

BENCH CARD on the Requirements Governing the Use of the Valid Court Order (VCO) Exception to the Deinstitutionalization of Status Offenders (DSO) Requirement

Including Amendments to the Juvenile Justice and Delinquency Prevention (JJDP) Act Made by the Juvenile Justice Reform Act (JJRA) of 2018 Bench Card Series

Purpose

One of the core aims of the Formula Grants Program, authorized under Title II, Part B, of the JJDP Act (1974) is to reduce or eliminate the institutionalization of status offenders. In order to be eligible for Formula Grants Program funding, a state must meet 33 statutory eligibility requirements, one of which is to provide that juveniles charged with status offenses will not be placed in secure detention facilities or secure correctional facilities, with certain exceptions. One of these exceptions is for a status offender who has violated a valid court order (VCO) issued in connection with the status offense. See 34 U.S.C. § 11133(a)(11)(A). This document outlines the requirements that must be met for states to use the VCO exception (34 U.S.C. 11133(a)(23)), including requirements that were added by the Juvenile Justice Reform Act (JJRA) of 2018.

As statutorily defined, “valid court order” means “a court order given by a juvenile court judge to a juvenile . . . (A) who was brought before the court and made subject to such order; and (B) who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States” (34 U.S.C. § 11103(16)).

Assessing Immediate Needs of the Status Offender

For the VCO exception to apply, the JJDP Act requires that the following actions occur when a status offender is taken into custody and accused of violating a VCO:

- An appropriate public agency shall be promptly notified that the status offender is held in custody for violating such order;
- Not later than 24 hours during which the juvenile is so held, an authorized representative of the agency shall interview, in person, such status offender; and
- Not later than 48 hours during which the status offender is so held the representative shall submit an assessment to the Court that issued the order, regarding the immediate needs of the status offender.

The JJDP Act, as amended by the JJRA, now provides a definition of assessment: “The term ‘assessment’ includes, at a minimum, an interview and review of available records and other pertinent information... by an appropriately trained professional who is licensed or certified by the applicable State in the mental health, behavioral health or substance abuse fields...and which is designed to identify significant mental health, behavioral health, or substance abuse treatment needs to be addressed during a youth’s confinement” (34 U.S.C. § 11103(3)).

While requiring an assessment of a status offender taken into custody is not new, the fact that it now must be conducted by a professional who is licensed or certified in mental health, behavioral health or substance abuse fields is a notable change.

Court Hearing Requirements

The Court must conduct a hearing on the record at which the juvenile has the right to counsel. The Court must determine whether there is reasonable cause to believe that the status offender violated the order and the appropriate placement of the status offender pending disposition of the alleged violation.

Additionally, pursuant to changes to the requirements made by the JJRA, if the Court determines the status offender should be placed in a secure detention or correctional facility for violating the order, the Court shall issue a written order that –

- Identifies the valid court order that has been violated;
- Specifies the factual basis for determining that there is reasonable cause to believe that the status offender has violated such order;
- Includes findings of fact to support a determination that there is no appropriate less restrictive alternative available to placing the status offender in such a facility, with due consideration to the best interest of the juvenile;
- Specifies the length of time, not to exceed 7 days, that the status offender may remain in a secure detention facility or correctional facility;
- Includes a plan for the status offender's release from such facility; and
- Provides that the order may not be renewed or extended.

Subsequent Violations

The maximum period of confinement for a status offender on a VCO is now 7 days. That period of confinement may not be renewed, and the status offender may not be confined again, unless there is a second or subsequent violation of another VCO, after the issuance of the order above.

Procedures to Ensure Custody Does Not Exceed 7 Days

Procedures must now be in place to ensure that any status offender held in a secure detention facility or correctional facility pursuant to a court order **does not remain in custody longer than 7 days or the length of time authorized by the Court, whichever is shorter.**