juvenile court records of juvenile highway traffic offenders and juvenile water traffic offenders shall be kept separate from delinquency matters.”

- Youth who commit a major traffic offense shall be **adjudicated a "juvenile highway traffic offender" or a "juvenile water traffic offender,"** as the case may be, and *shall not be adjudicated delinquent* (Minn. Stat. § 260B.225, subd. 9).

According to MNCJSS, many statutes that pertain to the equipment or operation of other motorized vehicles can also be petty offenses. As an example, off-highway motorcycles, ATVs, and snowmobile violations may be charged as juvenile petty offenses.

Game and Fish Laws

Minnesota Statutes, chapters 97A (Game and Fish), 97B (Hunting) and 97C (Fishing) collectively constitute Minnesota’s *Game and Fish Laws*. Under section 97A.051, the commissioner of natural resources is to publish and make available a summary of the hunting and fishing laws and rules, and subdivision 4 states that the rules have force and effect of law. Violation of a rule has the same penalty as a violation of the law under which the rule was adopted.

Minnesota Statutes, section 97A.301, *General Penalty Provisions*, states that a person who buys, sells, transports or possesses a wild animal in violation of the game and fish laws; aids or assists in committing the violation; knowingly shares in the proceeds of the violation; fails to perform a duty or comply with a requirement of the game and fish laws; knowingly makes a false statement related to an affidavit regarding a violation of the game and fish laws; **or violates or attempts to violate a rule under the game and fish laws is guilty of a Misdemeanor**. Certain fish and game acts are elevated to Gross Misdemeanors under Minnesota Statutes, sections 97A.331 and 97A.335.

As such, an adult or a juvenile who violates game and fish laws in Minnesota are not handled as civil matters, rather would be charged criminally. The Minnesota Offense Code table has several charging codes available for the violation of animal, fish and bird conservation laws.

According to MNCJSS, many statutes that pertain to Fish and Game, Hunting, and other environmental laws may be charged as petty offenses, rather than as Misdemeanors when committed by juveniles.

- Fish and Game rules in Minnesota have the full effect of law. Most violations of game and fish laws are misdemeanor level offenses for which both adults and juveniles can be cited.

Federal Wards

Under the JJDP, federal wards include youth in federal custody, namely for undocumented residency in the United States, and youth who are in the custody of the Bureau of Indian Affairs. It is specified by the JJDP that these are non-delinquent youth absent any delinquency charges. Minnesota statutes and rules do not expressly address detention or custody requirements for non-delinquent youth under federal control, however court jurisdiction and facility licensing standards provide some insight as to how these youth are classified.

American Indian Youth: Public Law 280 Tribes

Minnesota is a “Public Law 280 state” meaning, under federal law, state district courts have been given jurisdiction over delinquency and criminal matters committed by Indians and non-Indians in nine of Minnesota’s eleven federally recognized tribal communities. In non-delinquency cases, including child welfare matters, tribal courts retain original jurisdiction over any child placement or custody proceeding provided they have a functional judiciary. If a child welfare matter is being handled in the state courts and is petitioned by a county social services agency, the federal Indian Child Welfare Act (ICWA) requires that the youth’s tribe be contacted to advocate for and have an active voice in the proceedings.

Under ICWA, (which does not apply to *delinquent* Indian youth), non-delinquent Indian youth in temporary custody for child welfare matters are to be placed in least restrictive foster care setting necessary. The preferred locations for foster care are with extended family members; foster homes licensed by the youth’s tribe; or an institution for the placement of children approved by the Indian tribe that preserves their unique cultural values and traditions.

Emergency removal of an Indian youth from an off-reservation residence is permitted under ICWA within the parameters of State law provided the removal is: to prevent imminent physical damage or harm to the child; is for a duration no longer than is necessary to restore the youth’s safety; and results in the transfer of jurisdiction to the tribal judiciary in a timely manner. These youth meet the definition of CHIPS youth under Minnesota Statutes.

American Indian Youth: Non-Public Law 280 Tribes

Two tribal communities, the Red Lake Band of Chippewa and the Bois Forte Band of Chippewa (Nett Lake and Vermillion Reservations) are not under Public Law 280. As such, they maintain their own tribal courts; prosecute their own delinquency and criminal matters of persons residing within reservation boundaries; and maintain their own Indian child welfare divisions.

Red Lake appoints and employs their own law enforcement division versus Bois Forte that has a police department operated by the Bureau of Indian Affairs/Office of Law Enforcement Services. Minnesota state laws do not apply to these tribes such that they may form their own laws related to child placement provided they are in accordance with ICWA. Again, non-delinquent Indian youth from non-Public Law 280 tribes would meet the statutory definition of CHIPS youth, were the state to have jurisdiction, and Minnesota licensing rules for facilities would classify these youth as CHIPS youth for admission determination purposes.

Undocumented Immigrants

Immigrant youth pending deportation or other interventions are typically in the custody of federal Immigration and Customs Enforcement (ICE). While ICE has some intergovernmental contracts with local adult and juvenile facilities in Minnesota for the detention of undocumented persons, unaccompanied minors may be transported to the International Children's Center (ICC) in Chicago Illinois pending the outcome of their case. This is a juvenile facility licensed by the Illinois Department of Children and Family Services as a Child Care Institution. ICC operates under a Cooperative Agreement with the Office of Refugee Resettlement (ORR) to serve unaccompanied immigrant children.

As was stated previously, Minnesota Statutes do not comment on the appropriate placement of undocumented youth. If a youth's only reason for detention is their immigration status (not an additional delinquency matter) Minnesota licensing rules for facilities would classify these youth as CHIPS youth for admission determination purposes.

SECTION SUMMARY

1. Status and non-offenders, as defined by the JJDPA, predominantly fall under Minnesota's statutes related to Children in Need of Protection or Services and Delinquency.
2. **Children who are in Need of Protection or Services**, which includes neglected and abused youth, habitual truants and runaways, and youth committing delinquent acts before the age of 10 **are to be adjudicated as CHIPS and are not adjudicated delinquent.**
3. Minnesota does not have "status offenders" as are named in the Federal Act, rather laws that are violated by virtue of age are considered **petty offenses**. These include youth who have violated liquor, tobacco, small amount of marijuana possession statutes, and local curfew ordinances. While petty offenders are under the Delinquency Chapter in statute and procedure, the statutes clearly state that **petty offenders shall not be adjudicated delinquent.**
4. While juvenile traffic and watercraft offenses are also addressed under the Delinquency Chapter in statute, terminology clearly states that **these youth are to be adjudicated as "highway traffic offenders" or "water traffic offenders" and not as delinquents.** The juvenile court has jurisdiction over all traffic offenders ages 15 or younger and all major traffic offenses committed by youth ages 16 and 17. The adult court has original jurisdiction over Petty Misdemeanor level traffic offenses and vehicle operation under the influence.
5. While noncriminal wildlife violations can be considered "civil matters" under the Federal Act, Fish and Game Statutes and Rules in Minnesota are punishable as misdemeanors and gross misdemeanors and are listed in Minnesota Criminal Code. As such, a violator may receive a citation or be required to appear in delinquency/criminal court in response to a fish, game or other conservation law violation.
6. Minnesota has a broader classification of non-offenders and status offenders than the JJDPA because of the misdemeanor-level juvenile petty offender designation. Many offenses that in other states could be considered misdemeanor delinquency because they are also illegal for adults are reduced to petty offenses in Minnesota, which limits dispositional options.
7. Minnesota Statutes do not expressly provide direction on holding non-delinquent Federal Wards for illegal residency or those under the authority of the Bureau of Indian Affairs for non-delinquent matters.

ACTION FOR FULL COMPLIANCE

1. Clarify in statute or rule where non-delinquent federal wards and undocumented youth are to be detained. The JJDPA requires that these holds be non-secure. If they must be held securely, the hold can only be in a juvenile facility and cannot exceed 24 hours exclusive of weekends and holidays.
2. Consider decriminalizing fish and game violations committed by youth, currently charged as Misdemeanors.

Place of Detention

JJDPA: Place of Detention

The Juvenile Justice and Delinquency Prevention Act **prohibits holding status offenders and non-offenders in secure facilities**, juvenile or adult. While exceptions are made for secure holding in juvenile facilities, the Act explicitly states that these youth may not be held securely in adult jails or lockup for any length of time:

- “Juveniles who are not charged with any offense and who are aliens or alleged to be dependent, neglected, or abused *shall not be placed in secure detention facilities or secure correctional facilities*” (CM § 1.1).
- “A status offender, non-offender, alien juvenile, or civil-type juvenile offender cannot be securely detained for any length of time in an adult jail or lockup” (CM § 2.4).
- “OJJDP regulations allow a facility to hold an accused status offender in a secure juvenile detention facility for up to 24 hours, exclusive of weekends and legal holidays, prior to an initial court appearance and for an additional 24 hours, exclusive of weekends and legal holidays, immediately following an initial court appearance. (CM § 3.2)

“A secure juvenile detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders” (CM § 8).

Non-delinquent juveniles *may* be detained in a non-secure area of an adult jail or lockup for processing, while awaiting transportation to a non-secure shelter care facility or a juvenile detention center, or while waiting release to a parent or guardian (CM § 2.3).

Minnesota: Taking Youth into Custody

Minnesota Statutes, sections 260C.175 and 260B.175, inform taking non-delinquent youth into custody.

Both sections assert that “no child may be taken into immediate custody” unless: There is a court order with a finding that a youth is in surroundings that will endanger a child’s health, safety, or welfare; a minor is at imminent risk to perpetrate domestic abuse; or if there is a warrant for contempt of court or failure to obey a subpoena/summons. The delinquency code also allows for taking youth into immediate custody in accordance with the laws relating to arrests or when there is reasonable cause to believe that the youth has violated the terms of probation, parole or other field supervision.

➤ Provisions Specific to Child Protection Custody:

Minnesota Statutes, section 260C.175 further allows a peace officer to take a youth into custody when a child has (or there is reason to believe a child has) **runaway from a**

parent, guardian, or custodian; when a child is found in surroundings or conditions which endanger the child's health or welfare; when it is reasonably believed that the child has violated the terms of probation, parole, or other field supervision; upon failure to appear in court for a habitual truancy or runaway hearing; or to transport youth who are truant from school without lawful excuse to the school, home or truancy center.

➤ Provisions Specific to Petty Offender Custody:

Minnesota Statutes, section 260B.175 further allows a peace officer to take youth into custody in accordance with the laws of arrest. Laws of arrest generally state that an arrest may occur if an illegal act is committed in an officer's presence; if an officer has a warrant to arrest supported by probable cause; or without a warrant if the officer can articulate reasonable cause that an illegal act was committed and the arrested person committed the act (Minn. Stat. §§ 629.34; 629.30).

Minnesota Statutes, section 260B.43 dictates procedure for juvenile petty and misdemeanor offenses. If an officer finds it necessary to take into custody, **one who has committed a petty offense or has committed a delinquent act that would be a petty misdemeanor or misdemeanor if committed by an adult**, in accordance with the laws of arrest, Minnesota Statutes, section 260B.175 applies. Many traffic offenses are included among petty offenses.

Place of Temporary Custody (Detention)

Minnesota Statutes, sections 260C.181, 260B.181, and 260B.225 dictate where the aforementioned CHIPs, petty and traffic offenders taken into custody may be held in detention. The language again begins the same for both the Child Protection and Delinquency Statutes:

"A child taken into custody pursuant to section 260B.175 and 260C.175 may be detained for up to 24 hours in a shelter care facility, secure detention facility, or, if there is no secure detention facility available for use by the county having jurisdiction over the child, in a jail or other facility for the confinement of adults who have been charged with or convicted of a crime in quarters separate from any adult confined in the facility..."

Beyond 24 hours, if further detention is needed and if the youth was taken into custody on a court order or warrant and is not alleged to be delinquent, "the child shall be detained in the least restrictive setting consistent with the child's health and welfare and in closest proximity to the child's family as possible. Placement may be with a child's relative, a designated caregiver under chapter 257A, or in a shelter care facility" (Minn. Stat. § 260C.181, subd. 2).

The Place of Temporary Custody statutes are broad and include the use of secure juvenile and adult detention facilities. However, additional statutes and court rules preclude using secure placement and explicitly direct the use of shelter care facilities for some non-offenders. Examples:

- **Petty Offenders** who have been taken into custody and detained as one who is alleged to be delinquent or a juvenile petty offender by reason of having committed an offense which would not constitute a violation of a state law or local ordinance if the child were an adult; or have been previously adjudicated delinquent or petty offender, conditionally released without adjudication or have violated terms of probation or field supervision in response to delinquent or petty offense which would not constitute a violation of a state law or local ordinance if the child were an adult **may only be placed in a shelter facility** (Minn. Stat. § 260B.181).

This is reinforced by the Rules of Juvenile Delinquency Procedure, rule 5.02 subd. 4 which limits the place of detention for a juvenile petty offender to a child's relative, a designated care giver **or a shelter care facility**.

As such, accused petty offenders; youth violating technical conditions of probation originating from a petty offense; and youth on probation for a petty offense who commit another petty offense can only be detained in a shelter care facility.

- **Traffic Offenders:** Because traffic offenses are a subset of petty offenses, Rule 5.02 subdivision 4 also limits the place of detention for a traffic offender to a child's relative, a designated care giver or a **shelter care facility**.

Detention of Runaways and Habitual Truants

Minnesota Statutes, Section 260C.181, does not clearly state where runaway and truant youth are to be detained. Subdivision 1 implies they may be detained up to 24 hours in a jail, whereas Subdivision 3 states that youth who have been adjudicated in need of protection or services or have been conditionally released or have violated terms of probation or field supervision as a runaway or habitual truant **may only be placed in a shelter facility**. It is unclear because of comma placement and dangling phrase whether or not the shelter facility requirement applies to first time truants and runaways. Furthermore, Subdivision 3 is entitled "Placement" which is a term usually reserved for post-adjudication. Until this statute is clarified, practitioners may differ in their interpretation of whether runaway and truant youth may be detained securely for up to 24 hours under Minnesota statutes.

Shelter Care Facility Defined

Shelter care facilities in Minnesota are non-secure settings. In both Child Protection and Delinquency Statutes, a shelter care facility is defined as: "**a physically unrestricting facility**, such as, but not limited to, a hospital, a group home, or a licensed facility for foster care, used for the temporary care of a child pending court action" (Minn. Stat. §§ 260C.007, subd. 30; 260B.007, subd. 15).

All Other Child Protection Matters: Emergency Protective Care

Youth who are taken into custody under Minnesota Statutes, section 260C.151 subd. 6 (court findings based on a petition of surroundings or conditions which endanger the child's health, safety, or welfare), section 260C.154 (failure to appear on summons/avoiding personal service/contempt), or section 260C.175 (found in unsafe conditions; runaway/habitual truant; violation of terms of supervision) are deemed to be in “**Emergency Protective Care**”. These may also be called “72 hour holds” or “Health or Welfare Holds”.

According to Advisory Committee Comments in the Rules of Juvenile Protection Procedure, a child taken into emergency protective care **should never be held in secure detention** (following rule 28.01).

When the court makes an order for emergency protective care, it must be signed by the judge and must “order the child to be taken to an appropriate *relative*, a *designated caregiver* pursuant to Minnesota Statutes, section 260C.181, or a **shelter care facility** designated by the court pending an emergency protective care hearing...” (rule 28.03(a)). A child taken into custody for Emergency Protective Care must have a hearing before a judge within 72 hours of being taken into custody, excluding Saturdays, Sundays and legal holidays (rule 29.01).

Non-Delinquent Youth Under Tribal Court Jurisdiction and Federal Wards

Facilities Licensed By the State of Minnesota

Because non-delinquent Indian youth and non-resident youth detained only on their immigration status have committed no violation of state law, their admission to state licensed facilities would be subject to the same criteria as any other non-delinquent youth according to the Minnesota Department of Corrections Licensing Inspection and Enforcement Unit. Neither tribal courts nor Federal Courts may order the secure holding of a non-offender that is inconsistent with Minnesota facility licensing rules in a state licensed facility. As such, these youth could again be held securely for no longer than 24 hours before being moved to an appropriate less-restrictive shelter or foster care setting. Failure to comply with these holding limitations could jeopardize an individual facility's operating license.

Non-State Licensed Facilities

At present, no Minnesota tribes other than the Red Lake Band of Chippewa operate their own secure juvenile facility. Because Red Lake is a non-Public Law 280 tribe, child placement rules codified in state statute and rules of procedure do not apply.

The Juvenile Code section of the Red Lake Band of Chippewa Indians Tribal Code makes a distinction between Delinquent offenses (those that would be violations of the Red Lake Reservation Criminal Code for Adults) and Neglected and Dependent Youth. There are also

definitions for Habitual Truants, Runaways, Juvenile Petty Misdemeanors (Section 700.01) and Curfew (700.06A). The place of detention for juveniles (700.15) is to be in a “suitable place designated by the court for foster care” or “a room entirely separate from adult in a jail, police station or other facility for the detention of adults. **A child may be detained in such a facility only if he is alleged to be delinquent, to have violated the terms of his probation, parole or other field supervision** and if the child's habits, conduct or condition constitute a menace to him/herself to the extent that he/she cannot be detained in any available foster care facilities”. As such, Tribal Code appears to preclude the use of secure detention in any setting for non-delinquent youth.

Minnesota Detention Duration: Non-Delinquents

Any youth who is taken into custody and detained as one alleged or adjudicated to be a Child in Need of Protection or Services must have an Emergency Protective Care (EPC) Hearing within 72 hours of being taken into custody, excluding weekends and holidays (Minn. Stat. § 260C.178, subd. 1 (a); *Minn. R. Juv. Prot. P.* 30.01, subd. 1).

In the event a non-delinquent youth is held in secure juvenile detention or a secure adult jail or lockup, the youth must be transferred to a least restrictive setting within 24 hours (Minn. Stat. § 260C.181, subd. 1). Language in the statute does not presently appear to have any exclusion for weekend or holiday time.

SECTION SUMMARY

1. Minnesota Statute, section 260C.181 subdivisions 1 and 2 state that alleged non-delinquents can be held in a secure juvenile facility or, if there is no juvenile facility, an adult jail or lock-up for up to 24 hours. *It appears, based on a comparison to other statutes that specifically include an exception for weekends and holidays, that this 24-hour period does not include an exception for Saturdays, Sundays or legal holidays. (See, for example, 260C.176, subd. 2(b) which does include the phrase “Saturdays, Sundays and holidays” when referring to the 72-hour time limit).* After 24 hours, they must be placed in the least restrictive setting such as with a relative or in a shelter care facility.
2. Additional statutes and rules dictate specifically that juvenile petty offenders and traffic offenders may only be placed in shelter care facilities.
3. Minnesota Statute, section 260C.181 Subdivision 3 is not clear. As written, practitioners may disagree on whether it precludes the use of secure detention for 24 hours for runaways and truants and, whether the statute applies to first time runaways/truants or only those previously adjudicated.
4. Any youth placed in Emergency Protective Care (EPC) should not be placed in a secure facility, according to the comments in the Rules of Juvenile Protection Procedure.
5. Minnesota Statute is in direct conflict with the letter of the JJDPa in that youth taken into custody for non-delinquent CHIPS matters may, under section 260C.175, be securely detained for up to 24 hours in an adult jail or lock-up.

ACTION FOR FULL COMPLIANCE

1. Minnesota Statute, section 260C.181 is in direct conflict with the JJDPa in that it allows, under certain conditions, non-offenders to be held in adult jails or lockups. Section 260C.181 must be amended to remove secure adult facilities as a place to detain juvenile non-offenders.
2. For full compliance with the JJDPa, Minnesota Statute, section 260C.181 would need to be amended to clarify that the use of secure juvenile detention for all non-offenders (CHIPS youth) must be limited to 24 hours exclusive of weekends and holidays.
3. Language in the Rules of Juvenile Protection Procedure that states youth “should” never be held securely for Emergency Protective Care ought to be strengthened to prohibit a secure hold in any adult facility and that it be limited to 24 hours in any juvenile facility.

Allowable Exceptions

JJDPA

The JJDPA makes several exceptions for holding status offenders securely. These are: if a youth is found in possession of a handgun; is being held in accordance with an Interstate Compact related to runaway youth from another state; is a federal ward; or if a youth is held under a Valid Court Order (VCO). All of these holds, except for handgun possession, are limited to a juvenile facility.

JJDPA: Handgun Possession by a Minor

The Youth Handgun Safety Act (18 U.S.C. 922(x)) **prohibits possession of a handgun by a minor under the age of 18**. There are exceptions to this act such as using a handgun in a gun safety course or hunting under the supervision of an adult. Because the Youth Handgun Safety Act applies only to juvenile offenders and handgun possession, in most cases, would not be a crime if committed by an adult, it fits the definition of a status offense. However, the Violent Crime Control and Law Enforcement Act of 1994, Subtitle B, Youth Handgun Safety, amended the JJDP Act to provide that **juveniles who violate the Youth Handgun Safety Act or a similar state law can be placed in secure detention or secure correctional facilities without violating the DSO requirement**. Because of this exception to the JJDP Act, violations of the Youth Handgun Safety Act or a similar state law can be considered either status offenses punishable by detention or confinement, or delinquent acts.

Minnesota: Handgun Possession by a Minor

Minnesota Statutes, section 624.713 makes it illegal for a minor to possess a pistol or semi-automatic military-style assault weapon unless the minor (1) is in the actual presence or under the direct supervision of a parent or guardian; (2) is possessing it for military drill purposes; (3) is using it in an approved and supervised target practice range; or (4) has completed a state-approved marksmanship and safety course. Violation of this statute is a **felony** such that, even though it is illegal by virtue of age, it would be prosecuted as a delinquency matter. As such, Minnesota statute allows the secure holding of these youth.

JJDPA: Interstate Compact on Juveniles

The JJDPA states that youth who are runaways from another state, if held pursuant to the Interstate Compact on Juveniles enacted by the state, are excluded from the DSO requirements (*CM § 3.2*). While these holds must be reported to the OJJDP, they are not counted against the state as violations of the Deinstitutionalization of Status Offenders requirement.

Minnesota: Interstate Compact on Juveniles

The Interstate Compact on Juveniles (IJC) is an agreement pertaining to the legally authorized transfer of supervision and care, as well as the return of juveniles from one state to another, which has been adopted by all member states that have enacted legislation in substantially the same language.

In 2010, the Minnesota legislature adopted the Interstate Compact for Juveniles (Minn. Stat. § 260.515), as has been adopted by over forty other states including most states that neighbor Minnesota. The ICJ establishes procedures and protections for youth on probation and/or parole and the return of runaways.

The Interstate Commission for Juveniles have published Rules which all member states agree to abide by as it relates to juvenile supervision and transfer. Section 600 relates to the return of juveniles to their home state. As it relates to non-offenders, they may be released to a parent or guardian within the first 24 hours (excluding weekends and holidays) of custody unless abuse or neglect is suspected by the holding authorities. If a non-delinquent youth is held in custody longer than 24 hours (excluding weekends and holidays), **the holding state's ICJ Office must be contacted**. The ICJ does allow for runaway youth to be held in secure facilities if they are a danger to self or others until returned by the home state. As such, the present rules of the ICJ permit secure detention of out-of-state runaway juveniles in excess of 24 hours (excluding weekends and holidays) under certain circumstances. If the youth does not voluntarily agree to return to the home state, the home state must petition the holding state for a requisition and a hearing must occur within thirty days.

While the ICJ holding allowance supersedes the JJDPA, it does not supersede Minnesota DOC licensing rules. In other words, if a police department is licensed to detain youth for 6 hours or 24 hours, the ICJ does not extend the time the youth can remain in that particular facility. Instead the youth must be moved to a facility where longer detention is allowed. According to best practices, ICJ youth would ideally be transferred to a juvenile facility.

JJDPA: Federal Wards

The JJDP Act states that "juveniles ... who are aliens shall not be placed in secure detention facilities or secure correctional facilities" however a hold up to 24 hours is allowable. **Federal wards held beyond 24 hours in state and local secure detention and correctional facilities** pursuant to a written contract or agreement with a federal agency and for the specific purpose of affecting a jurisdictional transfer or appearance as a material witness or for return to their lawful residence or country of citizenship **must be reported as violations of the deinstitutionalization of status offenders requirement (CM § 3.2).**

Minnesota: Federal Wards

Minnesota statutes have no information on custody and detention of non-delinquent Federal Wards. The presumption is that holding limitations which apply to other non-delinquent youth would also apply to federal wards.

JJDPA: Valid Court Orders (VCO)

The Valid Court Order Exception provides that **adjudicated status offenders found to have violated a valid court order may be securely detained in a juvenile detention or correctional facility**. The JJDP Act of 2002 defines a valid court order as a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to such order; and who received, before the issuance of the order, the full due process rights guaranteed to such juvenile by the Constitution of the United States. It is important to note that status offenders who violate a valid court order cannot be held securely in an adult jail or lockup for any length of time (*CM § 3.2*).

Youth who are held under a VCO in a secure facility have numerous procedural safeguards:

- An appropriate public agency must promptly be notified that the juvenile is held in custody for violation of the order;
- Not later than 24 hours during which the juvenile is held, an authorized representative of the agency shall interview the youth *in person* and;
- Not later than 48 hours (excluding weekends/holidays) during which the juvenile is held,
 - The representative must submit an assessment regarding the immediate needs of the juvenile; and
 - The court shall conduct a hearing to determine whether there is reasonable cause to believe the juvenile violated the order and the appropriate placement of the juvenile pending disposition of the alleged violation (*CM § 3.2*).

➤ **A note about the VCO:** The JJDP Act of 2002 is currently up for reauthorization in congress. It is anticipated that in the next iteration, the VCO exception will be phased out over a period of three years. As such, non-delinquents held in excess of 24 hours, even for contempt of a prior court order, would become DSO violations.

Minnesota's Valid Court Order: The Hammergren Warning

Youth who are adjudicated CHIPs, especially runaways and habitual truants, may receive as a part of their adjudication (or as a result of on-going non-compliance with court expectations) what is known as the *Hammergren Warning*.

A 1980 Minnesota Supreme Court case, *State ex rel. L.E.A. v. Hammergren*, 294 N.W.2d 705 (Minn. 1980) concluded that **non-delinquent youth could not be placed in secure detention without having been given a warning that they could be detained as a result of Contempt of Court**. In order for the juvenile court to find a "willful failure to comply" which warrants holding of contempt, a record from a previous hearing must show that child understood that disobedience would result in incarceration in a secure facility.

As such, **no runaway or truant youth can be securely detained unless they have had a prior court appearance and received the Hammergren Warning verbally from a judge**. Minnesota court jurisdictions vary in the degree to which they use the Hammergren exception.

A youth *securely* detained on the Hammergren VCO would require a detention hearing within 36 hours (excluding weekends and holidays), just as would other accused delinquent youth, rather than the 72 hours afforded youth held in Emergency Protective Care. At that detention hearing, the professional responsible for monitoring the youth's supervision (typically probation or social services) would have to submit a document that establishes probable cause to believe that the youth acted in contempt of the court order warranting the detention.

Minnesota does not have an in-person interview requirement within 24 hours, or a report requirement describing the immediate needs of the child. As such, Minnesota does not have all the procedural safeguards the JJDPa requires in order to detain non-delinquents in secure facilities and not have them be counted as VCO violations.

- If the federal VCO exception is phased out, all secure Hammergren holds in excess of 24 hours (excluding weekends and holidays) would have to be reported by Minnesota to the Office of Juvenile Justice and Delinquency Prevention as violations of the DSO requirement.

SECTION SUMMARY

1. Minnesota aligns with the JJDPa in that youth who have been found in possession of a handgun may be charged with a felony and therefore are eligible to be held under delinquency rules in a secure juvenile facility or in an adult facility.
2. Minnesota does have an Interstate Compact whereby runaway youth from other states may be returned to their home state. These youth may be held securely according to the ICJ if they are a risk to self or others or are refusing voluntary return to their home state.
3. Minnesota has a Valid Court Order exception (VCO) to hold non-delinquents securely. Non-delinquent youth who have received the Hammergren Warning from a judge, which includes notification that failure to abide by the court's order will result in Contempt of Court, can be detained in a secure facility for non-compliance with the court order once the warning has been given.
4. The federal VCO exception requires certain procedural safeguards for these youth within a 24- and 48-hour time limit, namely an in-person interview and an assessment of the child's needs submitted to the court. These protections are not in Minnesota statutes or rules.

ACTION FOR FULL COMPLIANCE

1. Modify Rules of Juvenile Delinquency Procedure to implement the JJDPa procedural safeguards for youth held in secure detention on contempt of court (Hammergren) to include a 24-hour interview and an immediate needs of the child assessment report.
2. Ensure that non-offenders securely held in adult or juvenile detention appear in court or are transferred to the "least restrictive setting to meet the child's health and welfare" within 24 hours of admission. This could potentially be enforced by the Department of Corrections' Inspection and Enforcement Unit.

Post-Adjudication Dispositions and Supervision Violations

JJDPa: Dispositions and Violations

Not surprisingly, since the JJDPa prohibits the secure holding of non-delinquents prior to a due process hearing (detention status), it also prohibits the use of secure facilities as a part of a disposition on a non-delinquency matter. “Status offenders cannot be securely detained after adjudication...” (CM § 3.2).

Also, the JJDPa states that a status offender who fails to appear in court cannot be “upgraded” to a delinquent offender based on their failure to appear—they remain status offenders (CM § 3.2).

Similarly, status offenders who violate probation (by committing another status offense) remain status offenders (CM § 3.2).

Minnesota

Supervision Violations/Failure to Appear

Juvenile Petty Offenders

According to Minnesota Rules of Juvenile Delinquency Procedure, a Petty Offender or Traffic Offender detained on a warrant for committing another petty level offense or traffic offense or, for failing to appear after having been served personally with a subpoena may be taken into immediate custody (rule 4.03, subd. 3). Consistent with the JJDPa, **the child remains a petty level offender and can only be detained as a new petty offender would be: in a shelter care facility** (rules 4.03, subd. 4 and 5.02, subd. 4). This also applies to Petty Offenders who have been detained in response to a violation of their supervision or conditional release as a petty offender (Minn. Stat. § 260B.181, subd. 3 (2)). Failure to heed a summons or subpoena is an act for which a youth can found in contempt of court or for which a warrant may be issued for their arrest (Minn. Stat. § 260B.154).

Children in Need of Protection or Services

Likewise, under Minnesota Child Protection Statutes, section 260C.154, a youth may be in contempt of court and an order issued for their arrest if they fail to appear for a summons or subpoena. Child Protection Statute, section 260C.175, states youth who are Children in Need of Protection or Services can also be taken into custody for a failure to appear to a summons and “when it is reasonably believed that the child has violated the terms of probation, parole, or other field supervision” (Subd. 1(3)). **These youth remain Children in Need of Protection or Services and are to be detained as a youth in Emergency Protective Care. Rules of Juvenile Protection Procedure state that these holds should be non-secure. One condition, where a CHIPS youth has previously appeared in court and has received notice from a judge that subsequent contempt of the court’s orders can result in secure placement, allow for a secure detention hold.**

Juvenile Court Dispositions

Youth adjudicated for Petty Offenses and Traffic Offenses are not placed out of the home in Minnesota. Youth adjudicated CHIPS may be placed out of the home, but not in a secure facility. Both chapters 260B and 260C of Minnesota Statutes and the Rules of Juvenile Procedure dictate the dispositional options available to the juvenile bench.

Juvenile Petty Offenders

Petty offenders may not be placed out of the home (secure or non-secure) as a disposition when adjudicated a Petty Offender. Minnesota Statutes, section 260B.235 list the dispositional options available which include fines, community work service, six months probation, driver's license suspension, and outpatient treatment or awareness classes.

Under only one circumstance, in the case of a youth's third or subsequent alcohol or controlled substance offense, may the court order a chemical dependency evaluation and, if warranted by the evaluation, order the participation in *inpatient or outpatient chemical dependency treatment* (260B.235, subd. 6). In Minnesota, however, all residential chemical dependency treatment programs are licensed by the Minnesota Department of Human Services (not the Department of Corrections) and are non-secure.

Juvenile Traffic Offenders

As with Petty Offenders, juvenile highway traffic offenders and juvenile water traffic offenders **cannot be placed out of the home as a part of disposition**. Dispositions include suspension of license, safety courses, fines, probation, driving and boating restrictions, and restitution for damages. If the offense is related to driving while impaired, the youth may be required to take a chemical dependency assessment, alcohol safety courses, and comply with the recommended levels of care revealed by the assessments (Minn. Stat. § 260B.225).

CHIPS Youth, Habitual Truants and Runaways

If a child is adjudicated in need of protection or services, the child may remain in their home under the protective supervision of a social services agency, may be placed with a non-custodial parent; or legal custody may be transferred to a child placing agency for foster care placement, including with relatives (Minn. Stat. § 260.201, subd. 1 (5)(b)).

If the child was adjudicated in need of protection or services because the child is a runaway or habitual truant, all of the aforementioned dispositions may occur. If necessary, custody may be transferred to a "reputable person of good moral character," to a social services agency, or to county probation for placement in a group foster home. Many other consequences are also available to the court including work service, fines, and suspension of driver's license, but no dispositions involve placing youth in a secure facility.

SECTION SUMMARY

1. Minnesota's response to supervision violations and failure to appear for CHIPS youth and Petty Offenders are consistent with the JJDPA in that they cannot be elevated to delinquency matters.
2. Minnesota's dispositional options for CHIPS youth are consistent with the JJDPA in that court placement options are limited to non-secure settings.
3. Minnesota's dispositional options for Petty Offenders are consistent with the JJDPA in that out of home placements are not allowed for Petty Offenses alone.

ACTION FOR FULL COMPLIANCE

No additional action is required in this area for compliance with the JJDPA.

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Protection 2: Jail Removal Requirement

Overview

Under the Jail Removal requirement of the JJDP, the focus shifts from non-offenders to delinquent youth or “criminal type offenders.” The JJDP states that “no juvenile shall be detained or confined in any jail or lockup for adults....”

Whereas the DSO requirement prohibits any holding of non-offenders for any length of time in an adult jail or lockup, **this section applies to “criminal type” or “delinquent youth”; both accused and adjudicated** (definitions below). The JJDP provides several exceptions that allow for the temporary detention of criminal type offenders in adult jails and lockups.

There are three exceptions to the Jail Removal Requirement: (*CM § 1.3*)

- A period **not to exceed 6 hours** for processing or release, while awaiting transfer to a juvenile facility, or in which period such juveniles make a court appearance, and only if such juveniles do not have contact with adult inmates.
- An exception for alleged delinquent offenders to be **held for up to 48 hours (excluding Saturdays, Sundays, and legal holidays)** if certain facility criteria/travel conditions are met.
- An exception for juveniles **waived or transferred to a criminal court** (*CM § 2.4*).

Definitions

JJDP Definitions: Delinquent, Jail, Lockup

Criminal-type juvenile offender: A juvenile offender who has been **charged with or adjudicated for conduct that would**, under the law of the jurisdiction in which the offense was committed, **be a crime if committed by an adult** (*CM § 8*).

Secure custody. As used to define a detention or correctional facility, this term includes residential facilities that include construction features designed to **physically restrict the movements and activities of persons in custody** such as **locked rooms and buildings, fences, or other physical structures**. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff (*CM § 8*).

An **Adult Jail** is: A locked facility, administered by state, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than 1 year (*CM § 8*).

An **Adult lock-up** is: Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature that does not hold persons after they have been formally charged (*CM § 8*).

Minnesota Definitions: Delinquent, Jail, Lockup

Minnesota's definition of a delinquent youth is consistent with the federal definition. According to Minnesota Statutes, section 260B.007, subd. 6, a **"delinquent child" is one who has violated any state or local law (with the exception of petty offenses); one who has violated a federal law or a law of another state if the violation would be an act of delinquency if committed in this state or a crime or offense if committed by an adult;** or one who has escaped from confinement at a state or local correctional facility.

A "secure detention facility" for juveniles means a **physically restricting facility**, including but not limited to a jail, a hospital, a state institution, a residential treatment center, or a detention home used for the **temporary care of a child pending court action** (Minn. Stat. § 260B.007, subd. 14).

Facilities that are non-secure may operate secure programs. A **Secure Program** means a residential program offered in a building or part of a building secured by locks or other physical plant characteristics intended to prevent the resident from leaving the program without authorization (*M. R.* 2960.0020, subp. 66).

A "Jail" means a **secure adult detention facility** used to confine sentenced prisoners for a time not to exceed one full year per conviction, confine adult pretrial and presentenced detainees indefinitely, and confine juveniles up to limits prescribed by Minnesota statute and commissioner approval (*M. R.* 2945.0100, subp. 22).

In Minnesota, jail facilities are residential in nature and have five facility classifications depending on allowable length of hold (*M. R.* 2911.02). A Class II Facility which can hold adult both pre- and post sentenced inmates up to 90 days is defined as a "Lockup Facility." This use of the term "Lockup" is inconsistent with that used by the JJDP and can cause some confusion.

According to Administrative Rule part 2911.0200, subp.62 (Jail Facilities) a "secure facility" means a facility that is designed and operated to ensure that **all entrances and exits are under the exclusive control of the facility's staff**. "Perimeter security" means a system that controls ingress and egress to the interior of a facility. The term may also include electronic devices, walls, fences, sally ports, and patrols (*M.R.* 2911.0200, subp. 57).

Municipal police facilities means police facilities including an administrative processing area used to temporarily detain persons for up to six hours. Municipal police facilities are specifically designed to be nonresidential in nature, have either audio or visual capability, would normally not be locked except for routine security reasons, and would be used only long enough for identification, investigation, transfer arrangements, or release to a responsible person (*M.R.* part 2945.0100, Subp. 30).

In Minnesota, **Municipal Holding Facilities** are divided into four classes that limit holding to 4 hours, 16 hours, up to 48 hours and over 48 hours (*M.R.* 2945.0100, subp. 5-8). These facilities are called "Lockups" under the federal definition.

According to the JJDPA, a secure perimeter constitutes secure custody. According to the Minnesota Department of Corrections licensing, a facility must be “brick and mortar” secure in order to be considered a secure facility or a secure program unit.

SECTION SUMMARY

1. Both Minnesota and the JJDPA categorize “delinquent acts” as those acts that when committed by a juvenile would also be illegal if committed by an adult.
2. The JJDPA considers a youth to be in secure custody when physical movement is restricted by locked doors, buildings, fences and other physical structures. As long as a youth is within a secure perimeter, they are in secure custody. Minnesota also considers secure detention to be “physically restricting” and that secure programs and buildings are secured by locks and other physical plant characteristics that prevent a resident from leaving. However, the Minnesota Department of Corrections considers a facility secure if they are “brick and mortar secure”; a fenced perimeter alone is not a secure facility. This causes some conflict in classifying facilities under the JJDPA.
3. Generally the JJDPA’s definition of a jail matches that of Minnesota. In the JJDPA, however, a lock-up is a municipal police detention facility whereas in Minnesota statute a lock-up is a designation given to jails licensed to hold offenders for up to 90 days. In Minnesota, a police lock-up is called a “municipal police facility.” Despite this difference in terminology, Minnesota facilities can be easily categorized by the agency in control of the facility (county jail or municipal police).

ACTION FOR FULL COMPLIANCE

No additional action is required in this area for compliance with the JJDPA.

Initial Detention: Allowable Exceptions

JJDPA: 6 Hour Hold Exception

OJJDP regulations allow for a 6-hour “grace period” that permits the secure detention in an adult jail or lockup of those juveniles accused of committing criminal-type offenses (i.e., offenses that would be a criminal offense if committed by an adult) (*CM § 2.4*). Under the act, an accused or adjudicated delinquent could be detained for up to 6 hours before a court appearance and up to an additional 6 hours after a court appearance, but any hold of an adjudicated delinquent that is not related to a court appearance is a violation of jail removal. Adjudicated delinquents cannot be held for any length of time in adult jails or lockups as a disposition.

JJDPA: Rural Removal Exception (RRE)

The OJJDP allows an extension of the 6 hours to up to 48 hours (excluding weekends and holidays) only prior to an initial court appearance if a facility has pre-approval to do so based on their rural geographic location. In order to qualify for the exception, the geographic area having jurisdiction over the juvenile must be outside a metropolitan statistical area as defined by the US Office of Management and Budget and there must be no existing acceptable alternative placement for the juvenile. In addition, the facility must be able to maintain Sight and Sound Separation between adult and juvenile inmates (JJDPA Protection #3).

Facilities approved for RRE exceptions have for a juvenile awaiting an initial court appearance **additional time** if:

- the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation does not allow for court appearances within 48 hours a delay (not to exceed additional 48 hours) or;
- If the facility is located where conditions adverse to safety exist (e.g., severe, life-threatening weather conditions that do not allow for reasonably safe travel), the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

These extended time periods cannot be used after the initial court appearance. After the initial court appearance, the 6-hour exception applies and the juvenile could be held only for up to 6 hours after a court appearance in order to be transferred or released.

Minnesota's Use of Adult Facilities for Juveniles

Initial Detention

Minnesota Statutes, section 260B.181 dictates where accused delinquent youth may be held. Subdivision 4 expressly states that accused youth may be held in shelter care or secure juvenile detention facilities and, "if there is no secure juvenile detention facility or existing acceptable detention alternative available for juveniles within the county, a child described in this subdivision **may be detained up to 24 hours, excluding Saturdays, Sundays, and holidays, or up to six hours in a standard metropolitan statistical area, in a jail, lockup or other facility used for the confinement of adults** who have been charged with or convicted of a crime..." The Rules of Juvenile Delinquency Procedure 5.02 Subdivision 3 affirm these as allowable places of detention for juvenile delinquent offenders.

Under Minnesota Statutes, section 260B.178 Subd. 2, **if the child is being held at an adult jail or municipal lockup, the court shall hold a detention hearing within 24 hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays.** This is affirmed by the Rules of Juvenile Delinquency Procedure, rules 5.04, subd. 3 and 5.07, subd. 1.

- Minnesota statute is not fully in alignment with the JJDP:
- **Both the JJDP and Minnesota Statutes limit use of adult facilities in MSAs to 6 hours.** However, while the JJDP allows an additional 6 hours after a court appearance, Minnesota allows no extension of the 6 hours for facilities in MSAs.
- Minnesota Statutes are less strict than the JJDP in that **the 24 hour holding allowance has traditionally been granted to all non-MSA counties by the DOC.**
- In order to have the federal RRE extended hold allowance, these facilities must be reviewed and evaluated annually to determine if they meet the Rural Removal Exception (RRE). **If they do meet the RRE, the allowable hold is 48 hours whereas Minnesota Statute limits the hold to 24 hours. In this case the federal act gives facilities a longer hold than state statute.**

Weather/Safe Travel Conditions Exception

Minnesota Statutes, section 260B.185, subd. 2 allows for an extension of detention consistent with the JJDP:

(a) A delay not to exceed 48 hours may be made if the facility in which the child is detained is located where conditions of distance to be traveled or other ground transportation do not allow for court appearances within 24 hours. (also in Minn. Stat. § 260B.176)

(b) A delay may be made if the facility is located where conditions of safety exist. Time for an appearance may be delayed until 24 hours after the time that conditions allow for reasonably safe travel. "Conditions of safety" include adverse life-threatening weather conditions that do not allow for reasonably safe travel.

(c) The continued detention of a child under paragraph (a) or (b) must be reported to the commissioner of corrections.

If a child is held in an adult facility within an MSA, no extension beyond 6 hours is allowable for either the detention hearing or the transfer to a juvenile facility (*Minn. R. Del. P. 5.04 subd. 3(b)*).

Continued Detention

The JJDPa makes it clear that youth who are ordered to secure detention after the initial court appearance are to be transferred from a secure adult facility to a secure juvenile facility.

Minnesota Statutes, section 260B.178 subd. 2 related to the “continuation of detention” states that: If the court determines that the child should continue in detention, it may order detention continued for eight days, excluding Saturdays, Sundays and holidays, from and including the date of the order. Unless a motion to refer the child for adult prosecution is pending, a child who has been detained in an adult jail or municipal lockup and for whom continued detention is ordered, must be transferred to a juvenile secure detention facility or shelter care facility.

The Rules of Delinquency Procedure also restrict continued detention in adult facilities. Under rule 5.04 subdivision 3(A) related to a child taken into custody and held in an adult jail or municipal lockup, it states that if “the court’s decision at the detention hearing is that the child shall remain detained, the child shall be detained at a juvenile facility.”

Minnesota Statutes, however, allows one condition where 8 days of continued detention may occur in an adult facility if there is no juvenile secure detention facility available for use by the county having jurisdiction over the child. If after 8 days detention is still ordered, the youth must be transferred to a secure juvenile facility (Minn. Stat. § 260B.181, subd. 4).

Minnesota Age Restriction on Use of Adult Facilities

The minimum age in Minnesota for a youth to be detained in an adult jail or lockup is 14 years old (Minn. Stat. 260B.181, subd. 4). Youth accused of delinquency ages 13 and under must be held in a juvenile facility. While this is not a requirement of the JJDPa, the age restriction is monitored regularly by the Minnesota Department of Corrections Inspection and Enforcement Unit as a condition of facility licensing.

SECTION SUMMARY

1. Minnesota is more restrictive than the JJDPA on holding youth in jails or lock-up facilities within an MSA. In Minnesota this hold is limited to 6 hours and there are no exceptions or extensions allowed. The JJDPA allows two 6 hour periods (one pre- and one post-initial appearance).
2. Minnesota Statutes and Rules of Delinquency Procedure support the JJDPA in that any secure continued detention must occur in a juvenile facility. One statute however, states that holding a youth in continued detention for one 8 day period is permitted. This portion of the statute is in conflict with the JJDPA.
3. For adult jails outside of MSAs, facilities have 24 hours excluding weekends and holidays to release a youth or arrange a detention hearing. While Minnesota unilaterally grants this time limit, the JJDPA states that facilities must receive a federal Rural Removal Exception.
4. If the RRE is granted to non-MSA facilities, the hold time increases to 48 hours, which is greater than the 24 hour hold allowable under Minnesota Statute. Facilities holding youth in excess of 24 hours are in violation of state law, even if they are not in violation of the JJDPA.
5. The JJDPA has no restriction on the age of a youth admitted to adult jails and police lockups; Minnesota statute states no youth under 14 may be admitted.
6. Minnesota allows for weather and safe travel delays that are consistent with the extensions allowable under the JJDPA.

ACTION FOR FULL COMPLIANCE

1. Modify Minnesota Statutes, section 260B.181, subd. 4 to state that youth in adult facilities who required continued detention must be moved to a juvenile facility consistent with Minnesota Statutes, section 260B.178, subd. 2. Eliminate the statement that continued detention can occur in an adult facility for up to 8 days. Allowing secure detention in an adult facility beyond 24 hours is a violation of the JJDPA.
2. Request that the Department of Corrections license adult facilities for only six hours if there is a secure juvenile alternative in their county, even if the county is outside a metropolitan statistical area. This is consistent with the federal Rural Removal Exception guidelines.

Delinquency Dispositions

JJDPA: Delinquency Dispositions

The JJDPA restricts the use of adult facilities as a disposition for adjudicated delinquent youth:

“In accordance with current OJJDP policy and proposed regulation, the state must assure that **no juvenile offender shall enter under public authority, for any amount of time, into a secure setting or secure section of an adult jail, lockup, or correctional facility as a disposition of an offense or as a means of modifying their behavior** (e.g., Shock Incarceration or Scared Straight)” (CM § 2.5).

Minnesota: Delinquency Dispositions

Minnesota Statutes 260B.198 Subdivision 1 lists the myriad dispositional options judges may use for youth adjudicated delinquent. None of Minnesota’s dispositional options include placement in an adult facility.

The Rules of Juvenile Delinquency Procedure, rule 15.05 subd. 3 states: “Where an out-of-home placement is being considered, the placement should be suitable to the child's needs. A placement that is not suited to the actual needs of the child cannot serve the child's best interests.” Predispositional reports are to explain the reasons why a youth is recommended for either secure or non-secure out-of-home placement based on public safety and the best interest of the child (rule 15.04).

SECTION SUMMARY

1. The JJDPA and Minnesota Statute are in alignment in that secure adult facilities may not be used as a placement or a consequence as a part of a court disposition for youth adjudicated delinquent.

ACTION FOR FULL COMPLIANCE

No additional action is required in this area for compliance with the JJDPA.

Transfer to Adult Court

JJDP: Adult Transfer/Waiver

If **criminal felony charges have been filed against a juvenile** in a court exercising criminal jurisdiction, **the juvenile can be detained in an adult jail or lockup**. The jail and lockup removal requirement does not apply to those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed or to juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

The JJDP also notes that the filing of adult charges does not transform a youth into an adult. The youth may still be placed in a juvenile facility and comingled with juvenile offenders pre- or post-conviction until the state's age of majority at which time, he or she must be separated from the juvenile population within 6 months (*CM § 2.4*).

Minnesota: Adult Certification

When a child is alleged to have committed, after becoming 14 years of age, an offense that would be a felony if committed by an adult, the juvenile court may enter an order certifying the proceeding for action under the laws and court procedures controlling adult criminal violations (Minn. Stat. § 260B.125). Only one criminal offense, 1st degree murder committed after becoming 16 years of age, gives the adult court original jurisdiction (Minn. Stat. § 260B.007, subd. 6(b)).

Several offenses are termed "presumptive" in that it is presumed that the youth will be certified as an adult. These offenses are those for which, if committed by an adult, would carry a presumptive prison sentence of over one year. Also, offenses that involve the display, brandishing, threatening or otherwise employing a firearm are presumptive certifications. A youth must be 16 or 17 at the time of the offense for presumptive certification to apply (Minn. Stat. § 260B.125, subd. 3).

Initial Custody and Continued Detention Pending Certification/Appeal

Under adult Criminal Statutes (Minn. Stat. chapter 641), youth can be detained in an adult jail under several circumstances including:

- the minor **has been referred for adult prosecution and the prosecuting authority has filed a notice of intent to prosecute** the matter for which the minor is being held under section 260B.125 (Certification);
- the **minor is 16 or 17 and has been indicted for murder in the first degree;**
- the minor has been committed to the commissioner of corrections by having received an adult sentence of imprisonment (Minn. Stat. § 641.14).

If a youth has been certified as an adult by the court and is appealing the certification decision, the Minnesota Rules of Juvenile Delinquency Procedure, section 21.03, subdivision 3B states: "If the district

court determines that a certified child should be detained, placement pending appeal shall be governed by Minnesota Rules of Criminal Procedure, rule 6.02, and **detention in an adult facility shall be presumed.**”

Adult Court Traffic Offenses

In the event the adult court (criminal court) has original jurisdiction over a traffic offense, however, Minnesota Statutes, section 260B.225, subdivision 8 states that the youth may only be held in a juvenile facility:

- A juvenile who is charged with an adult court traffic offense in district court shall be treated as an adult before trial, except that **the juvenile may be held in secure, pretrial custody only in a secure juvenile detention facility.**
- A juvenile who is convicted of an adult court traffic offense in district court shall be treated as an adult for sentencing purposes, **except that the court may order the juvenile placed out of the home only in a residential treatment facility or in a juvenile correctional facility.**

Placement Upon Certification

When a youth is certified as an adult, the jurisdiction of the juvenile court is terminated and “all subsequent steps in the case are governed by the Minnesota Rules of Criminal Procedure” (*Minn. R. Juv. Del. P.* 18.08). If there is a finding of guilt in adult (criminal) court, the youth receives an adult sentence and conditions which can include placement in a secure adult facility.

SECTION SUMMARY

1. Consistent with the JJDPa, certain felony level offenses committed by juveniles can be transferred to adult court. During this time, Minnesota allows (but does not require) detention in an adult facility, as does the JJDPa.
2. The JJDPa only allows the use of a secure adult facility for a felony level transfer. This is consistent with Minnesota's statutes which dictate that only felony level offenses can result in adult court certification.
3. The ability to hold a youth in an adult jail in Minnesota begins at the time a motion for adult Certification is filed and continues throughout the certification process including any appeals. This is allowable under the JJDPa because the juvenile is not being held as a delinquent.

ACTION FOR FULL COMPLIANCE

No additional action is required in this area for compliance with the JJDPa.

Note: The JJDPa allows youth certified as adults to be held in a secure juvenile facility until the age of majority plus 6 months. Minnesota Statute presumes that youth certified as adults will serve their sentence in an adult facility, including pending an appeal of their Certification. Minnesota could modify the statutes to allow certified youth to serve their sentence in a juvenile facility until they are age 18 and six months, if that were the most appropriate placement, and still be in compliance with the JJDPa.

Blended Sentencing

JJDPA: Blended Sentencing

The JJDPA acknowledges delinquent offenders and youth who are to be prosecuted as adults, but does not provide direction specifically for blended sentencing where juveniles may have stayed adult sentences or may remain on juvenile supervision past the state's age of majority.

The presumed JJDPA procedure for youth charged with anything less than adult certification would be the requirements applicable to delinquent youth.

Minnesota's Blended Sentencing: Extended Juvenile Jurisdiction (EJJ)

"Extended jurisdiction juvenile" (EJJ) is Minnesota's blended sentencing option intended to retain youth who qualify for adult certification in the juvenile system. Under EJJ, youth can remain under the jurisdiction of the juvenile court until their 21st birthday.

An EJJ designation gives a youth both a juvenile disposition and a stayed adult sentence. In the event an EJJ youth commits a new offense or violates their conditions of supervision, their EJJ status can be revoked with due process, and the adult sentence executed.

In order to be eligible for EJJ designation, youth must have committed a felony level offense while between the ages of 14 and 17. The prosecutor may then either petition the case with an EJJ motion, petition the case with an adult certification motion, or choose to allow the case to proceed in juvenile court. In cases where the offense is a "presumptive certification" and adult certification is not imposed, EJJ designation is the alternative disposition (Minn. Stat. § 260B.130).

Place of Initial and Continued Detention:

When a juvenile is detained on a new offense or an EJJ supervision violation, the normal rules for holding a delinquent youth apply. He or she may be held in a secure juvenile facility or in an adult jail or police lockup under the aforementioned 6 hour and 24 hour rules.

Placement Pending Appeal:

If a youth has been designated EJJ and wishes to appeal the designation, the place of custody must be a juvenile facility. The reasons for the place of detention must be stated on the record, and the detention must comply with Minnesota Statutes, section 260B.176 restricting holding to juvenile facilities (*Minn. R. Juv. Del. P.* 21.03, subd. 3). Only for youth appealing adult Certification is the place of detention presumed to be an adult facility.

Placement Pending EJJ Revocation

Placement pending revocation of one's EJJ status depends on the age of the person at the time of revocation. Since EJJ jurisdiction can extend to age 21, two distinctions are made in statute and in the Rules of Procedure:

Per Minnesota Statutes, section 260B.130, subd. 5,

- If the probationer is under eighteen (18) years of age and is to be detained prior to the revocation hearing, the probationer may only be detained in juvenile a secure detention facility or a shelter care facility.
- If the probationer is eighteen (18) years of age or older and is to be detained, the probationer may be detained in an adult facility.
- This statutory language is also found in the Rules of Delinquency Procedure, Rule 19.11, subd. 1(C).

Placement Upon EJJ Revocation

Upon revocation, the offender's EJJ status is terminated and juvenile court jurisdiction is terminated. "The ongoing jurisdiction for any adult sanction...is with the adult court." (Minn. Stat. § 260B.130, subd. 5 (c-d)). At this time a youth can be transferred to an adult facility to serve the adult sentence.

Also, under the rules of procedure, "Upon revocation of extended jurisdiction juvenile status, the court shall treat the offender as an adult and may order any of the adult sanctions authorized by Minnesota Statutes, section 609.14, subdivision 3." (*Minn. R. Juv. Del. P.* 19.11, subd. 3(1)).

SECTION SUMMARY

1. Minnesota's Extended Jurisdiction Juvenile (EJJ) blended sentencing law is not in conflict with the JJDPA related to detaining delinquent youth.
2. All EJJ processes including initial custody, continued detention, appeal of EJJ designation, and EJJ revocation procedures require that the juvenile be held in a juvenile facility, not an adult jail or lockup. EJJ youth brought into an adult jail or lockup for initial detention are limited to the 6- or 24-hour time limits for delinquency.
3. Adults over age 18 who are pending an EJJ revocation hearing may (but are not required to) be held in an adult facility. Most secure juvenile facilities in Minnesota are licensed to hold youth up to age 20.
4. Once a youth's EJJ status has been revoked, juvenile court jurisdiction ends. At this time, criminal court jurisdiction begins and the stayed adult sentence may be executed. Revoked EJJ youth may be placed in an adult facility with adult offenders. This is also consistent with the JJDPA that youth transferred to adult court can be held in adult facilities.

ACTION FOR FULL COMPLIANCE

No additional action is required in this area for compliance with the JJDPA.

Note: While MN Statute states that a juvenile shall be treated as an adult following EJJ revocation, youth could be held in a secure juvenile facility until 18 years and six months, if that were the most appropriate placement, and not be in conflict with the JJDPA.

Protection 3. Sight and Sound Separation

Adult Jails and Lockups

JJDPA: Sight and Sound Separation

In one of the original provisions of the JJDPA, Congress sought to provide separation between adult inmates and juveniles in institutional settings such as jails, lockups, prisons, and other secure facilities. The JJDPA of 2002, as amended, provides that “juveniles alleged to be or found to be delinquent,” as well as status offenders and nonoffenders, “will not be detained or confined in any institution in which they have contact with adult inmates.” The 2002 Act further requires that “there is in effect in the state a policy that requires individuals who work with both such juveniles and such adult inmates, including in collocated facilities, [to] have been trained and certified to work with juveniles” (*CM § 1.2*).

Under the JJDPA, **separation must be achieved in all secure areas of the facility. Accused or adjudicated delinquent offenders, status offenders, and nonoffenders cannot have contact with adult inmates, including inmate trustees.**

Contact is defined to include **any physical or sustained sight or sound contact**. Sight contact is defined as clear visual contact between adult inmates and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between adult inmates and juvenile offenders.

Sight and sound separation may be accomplished architecturally or through policies and procedures such as time phasing the use of an area to prohibit simultaneous use by juveniles and adults. Brief and inadvertent or accidental contacts between juvenile offenders in a secure custody status and adult inmates in secure nonresidential areas of the facility do not count as violations.

Federal Exceptions:

Age of Majority

A state is not prohibited from placing or transferring an accused or adjudicated delinquent who reaches the state’s age of full criminal responsibility to an adult facility when required or authorized by state law. Likewise, an adult held in an adult jail or lockup for a delinquency proceeding (generally related to a crime committed before reaching the age of full criminal responsibility) can be held securely in an adult jail or lockup because **the adult is not a juvenile** alleged to be or found to be delinquent. As such, sight and sound separation does not apply (*CM § 2.5*).

Transfer to Adult Court

A juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court does not have to be separated from adult criminal offenders. This is due to the fact that such a juvenile is not an accused or adjudicated *delinquent* (i.e., the juvenile is under a criminal proceeding, not a delinquency proceeding). Both types of individuals can be placed wherever the legislature or courts, where authorized, deem appropriate. (*CM §2.5*)

Minnesota: Sight and Sound Separation

Minnesota has implemented the JJDP's sight and sound separation requirements in Statute and Rule for both jails and municipal police lockups. Separation is explicitly stated in juvenile statutes related to the place of temporary custody for youth (Minn. Stat. §§ 260B.181; 260C.181). If youth are to be held in a jail or police lockup, statute states that they must be "in quarters separate from any adult confined in the facility."

Jails

As it relates to jails, Minnesota Statutes, section 641.14 states that a minor and a prisoner over the age of 18 may not keep in the same room or section of the jail **unless**:

- **the minor has been referred for adult prosecution** and the prosecuting authority has filed a notice of intent to prosecute the matter as an adult certification;
- **or the minor has been given an adult imprisonment sentence**;
- **or the minor is 16 or 17 and is indicted for first degree murder** over which the criminal court had original jurisdiction.

Minnesota Statute also prohibits holding a minor under 18 with an Extended Jurisdiction Juvenile 18 years old or older who is alleged to have violated the conditions of the stay of execution revocation (Minn. Stat. § 641.14).

Municipal Police Lockups

Administrative rules related to municipal facilities have a mandatory separation requirement for adult and juveniles (*M. R.* 2945.2500). These rules specifically state that juvenile prisoners must be separated from adult prisoners by sight and sound.

SECTION SUMMARY

1. The JJDP and Minnesota Statute are in alignment in that they both require sight and sound separation between adult and juvenile inmates while in adult jails and police lockups.

ACTION FOR FULL COMPLIANCE

1. Minnesota Statute or Rule ought to be more specific in their definition of "contact" to prohibit clear visual contact and direct oral communication between adult and juvenile inmates in non-residential areas of the facility. This would apply to Minnesota Statutes, sections 260B.181 and 260C.181 and also the Administrative Rules for adult jails and lockups.

Court Holding, Collocated Facilities, Prisons and Mental Health Facilities

The JJDP Act provides guidance on other facilities and situations in which adult and juvenile offenders may come into contact. This section will explore the JJDP Act's commentary on Court Holding Facilities, Collocated Facilities, Adult Prisons, and Locked Mental Health Settings.

JJDP Act: Court Holding Facilities

According to the federal Guidance Manual, a **court holding facility** is a secure, nonresidential facility, that is not an adult jail or lockup, that is used to temporarily detain persons immediately before or after court proceedings (*CM § 8*). Court holding facilities, where they do not detain individuals overnight (i.e., are not residential) and are not used for punitive purposes or other purposes unrelated to a court appearance, are not considered adult jails or lockups (*CM §4.2*).

A status offender or delinquent offender placed in a court holding facility is exempt from the deinstitutionalization requirement if the facility meets the criteria listed in the definition above.

Court Holding Facilities do, however, remain subject to the separation requirements of the JJDP Act.

The separation requirement pertains to status offenders, non-offenders, and alleged or adjudicated delinquent offenders. Youth must be sight and sound separated from adults in secure court holding facilities.

Minnesota: Court Holding

Administrative Rules for court holding facilities falls under chapter 2945 which regulates Municipal Jail facilities. According to rule 2945.01, **Court holding facilities** means those areas where persons are held in conjunction with a court appearance. Court holding facilities *may be secure* but are nonresidential in design, and persons are not normally held there beyond four hours (subp. 13).

Because court holding facilities are under the Rules for Municipal Jails, Sight and Sound separation requirements would apply to secure holding under Administrative Rules, part 2945.2500, subpart 3.

JJDP Act: Collocated Facilities

According to the JJDP Act, collocated facilities are facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds (42 U.S.C. 5603 Sec 103 (28)) (*CM § 8*). Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

- The facility must ensure separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and adult inmates in the facility. Separation can be achieved architecturally or through time phasing of common use nonresidential areas; and
- The facility must have separate juvenile and adult program areas, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility that provides for a full range of separate program services. No program activities may be shared by juveniles and adult inmates. Time phasing of common use nonresidential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns;
- If the state will use the same staff to serve both the adult and juvenile populations, there is in effect in the state a policy that requires individuals who work with both juveniles and adult inmates to be trained and certified to work with juveniles; and
- In states that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no state standards or licensing requirements, OJJDP encourages states to establish administrative requirements that authorize the state to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards. (CM § 4.1)

Minnesota: Collocated Facilities

Minnesota has a small number of facilities where juveniles and adults are held in a related set of buildings; where common areas must be shared through time phasing; and where facility staff may serve both adult and juvenile populations.

Consistent with the recommendations of the JJDP, each program that provides services to juveniles is licensed as its own children's residential program distinct from the adjoining adult facility. As such, all licensing rules and requirements apply to the juvenile program including mandatory trainings related to working with juveniles. Comprehensive rules for staffing patterns and training requirements are under the *Minnesota Rule, Chapter 2960: Licensure and Certification of Programs for Children*.

Because the adult portions of the facilities are separately licensed as adult jails, they must maintain sight and sound separation of the adult inmates from the juvenile residents under the aforementioned Minnesota Statutes and Rules.

JJDPA: Adult Prisons

Technically, the scope of the JJDPA does not extend into adult prisons, as it is limited to adult jails and lock-ups. The JJDPA prohibits holding non-offenders or status offenders in any adult facility however, technically, an alleged or accused delinquent could be held in an adult prison provided sight and sound separation was maintained (*CM § 4.3*). If the youth was convicted of an adult charge, they may be held in a prison with no restriction and no sight and sound separation requirement.

Minnesota: Adult Prisons

Minnesota Statutes, section 242.14 (Corrections; Juveniles) prohibits the commissioner of corrections from placing any child committed by a juvenile court in a penal institution.

Minnesota Statutes, section 242.41 establishes the Minnesota Correctional Facility-Red Wing as the location to place juvenile offenders committed to the commissioner of corrections.

JJDPA: Secure Mental Health Treatment

A juvenile committed to a mental health facility under a separate state law governing civil commitment of individuals for mental health treatment or evaluation would be considered outside the class of juvenile status offenders and non-offenders. There are no restrictions to placing delinquent offenders in a mental health treatment unit. **The separation requirement does not apply if the juvenile and adults are held in a mental health facility** solely because of a mental health civil commitment. The state must ensure that juveniles alleged to be or found to be juvenile status offenders or non-offenders are not committed under state mental health laws to circumvent the intent of DSO (*CM § 4.5*).

Minnesota: Secure Mental Health Treatment

In Minnesota, all Mental Health treatment facilities are licensed by the Minnesota Department of Human Services (DHS). There are three locations in the state that provide secure (locked) mental health units for youth. For all three programs, licensure goes only up through age 17, such that no adults could be housed in a locked mental health unit with juveniles, either as a civil commitment or a part of a delinquency disposition. Adult residential mental health licenses are issued to programs serving persons age 18 and over.

While the JJDPA does not prohibit adults and juveniles from being housed together in a mental health facility, Minnesota licensing rules would not allow this to occur.

SECTION SUMMARY

1. Court Holding Facilities in Minnesota are consistent with the JJDPa in that they are non-residential in nature and are only used for holding immediately pre- and post-court. Court holding facilities may be either secure or non-secure. Those that are secure, being under the authority of jails in Minnesota, must ensure Sight and Sound separation of adult and juvenile offenders.
2. Collocated Facilities in Minnesota have two licenses; one for the adult portion of the facility and one for the juvenile programming. The juvenile programming must meet all licensing criteria for a Children's Residential Program under Administrative Rule 2960, which includes staff training to work with juveniles. The adult programs are licensed as jail facilities and are required to maintain Sight and Sound Separation under Rule 2945. As such, Minnesota's collocated facilities meet JJDPa requirements.
3. Adult Prisons: Juveniles in Minnesota can only be placed in a prison if they have received an adult sentence by having been certified as an adult or an EJJ revocation. When a juvenile is committed to the commissioner of corrections, placement is to occur at the MCF: Red Wing for youth. Minnesota Statute prohibits the use of an adult penal institution for a delinquent juvenile.
4. Locked Mental Health facilities in Minnesota serve either adults or juveniles, but are not licensed to house both in a residential fashion. Though the separation requirement does not apply, it is maintained as a best practice in meeting adolescent mental health needs.

ACTION FOR FULL COMPLIANCE

1. Administrative Rules related to court holding facilities ought to specifically state that sight and sound separation must occur in secure court holding areas, rather than being presumed under jail rules.

Report Summary

The Juvenile Justice and Delinquency Prevention Act, through its Core Protections, is intended to help states institutionalize policies and procedures that promote public safety and protect juvenile non-offenders and delinquents. Most of these protections are related to ensuring the appropriate use of secure detention for accused and adjudicated youth. Minnesota, through statutes, rules and court procedures has implemented many of the recommendations and protections of the JJDP.

Minnesota can continue to better protect and serve youth and ensure federal funding for prevention and intervention in the future with on-going movement toward full compliance with the JJDP. The following sections are a compilation of all the statute, rule and enforcement opportunities detailed in the report, listed by each Core Protection. It is the hope that juvenile justice policy makers, leadership, practitioners, and advocates can prioritize these tasks, investigate the potential effects of these changes, and move forward with recommendations for state level action.

I. The Deinstitutionalization of Status Offenders Requirement (DSO)

1. Clarify in Statute or Rule where non-delinquent federal wards and undocumented youth are to be detained. The JJDP requires that these holds be non-secure. If they must be secure, they may only be in a juvenile facility and cannot exceed 24 hours exclusive of weekends and holidays.
2. Consider decriminalizing fish and game violations committed by youth, currently charged as Misdemeanors.
3. Minnesota Statutes, section 260C.181 is in direct conflict with the JJDP in that it allows, under certain conditions, juvenile non-offenders to be held in adult jails or lockups. Minnesota Statutes, section 260C.181 must be amended to remove secure adult facilities as a place to detain juvenile non-offenders.
4. For full compliance with the JJDP, Minnesota Statutes, section 260C.181 would need to be amended to clarify that the use of secure juvenile detention for all non-offenders (CHIPS youth) must be limited to 24 hours exclusive of weekends and holidays.
5. Modify the Minnesota Rules of Juvenile Delinquency Procedure to implement the JJDP procedural safeguards for youth held in secure detention on contempt of court (*Hammergren Warning*) to include an interview within 24 hours and an immediate needs of the child assessment report.
6. Ensure that non-offenders securely held in adult or juvenile detention appear in court or are transferred to the “least restrictive setting to meet the child’s health and welfare” within 24 hours of admission exclusive of weekends and holidays. This could potentially be enforced by the DOC Inspection and Enforcement Unit.

II. Jail Removal Requirement

1. Modify Minnesota Statutes, section 260B.181, subd. 4 to state that youth in adult facilities who required continued detention must be moved to a juvenile facility consistent with Minnesota Statutes, section 260B.178, subd. 2. Eliminate the statement that continued detention can occur in an adult facility for up to 8 days. Allowing secure detention in an adult facility beyond 24 hours is in violation of the JJDP.
2. Request that the DOC license adult facilities for only 6 hours if there is a secure juvenile alternative in their county, even if the county is outside a metropolitan statistical area. This is consistent with the federal Rural Removal Exception guidelines.
3. The JJDP allows youth certified as adults to be held in a secure juvenile facility until the age of majority plus six months. Minnesota Statute presumes that youth certified as adults will serve their sentence in an adult facility, including pending an appeal of their Certification. Minnesota could modify the statutes to allow certified youth to serve their sentence in a juvenile facility until they are age 18 and six months, if that were the most appropriate placement, and still be in compliance with the JJDP.

III. Sight and Sound Separation Requirement

1. Minnesota Statutes and/or Administrative Rules ought to be more specific in their definition of “contact” to prohibit clear visual contact and direct oral communication between adult and juvenile inmates in non-residential areas of secure facilities. This would apply to Minnesota Statutes, sections 260B.181 and 260C.181 and also the Administrative Rules for adult jails and lock-ups.
2. Minnesota Administrative Rules related to court holding facilities ought to specifically state that sight and sound separation must occur in secure court holding areas, rather than being presumed under jail rules.

For questions, comments or corrections to this document, please contact Dana Swayze, Juvenile Justice Analyst at dana.swayze@state.mn.us.