

# The Valid Court Order (VCO) Exception

Bad for our communities, bad for our kids

The Juvenile Justice and Delinquency Prevention Act (JJDP A) aimed to bring an end to the incarceration of non-delinquent youth, however the VCO exception continued to result in incarceration in more than 7,000 cases annually.

In 1974, Congress enacted the Juvenile Justice Delinquency and Prevention Act (JJDP A). This legislation was meant to address inconsistencies that existed among the nearly 56 different juvenile justice systems that exist across the United States, and its territories. It was further intended to improve youth outcomes, and help address community safety.

The legislation further set out four key protections for court-involved youth. These protections included a requirement that courts could no longer incarcerate youth for non-delinquent, status offense behaviors. Status offenses are acts that violate the law solely because the person who engaged in them was younger than the age of majority. These behaviors vary by state, but may include skipping school, running away from home, violating curfew, failing to obey a parent's rules, and possessing alcohol or tobacco products.

Subsequent reauthorization of the JJDP A in 1980, resulted in an amendment to this protection. As a result, states could detain youth for non-delinquent behaviors through the valid court order (VCO) exception. This exception enabled states to incarcerate children in need of services if their conduct was in violation of a valid court order, such as requiring a child to attend school regularly.

## Status Offenses

Laws governing status offense behaviors vary widely by state. Common examples of these behaviors, however, include:

- **Skipping school (truancy);**
- **Running away from home;**
- **Failure to abide by a municipal curfew;**
- **Failure to abide by a parent's rules; and**
- **Possession or consumption of alcohol or tobacco products.**

To learn more about the VCO visit:  
[www.juvjustice.org](http://www.juvjustice.org)

In 2018, Congress reauthorized the JJDP Act for the first time in 16 years. The reauthorization amended some key components of the JJDP Act, including the VCO provision. Now, courts detaining young people under the VCO exception must issue a written order that identifies the order that has been violated, specifies a factual basis for determining there is reasonable cause for believing there was a violation, includes a finding of fact to support the determination that there are no less restrictive placement alternatives available, and specifies the length of time of the detention, which is not to exceed 7 days. These orders can only be used to detain a young person once. They cannot be renewed or extended. While this is a step in the right direction, more must be done to phase out the use of the VCO.

OJJDP reports that 27 states continued to use the VCO exception to detain youth for status offenses during the most recent reporting period. In FY2014, 16 of these states used the exception to detain youth on 100 or more occasions, with one state using the exception 2,705 times during the 12-month reporting period.

## Changing Perspectives

Sen. Robert Casey (D-PA) and Sen. Rand Paul (R-KY) have introduced bi-partisan legislation for the past two congresses to phase out the use of the VCO. In the House, Rep. Tony Cardenas (D-CA) has previously introduced similar legislation. In the 115<sup>th</sup> Congress these bills were S. 866 and H.R. 1885. Both bills would end the VCO exception and provide for a one-time hardship exception.

**Better Outcomes for Youth.** Eliminating the VCO exception would result in better outcomes for youth. Young people who are placed in detention centers are more likely to come back into contact with the court system, a probability that increases the more times they are detained. Often, detained youth are held in overcrowded, understaffed facilities – environments that can breed violence and complicate a child’s unmet needs for counseling and other services.<sup>2</sup> In addition, nearly 20% of youth who are detained for status offense behaviors and other non-delinquent conduct are placed in living units with young people who have killed someone.<sup>3</sup>

Research reveals that locked confinement is not an evidence-based practice for court-involved youth, especially youth who engage in non-delinquent offenses. Institutionalization’s many harms begin with removing youth from their families and communities, which prohibits youth from developing the strong social network and support system necessary to transition successfully from adolescence to adulthood.<sup>4</sup>

**Better Financial Outcomes for Communities.** Incarcerating youth is a costly undertaking. Confining someone in a detention facility costs an average of \$400 per day, per youth.<sup>5</sup> This equates to roughly \$149,000 a year for each child who is incarcerated. Youth who engage in non-delinquent behaviors often do so, however, because they need community- and family-based supports. Research has shown that providing youth with these types of programs, instead of placing them in detention facilities, makes them less likely to have future contact with the juvenile justice system and has a higher return on investment.<sup>6</sup>

<sup>1</sup> Justice Policy Institute. (December 2014). *Sticker Shock: Calculating the Full Price for Youth Incarceration*.

<sup>2</sup> Holman, B. & Ziedenberg, J. (2006). *The Dangers of Detention*. Washington, DC: Justice Policy Institute.

<sup>3</sup> Nancy Gannon Hornberger. (2010). Improving Outcomes for Status Offenders in the JJDP Act Reauthorization. *Juvenile and Family Justice Today* citing Sedlak, A. J., & McPherson, K. S. (May 2010). *Conditions of confinement: Findings from the Survey of Youth in Residential Placement*. Washington, DC: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

<sup>4</sup> Nelson, D. W. (2008). *A Road Map for Juvenile Justice Reform*. Baltimore, MD: Annie E. Casey Foundation.

<sup>5</sup> Jeffrey A. Butts and Douglas N. Evans (2011). *Resolution, Reinvestment and Realignment: Three Strategies for Changing Juvenile Justice*. John Jay College of Criminal Justice, City University of New York.

<sup>6</sup> *Id.*



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