

United States General Accounting Office

Report to Congress on Committee

NON-GRANT
JULY 1966

Defendants Have Been
Reduced to Better
Monitoring Needed



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U.S. Department of Justice
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United States
General Accounting Office
Washington, D.C. 20548

General Government Division

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April 24, 1991

The Honorable William D. Ford
Chairman, Committee on Education and Labor
House of Representatives

The Honorable Joseph R. Biden
Chairman, Committee on the Judiciary
United States Senate

The Juvenile Justice and Delinquency Prevention Act of 1974 established a formula grant program for states to improve their juvenile justice systems. States receive grant funds for, among other things, removing status offenders (noncriminal offenders) from secure detention and correctional facilities. In 1980, Congress amended the act, allowing states to exclude the detention of status offenders who violate a judge's valid court order. The Anti-Drug Abuse Act of 1988 required us to investigate the extent to which status offenders are placed in detention for violating a judge's court order.

We are sending copies of this report to the Attorney General; the Administrator, Office of Juvenile Justice and Delinquency Prevention; Director, Office of Management and Budget; and other interested parties.

Major contributors to this report are listed in appendix VII. If you have any questions about this report, please contact me on (202) 275-8389.

A handwritten signature in cursive script that reads "Lowell Dodge".

Lowell Dodge
Director, Administration
of Justice Issues

Executive Summary

Purpose

To what extent and under what circumstances are juvenile status offenders—youths under 18 years old who are charged with such things as curfew violation, truancy, possession of alcohol, and running away—placed in secure detention facilities, and are states that allow this practice complying with applicable federal policies? Removing detained status offenders from such facilities was an objective of the Juvenile Justice and Delinquency Prevention Act of 1974. The act established a state formula grant program to, among other things, facilitate the development of alternatives to secure detention. A 1980 amendment allows states to detain status offenders in secure facilities under certain circumstances. (See p. 8.)

In 1988, Congress enacted the Anti-Drug Abuse Act, which, among other things, required GAO to report on the detention of status offenders. Accordingly, GAO (1) gathered information on the extent to which status offenders have been detained, (2) examined states' efforts to meet federal goals and regulations, and (3) determined if the juvenile court system has provided detained status offenders procedural protections. (See p. 13.)

Background

Each state's juvenile justice system is unique. Concerned that states had insufficient resources to adequately provide justice to each youth or effectively administer their justice systems, Congress passed the 1974 act. It (1) provided formula grants to states for such initiatives as providing alternatives to the institutionalization of juveniles and (2) created the Office of Juvenile Justice and Delinquency Prevention to administer the grant program and provide assistance to states in achieving compliance with grant requirements. In fiscal year 1990, the Office distributed approximately \$48 million in grants. (See p. 8.)

To receive grant funds, states must comply with a number of requirements. States are to monitor detention facilities to ensure that status offenders are not confined there and must report any detentions they find to the Office. Generally, states that detain less than 29.4 per 100,000 (de minimis threshold) of all persons under 18 years of age within the state are in full compliance with the program's deinstitutionalization requirement.

The 1980 amendment to the act allowed participating states to detain status offenders without risking their grant eligibility. A judge may order juveniles detained if they have violated a judge's valid court order—an order that regulates the status offender's future behavior

(e.g., attending school). If states properly follow the regulations, they can exclude these cases from those they must report to the Office and thus not jeopardize their grant funds. In 1988, 25 states reported that they used the exclusion. (See p. 11.)

To exclude cases, states must ascertain whether the juvenile who violated a valid court order received the procedural protections specified in regulations. For example, states are to ensure that offenders appear before a judge within 24 hours of their incarceration.

GAO collected nationally available data from juvenile justice experts and federal agencies, sent a questionnaire to state officials, and reviewed case files for status offenders detained in 1989 at three juvenile detention facilities. (See p. 13.)

Results in Brief

Overall, states have reported significant reductions in the number of status offenders detained and have not used the exclusion extensively. In the aggregate, states report achieving almost a 95-percent reduction in detention of status offenders since joining the program. In 1988, 25 states reported detaining about 5,300 status offenders after they violated a valid court order, with 5 states accounting for 70 percent of the exclusions claimed.

The Office audited state compliance data and compliance monitoring systems, mostly in 1987, and identified errors in their monitoring practices. In responding to GAO's questionnaires, states reported that since the audits they have either begun or completed action to improve their monitoring practices.

The Office has also become more critical in assessing reported exclusions. As a result, it rejected 710 exclusions in 1988 that did not meet its regulations. However, these rejections did not result in any state exceeding the de minimis threshold.

GAO's analysis at a secure detention facility in each of three states showed that procedural protections were not consistently provided to offenders. Further, six other states reported not complying with the regulations requiring verification of procedural protections for detained status offenders.

States can remain in compliance with grant program regulations by not exceeding their de minimis threshold. This can be accomplished by

excluding those reported cases of detentions where juveniles violated a valid court order. The Office should focus its oversight on the adequacy of monitoring in those states that could exceed the threshold were the Office to disallow a sufficient number of their claimed exclusions.

GAO's Analysis

Status Offender Detention

While states continue to detain some status offenders in secure facilities outside of the scope of the exclusion, these detentions number less on a state-by-state basis than the de minimis threshold specified in the regulations. The 49 states and the District of Columbia (South Dakota did not participate in 1990) who are participating in the formula grant program report that they have collectively reduced the number of status offenders detained in secure facilities from about 187,000 since they joined the program to about 10,000 in 1988. According to the Office, all states participating in the grant program have reduced the number of status offenders detained to a level that brings them into compliance with the regulations or shows progress toward compliance. (See p. 19.)

In 1988, 25 of the participating states reported a total of about 5,300 exclusion cases. Ohio accounted for about 44 percent of these; Idaho, Missouri, South Carolina, and Tennessee accounted for an additional 26 percent. (See p. 22.)

States Report Efforts to Comply With Regulations

In response to GAO's questionnaire, states reported they are improving their compliance with federal regulations. Between 1985 and 1988 the Office did initial audits of 46 of the participating states' compliance monitoring system and identified a number of problems, particularly with data collection and verification. All 46 audited states reported that they had either begun or had completed action to improve their monitoring procedures as a result of the audits. (See p. 26.)

Before 1985, the Office did not verify through audits states' claims for exclusion cases. However, its reviews of state monitoring reports noted some inconsistencies with federal regulations. For example, some states did not require that detained juveniles receive a hearing within 24 hours. As a result, the Office rejected 12 states' exclusion claims. When added to nonexcluded detentions, the rejected exclusions did not bring these states over their de minimis threshold.

Procedural Protections Are Inconsistently Provided and Documented

Assurances do not exist that state juvenile justice systems always provide status offenders the required procedural protections. The Office does not require states whose laws or regulations incorporate all the procedural protections to demonstrate that they were actually provided, in part because of the difficulty of verifying individual cases.

At the three detention facilities visited, GAO found instances of court-ordered detention that, while not necessarily counted by the state as exclusions, showed no record that all of the procedural protections required for an exclusion had been provided. For example, GAO found 17 of 26 cases at a detention center in Utah where status offenders were not advised of their right to legal counsel. After GAO pointed this out, Utah officials said that status offenders would be told of their right to counsel.

In response to GAO's questionnaire eight states reported not incorporating one or more of the procedural protections through state law or court rule. The Office requires these states to verify in each case that these protections were provided, before it will accept the exclusions those states claim. However, six of these states responded that they verified few, if any, of the cases. If the Office had disallowed all the exclusions for these six states, three would have had levels of institutionalization exceeding the de minimis threshold. (See pp. 30-32.)

Recommendations

GAO recommends that the Attorney General direct the Office to concentrate its oversight on the monitoring efforts states make to assure compliance with Office regulations, particularly with respect to offenders' procedural protections. Specifically, its efforts should be directed at those states that could exceed the de minimis threshold of status offenders detained in secure facilities should the Office, on review, disallow some or all of their reported exclusions. (See p. 34.)

Agency Comments

The Department of Justice said that it generally agrees with GAO's findings and recommendation. (See p. 35.) GAO discussed the report with officials from the three states visited, and they concurred with the descriptions of their juvenile justice systems. The states and Justice provided further clarifications, which have been incorporated as appropriate.

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Abbreviations

| | |
|-------|---|
| DFS | Division of Family Services |
| DSO | Deinstitutionalization of Status Offenders |
| DHS | Utah Department of Human Services |
| DYC | Division of Youth Corrections |
| GOCJS | Governor's Office of Criminal Justice Services |
| OJJDP | Office of Juvenile Justice and Delinquency Prevention |
| TCCY | Tennessee Commission on Children and Youth |
| VCO | Valid Court Order |

Introduction

Youths who come in contact with the juvenile justice system generally fall into one of two broad categories: delinquents and status offenders.¹ Delinquents are juveniles who have either been charged with or convicted of an offense that would be criminal if committed by an adult. Status offenders, the subject of this report, are juveniles who have come in contact with the juvenile justice system for an offense that would not be a crime if committed by an adult. Status offenses include running away from home, truancy, curfew violation, possession of alcohol, or unruly behavior.

The Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601), established a formula grant program for states to improve their juvenile justice systems. States may receive formula grant funds if they comply with certain conditions, one of which is that the state generally must not hold status offenders in secure facilities.² States have a 3-year time frame to comply with those conditions.³ In 1980, Congress amended the act, allowing states to detain status offenders who have violated a judge's court order as long as the offenders were provided certain procedural protections before their detention. The Anti-Drug Abuse Act of 1988 required us to report on states' use of the amendment.

Background

Congress was concerned that because of inadequate programs, technical expertise, and lack of resources, states were not able to adequately provide justice or effective help to juveniles, including status offenders, coming in contact with the juvenile justice systems. Congress was also concerned that juveniles detained in jails and other secure facilities were exposed to possible physical abuse and were believed to be more likely to commit criminal acts upon their release. As a result of this concern, the act was passed. The 1974 act established goals of preventing juvenile delinquency, diverting juveniles from the traditional juvenile justice system, and improving the quality of juvenile justice in the United States. In addition, it established a program of formula grants to states in order to accomplish those goals. The act created the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the Department of Justice

¹ Another group of juveniles are known as nonoffenders. These are children who may come in contact with the legal system for reasons other than illegal behavior, such as being neglected or abused.

² The act defines a "secure detention facility" as any public or private residential facility that includes construction fixtures designed to physically restrict the movements or activities of juveniles or others.

³ Two additional years are provided if they achieve substantial compliance.

to provide federal resources and leadership and to coordinate assistance to state and local governments in meeting the act's goals. OJJDP is also responsible for administering the formula grant program.

Formula Grant Program

The formula grant program is designed to assist participating states to improve their juvenile justice systems. Those states wishing to participate apply to OJJDP annually for grant funds that are primarily directed toward local juvenile justice programs. For example, Ohio uses some of its grant to sponsor local shelter care projects to reduce the number of status offenders held in secure facilities; Tennessee uses grant funds to operate temporary facilities for the same purpose. The governor of each participating state appoints a state advisory group composed of juvenile justice experts to review applications for the distribution of formula grant funds. The governor also designates a state agency to administer the grant program locally.

Juvenile justice programs in nonparticipating states that further the goals of the program may also receive grant funds from OJJDP. OJJDP distributes the funds directly to local public and private nonprofit agencies on the basis of their applications, thereby precluding state control. As of October 1, 1990, only South Dakota was not participating in the grant program, and OJJDP provided funding directly to such agencies.

In fiscal year 1990, OJJDP distributed approximately \$48 million to participating states and to local agencies within the one nonparticipating state. The funds are distributed proportionally on the basis of each state's population under the age of 18, with a minimum grant amount of \$325,000. In fiscal year 1990, 49 states, the District of Columbia, and 6 additional jurisdictions (defined as states for eligibility purposes) received funds.

Requirements for Grant Eligibility

In order for states to receive and remain eligible for funds under the 1974 act, they must meet certain requirements. One requirement is that juveniles are to be separated from adults during incarceration and another is that they be removed from adult facilities. In addition, status offenders are not to be held in secure detention, which is referred to as the deinstitutionalization of status offenders (DSO). Under the grant program, for purposes of compliance, each participating state must report the number of juveniles⁴ who have been detained in a secure facility for

⁴Status offenders and nonoffenders are to be reported.

longer than 24 hours. As long as a state remains in compliance with this and other requirements of the statute and OJJDP regulations, it may receive grant funds.

Specific procedures that states must follow to meet the DSO requirement are set out in the 1974 act and OJJDP's implementing regulations. The act provides that states must achieve full deinstitutionalization of status offenders, except those detained under the VCO process described below, within 3 years after entering the program. States that OJJDP determines to not be in full compliance with the DSO requirement at the end of 3 years will lose their grant eligibility, unless they can show that they are in substantial compliance with the requirement and are committed to achieving full compliance within 2 additional years.⁵

OJJDP will consider a state to be in full compliance with the DSO requirement even if some status offender⁶ detentions occur. Under OJJDP regulations, it will consider a state to be in full compliance if the number of detentions does not exceed a de minimis threshold of 29.4 per 100,000 persons under the age of 18 in the state.⁷

If a state chooses not to participate or is not able to achieve or remain in compliance with the DSO requirement, it may not participate in the grant program. In such cases, local agencies desiring funds to further the purposes of the act may apply directly to OJJDP for federal assistance. OJJDP then may provide funds to local organizations within the noncomplying state in order to assist in the deinstitutionalization of status offenders.

Under the 1974 act, states are required to establish adequate systems of monitoring jails, detention facilities, correctional facilities and nonsecure facilities to ensure that the requirements of the act are met and for reporting the results of their monitoring to OJJDP. States demonstrate to OJJDP their progress towards DSO through their annual monitoring reports, which contain the number of status offenders detained for longer than 24 hours. Monitoring techniques vary from state to state. Some states designate an agency to perform the monitoring task in-

⁵A state is in substantial compliance under the act when it has achieved a 75-percent reduction in the aggregate number of detained status offenders and nonoffenders held in secure detention or correctional facilities, or when it has removed 100 percent of these juveniles from secure correctional facilities.

⁶Also includes nonoffenders.

⁷OJJDP regulations require that states with detention rates over 5.8 per 100,000 juvenile population meet other programmatic requirements to be in compliance with the DSO requirement.

house, while others contract for the services. OJJDP regulations require state monitors to identify all the detention facilities capable of holding juveniles in the state, classify the facilities as secure or nonsecure, periodically inspect the facilities to determine if they are detaining status offenders more than 24 hours, and annually report the number of status offender detentions. For example, Tennessee Commission on Children and Youth staff monitor all detention facilities for compliance with federal and state laws and regulations regarding the DSO requirement.

Valid Court Order Amendment

In 1980, Congress amended the 1974 act, allowing states to institutionalize status offenders without violating the DSO requirement if such offenders were detained for violating a "valid court order" (VCO).⁸ A VCO is a court order that regulates a status offender's future behavior and that, if violated, would permit incarceration after the offender first receives full due process rights as contained in OJJDP's Formula Grants Regulations.

The VCO provision, as implemented by OJJDP regulations, has requirements that court-ordered detentions of status offenders must meet in order for a state to exclude such detentions from the overall detention rates it reports to OJJDP. The VCO provision does not itself grant any legal authority to states to detain status offenders in secure facilities. The granting or withholding of such authority, as well as required procedures and due process safeguards, are matters of state law and policy and applicable constitutional protections.

Valid Court Order Process

The process that OJJDP requires for a state to claim a valid court order exclusion is as follows. First, a judge⁹ must determine that a juvenile committed a status offense and place the juvenile under a court order regulating the juvenile's future conduct (e.g., attend school, obey parents, follow rules of probation). Under OJJDP regulations, the judge must warn the juvenile of the consequences of violating the court order and provide the warning in writing to the juvenile's attorney and/or legal guardian. The warning must also be reflected in the court record.

⁸Public Law 96-509. In 1984, Congress further amended the act to include a definition of a VCO.

⁹Some juvenile courts delegate judicial authority to officials, such as referees, commissioners, and magistrates. So long as state law or local court rule permit these officials to assert the court's jurisdiction over status offenders, federal policy allows detentions ordered by these officials to count as VCO exclusions.

If the status offender is subsequently accused of violating the conditions of the VCO, OJJDP regulations require that the juvenile receive a violation hearing in a court of appropriate jurisdiction. A status offender may be detained pending a violation hearing beyond the 24 hours for protective purposes or to assure his or her appearance at the violation hearing. Any detention for these purposes may exceed 24 hours only if the juvenile receives a preliminary hearing during the 24-hour period to determine whether there is probable cause to believe the juvenile violated the court order. OJJDP recommends that such detention not exceed 72 hours.

In addition, during the judicial process, specific procedural protections listed in OJJDP's regulations must be provided to the juvenile. These protections include the juvenile's right

- to have the charges served in writing a reasonable time before the hearing;
- to a hearing before a court;
- to an explanation of the nature and consequences of the proceedings;
- to legal counsel, and the right to have such counsel appointed by the court if the juvenile is indigent;
- to confront and present witnesses;
- to have a transcript or record of the proceedings; and
- to appeal the judgment to an appropriate court.¹⁰

Finally, the judge must determine that (1) the original order met all the regulatory criteria of a VCO, (2) the juvenile violated the conditions of the VCO, and (3) the juvenile received all of the protections required under the OJJDP regulations during the judicial hearings. Once this is determined, and the judge also determines that there is no less restrictive appropriate alternative to detention in a secure facility, the detention of the status offender meets the criteria of the VCO exclusion. While not required by the amendment, the legislative history indicated that the VCO provision should apply to "chronic" status offenders (i.e., those juveniles who repeatedly disobey judicial orders).¹¹

¹⁰The procedural protections afforded status offenders under the OJJDP regulations are based on the leading U.S. Supreme Court decision addressing the due process rights of youthful offenders. In *Re Gault*, 387 U.S. 1 (1967). However, the regulatory protections extend beyond the due process rights specifically guaranteed under *Gault*. For purposes of compliance with OJJDP's formula grant program, states must provide the full spectrum of procedural protections required under the regulations.

¹¹A generally accepted definition of what constitutes chronic status offense behavior does not exist. In addition, almost 70 percent of the states that detain status offenders on the basis of violation of a valid court order reported that they have no formal or informal operating definition of a "chronic" status offender.

Objectives, Scope, and Methodology

The Anti-Drug Abuse Act of 1988 required us to report by October 1991 to the Chairman of the House Committee on Education and Labor and the Chairman of the Senate Committee on the Judiciary our analysis of court-ordered detention of status offenders. The law required us to report (1) the number of instances where judges detain status offenders in secure facilities for violating a VCO or a court order other than a VCO (i.e., does not meet VCO criteria) for the 5-year period ending December 31, 1988; and (2) the frequency, length of confinement, and type of conduct the juvenile was detained for, differentiating between secure detention facilities, secure correctional facilities, and jails and lockups for adults.

We pointed out to the Committees that the original reporting mandate was not practical, mainly because existing databases that we examined did not have sufficient data to address the congressional reporting mandate.¹² In addition, the uniqueness of each state's juvenile justice system prevented us from developing a common database from which to sample a selection of court ordered detention cases.

Because of these limitations, we agreed with the Committees to analyze court ordered detention of status offenders and the use of the VCO. This involved collecting data at the national, state, and local levels, as well as reviewing actual status offender files. Specifically, we agreed to

- provide a national perspective on the use of the VCO,
- examine states' efforts to meet federal goals and regulations, and
- determine if the juvenile court systems provide detained status offenders the procedural protections that would be required for such detentions to count as VCO exclusions.

To learn about federal laws and regulations we met with officials from OJJDP and the Office of Justice Programs.¹³ To better understand how OJJDP assists states in improving their monitoring practices we met with personnel from Community Research Associates, an organization that provides technical assistance to states. We explored the availability of juvenile justice data and status offender policy with researchers from

¹²We met with researchers responsible for working with two widely used sources of juvenile detention information, the U.S. Census Bureau's annual Juvenile Detention and Correctional Facility Census (Children In Custody), and the National Center for Juvenile Justice's National Juvenile Court Data Archive. Neither database contains complete information from all juvenile courts and detention centers, and both contain data that is unverified and internally inconsistent due to differing state laws and practices.

¹³OJJDP is within the Office of Justice Programs.

the National Center for Juvenile Justice, the Rand Corporation, the University of Michigan's Center for the Study of Youth Policy, the University of Southern California's Social Science Research Institute, the National Center on Institutions and Alternatives, and the National Council on Crime and Delinquency. To obtain the perspective from child advocate groups we met with the Director of the Youth Law Center and the Chair of the National Coalition of State Advisory Groups. We also met with the President of the National Council of Juvenile and Family Court Judges to obtain their perspective on status offender detention.

We developed a national perspective on status offender juvenile detention through the use of a questionnaire to determine juvenile justice policy and practices, including use of court-ordered detention. We mailed our questionnaire on March 23, 1990, to the juvenile justice specialist in each of the 50 states and the District of Columbia, and we received 51 responses. We did not verify the accuracy of their responses. When we had questions about certain responses, however, we followed up with telephone calls for clarification (see app. I).

We examined OJJDP audit findings of states' compliance monitoring systems done between 1985 and 1988. Some responses from this review were cross-referenced with results from the questionnaires to determine the number of states that had taken corrective action in response to the audits. We did not evaluate the quality of the OJJDP audits.

We used OJJDP data collected from reports provided by state monitors to present information on VCO exclusions by all states between 1983 to 1988 and on states' DSO noncompliance rates for those states receiving 1988 formula grant funds. OJJDP officials stated that data collected before their audits were not considered reliable.

To obtain a more complete picture of how states detain status offenders on the basis of the violation of court orders, we did case studies in Ohio, Tennessee, and Utah. (See app. II for a detailed discussion of the case studies and app. III for related statistical data.) The cases we studied involved court-ordered detentions, but we were not able to determine whether the states counted these particular cases as VCO exclusions. We judgmentally selected the states for our study after considering such factors as the number of VCO exclusions reported by the states and whether OJJDP had approved the states' monitoring systems. We interviewed court and juvenile officials from these three states, discussed how these states administered their juvenile detention programs, and

reviewed how they did their monitoring and reporting of juvenile detention. We reviewed the applicable state laws and judicial procedures to determine if their directives were consistent with federal regulations.

To understand the use of court-ordered detention of status offenders within the three states, we reviewed status offender case files and interviewed local officials at one detention center in each state. We selected the detention center within each state that according to state officials had the highest number of VCO exclusions in the state after such factors as juvenile population, availability of records, and urban and rural locations were considered. The three detention centers we visited were: Hamilton County Youth Center in Cincinnati, Ohio; Upper East Tennessee Regional Juvenile Detention Center in Johnson City, Tennessee; and the Salt Lake County Detention Center in Salt Lake City, Utah.

We analyzed court and detention case files for status offenders in these three locations. In addition to providing data on the frequency, length of confinement, and type of conduct for which detention was imposed, we recorded such demographic information as age and sex and whether the courts' written records documented the procedural protections required by federal regulations for VCO exclusions to be accepted. We analyzed 31 case files from 3 of the courts that use the Upper East Tennessee facility, covering all the status offenders that were detained by court order for 1989. Similarly, in Salt Lake County, we examined 26 cases of status offenders detained by court order, covering all of 1989. In Hamilton County, we reviewed records for 3 randomly selected days in 1989 and identified 35 cases on which we collected data. A sample was used because of the large number of status offender files.

Results from these cases at each detention center are representative of status offense cases at that center but are not necessarily representative of either state or national cases. Therefore, the results should not be generalized beyond status offense cases at the three centers.

In three previous reports—Removing Status Offenders From Secure Facilities: Federal Leadership and Guidance Are Needed (GGD-78-37, June 5, 1978); Improved Federal Efforts Needed to Change Juvenile Detention Practices (GAO/GGD-83-23, Mar. 22, 1983); and Better Monitoring and Recordkeeping Systems Needed to Accurately Account For Juvenile Justice Practices (GAO/GGD-84-85, July 9, 1984)—we discussed problems with the detention of juveniles and need for improved monitoring and recordkeeping systems. Since the focus of this report is on the use of

court-ordered detentions and the vco exclusion, we did not include a discussion of these reports.

We obtained comments from the Department of Justice (see p. 25 and app. VI). We also discussed the report with officials from the three states visited. The states and Justice provided clarifications, which have been incorporated as appropriate.

Our review was done in accordance with generally accepted government auditing standards between September 1989 and June 1990.

States Continue Efforts to Comply With the Act

The Nation's juvenile justice system is state-based and enforced by local jurisdictions (e.g., counties and cities). Since states' juvenile justice laws vary a great deal, they have different approaches toward implementing OJJDP regulations. In this environment, 56 jurisdictions are participating in the grant program and have reduced the number of status offenders detained in secure facilities in order to comply with the 1974 act's deinstitutionalization requirement. In 1988, 25 states reported using the VCO exclusion 5,345 times. At the same time, some status offender files do not contain data, which in most cases are not required, to confirm that states are following OJJDP regulations governing VCO exclusions. OJJDP's reliance on state monitoring does not assure that status offenders always receive the procedural protections required for a detention to be counted as a VCO exclusion. Therefore, some states could exceed their de minimis threshold if OJJDP were to disallow some of their claimed VCO exclusions, causing them to not meet the grant program requirements.

States Have Unique Juvenile Justice Systems

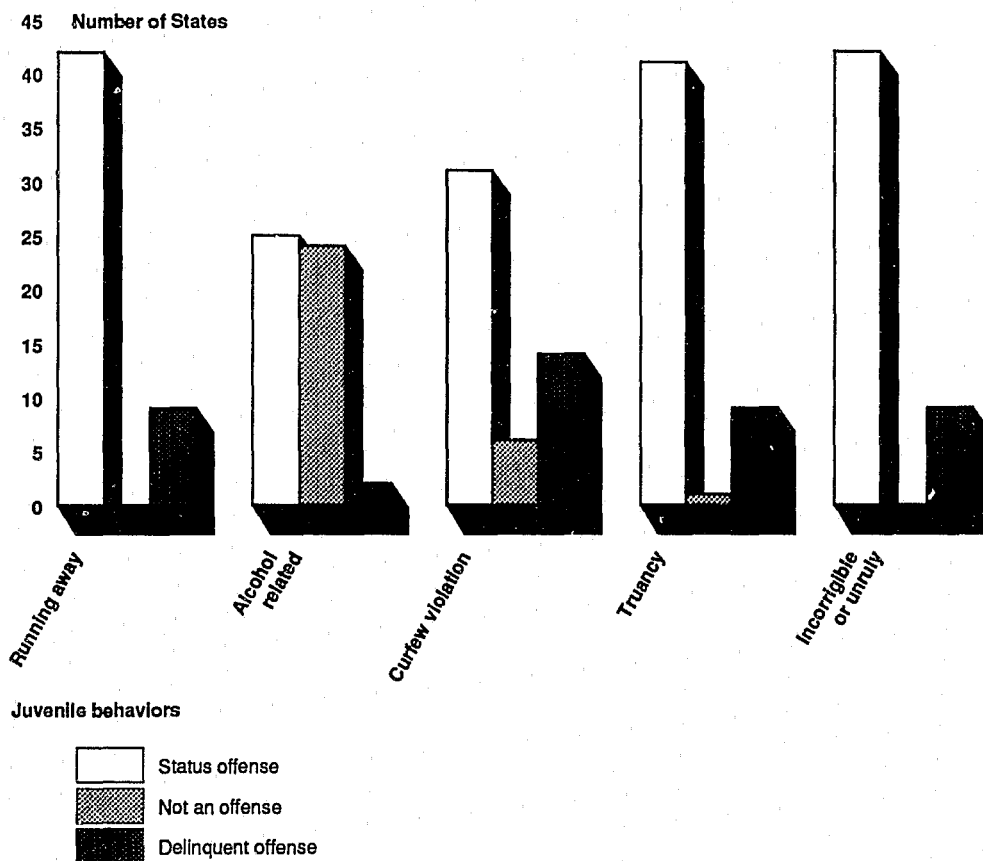
Juvenile courts first became separated from the adult criminal justice system at the turn of the century. Since that time, states have implemented their own approaches to deal with juvenile delinquents and non-criminal juvenile offenders. Most juvenile courts are county or city based, with judges who are either appointed or elected and accountable to the local community. For example, Ohio has 106 juvenile judges based in local courts in 88 counties, and Tennessee has 98 juvenile courts in 95 counties (see app. II for a description of how these systems operate). Some juvenile justice experts have characterized the Nation's juvenile justice system as a patchwork quilt of different objectives, laws, and detention practices.

State approaches to DSO have also varied. OJJDP's deinstitutionalization of status offenders regulations allowed states to implement programs as they desired. Researchers point out that DSO proponents often disagree about the overall objectives of deinstitutionalization. They stated that some proponents believe that the program's focus should be on the removal of inappropriately incarcerated juveniles, while others believe that states participating in the program should be committed to developing alternatives to incarceration.¹ Because of differing views regarding deinstitutionalization, the state programs and approaches are diverse.

¹ J. F. Handler and J. Zatz, *The Implementation System: Characteristics and Change*, in J.F. Handler and J. Zatz (eds), *Neither Angels nor Thieves: Studies in Deinstitutionalization of Status Offenders*. Washington, DC: National Academy Press, 1982.

In response to our questionnaire, states reported that their definitions sometimes differ from federal definitions of what constitutes status offense behavior. As shown in figure 2.1, some states are less restrictive in their definitions of status offenses while others are more restrictive. For instance, in nine states running away and truancy are not status offenses but are considered such under the federal definition. Further, 27 states reported that juveniles may be considered delinquents, which connotes criminal behavior even though they committed a status offense. For example, if a runaway youth was placed on probation and subsequently ran away again (which is still a status offense under the federal definition), some of these states could treat the juvenile as a delinquent rather than as a status offender. According to OJJDP, this is not consistent with the statute or OJJDP's policy.

Figure 2.1: Differences Between Federal and State Definitions of Status Offense Behavior



Note: OJJDP classifies all the above offenses as status offenses.
Source: States' responses to GAO questionnaire.

States Report Status Offender Detention Rates Have Declined

States participating in the OJJDP formula grants program report that they have decreased the number of status offender detentions since joining the program. When states enter the program, they are required to identify a "base year" number of status offenders² held in secure detention for longer than 24 hours. The states must then reduce the number of status offenders detained to an acceptable level below the base year number, as determined by federal regulations, in order to be in compliance with the deinstitutionalization requirement. As shown in table 2.1, states reported that in 1988 they had cumulatively reduced their status offender detention about 95 percent below their base years.

²Nonoffenders are also included.

Thirty-eight of the 50 participating states have reduced status offender detention by at least 75 percent since they entered the grants program. A 75-percent reduction qualifies as substantial compliance under the act.

Table 2.1: States Reported Decline in Institutionalized Status Offenders

| State | Base year | In 1988 | Percent decline |
|----------------------|-----------|---------|----------------------|
| Alabama | 6,008 | 33 | 99.45 |
| Alaska | 485 | 9 | 98.14 |
| Arizona | 5,436 | 242 | 95.55 |
| Arkansas | 4,260 | 8 | 99.81 |
| California | 34,216 | 260 | 99.24 |
| Colorado | 6,123 | 204 | 96.67 |
| Connecticut | 699 | 29 | 95.85 |
| Delaware | 335 | 8 | 97.61 |
| District of Columbia | 107 | 5 | 95.33 |
| Florida | 1,231 | 576 | 53.21 |
| Georgia | 410 | 443 | (8.05) ^a |
| Hawaii | 64 | 64 | 0.00 |
| Idaho | 2,196 | 55 | 97.50 |
| Illinois | 1,797 | 87 | 95.16 |
| Indiana | 7,494 | 450 | 94.00 |
| Iowa | 1,189 | 0 | 100.00 |
| Kansas | 3,826 | 57 | 98.51 |
| Kentucky | 5,606 | 283 | 94.95 |
| Louisiana | 123 | 141 | (14.63) ^a |
| Maine | 41 | 0 | 100.00 |
| Maryland | 857 | 1 | 99.88 |
| Massachusetts | 37 | 28 | 24.32 |
| Michigan | 19,332 | 102 | 99.47 |
| Minnesota | 6,309 | 3 | 99.95 |
| Mississippi | 4,172 | 108 | 97.41 |
| Missouri | 4,783 | 207 | 95.67 |
| Montana | 1,194 | 4 | 99.66 |
| Nebraska | 1,087 | 132 | 87.86 |
| Nevada | 2,997 | 2,997 | ^b |
| New Hampshire | 200 | 0 | 100.00 |
| New Jersey | 50 | 19 | 62.00 |
| New Mexico | 2,376 | 462 | 80.56 |
| New York | 7,993 | 160 | 98.00 |
| North Carolina | 3,228 | 457 | 85.84 |

(continued)

Chapter 2
States Continue Efforts to Comply With
the Act

| State | Base year | In 1988 | Percent decline |
|------------------------|------------------|----------------|------------------------|
| North Dakota | ^c | ^c | |
| Ohio | 16,552 | 826 | 95.01 |
| Oklahoma | 208 | 154 | 25.96 |
| Oregon | 4,110 | 21 | 99.49 |
| Pennsylvania | 3,634 | 0 | 100.00 |
| Rhode Island | 1,972 | 0 | 100.00 |
| South Carolina | 409 | 274 | 33.01 |
| South Dakota | ^c | ^c | |
| Tennessee | 4,078 | 85 | 97.92 |
| Texas | 4,772 | 555 | 88.37 |
| Utah | 3,344 | 79 | 97.64 |
| Vermont | 744 | 4 | 99.46 |
| Virginia | 6,558 | 64 | 99.02 |
| Washington | 66 | 24 | 63.64 |
| West Virginia | 627 | 3 | 99.52 |
| Wisconsin | 3,661 | 126 | 96.56 |
| Wyoming | ^c | ^c | |
| Total | 166,996 | 9,849 | |
| Average decline | | | 94.73 |

Note: Includes nonoffenders.

^aState increased from base year but did not exceed de minimis threshold.

^bIn 1987 Nevada had 3 years to reduce its DSO violations.

^cNot participating in 1988.

Source: OJJDP.

In 1988, 5 states exceeded the de minimis threshold: Nevada, which began participating in the program in 1987, has 3 years to meet the grant program requirement and another 2 years if it is able to demonstrate substantial compliance; Indiana and New Mexico, which reported that they have amended their laws since 1988 to comply with the grant program requirements; and Georgia and Kentucky, which reported detention rates in excess of the de minimis rate due to out-of-state run-aways held in secure detention for more than 24 hours in order to return them to their home states. OJJDP regulations recognize out-of-state run-aways are exceptional circumstances.

The U.S. Census Bureau's Juvenile Detention and Correctional Facility Census, a source of information on juvenile detention, shows that status offender detention between the 1977 and 1987 surveys has declined at juvenile detention centers and training schools (post-adjudicatory institutional placement facilities) operated by state and local governments.

(See table 2.2). The census, known commonly as the Children In Custody survey, contains an annual "snapshot" of juvenile detention on one selected day of the year.³

Table 2.2: Decline of Detained Status Offenders

| | 1977 | 1987 |
|-----------------------------------|-------|------|
| Public juvenile detention centers | 1,142 | 833 |
| Public training schools | 2,063 | 560 |

Note: We used 1977 data because it was the first year data were available after the grant program started, and 1987 is the most recent available data.

Source: U. S. Census Bureau database.

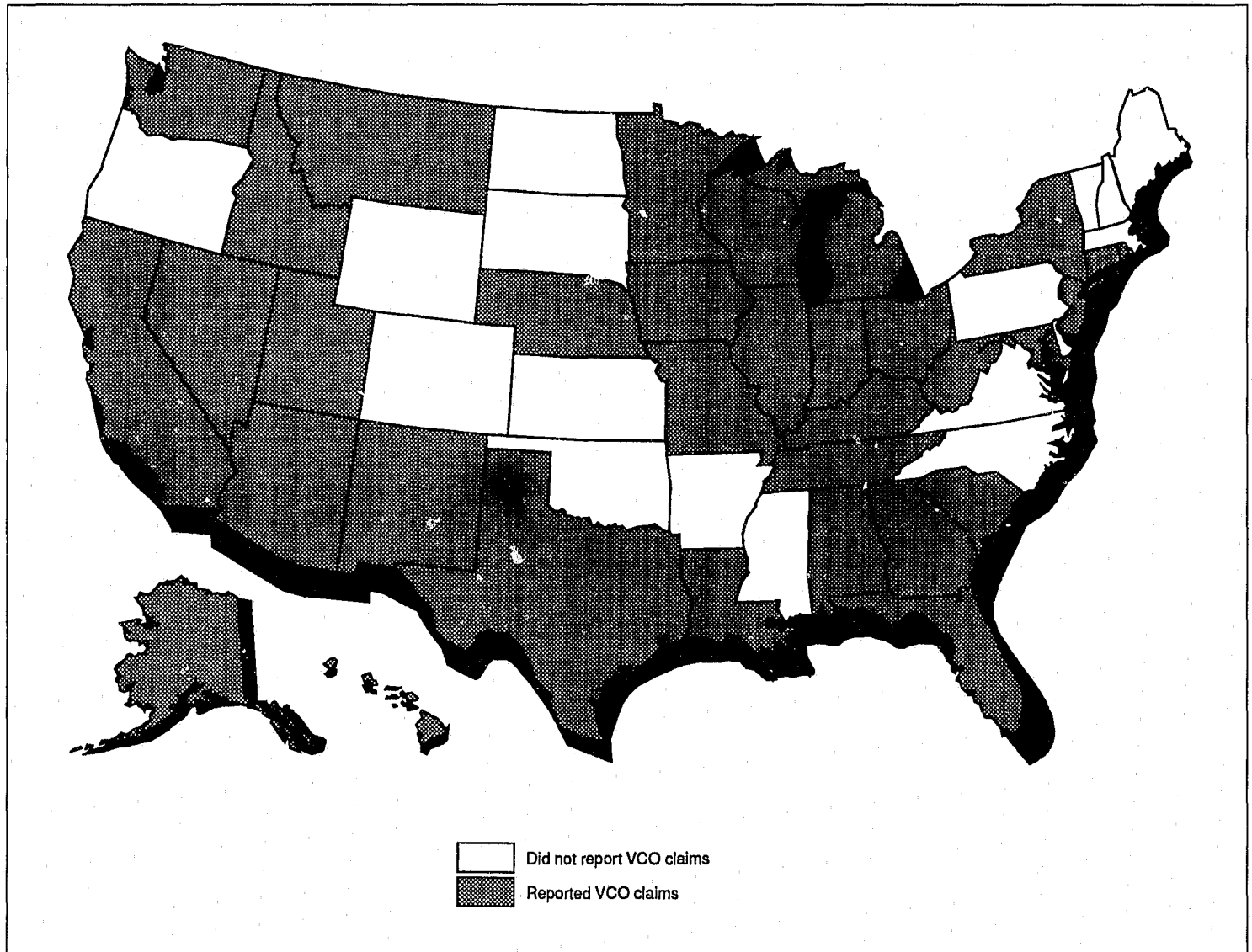
Valid Court Order Use

Since the VCO provision took effect, most states have reported to OJJDP that their judges detained juveniles for violating a VCO.⁴ According to OJJDP data through December 1988, the most recent year on which OJJDP has complete statistics for all states, 38 states have used VCO exclusions at least once, and 12 states have used VCO exclusions in each of the 6 years. In 1988, 25 states had reported VCO exclusions to OJJDP (see app. IV). During 1987 through 1989, 33 states reported or said they plan to report VCO exclusions. (See fig. 2.2.)

³These numbers may not accurately reflect status offender detention because differences in the definition of a status offender (e.g., some state laws characterize status offense behavior as delinquent offenses) may lead to under or over-reporting. Also, the data is reported by detention facility administrators without verification. In addition, since the survey gathers data from detention facilities for a single day out of the year, the data cannot be used to verify states' reported detention rates or VCO exclusions.

⁴We counted the District of Columbia as a state but excluded the other nonstate jurisdictions.

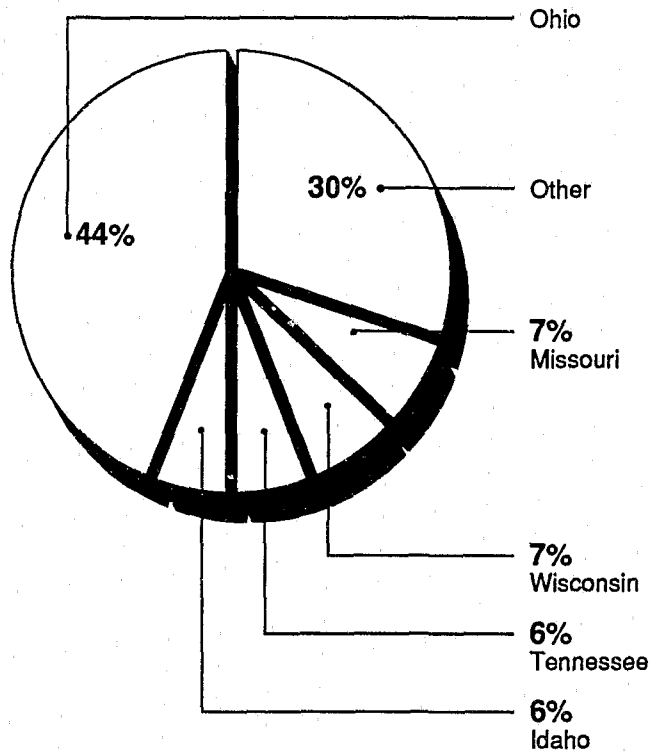
Figure 2.2: States Reported VCO Exclusions Between 1987-89



Source: OJJDP and GAO.

A small number of the 25 states reported the majority of vco exclusions in 1988 (see fig 2.3). In 1988 25 states reported using 5,345 vco exclusions. Ohio accounted for 44 percent of these; Idaho, Missouri, Wisconsin, and Tennessee accounted for an additional 26 percent.

**Figure 2.3: Five States Report 70 Percent
of All VCO Exclusions in 1988**



Source: OJJDP.

For the 25 states, 18 had vco rates of less than 15 per 100,000 of the juvenile population under the age of 18 years. The median rate for the 25 states was 9.6 per 100,000, while the mean was 16.2. However, 6 states had vco rates over 25 per 100,000 (see table 2.3). While Ohio had the greatest number of vco claims, its rate of 84 per 100,000 was second to Idaho's, which had the highest vco rate of 100 per 100,000.

**Table 2.3: States With the Highest
Reported VCO Rates**

| State | Rate of VCOs reported per 100,000 juveniles in 1988 |
|----------------|--|
| Idaho | 100.0 |
| Ohio | 84.3 |
| Missouri | 29.0 |
| South Carolina | 28.5 |
| Wisconsin | 27.9 |
| Tennessee | 25.2 |

Source: OJJDP.

States' Compliance With OJJDP Regulations Has Improved

Recent OJJDP efforts to improve the quality of state compliance monitoring reports have contributed to increased state compliance with the 1974 act's goals. OJJDP audits of state reporting systems identified many compliance and reporting problems, some of which have been corrected. States have also improved the accuracy of reported detention rates and valid court order exclusion claims. In addition, three states that we visited had initiated action to ensure their compliance with the DSO requirement.

State Compliance Monitoring Systems Had Problems

In three of our reports between 1978 and 1984 we identified problems with both the accuracy of state compliance monitoring reports and OJJDP's failure to validate states' data.⁵ As a result of our 1984 report, Congress required OJJDP to audit states' compliance monitoring systems to ensure that federal regulations were being followed and reported data was accurate.

OJJDP's audits of state compliance data and compliance monitoring systems identified numerous errors in state reporting practices. As of October 1990 OJJDP had audited 48 states, mostly in 1987. We analyzed and tabulated the results of 46 OJJDP audits⁶ and found that the majority of problems identified by OJJDP related to weaknesses in data collection. For example, OJJDP recommended that

- 22 states improve their data collection procedures,
- 30 states improve their data verification procedures,
- 29 states revise their procedures for identifying detention facilities, and
- 20 states change their procedures concerning the length of secure detention.

According to OJJDP officials, it had not planned to do more audits as of October 1, 1990. However, in commenting on our draft report, the Department of Justice said that OJJDP, on the basis of its determination that audits are a useful program management tool, has decided to establish a regular 5-year cycle for follow-up audits beginning in 1991.

⁵Removing Status Offenders From Secure Facilities: Federal Leadership and Guidance Are Needed (GGD-78-37, June 5, 1978); Improved Federal Efforts Needed To Change Juvenile Detention Practices (GAO/GGD-83-23, Mar. 22, 1983); and Better Monitoring and Recordkeeping Systems Needed To Accurately Account for Juvenile Justice Practices (GAO/GGD-84-85, July 9, 1984).

⁶At the time of our review, Wisconsin was not participating in the program, and therefore we did not analyze the results of its audit. Subsequently, Wisconsin rejoined the program in 1990. The Hawaii audit was not completed at the time of our review.

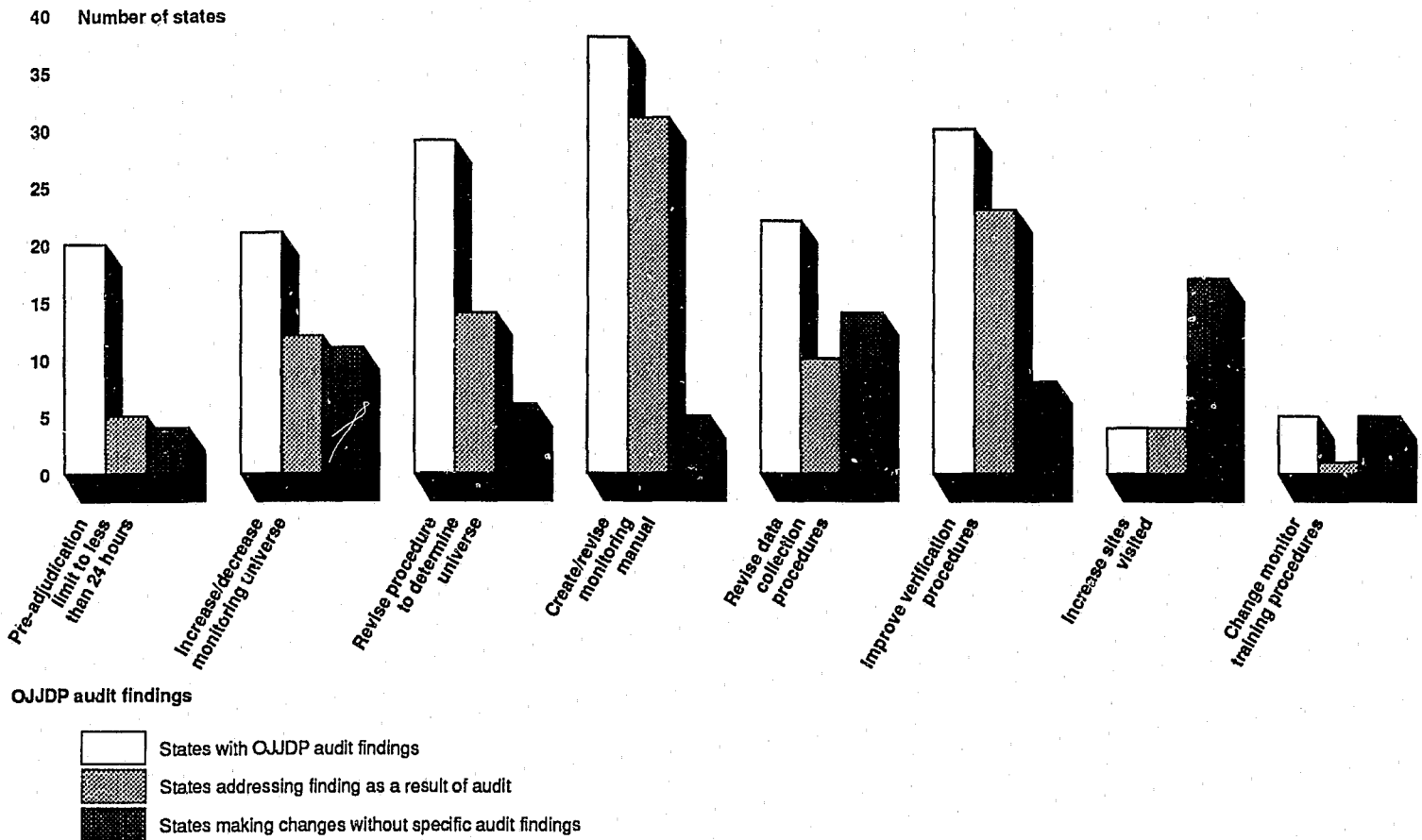
According to Justice, OJJDP pointed out this decision in its November 7, 1990, response to an Office of Inspector General report.

States Reported Improvements to Their Compliance Monitoring Systems

We surveyed the states to determine their response to the OJJDP audits. The states reported that they were making procedural changes to bring their compliance monitoring systems into conformity with federal regulations.

As a result of the audits, all 46 states responded in our questionnaire that they have either begun or completed action to improve their monitoring procedures. (See fig. 2.4.) Some of these actions were in response to OJJDP recommendations and other actions states initiated on their own without OJJDP making a recommendation. For example, 23 states reported improving their data verification procedures in response to OJJDP's recommendation. At the same time, 40 states reported taking action to improve their monitoring systems on their own initiative; OJJDP did not recommend such action.

Figure 2.4: States Reported Improvements After OJJDP Audits



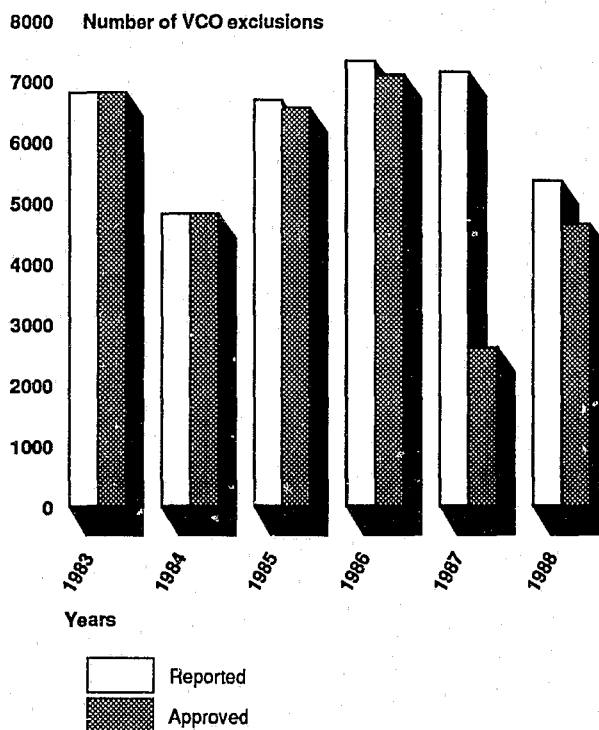
Source: States' responses to GAO questionnaire.

Valid Court Order Reporting Has Improved

OJJDP has become more critical in its assessment of VCO exclusion claims. Prior to its audits, OJJDP did not verify or challenge any of the states' reported VCO exclusion cases. It accepted the accuracy of all state reported VCO exclusions. However, OJJDP's review of state monitoring reports identified practices in some states that were not consistent with federal regulations for properly claiming VCO exclusions. For example, the audit identified 25 states whose laws or procedures were not in compliance with OJJDP's regulations unless they changed some of their procedures, such as limiting the detention of status offenders to the 24-hour period or passing legislation adopting the federally specified procedural protections. Figure 2.5 compares the number of VCO exclusions reported

to and approved by OJJDP. Further, 12 states have had their VCO exclusions disallowed by OJJDP since the audits began. OJJDP considers their disallowed VCO exclusion claims as detentions that count against the states' DSO compliance levels (see app. V for VCO and DSO rates). In 1988, 5 states had 710 VCO exclusions disallowed but OJJDP determined that none of the states exceeded the de minimis threshold (see table 2.4).

Figure 2.5: Comparison of Reported and Approved VCO Exclusions, 1983-1988



Source: OJJDP.

Table 2.4: Disallowed VCO Exclusions in 1988

| | Number of disallowed VCO exclusions |
|----------------|--|
| Alabama | 6 |
| California | 152 |
| Louisiana | 124 |
| New York | 158 |
| South Carolina | 270 |
| Total | 710 |

Source: OJJDP.

Some states took action following OJJDP's disallowances of their VCO exclusions. In responding to our questionnaire and according to Utah and OJJDP officials, five states that had VCO exclusions disallowed by OJJDP reported changing either their laws or practices to meet federal regulations for VCO exclusions. For example, the Missouri state legislature passed legislation guaranteeing status offenders a hearing within 24 hours following placement in a secure detention facility.

State Action to Ensure Compliance

During our visits to facilities in Ohio, Tennessee, and Utah officials told us of efforts to ensure compliance with the 1974 act. After identifying a potential problem in complying with the DSO requirement, Ohio officials said that the state advisory group established a committee to recommend ways to ensure compliance with the DSO requirement. Because Tennessee was concerned about possibly not being in compliance with the DSO requirement, officials said that it passed legislation mandating compliance with OJJDP regulations. Utah officials said that its statewide monitoring system was revised in order to distinguish delinquency cases from VCO exclusion cases.

Procedural Protections Inconsistently Provided and Documented

Although the states have made progress in meeting the 1974 act's DSO requirement, we found the following:

- Some states were not providing all of the procedural protections to juveniles who were detained for violating a court order necessary for such detentions to count as VCO exclusions.
- For states reporting VCO exclusions, OJJDP assumed but did not verify that juveniles actually received the required procedural protections when state law or policy requires such protections.
- Seven states, without a law or policy guaranteeing all of the required protections, did not verify that they met the conditions for claiming the VCO exclusion.
- Court records did not document that judges provide juveniles their procedural protections.

Providing additional assurance that status offenders received their procedural protections may be difficult, according to officials. Also, many states with decentralized juvenile justice systems do not have enforcement authority over their local juvenile courts.

Guaranteed Procedural Protections Not Always Provided

The procedural protections that must be provided to detained juveniles derive from the Constitution and generally are defined in state law and policy. We found that juveniles detained by court order are not always receiving the procedural protections guaranteed by state law. During our review in Salt Lake County, Utah, the Salt Lake County Court Commissioner said that he did not advise status offenders appearing before him of their right to legal counsel because he believed that he did not have the authority under the Utah Judicial Code to provide counsel to indigent status offenders. However, the senior judge in Salt Lake County said that the right to counsel is part of state law and that all status offenders appearing before the Commissioner have this right. Of the 26 cases we examined of status offenders detained in 1989 at the Salt Lake County Detention Facility, the Commissioner heard 17 cases. In all 17 cases the status offenders were not advised of their right to an attorney prior to incarceration. As a result of our discussions with the senior judge, status offenders will be advised of their right to counsel.

Other legally guaranteed protections were not being provided at the Upper East Tennessee Regional Detention Center in Johnson City. Consistent with federal regulations, Tennessee law limits to 24 hours the amount of time a status offender may be securely detained without going before a judge. In addition, if within the 24-hour period a judge at a hearing has determined that probable cause exists that a status offender violated a VCO, OJJDP regulations allow the accused to be held up to, but not longer, than 72 hours. In the 31 cases of court-ordered detention from 1989 we examined, we identified 6 instances where authorities failed to observe at least 1 of the time limits. Tennessee officials told us that such violations of state law requirements, which are consistent with OJJDP regulations, are identified by state monitors and reported to OJJDP as detentions that violate the DSO requirement. However, according to the officials, there are no indications that this practice is sufficiently widespread to warrant additional verification that might force the Tennessee monitors to reduce their oversight in other higher priority areas, such as removal of juveniles from adult jails.

Protections Are Assumed

In order for states to claim the VCO exclusion, status offenders detained on the basis of having violated a VCO must be provided procedural protections. According to an OJJDP official, it assumes for the purpose of compliance monitoring that the protections were provided as long as states have a law, regulation, or court ruling granting juveniles all the procedural protections. According to the OJJDP official, it does not require states reporting the VCO exclusion to verify that status offenders

received all the required procedural protections. For example, since Ohio, Tennessee, and Utah have laws that provide status offenders the right to present and question witnesses, OJJDP does not require state monitors to determine that this right is afforded each time youths are detained for violating a VCO. As a result, the state need not assure that youths actually receive their rights in order to claim the VCO exclusion, and OJJDP cannot be assured that cases reported as VCO exclusions include the required protections.

Some States Do Not Verify All VCO Conditions

OJJDP requires states that do not guarantee the required protections to verify that all procedural protections have been given in order to report a VCO exclusion. In these states, state monitors are responsible for verifying on a case-by-case basis that all criteria required to claim a VCO exclusion have been met.

In response to our survey, 29 states indicated that they had cases of status offenders being securely detained on the basis of violating a VCO between 1987 and 1989. Eight of these states⁷ reported their state laws and court rules do not require all of the procedural protections listed in OJJDP regulations. For example, Alabama, Hawaii, Illinois, Louisiana, and Missouri did not require that a judicial determination be made that no rational alternative to secure detention exists before a status offender is detained. California did not guarantee the right of appeal to an appropriate court. Hawaii and Nevada did not guarantee that the juvenile's charges be served in writing within a reasonable time prior to the hearing. Whenever state laws or court rules do not require that protections listed in OJJDP regulations are given before status offenders are detained, OJJDP requires the states to verify with original source documents that the protections were provided in order to claim the VCO exclusion.

Seven of the eight states were not verifying that all VCO conditions have been met. While Alabama responded that it verified all cases, six states stated they verified few if any of the cases. The remaining state, Ohio, responded that it verified about half of its reported cases. Therefore, these states should exclude only the VCO cases for which they verified that the conditions for claiming the VCO had been met. If OJJDP disallowed all the VCO exclusions for these six states, three would have levels of institutionalization exceeding the de minimis threshold.

⁷Alabama, California, Hawaii, Illinois, Louisiana, Missouri, Nevada, and Ohio.

Juvenile Court Documentation of Protections Generally Not Required

OJJDP regulations do not require that all the procedural protections listed in the regulations be fully documented in court records. The regulations require only that one protection—the judge’s warning to the juvenile of the consequences of violating the judge’s order—be reflected in the court record and proceedings. While the remaining procedural protections must be afforded before a state can properly report a VCO, OJJDP regulations do not require supporting documentation for them in court records. State monitors are responsible for determining if the protections were afforded.

Documentation of procedural protections at the five juvenile courts we visited in Tennessee, Ohio, and Utah was insufficient to allow us to determine if all protections were provided status offenders securely detained by court order. In none of the 92 cases we reviewed in the 3 states did we find data showing that all of the specified protections were afforded. For example, we found no evidence in the written court records for any of the 92 cases that the status offenders had the right to a transcript of their violation hearing. In only 6 of the 92 cases we determined that juveniles had the charges served to them in writing within a reasonable time before the hearing.

Difficulty in Verifying and Documenting Procedural Protections

OJJDP and state officials pointed out problems in verifying and documenting that the juveniles had received their procedural protections listed in OJJDP regulations. According to OJJDP officials, its practice of not requiring states claiming the VCO exclusion to verify that status offenders received their procedural protections is based on practical considerations. An OJJDP official stated that it would be impossible for a state to actually verify that all rights were provided to each status offender coming before a juvenile court because of the volume of cases and the number of juvenile courts. Another OJJDP official explained that because courts sometimes limit access to juvenile records, some state agencies do not have access to all detention facility or court records. In such cases, state officials have to rely on detention center and jail personnel to report juvenile detention information, and the data is thus not accessible for verification. He stated that OJJDP therefore allows some latitude to state monitors to ensure that state laws are carried out.

Ohio is one of the eight states whose laws and policies do not require one or more of the procedural protections listed in the OJJDP regulations. While the state does guarantee that the juvenile will receive the right to be warned of the consequences of violating a VCO, it does not guarantee that the warning be reflected in the court records and proceedings. State

monitors do not verify in all cases that juveniles were actually afforded this protection because it is not practical given the large numbers of VCO cases in Ohio.

At the Hamilton County Juvenile Detention Center in Cincinnati, we did not find the warning reflected in either detention center or written court files for 34 of the 35 cases in our review. The Deputy Clerk of the Hamilton County Juvenile Court stated that the Court used to automatically include a written warning in the court records, but this practice ended several years ago. The Administrative Judge of the Hamilton County Juvenile Court said that judges in the County warn all adjudicated status offenders verbally of the consequences of not obeying the judicial order, and this verbal warning appears on audio tapes of each of the proceedings. The court retains the tapes, which the court considers part of the official court record, and thus satisfies the federal requirement, according to the judge. The court does not usually make transcripts of the tapes but retains them in the event status offenders appeal the disposition of their cases. According to the judge, the tapes provide a record for appellate consideration of the juveniles' cases. In discussing this with a Justice attorney, he said that he concurred with the judge's view.

According to Ohio officials, an average hearing lasts about 15 minutes. The Ohio state juvenile justice specialist said that it could have been very impractical to review all records and listen to audio tapes for the 2,916 VCO exclusion cases reported by Ohio in 1989, and the state monitors did not do so.

OJJDP's audits of state compliance monitoring systems found that 24 of the 46 audited states do not have enough enforcement authority over local juvenile officials to compel the officials to follow OJJDP procedures. For example, OJJDP's Tennessee audit found that state statutes had no sanction provisions to enforce either the DSO requirement or the requirement that juveniles be separated from adults. Likewise, OJJDP's Missouri audit found the state had no enforcement mechanism for the removal of juveniles from jails because each local court has total authority over jailing and locking up juveniles.

Conclusions

States are taking action to comply with the 1974 act's goal of keeping status offenders out of secure detention facilities. States amended their statutes and revised their regulations governing their secure detention practices for status offenders. Further, states reported that they have

taken action to improve their monitoring of status offender detention. As of October 1990, all but one state were participating in the \$48 million formula grant program that the OJJDP administers. Further, states have reduced the number of status offenders⁸ detained for longer than 24 hours nationwide by almost 95 percent since they began participating in the program.

OJJDP audits, done mostly in 1987, of state compliance identified errors in their monitoring practices. In responding to our questionnaires, states reported that since the audits they have either begun or completed action to improve their monitoring practices.

With respect to the VCO exclusion, 25 states reported about 5,300 exclusions in 1988. Of these 25 states, 5 states accounted for about 70 percent, with Ohio accounting for 44 percent. Since OJJDP began its state audits in 1985, 12 states have had some of their VCO exclusions disallowed. In 1988, OJJDP rejected 710 VCO exclusions that did not meet its regulations. However, none of these exclusions resulted in a state exceeding its de minimis threshold.

We could not determine whether status offenders received their procedural protections because (1) court records did not reflect whether juveniles received their procedural protections, and (2) the state laws or regulations did not require documentation of most of these protections. However, at those secure detention facilities we visited, we determined that certain protections were not consistently provided, such as the right to an attorney and the right to a hearing within 24 hours. Further, six states reported they did not have laws or regulations to assure that procedural protections for status offenders were provided, nor did they verify that such protections were provided. The states remain in compliance with OJJDP regulations governing the grant program by not exceeding their de minimis threshold. This can be accomplished by excluding those reported cases of detentions where juveniles violated a VCO.

Recommendation

We recommend that the Attorney General direct the Administrator, OJJDP, to concentrate its oversight on the monitoring efforts states make to assure compliance with its regulations, particularly with respect to offenders' procedural protections. Specifically, its efforts should be directed at those states who would exceed their de minimis threshold of

⁸Includes nonoffenders.

status offenders detained in secure facilities should OJJDP disallow some or all of their vco reported exclusions.

Agency Comments

In commenting on the draft report, the Department of Justice said that it generally agreed with our findings and recommendation (see app. VI). We discussed the report with officials from the three states visited, and they concurred with the descriptions of their juvenile justice systems. They and Justice provided further clarifications, which have been incorporated as appropriate.

GAO Questionnaire Sent to State Juvenile Justice Specialists



United States General Accounting Office

National Survey of Court-Ordered Detention of Status Offenders

INTRODUCTION

At the request of Congress, the U.S. General Accounting Office is reviewing the court-ordered detention of juvenile status offenders. The purpose of this survey is to obtain information from state juvenile justice experts on the detention of juvenile status offenders, including the use of the valid court order (VCO) Amendment to the Juvenile Justice and Delinquency Prevention Act. The survey addresses both general information regarding your state's overall juvenile justice system, and specific information on your use or non-use of the VCO provision.

The questionnaire should take about 45 minutes of your time. If you have any questions, please call Anthony Moran at (213) 894-3813 or Maria Vargas at (303) 844-0036. Please return the completed questionnaire in the enclosed pre-addressed, pre-paid envelope within 10 days of receipt. In the event the envelope is misplaced, our return address is:

U.S. General Accounting Office
Ms. Maria Vargas
Suite 800
1244 Speer Boulevard
Denver, Colorado 80204

If you have any comments you wish to add, please use the space provided at the end of the questionnaire.

Thank you in advance for your prompt assistance.

Note: The total number of responses for each question is presented either in parentheses at the end of each question option or in the corresponding boxes. Additionally, the number of Valid Court Order (VCO) user states that responded to each option is presented, when appropriate, after the total number of responses (e.g., 39/21 denotes that 39 states responded, and of those, 21 were VCO user states).

DEFINITIONS FOR THIS SURVEY

Status offender - Federal law and regulations define a status offender as a juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

Valid Court Order - The U.S. Code (Title 42, section 5603.16) defines a "valid court order" as a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order regulating the juvenile's future conduct. The use of the word "valid" permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States.

I. BACKGROUND ON STATE PROGRAM

Please provide the following information:

State: 50 states plus District of Columbia

Respondent's name: _____

Respondent's title: _____

Telephone: (____) _____
(area code) (number)

**Appendix I
GAO Questionnaire Sent to State Juvenile
Justice Specialists**

1. Federal law and regulations define a status offender as a juvenile offender who has been charged with or adjudicated for conduct, which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

Does your state law have a similar definition for a status offender? (Check one)

1. ☐ Yes (Skip to Question 3.) (39/21)
2. ☐ No (Continue with Question 2.) (12/8)

2. What is your state's definition of a status offender? (Please define.) (12/8)

3. Does your state have a formal or informal definition of "chronic" status offender? (Check one)

1. ☐ Yes, a formal definition (Continue with Question 4.) (5/3)
2. ☐ Yes, an informal definition (Continue with Question 4.) (11/6)
3. ☐ No (Skip to Question 5.) (34/19)
Nonrespondent (0/1)

4. Which of the following, if any, best describes how the criteria for the word "chronic" was established? (Check all that apply)

1. ☐ A result of our state's research (2/0)
2. ☐ Enabling legislation (4/2)
3. ☐ Procedural court rules (2/1)
4. ☐ Common practice (6/2)
5. ☐ Each judge has own working definition (8/7)
6. ☐ Other (Please specify.) (0)

5. Does your state classify each of the following juvenile behaviors, at the first occurrence, as a status offense, delinquency, or is it not an offense? (Check one box in each row.)

| JUVENILE BEHAVIORS | Status offense | | | Delinquency | | | Not an offense | | | VCO States | | |
|--|----------------|-----|-----|-------------|-----|-----|----------------|-----|-----|------------|-----|-----|
| | (1) | (2) | (3) | (1) | (2) | (3) | (1) | (2) | (3) | (1) | (2) | (3) |
| 1. Running away | 42 | 0 | 9 | 24 | 0 | 5 | | | | | | |
| 2. Purchase, possession, or consumption of alcohol by a minor (not public consumption) | 25 | 24 | 2 | 13 | 15 | 1 | | | | | | |
| 3. Curfew violation | 31 | 6 | 14 | 16 | 4 | 9 | | | | | | |
| 4. Truancy | 41 | 1 | 9 | 23 | 1 | 5 | | | | | | |
| 5. Incurable / unruly | 42 | 0 | 9 | 24 | 0 | 5 | | | | | | |
| 6. Other juvenile actions not considered adult crimes (Please specify.) | | | | | | | | | | | | |
| | 9 | 1 | 1 | 6 | 1 | 0 | | | | | | |

6. If a juvenile on probation or under other court supervision for having committed a status offense violates that probation or supervision by committing an additional status offense, can the juvenile be considered a delinquent? (Check one)

1. ☐ Yes, in all cases (9/6)
2. ☐ Yes, in some cases (Please explain.) (18/12)

3. ☐ No (22/10)
4. ☐ Don't know (2/1)

**Appendix I
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7. What is the maximum number of hours, if any, your state law allows pre- and post-adjudicated status offenders to be detained in a secure facility, excluding holidays and weekends? (Check one box in each column.)

| MAXIMUM HOURS ALLOWED | Pre-adjudication | | Post-adjudication | | VCO States | |
|-------------------------------|------------------|-----|-------------------|-----|---------------|-------------|
| | (1) | (2) | (1) | (2) | Pre (1) | Post (2) |
| 1. Never detained | 16 | 22 | | | 10 | 9 |
| 2. 1 hour - 24 hours | 16 | 5 | | | 10 | 5 |
| 3. 25 hours - 48 hours | 4 | 3 | | | 2 | 1 |
| 4. 49 hours - 72 hours | 5 | 0 | | | 2 | 0 |
| 5. More than 72 hours | 3 | 5 | | | 1 | 4 |
| 6. No limit | 5 | 6 | | | 3 | 2 |
| 7. Other (Please specify.) | | | | | | |
| | 2 | 10 | | | 1 | 8 |

II. STATE JUVENILE JUSTICE SYSTEM

The following questions cover your state juvenile justice system and practices for dealing with status offenders.

8. Are juveniles in your state judicially handled under a juvenile court system or a family court model? (Check all that apply)

1. ☐ Juvenile court system (34/19)
 2. ☐ Family court model (12/8)
 3. ☐ Other (Please specify.) (14/9)

9. Which of the following statements best describes the judges who deal with juveniles in your state? (Check all that apply in each category.)

Qualifications

1. ☐ Required to be an attorney (49/28)
 2. ☐ Required to be knowledgeable about juvenile justice (11/7)
 3. ☐ Required to participate in continuing professional development training (25/16)
 4. ☐ Other (Please specify.) (1/1)

How Judges Are Selected

5. ☐ Elected (27/16)
 6. ☐ Appointed (29/15)
 7. ☐ Elected and reconfirmed (2/2)
 8. ☐ Other (Please specify.) (4/3)

How Judges Serve

9. ☐ Assigned to juvenile courts (28/17)
 10. ☐ Rotate from adult to juvenile courts (19/8)
 11. ☐ Concurrently work in adult and juvenile courts (28/16)
 12. ☐ Other (Please specify.) (11/7)

**Appendix I
GAO Questionnaire Sent to State Juvenile
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10. Which of the following officials, if any, in your state have the authority to judicially authorize the secure detention of accused or adjudicated status offenders longer than 24 hours? (Check all that apply)

- 1. ☐ No official has authority to authorize secure detention longer than 24 hours (17/9)
- 2. ☐ Referees (4/4)
- 3. ☐ Commissioners (7/6)
- 4. ☐ Magistrates (2/0)
- 5. ☐ Justices of the peace (3/1)
- 6. ☐ Judges (35/21)
- 7. ☐ Other (Please specify) (9/1)

11. In your opinion, which of the following, if any, is the predominant pattern of use of secure detention by authorized officials in your state for either accused or adjudicated status offenders? (Check all that apply)

- 1. ☐ No secure detention (13/7)
- 2. ☐ No recognizable pattern of use (13/10)
- 3. ☐ Some authorized officials detain status offenders more than others (24/14)
- 4. ☐ Heavy urban use (3/1)
- 5. ☐ Heavy rural use (3/1)
- 6. ☐ Even distribution across state (2/0)
- 7. ☐ Other (Please specify) (7/4)

- 8. ☐ No basis to judge (1/0)

12. Which, if any, of the following programs or facilities are used as alternatives to secure detention of status offenders in your state? (Check all that apply)

- 1. ☐ Non-resident intervention (e.g., counseling or home health care) (39/24)
- 2. ☐ Shelters (non-secure) (49/28)
- 3. ☐ Shelters (staff secure) (28/17)
- 4. ☐ Group homes (37/20)
- 5. ☐ Foster homes (42/25)
- 6. ☐ Residential child care facilities (33/17)
- 7. ☐ Other (Please specify) (23/17)

- 8. ☐ Other (Please specify) (10/7)

- 9. ☐ Other (Please specify) (4/2)

13. Of the programs/facilities you checked in Question 12, please rank the three used most often in your state, with "1" being the most often used.

- 1. _____
- 2. _____
- 3. _____

Note: nonresident intervention and non-secure shelters were the two most frequently used programs.

**III. OFFICE OF JUVENILE JUSTICE AND
DELINQUENCY PREVENTION (OJJDP)
FORMULA GRANTS PROGRAM**

A. OJJDP FORMULA GRANTS PROGRAM FUNDS

14. Has your state participated in the OJJDP Formula Grants Program in the last three years (1987-1989)? (Check one box in each row.)

| Year | Yes (1) | No (2) |
|---------|------------|-----------|
| 1. 1987 | 47 | 4 |
| 2. 1988 | 48 | 3 |
| 3. 1989 | 49 | 2 |

**Appendix I
GAO Questionnaire Sent to State Juvenile
Justice Specialists**

10. Which of the following officials, if any, in your state have the authority to judicially authorize the secure detention of accused or adjudicated status offenders longer than 24 hours? (Check all that apply)

- 1. ☐ No official has authority to authorize secure detention longer than 24 hours (17/9)
- 2. ☐ Referees (4/4)
- 3. ☐ Commissioners (7/6)
- 4. ☐ Magistrates (2/0)
- 5. ☐ Justices of the peace (3/1)
- 6. ☐ Judges (35/21)
- 7. ☐ Other (Please specify) (9/1)

11. In your opinion, which of the following, if any, is the predominant pattern of use of secure detention by authorized officials in your state for either accused or adjudicated status offenders? (Check all that apply)

- 1. ☐ No secure detention (13/7)
- 2. ☐ No recognizable pattern of use (13/10)
- 3. ☐ Some authorized officials detain status offenders more than others (24/14)
- 4. ☐ Heavy urban use (3/1)
- 5. ☐ Heavy rural use (3/1)
- 6. ☐ Even distribution across state (2/0)
- 7. ☐ Other (Please specify) (7/4)

- 8. ☐ No basis to judge (1/0)

12. Which, if any, of the following programs or facilities are used as alternatives to secure detention of status offenders in your state? (Check all that apply)

- 1. ☐ Non-resident intervention (e.g., counseling or home health care) (39/24)
- 2. ☐ Shelters (non-secure) (49/28)
- 3. ☐ Shelters (staff secure) (28/17)
- 4. ☐ Group homes (37/20)
- 5. ☐ Foster homes (42/25)
- 6. ☐ Residential child care facilities (33/17)
- 7. ☐ Other (Please specify) (23/17)

- 8. ☐ Other (Please specify) (10/7)

- 9. ☐ Other (Please specify) (4/2)

13. Of the programs/facilities you checked in Question 12, please rank the three used most often in your state, with "1" being the most often used.

- 1. _____
- 2. _____
- 3. _____

Note: nonresident intervention and non-secure shelters were the two most frequently used programs.

**III. OFFICE OF JUVENILE JUSTICE AND
DELINQUENCY PREVENTION (OJJDP)
FORMULA GRANTS PROGRAM**

A. OJJDP FORMULA GRANTS PROGRAM FUNDS

14. Has your state participated in the OJJDP Formula Grants Program in the last three years (1987-1989)? (Check one box in each row.)

| Year | Yes (1) | No (2) |
|---------|------------|-----------|
| 1. 1987 | 47 | 4 |
| 2. 1988 | 48 | 3 |
| 3. 1989 | 49 | 2 |

**Appendix I
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IF YOU ANSWERED "NO" TO ALL THREE YEARS IN QUESTION 14, SKIP TO SECTION IV, PAGE 7.

15. Which one of the following, if any, has primary responsibility for dispersing OJJDP funds to other state or local agencies/programs? *(Check one)*

- 1. ☐ Criminal justice agency (24)
- 2. ☐ Social services agency (7)
- 3. ☐ Governor's office (7)
- 4. ☐ Other *(Please specify.)* (12) _____

Nonrespondent (0/1)

16. The 1974 Juvenile Justice and Delinquency Prevention Act sets forth three juvenile justice mandates:

- 1. Deinstitutionalization of status offenders (DSO) and juvenile non-offenders,
- 2. Removal of juveniles from adult jails and lock-ups, and
- 3. Sight and sound separation of juveniles from incarcerated adults.

Has OJJDP directed your state to concentrate its use of OJJDP funds on any one of the mandates during the last three years? *(Check one)*

- 1. ☐ No (21)
- 2. ☐ Yes (29)

Nonrespondent (1/0)

If yes, please list the year(s) and the mandate(s).

| Year | Mandate |
|----------|---------|
| 198_____ | _____ |
| 198_____ | _____ |
| 198_____ | _____ |

Note: During the 3-year period 1987-1989, jail removal was listed 32 times and deinstitutionalization was listed 2 times.

B. STATE COMPLIANCE MONITORING PROCESS

17. Which of the following, if any, monitors for juvenile justice compliance in your state? *(Check all that apply)*

- 1. ☐ Juvenile justice specialist (32/22)
- 2. ☐ In-house monitoring specialist (17/9)
- 3. ☐ Other state agency - (e.g., department of corrections or institutions) *(Please specify.)* (19/_____) _____
- 4. ☐ Outside contractor (8/5)
- 5. ☐ Part-time employees/interns (1/0)
- 6. ☐ State advisory group (15/9)
- 7. ☐ Other *(Please explain.)* (7/3) _____

18. Which of the following, if any, is your state's current method of monitoring? *(Check all that apply)*

- 1. ☐ Phone surveys (9/7)
- 2. ☐ Mail-out surveys (23/12)
- 3. ☐ Self-reporting (33/20)
- 4. ☐ On-site data collection (48/28)
- 5. ☐ Statistical projection (8/5)
- 6. ☐ Other *(Please specify.)* (5/4) _____

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19. To what extent, if any, have the following situations affected your state's ability to obtain data at secure detention facilities and courts? *(Please respond by using the following numbering system. If the situation does not exist, enter "6".)*

- 1 = Very great extent
- 2 = Great extent
- 3 = Moderate extent
- 4 = Some extent
- 5 = Little or no extent
- 6 = Situation does not exist

| SITUATIONS | At secure detention facilities (1) | At courts (2) |
|--|---------------------------------------|------------------|
| 1. State monitor does not have authority to access records | | |
| 2. Limited resources (e.g., computer, staff, financial) available to comprehensively access juvenile records | | |
| 3. Incomplete or missing juvenile records | | |
| 4. Difficulty in obtaining records from local officials | | |
| 5. Other <i>(Please explain.)</i> | | |
| _____ | | |
| _____ | | |

For responses to question 19 see attachment A.

C. OJJDP AUDIT RESULTS

20. The June 1985 Formula Grants Reauthorization regulation required OJJDP to conduct an audit of each state's compliance monitoring system. These audits were generally conducted between 1987 and 1988. In some cases, OJJDP reported findings and made recommendations for improved monitoring procedures.

In response to the audit, have any of the following actions been initiated or completed in your state?
(Check all that apply)

- 1. ☐ Limited pre-adjudication detention to less than 24 hours (9/7)
- 2. ☐ Eliminated detention of adjudicated status offenders (2/2)
- 3. ☐ Increased/decreased the monitoring universe (23/
- 4. ☐ Revised procedure to determine the monitoring universe (20/13)
- 5. ☐ Created and/or revised monitoring manual (36/2
- 6. ☐ Changed monitoring responsibility (11/6)
- 7. ☐ Stopped claiming detentions based on violation of a court order as exclusions and began reporting these cases as DSO violations (2/2)
- 8. ☐ Revised data collection procedures (24/15)
- 9. ☐ Improved verification procedures (31/19)
- 10. ☐ Modified statistical projection procedures (2/1)
- 11. ☐ Increased number of sites visited (21/15)
- 12. ☐ Increased frequency of site visits (14/9)
- 13. ☐ Reclassified one or more facilities (10/8)
- 14. ☐ Changed training procedures for state monitors (6/5)
- 15. ☐ Other *(Please specify.)* (6/6) _____
- 16. ☐ Other *(Please specify.)* (2/2) _____
- 17. ☐ Other *(Please specify.)* (1/0) _____

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21. To what extent, if any, do you agree with the 1987-88 OJJDP audit report of your state? (Check one)

- 1. ☐ Generally agree with audit report (Skip to Question 23.) (38/25)
- 2. ☐ Generally agree with audit report but have specific areas of disagreement (Continue with Question 22.) (8/3)
- 3. ☐ Generally disagree with audit report (Continue with Question 22.) (0/0)
- 4. ☐ No basis to judge/don't know (Skip to Question 23.) (1/0)

Nonrespondents (4/1)

22. With which areas do you disagree and why? (Please explain.) (8/3)

IV. THE VALID COURT ORDER EXCLUSION

In 1980, Congress passed an amendment to the JJDP Act which permits states to implement policies authorizing the secure detention of status offenders who violated a juvenile judge's valid court order (VCO). Juveniles detained in secure facilities on the basis of violating a valid court order can be excluded by OJJDP from the total number of DSO violations reported annually by the state. The following questions pertain to your state's use or non-use of the VCO provision.

23. Does your state permit juvenile judges to order the secure detention of status offenders for violating a VCO? (Check all that apply)

- 1. ☐ No (15/3)
- 2. ☐ Yes, through legislation (21/15)
- 3. ☐ Yes, through judicial contempt authority (16/1)
- 4. ☐ Yes, through court procedural rule (10/9)
- 5. ☐ Yes, through state supreme court ruling (2/2)
- 6. ☐ Yes, through other means (Please specify.) (3/

24. Has your state reported to OJJDP any cases of status offenders detained in secure facilities on the basis of violating a VCO at any time in the past 3 years (1987-1989)? (Check one)

- 1. ☐ Yes (Skip to Question 28.) (29)
- 2. ☐ No (Continue with Question 25.) (22)

Note: 29 states use the VCO and responded to questions 28-40; the remaining 22 states responded to questions 25-27 and 40.

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25. If your state has not reported any cases of secure detention based on violations of VCOs in the past 3 years (1987-1989), which of the following, if any, has been the reason(s)? (Check all that apply)

- 1. ☐ State does not allow the secure detention of accused or adjudicated status offenders regardless of court order violations (7)
- 2. ☐ State laws and/or court rules do not guarantee judicial hearing within 24 hours (5)
- 3. ☐ State laws and/or court rules do not guarantee the due process protections required by federal regulations (4)
- 4. ☐ State has not identified a need to securely detain adjudicated status offenders (3)
- 5. ☐ Compliance with the federal monitoring requirements is difficult for state (Please explain.) (1)

6. ☐ Other reasons (Please explain.) (7)

26. Does your state expect to start reporting cases of secure detention based on violations of VCOs within the next two years? (Check one)

- 1. ☐ Yes (Continue with Question 27.) (6)
- 2. ☐ No (Skip to Question 40.) (12)
- 3. ☐ Don't know (Skip to Question 40.) (4)

27. Which of the following, if any, describes why you expect your state to start reporting cases of secure detention based on violations of VCOs? (Check all that apply)

- 1. ☐ State identified secure detention as a needed dispositional alternative (1)
- 2. ☐ VCO exclusion needed to demonstrate full compliance with the DSO mandate (2)
- 3. ☐ Legislative branch provided impetus for VCO violation detention (2)
- 4. ☐ Executive branch provided impetus for VCO violation detention (0)
- 5. ☐ Judiciary branch provided impetus for VCO violation detention (2)
- 6. ☐ Other (Please specify.) (2)

PLEASE SKIP TO QUESTION 40 ON LAST PAGE

28. Which of the following, if any, describes why your state reports cases of status offenders detained in secure facilities on the basis of violating VCOs? (Check all that apply)

- 1. ☐ State identified secure detention as a needed dispositional alternative (5)
- 2. ☐ VCO exclusion needed to demonstrate full compliance with the DSO mandate (15)
- 3. ☐ Legislative branch provided impetus for VCO violation detention (8)
- 4. ☐ Executive branch provided impetus for VCO violation detention (1)
- 5. ☐ Judiciary branch provided impetus for VCO violation detention (11)
- 6. ☐ Other (Please specify.) (5)

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29. We are interested in your statewide use of VCO violations as a basis for detaining status offenders. In your opinion, which, if any, of the following describes the predominant pattern of use? (Check all that apply)

- 1. ☐ Some judges (or other judicial officials) use VCO extensively (9)
- 2. ☐ Heavy urban use (1)
- 3. ☐ Heavy rural use (1)
- 4. ☐ Even distribution across state (2)
- 5. ☐ No recognizable pattern of use (19)
- 6. ☐ Other (Please specify.) (5)

- 7. ☐ No basis to judge (2)

30. Did OJJDP disallow any of your state's reported VCO violation cases for 1987 - 1988? (Check one)

- 1. ☐ Yes (Continue with Question 31.) (4)
- 2. ☐ No (Skip to Question 32.) (19)
- 3. ☐ Don't know (Skip to Question 32.) (5)
- Nonrespondent (1)

31. Which of the following, if any, describes the effect of the disallowance? (Check all that apply)

- 1. ☐ DSO violation rate increased (2)
- 2. ☐ State did not demonstrate full compliance with the DSO mandate (0)
- 3. ☐ State law changed to comply with federal regulations (0)
- 4. ☐ Increased number of "other" (e.g., out of state runaways) exceptions claimed (0)
- 5. ☐ State individually verifies all VCO violation detentions before reporting them as exclusions (3)
- 6. ☐ Other (Please specify.) (2)

32. To what extent, if any, do you review the following records to verify that the VCO violation cases you report to OJJDP meet federal regulations for procedural guarantees? (Please check one box for each row.)

| RECORDS REVIEWED | | | | | | VCO |
|--|-----|-----|-----|-----|-----|------------|
| | (1) | (2) | (3) | (4) | (5) | |
| 1. Self-reported data from detention centers and/or training schools | 7 | 6 | 2 | 4 | 8 | nonrespon: |
| 2. Detention center and/or training school logs | 6 | 6 | 5 | 2 | 8 | 2 |
| 3. Detention center and/or training school files | 10 | 4 | 2 | 3 | 9 | 1 |
| 4. Computerized reports | 7 | 2 | 5 | 3 | 9 | 3 |
| 5. Juvenile court records | 10 | 4 | 3 | 2 | 8 | 2 |
| 6. Other (Please specify.) | 3 | 0 | 1 | 0 | 0 | 25 |

33. About what percent of the VCO violation cases reported to OJJDP do you verify by checking the original source documents? (Check one)

- 1. ☐ None (0 percent) (4)
- 2. ☐ Some (less than 25 percent) (8)
- 3. ☐ Many (26 to 75 percent) (5)
- 4. ☐ Most (76 to 99 percent) (5)
- 5. ☐ All (100 percent) (Skip to Question 35.) (6)
- Nonrespondent (1)

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34. If you do not verify all the VCO violation cases using original source documents, which, if any, of the following explains why? (Check all that apply)

- 1. ☐ Not applicable, all cases are verified (4)
- 2. ☐ Not required by OJJDP (4)
- 3. ☐ Difficulty in obtaining records from local officials (4)
- 4. ☐ Lack of resources (12)
- 5. ☐ Lack of time (12)
- 6. ☐ Incomplete or missing records (2)
- 7. ☐ Cannot trace to individual cases (3)
- 8. ☐ Other (Please specify.) (9)

35. Which, if any, of the following rights for detained status offenders are guaranteed by your state laws and/or court procedural rules? (Check one box in each row.)

| RIGHTS | Guaranteed? | | |
|--|-------------|-----------|----------------------|
| | Yes (1) | No (2) | Don't know (3) |
| 1. The right to have the charges in writing served upon the juvenile within a reasonable amount of time prior to the hearing | 25 | 2 | 2 |
| 2. The right to a judicial hearing | 29 | 0 | 0 |
| 3. The right to an explanation of the nature and consequences of the proceedings | 28 | 0 | 1 |
| 4. The right to legal counsel and the right to have such counsel appointed by the court if indigent | 29 | 0 | 0 |
| 5. The right to present / confront witnesses | 28 | 0 | 1 |
| 6. The right to have a transcript or record of the proceedings | 24 | 0 | 5 |
| 7. The right of appeal to an appropriate court | 27 | 1 | 1 |
| 8. The right to be warned in writing of the consequences of violating a judge's order | 21 | 3 | 5 |
| 9. The right of a judicial determination that there is no rational alternative to secure detention | 19 | 5 | 5 |

IF YOU RESPONDED "YES" OR "DON'T KNOW" TO ALL THE RIGHTS IN QUESTION 35, SKIP TO QUESTION 37.

IF YOU RESPONDED "NO" TO ONE OR MORE OF THE RIGHTS IN QUESTION 35, CONTINUE WITH QUESTION 36.

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36. Some states cannot guarantee status offenders all the rights listed in Question 35. To assure that all the rights are afforded, state monitors verify that detained status offenders receive those rights by checking the original source documents.

Of the VCO violation cases you reported to OJJDP in 1988, for about how many cases did you verify that detained status offenders were afforded the rights not guaranteed? (Check one)

1. ☐ Few, if any, of the cases (6)
2. ☐ Some of the cases (0)
3. ☐ About half of the cases (1)
4. ☐ Most of the cases (0)
5. ☐ All of the cases (1)

37. Since 1987, has the number of VCO violation cases you reported to OJJDP generally increased, remained about the same, or decreased? (Check one)

1. ☐ Generally increased (Continue with Question 38.) (5)
2. ☐ Remained about the same (Skip to Question 39.) (13)
3. ☐ Generally decreased (Continue with Question 38.) (9)

Nonrespondent (2)

38. If the number of VCO violation cases you reported to OJJDP has increased/decreased since 1987, which of the following, if any, has been the reason(s)? (Check all that apply)

1. ☐ Change in state law or approach to the detention of status offenders (Please explain.) (8)

2. ☐ State's DSO violation rate increased requiring the exclusion of VCO violation cases to remain in compliance with the DSO mandate (0)

3. ☐ State's DSO rate decreased, allowing state to remain in compliance with DSO standard without excluding all VCO violation cases (3)

4. ☐ Result of OJJDP audit finding or recommendation regarding state's compliance monitoring system (Please explain.) (4)

5. ☐ Other (Please specify.) (5)

39. Does your state plan to continue reporting VCO violation cases in the future? (Check one)

1. ☐ Yes (26)

2. ☐ No (Please explain.) (2)

3. ☐ Don't know (0)

Nonrespondent (1)

Appendix I
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40. If you have any comments on this survey, or on detention of status offenders, please write them in the space below. (13)

Three states (1 non and 2 VCO) cited lack of resources for alternative programs.

Three states (1 non and 2 VCO) stated that runaways are a big problem.

GGD/MS/3-90

Thank you for your assistance.

Appendix I
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Attachment A

19. To what extent, if any, have the following situations affected your state's ability to obtain data at secure detention facilities and courts?

| SITUATIONS | At secure detention facilities | | | | | | | At courts | | | | | | |
|--|--------------------------------|---------------------|------------------------|--------------------|----------------------------|---------------------------------|----------------------|--------------------------|---------------------|------------------------|--------------------|----------------------------|---------------------------------|----------------------|
| | (1) Very great extent | (2) Great extent | (3) Moderate extent | (4) Some extent | (5) Little or no extent | (6) Situation does not exist | (7) Non-responses | (1) Very great extent | (2) Great extent | (3) Moderate extent | (4) Some extent | (5) Little or no extent | (6) Situation does not exist | (7) Non-responses |
| 1. State monitor does not have authority to access records | 2 | 1 | 3 | 3 | 17 | 23 | 2 | 4 | 1 | 4 | 4 | 19 | 17 | 2 |
| 2. Limited resources (e.g., computer, staff, financial) available to comprehensively access juvenile records | 3 | 9 | 6 | 11 | 11 | 8 | 3 | 3 | 8 | 8 | 9 | 10 | 10 | 3 |
| 3. Incomplete or missing juvenile records | 3 | 0 | 7 | 10 | 21 | 8 | 2 | 0 | 1 | 7 | 8 | 20 | 12 | 3 |
| 4. Difficulty in obtaining records from local officials | 0 | 1 | 5 | 6 | 21 | 16 | 2 | 1 | 0 | 5 | 7 | 18 | 17 | 3 |
| 5. Other (Please explain.) | 1 | 1 | 0 | 0 | 0 | 0 | 49 | 0 | 1 | 0 | 0 | 0 | 1 | 49 |

Case Studies

The following case studies from Cincinnati, Ohio; Johnson City, Tennessee; and Salt Lake City, Utah, provide information on each state's juvenile justice system and state laws, the relationship between state laws regarding the detention of status offenders and federal requirements, and the extent to which status offenders were detained in secure facilities by court order. For each community, we provide a general description of the juvenile justice system as it relates to status offenders and include views of local juvenile justice officials and judges. We developed the descriptions from discussions with local officials, but we did not verify the descriptions. We also provide the results of our case analysis of status offenders detained by court order at the juvenile detention facility. Graphs in appendix III illustrate data on number of prior offenses, type of offense for which the juvenile was detained, length of detention, age, and gender of the 92 cases at the 3 detention centers. Finally, we include descriptive examples of status offender case histories from each location. Although the states use unique terms, we use language consistent with the federal regulations. For example, in Ohio status offenders are called "unruly children," but we refer to them as status offenders.

Ohio Juvenile Justice System

Ohio's juvenile justice system is decentralized and managed by 88 counties, with a total of 106 judges. Each of the 88 counties operates its courts independently. The juvenile courts hear cases that involve youth who allegedly committed status or delinquent offenses (e.g., robbery). Each juvenile court judge manages his or her respective court, clerks, probation staff, and detention centers.

The state agency that implements the JJDP for Ohio is the Governor's Office of Criminal Justice Services (GOCJS), created in the early 1970s. It distributes the OJDP formula grant and monitors the courts' compliance with the OJDP regulations. Ohio's formula grant for fiscal year 1990 was \$1,977,000, and much of the OJDP grant was used to subsidize local juvenile justice programs. GOCJS has specific efforts underway to maintain Ohio's compliance with the DSO requirement. For example, in 1990 GOCJS began funding a DSO program in Hamilton County that provides shelter care for status offenders in order to keep them out of secure detention. GOCJS has a "step down" policy for its grants that requires a court, after 4 years, to fund its own program. Under this policy, the federal money is used to start programs that the county continues after the grant money is stopped. This policy enables funding for other programs, such as establishing alternatives to detention.

In 1981, Ohio enacted legislation, sponsored by the Ohio juvenile judges, that eliminated the detention of status offenders and minor criminal offenders in the Department of Youth Services' long term juvenile correctional facilities. At the same time the state law provided about \$20 million a year to be distributed among each county on the basis of the county's population. This money provided the local juvenile courts with resources to offset the loss of the correctional facility option, according to an Ohio official. Some courts use a portion of the money to fund programs to divert status offenders from secure detention facilities. These programs are separate from OJDP funded programs.

State Laws Regarding Status Offenders

Ohio state law allows the detention of status offenders on the basis of circumstances other than violation of a court order. While Ohio's court order legislation permits secure detention for status offenders who violate a court order, it also permits the secure detention of juveniles who commit a status offense but have not violated a court order.

Judges have discretion on the length of time they can detain status offenders on the basis of two different state laws. One of the laws places a 5-day limit on the length of time an alleged or adjudicated status offender can be held in a secure setting. The other law places a 90-day limit on holding a status offender in a secure detention facility for purposes of evaluation. According to an Ohio official, the 5-day limit is primarily responsible for Ohio's high numbers of non-vco detentions (see app. IV). Ohio's DSO committee is working to revise Ohio's law to make it consistent with federal DSO policy.

Ohio law considers a juvenile who violates a court order to be a delinquent. For example, a juvenile who violates a court order by being truant can be considered a delinquent. According to the President of the Ohio Family and Juvenile Court Judges Association, juvenile courts have discretion to charge a juvenile with different offenses for the same behavior. For instance, if a status offender runs away from a nonsecure group home after being placed there under a court order, the juvenile can be charged with (1) escape, which is a felony; (2) violating a court order, which is a misdemeanor; or (3) running away, which is a status offense. Each charge has different consequences for the juvenile.

Detention of Status Offenders

Ohio does not have a statewide program to divert status offenders from secure detention, according to an Ohio official. Procedures for diverting status offenders vary from court to court. The courts use state and federal funding for such purposes as placing status offenders or delinquent youth in foster homes, group homes, or community centers (e.g., boarding schools) so they may receive care and treatment unavailable in their own homes. For example, the state grant in Hamilton County finances a program designed to divert first-time status offenders. If juveniles and their parents voluntarily consent to attend a court-arranged counseling program, then the court will drop the status offense charge. Hamilton County also has a shelter care program for status offenders that GOCJS funds with the OJJDP grant.

Ohio has significantly reduced the detention of status offenders. In 1976, Ohio detained 16,552 status offenders. According to Ohio's 1989 Monitoring Report, its detentions of status offenders had dropped to 756. GOCJS officials still considered this rate too high, since it comes too close to exceeding the federal de minimus standard. (See ch. 1 for an explanation of the de minimus standard.)

Ohio is by far the largest user of the vco exclusion in the United States. (See fig. 2.3.) Several Ohio judges told us that the idea of the vco amendment originated in Ohio, and Ohio's juvenile judges strongly support its use. The extent of vco use varies by county, according to GOCJS. In 1988, 15 of 88 counties had more than 60 vco exclusions that meet OJJDP requirements according to Ohio state monitors. Hamilton County had about 400 vco exclusions, the largest number from any county. The Administrative Juvenile Judge of Hamilton County believes that as long as juvenile judges have jurisdiction over status offenders, the vco is a necessary tool for courts.

Ohio's vco exclusions reported to OJJDP have generally increased recently, as shown in table II.1.

Table II.1: Ohio's Reported VCO Exclusions

| Year | VCO exclusions |
|------|----------------|
| 1986 | 811 |
| 1987 | 1,573 |
| 1988 | 2,380 |
| 1989 | 2,916 |

Source: OJJDP.

Ohio's juvenile justice specialist believes the increase is due to more accurate counting of the VCO exclusions after the OJJDP audit in 1987. She also said that Ohio probably could report more VCO exclusions and fewer non-VCO detentions in its monitoring report to OJJDP if monitors could check all of the court records of status offenders who have been detained. However, GOCJS monitors are not able to always verify from court records that all cases of status offenders detained longer than 24 hours met the VCO regulations. This is because the court records do not always contain such information. As a result, GOCJS must report these cases to OJJDP as non-VCO detentions.

To perform its monitoring function, GOCJS receives data from detention facilities statewide regarding detained status offenders. GOCJS monitors make on-site visits to selected facilities each year. During such visits they verify most of the reported data. For example, they review the cases of status offenders detained more than 24 hours.

Case File Review Results

We reviewed court records in Hamilton County, Ohio, from 3 randomly selected days in 1989. We examined 35 cases that we determined were instances where status offenders were detained by court order, although these cases were not necessarily counted as VCO exclusions. Running away was the most frequent violation charge, occurring in 22 of 35 cases. Other charges include unruly behavior (six), truancy (five), and curfew violation (two). For 30 of the 35 cases, the detention time exceeded 1 week. The average length of detention (excluding holidays and weekends) was about 3 weeks and the median detention time was about 2-1/2 weeks.

Example of Status Offender Case

The following is an example of a court-ordered detention involving a boy who, at the age of 11, ran away nine times over a 13-month period. (See table II.2 below.) He was charged with running away the first time in March 1988. The judge dismissed the charge and did not detain him. One month later, he was charged with running away for a second time. The judge adjudicated him for unruly behavior and detained him about 3-1/2 days in the county detention center.

After many offenses, the boy ran away in April 1989 and was charged with violating a court order. He was picked up the day after being charged and brought to the detention center. He was held for 3 days until he was adjudicated delinquent for violating a court order, then held for an additional 45 days. During his detention, his case was reviewed twice and each time the judge ordered him back to detention

pending final disposition. His detention orders specified that he needed to be detained

- to ensure his appearance at a hearing;
- to protect him and society; and
- to ensure he could be released to his parents, who were not available.

From April 1988 and April 1989, he was held in secure detention at the Youth Center for a total of 162 days.

Table II.2: Juvenile's Offense History

| Date | Offense | Behavior | Judge's action | Days detained |
|--------------|---------------|--------------|------------------|---------------|
| March 1988 | Runaway | Running away | Dismissed | 0 |
| April 1988 | Runaway | Running away | Found unruly | 4 |
| May 1988 | Runaway | Running away | Found unruly | 4 |
| June 1988 | VCO violation | Running away | Found delinquent | 0 |
| July 1988 | VCO violation | Running away | Found delinquent | 15 |
| August 1988 | VCO violation | Running away | Found delinquent | 48 |
| October 1988 | VCO violation | Running away | Found delinquent | 30 |
| March 1989 | VCO violation | Running away | Found delinquent | 13 |
| April 1989 | VCO violation | Running away | Found delinquent | 48 |

Source: Hamilton County Court Records.

Tennessee Juvenile Justice System

Tennessee's juvenile court system is decentralized and county based. The Tennessee Commission on Children and Youth (TCCY) is the state agency that administers the grant program. According to the Executive Director of TCCY, Tennessee has a fragmented juvenile court system consisting of 104 judges from 95 counties, with each county having at least 1 court. This decentralization results in different juvenile justice practices among the juvenile courts. For example, some counties detain status offenders for violating court orders, while others do not. According to state officials, because of decentralization, Tennessee juvenile court judges have great influence in establishing policy for juvenile detention.

The TCCY is an independent state agency, which administers state and federal funds to improve juvenile court services to children. Tennessee's formula grant for fiscal year 1990 is \$878,000. Much of the OJJDP grant is used to initiate new local juvenile justice programs, according to a TCCY official. TCCY staff monitor all jails and detention facilities for compliance with the act and state law requirements to deinstitutionalize status

offenders, and TCCY also educates judges and court staff about the federal requirements. In addition, using state funds, TCCY serves as an advocate for basic changes in the state juvenile justice system by sponsoring conferences, drafting legislation, and lobbying the state legislature.

During the on-site visits to detention centers, TCCY staff gather information regarding compliance with the JJDPa by reviewing the detention centers' records. According to TCCY's Juvenile Justice Director, TCCY monitors all secure facilities (e.g., jails and detention centers) monthly, quarterly, semiannually, or annually depending on the number of youth detained and the facilities' past records of compliance with state law and OJJDP regulations. When the monitor finds a noncomplying incident (e.g., improperly detaining a status offender over 24 hours), the monitor requests the administrative staff to sign a form acknowledging the incident. The juvenile justice specialist explained that this method of monitoring educates detention facility staff about federal regulations and state law. In addition, TCCY reports that the frequency of their on-site visits has sensitized the juvenile court judges to the importance of compliance with the DSO requirement and has helped decrease noncompliance incidents.

The state requires all detention center and court staff to have training, partly to help increase compliance with regulations. For example, at least one court staff member in each juvenile court in Tennessee is required to have at least 20 hours of training per year. According to the detention center director in the Upper East Tennessee Regional Detention Center (Center), the Center and court staff screen admissions to the Center in part to increase compliance with the DSO requirement. This means that fewer status offenders are detained. Court staff also monitor the amount of time juveniles spend in detention. They believe that these actions strengthen efforts to decrease the length of time status offenders are detained.

According to state officials, Tennessee has a strong incentive to comply with the DSO requirement because its juvenile justice program would be detrimentally affected if the state lost its eligibility for the grant funding. Tennessee state officials said that the grant program has influenced change in the state laws regarding use of the VCO. For example, in 1982 juvenile judges supported legislation mirroring OJJDP regulations after the state was faced with the loss of grant funding if it did not meet the formula grant requirements. Also, juvenile court judges withdrew

support from a bill permitting the secure detention of out-of-state run-aways. Although the judges believed that such a bill was strongly needed, they did not want to jeopardize the state's formula grant.

State Law Regarding Status Offenders

State law and regulations limit the length of time status offenders can be detained in secure detention and correction facilities. According to state law, judges cannot detain status offenders for more than 24 hours (excluding weekends and holidays) unless they have been charged with violation of a valid court order. A status offender may be securely detained beyond the 24-hour grace period if a detention hearing held within the 24-hour period reveals that there is probable cause to think the juvenile violated the VCO. In such instances, a hearing on the violation must be held within 72 hours.

According to the TCCY Executive Director, progress in implementing the act was initially slow and difficult. In 1982, when Tennessee was faced with not being in compliance with the DSO requirement, it passed legislation aimed at ensuring compliance with the requirement.

According to the Executive Director of the Tennessee Council of Juvenile and Family Court Judges, the Tennessee law provides protections to status offenders that exceed some of the requirements set forth in OJJDP's regulations. For example, a Tennessee court decision bans incarcerating adjudicated status offenders in the same facility as adjudicated delinquent offenders. This means that status offenders cannot be detained in the state's secure correctional facilities.

Detention of Status Offenders

According to the TCCY Executive Director, the deinstitutionalization of status offenders was a major change in the juvenile justice system in the past decade. In Tennessee's base year, 1977, the state reported 4,078 status offender detentions. In 1988, they reported 85 detentions. Tennessee's detention rate is 6.8 per 100,000 juveniles, which is below the OJJDP's de minimus rate of 29.4.

Judges usually detain juveniles for violating a court order before their cases are adjudicated, rather than after adjudication has occurred. According to the Executive Director of the Tennessee Council of Juvenile and Family Court Judges, detention is therefore generally not used as a means to punish status offenders. Also, after the disposition hearing, the judge releases or commits the child to a department, such as the Department of Youth Development (correctional facilities) or

Department of Education, which decides where to place the juvenile. Each department has its own alternative programs, such as group homes.

Monitors count the number of juveniles as recorded in the detention center's logbook to determine the number of vco detentions in that facility. TCCY's procedures require that for each such detention, the monitors check the detention center or court records for the original court order and to determine whether the violation hearing was within the legal time limits. If the case does not have a descriptive charge in the logbook, the monitors check to see if it was for status offense behavior. Because the state's definition of a vco mirrors that of the federal regulations, TCCY monitors do not verify that each vco violation meets all of the federal vco criteria.

Tennessee reported 316 vco exclusions in its 1988 monitoring report. Of 16 juvenile facilities where status offenders can be detained, 4 facilities had 30 or more cases of vco exclusions. Nine facilities had five or less cases of vco exclusions. The Upper East Tennessee Regional Juvenile Detention Center had 60, the highest number of vco exclusion cases in the state.

Case File Review Results

We reviewed all instances of court-ordered detention at this Center of status offenders for 1989 coming from three courts in upper eastern Tennessee. The courts were: Sullivan County Court in Kingsport, Washington County Court in Johnson City, and Washington County Court in Jonesborough. According to the detention center director, the detention center only accepts juvenile offenders from juvenile courts.

Juvenile judges from the courts differ on their views about using the court order to detain status offenders. For example, a judge said she believes detaining status offenders is an effective way to change behavior. She felt that the vco should have fewer restrictions and that judges need additional authority to detain juveniles. However, because of the high cost of detaining juveniles, her court does not detain many status offenders. Another judge said that he uses the court order only for repeat status offenders in accordance with the legislative intent of the vco amendment. He said that he has instituted court procedures that guarantee that the goals of the law are met.

Programs to divert status offenders from detention in upper eastern Tennessee are locally based. In Sullivan County the court initiated several alternative programs, such as group homes, counseling, and mentor programs. In Unicoi County, the court staff use several alternatives to detention for status offenders, such as placement with relatives, state-operated group homes, and mental health evaluations at state-operated mental health facilities. However, in Washington County, judges felt they did not have adequate resources to provide effective alternatives. They assigned the juveniles to probation under their parents supervision as an alternative.

We examined 31 cases that we determined were court-ordered detentions of status offenders, although not necessarily counted as VCO exclusions. Almost half of the juveniles were detained for running away. Other status offenses included unruly behavior, curfew violation, and truancy. The original offenses for which the juveniles were detained were for the same types of behavior. For 20 of the 31 cases, the detention time was 24 hours or less. The remaining 11 cases were all for less than 1 week of detention. The average length of detention (excluding holidays and weekends) was 29 hours.

The extent of documentation of the criteria that would be required for a VCO exclusion to be claimed differed, but we did not find any case where a judge documented all of the criteria necessary for a VCO exclusion. However, documentation of adherence to OJJDP criteria is not required for a VCO exclusion to be claimed. Recordkeeping practices varied from court to court. In one court, the juvenile signed a form that documented receipt of the majority of their procedural protections. A court in another county documented few of the protections. TCCY officials told us they are considering preparing an improved form that each court can use to document that the judge complied with requirements for using the VCO exclusion and distribute it throughout Tennessee.

Our analysis of the cases showed that the judges usually detained status offenders who had previously been adjudicated for having committed status offense violations. Some of the juveniles had extensive histories of committing both status and delinquent offenses, including three juveniles who had previously committed five or more offenses. Twenty-three status offenders in our sample had 1 or 2 prior adjudications for offenses. Judges generally detained status offenders prior to adjudication, but in 27 out of 31 cases, juveniles were not detained after the adjudication hearing or had their charges dropped. The most frequent reason cited for detaining juveniles was to ensure their appearance in

Examples of Status Offender Cases

court. The preadjudication detentions were generally within the 24-hour limit that OJJDP recommended and state law requires, although 4 of 31 cases exceeded the 24-hour limit.

The following are examples of the detention process for a status offender in upper eastern Tennessee. We identified two cases where juveniles were detained for status offense behavior after violating a court order. In October 1989, a 15-year-old girl was charged with running away. This was the first time she had been charged with any type of status offense. The judge placed her under a court order with specific rules that she had to obey, including observing curfew and not running away from home.

A few weeks later, on a Monday, she ran away from home and in the process also broke the rule on curfew. On Tuesday, she was charged with exhibiting unruly behavior and a warrant was issued for her arrest. On Wednesday afternoon, she was brought into the detention center to ensure her appearance at the probable cause hearing the following morning. At her probable cause hearing, she was released on bail until her violation hearing 2 weeks later. She was held a total of twenty hours.

In November 1988, a 13-year-old boy was charged with truancy. At his hearing a few days later, the judge dropped the charge because the child agreed to go to counseling at a mental health center, participate in the court's life skills program, follow parental probation, and attend school daily with his completed homework.

In March 1989, the boy was charged with truancy a second time. This time the judge placed him under a court order to attend school and complete the counseling program at a mental health center. He was not sent to detention for this offense. In April 1989, the boy was charged with violation of a court order for truancy on a Thursday. That Friday, the judge found that there was probable cause that he violated the court order and sent him to detention to ensure his appearance at the violation hearing on Monday. At the violation hearing, the judge found that he had violated the court order and committed him to a nonsecure group home and ordered him to attend school. Although he was detained a total of 68 hours, between Friday afternoon and Monday morning, because the detention was over a weekend, the official detention time was 5 hours.

Utah Juvenile Justice System

According to Utah state officials, the Utah Juvenile Justice System is a centralized statewide system consisting of four components: (1) the Utah Commission on Criminal and Juvenile Justice within the Governor's Office, (2) the Department of Human Services (DHS), (3) the court system, and (4) the law enforcement community.

Within the Commission, the Utah governor formed the Utah Board of Juvenile Justice and Delinquency Prevention (Board). The Board is responsible for overseeing the use of all JJDP state formula grant funds and advising the Governor and legislature on matters relating to juvenile justice, including compliance with the OJJDP regulations. Utah's formula grant for fiscal year 1990 was \$441,000. Much of the OJJDP grant is used to subsidize local juvenile justice programs. The Board also develops the 3-year comprehensive state juvenile justice plans and monitors the state's compliance with the plans. The State Commission on Criminal and Juvenile Justice in the Governor's Office provides administrative and staff support for the Board.

DHS is responsible for dealing with juveniles who come in contact with the system if they commit status offences. Two divisions within DHS deal with juvenile status offenders. The Division of Family Services (DFS) is charged with diverting juveniles from the court system, and the Division of Youth Corrections (DYC) is responsible for assuring that the detention facilities comply with OJJDP regulations and state juvenile detention laws.

To divert juveniles from the court system, DFS operates four Youth Services Centers that provide alternative programs and services to run-away and ungovernable youths (e.g., youths who defy parental or school authorities and exceed reasonable parameters of control) throughout the state. A fifth Youth Service Center, located in Salt Lake City, is a cooperative effort between the DFS and the Salt Lake County government. Parts of the state, which are not included in one of the five Youth Services Centers' service delivery systems, have 24-hour social services programs, such as crisis host homes and shelters to serve status offenders and nonoffenders.

DYC is responsible for (1) operating and licensing state secure facilities where juveniles may be detained and (2) monitoring compliance with federal regulations pertaining to juveniles held in these facilities. DYC is also responsible for identifying and reporting detention admissions to OJJDP, including the detentions under VCOS for status offenders and nonoffenders.

The state court system includes 13 juvenile judges and 1 court commissioner, located in Salt Lake County, who also has authority to detain juveniles. Both the state courts and the DYC (including the detention centers) staffs are responsible for recording and maintaining administrative detention information on the statewide Juvenile Information System.

The law enforcement community works with the courts, DHS, and the Board. Law enforcement officers enforce court orders to find and arrest juveniles who have violated court orders (i.e., chronic truancy and running away from home). DHS and the Board provide training to law enforcement officers to ensure that status offenders who are not under court orders to be detained are taken to DFS for assistance instead of to detention centers or other facilities, such as adult jails. Utah's effort to comply with OJJDP regulations has included a continuing emphasis on training the law enforcement community on how to deal with status offenders.

State Laws Regarding Status Offenders

Utah generally follows the JJDP's goals of diverting status offenders from the juvenile justice system and court-ordered juvenile detention. It has a statewide system of alternative programs to help divert status offenders from the court system. To help avoid detaining juveniles, Utah transferred primary jurisdiction over status offenders (runaways and ungovernables) from the juvenile courts system to DFS and authorized it to refer juveniles to the court system only when its "earnest and persistent efforts" (Utah Judicial Code 78-3a-16.5) to divert the status offenders from the court system have failed. Utah officials stated that under this criterion, detention is used only as a last resort after other alternatives have failed to modify the juvenile's unacceptable behavior (i.e., running away).

Utah laws also make the state responsible for juvenile detention and limit the length of post-adjudicatory detention (incarceration after the allegations against a juvenile have been proven in a court of law). The responsibility for juvenile detention was transferred from the counties to the state in 1987 to standardize care and services to detained juveniles. Since 1989, Utah has allowed post-adjudicatory detention of status offenders for contempt of court but limits the detention to no more than 10 days.

Utah requires that status offenders receive a hearing within 48 hours, as opposed to the 24 hours required by federal regulation. However, according to Utah officials, most status offenders held at the Salt Lake

Detention Center, which has the largest detention population, actually receive their hearings within 24 hours. Cases in which a status offender was held more than 24 hours would have to be reported as institutionalization of a status offender.

The court commissioner who works in the Third Judicial District, which includes the Salt Lake County area, said he did not advise status offenders of their right to legal counsel and their right to have the court appoint such counsel if they were indigent. Yet these rights are guaranteed by Utah law, and cases in which they are not provided cannot be counted as VCO exclusions. The Commissioner told us that since he believed that he did not have the authority to appoint counsel, he did not address those rights unless juveniles inquired about legal representation.

During our observation of four court proceedings in the commissioner's court room, he did not advise the status offenders of either of these rights. However, he did advise them of their right to appeal his decision and appear before a judge. According to court records, the commissioner presided over court proceedings for about three-fourths of the 1,120 status offenders who appeared in the Salt Lake Juvenile Court in 1989.

Detention of Status Offenders

For 1989, DYC reported that Utah detained 129 status offenders, including those detained for violating VCOs, and nonoffenders (e.g., neglected or abused children) out of a juvenile population (under age 18) of 629,000. According to state officials, almost all status offenders and nonoffenders are charged as runaways and ungovernable youths. Offenses for ungovernable youths generally include truancy and curfew violations.

In the Salt Lake City metropolitan area, the DFS contracts with the Salt Lake County Division of Youth Services to operate the Youth Services Center for status offenders and nonoffenders. The Center provides several programs, such as crisis intervention and counseling for youths and their families, a 48-hour interim shelter, and a network of community-based host homes, as well as intensive individual, family, and group therapy. Additionally, as a part of the Center's 1989 outreach program, the staff trained about 300 of the 993 county law enforcement officers on how to deal with status offenders. Utah has also included additional training for law officers as part of its plan to lower the number of detention admissions.

The Youth Services Center programs are available—at no cost and with no waiting period—to all youths and their families in the Salt Lake County area. Status offenders taken to the Center are not subject to the court system, so their offenses are not entered into a court record. For example, DFS provides services to truant youths to help divert them from the court system, but DFS does not recommend referring them to court unless their behavior becomes habitual. When truant youths are referred to the court system, they are charged with one count of habitual truancy rather than having numerous charges for the same offense. Thus, Utah status offenders who enter the court system may not have as many prior legal charges as they would have had without the detention diversion programs.

In 1989, the Center served 3,168 status offenders, or 5 percent of the 59,877 juveniles between the ages of 13 and 18 years in Salt Lake County. These status offenders included 1,758 ungovernables, 1,156 runaways, and 254 truants. According to its 1989 annual report, the Center diverted from the court system over 99 percent of the status offenders it served.

Utah uses the VCO exclusion for status offenders, and DYC is responsible for identifying and reporting the court ordered detentions to OJJDP. The DYC staff identifies VCOs by using data from its information system. Since DYC cannot always determine whether a court-ordered detention can be classified as a VCO exclusion on the basis of the charge listed in its system, the staff must also check the court records to verify that the juvenile is a status offender or a nonoffender. According to a DYC official, the staff checks the offenses, determines if the juvenile received a hearing within 24 hours, and determines the length of detention, but they do not check for assurances that each status offender received all the procedural protections required by OJJDP regulations. DYC staff examine the court records under the assumption that all status offenders and nonoffenders received the procedural protections required by OJJDP since those protections are also required by state law. According to a state official, OJJDP has approved this procedure.

In its 1989 Monitoring Report to OJJDP, Utah reported a detention rate of 13.83, which is well under OJJDP's standard of 29.4 per 100,000 juvenile population under 18 years of age. Utah reported 129 detentions: 87 were reported as noncomplying detentions, and 42 were submitted for exclusion to OJJDP because the juveniles were found to have violated valid court orders. Of the 87 noncomplying detentions, 23 (17 out-of-state

runaways and 6 nonoffenders) were committed at the Salt Lake Detention Center. Of Utah's 42 VCO exclusions, 26 were from the Salt Lake Detention Center.

Case File Review Results

We examined 27 cases of detention that the Salt Lake Detention Center identified as possible VCO exclusions in 1989 to determine whether they were court-ordered detentions for status offenders. Twenty-six of the 27 cases under the Salt Lake County Court's jurisdiction met our criteria of being court-ordered detentions. The other case file was located in another juvenile court. Of the 26 status offenders, 24 were between 13 and 16 years of age. Although 25 of the 26 status offenders were detained for contempt of court, the original offense behavior in 20 cases was truancy. The offense behavior for the remaining cases were one ungovernable, one alcohol-related, and four runaways. For 11 of the 26 admissions, the status offenders were detained 24 hours or less; but for 15, the admissions were from 1 to 7 days (25 to 168 hours). The average length of official detention (excluding weekends and holidays) was 63 hours, or about 2-1/2 days.

Example of Status Offender Case

Following is an example of the detentions we examined at the Salt Lake Detention Center. Since truancy was the predominant behavior for detention, we selected a 16-year-old female habitual truant to illustrate the detention process.

In March of 1989, the school system petitioned the court to hear the youth's truancy case. The school's basis for filing the petition was that she had been truant more than 15 times. The Division of Family Services had been working with her, her family, and the school to try to get her to attend classes. A state law prerequisite for the school's petitioning the court is documented "earnest and persistent effort" to get youths to attend classes. On the basis of petition, she was summoned to court for a hearing before the court commissioner. She appeared without counsel, admitted to the allegation, was fined \$100, charged \$25 court costs, and ordered to attend not only regular school, but also truancy school, to which her parents were to accompany her. Of the total fines and charges, \$50 were stayed: \$40 of the fine on the basis of her agreement to attend school and \$10 of the court costs.

The Salt Lake County juvenile justice system requires frequent reviews of truancy cases; therefore, her case was set for review 1 week later. She was still not attending classes regularly, so the court commissioner sentenced her to modified house arrest and required her to have all her

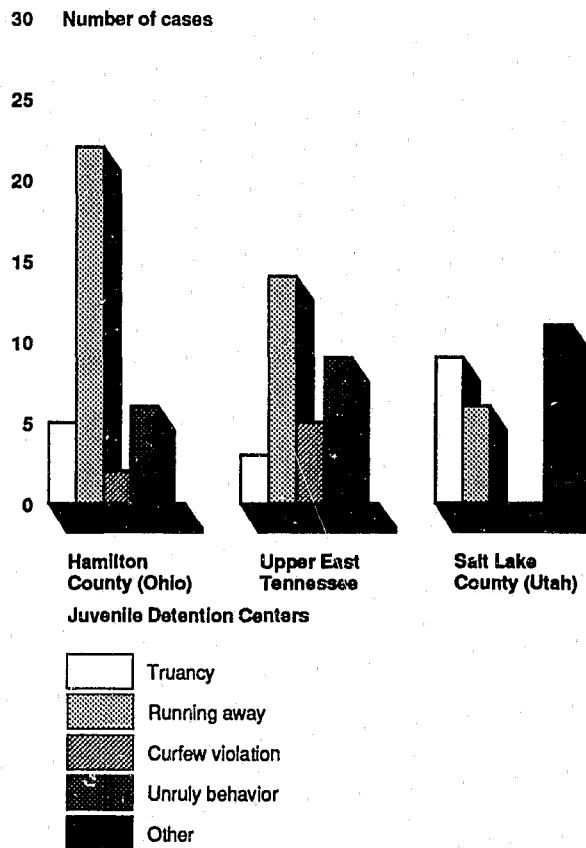
teachers sign an attendance sheet for each class she attended. She was to provide the signed attendance sheet to the court commissioner at her next case review 2 weeks later.

On the day of her next review, she ran away from home. Because she failed to appear in court, the commissioner instructed her to be taken to the detention center when found. Two weeks later she was found and taken to detention. On the following morning, she was taken to court for a hearing on the charges of violating a court order and contempt of court. She was found guilty and sentenced to 5 days' detention, which were stayed. Instead, she was sentenced to home detention for 1 week and was required to sign, along with her parents, a home detention agreement, promising to follow the court's instructions.

On the day of her next review, she ran away from home again. The court commissioner began the court procedure to bring her back to court, and 1 month later she was found and her case was reviewed. The commissioner determined that she violated the court order and sentenced her to detention for 10 days, of which she served 8 (the other 2 were stayed for good behavior). Two weeks later, the outstanding fines were cancelled because she entered the county work program.

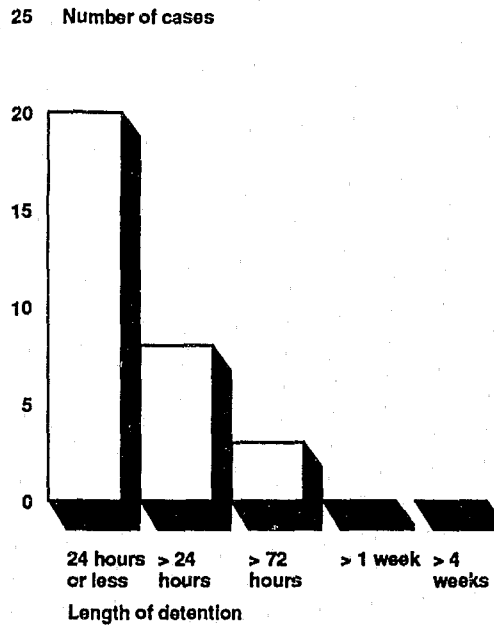
Statistical Data

Figure III.1: Status Offender Behavior Resulting in Detention



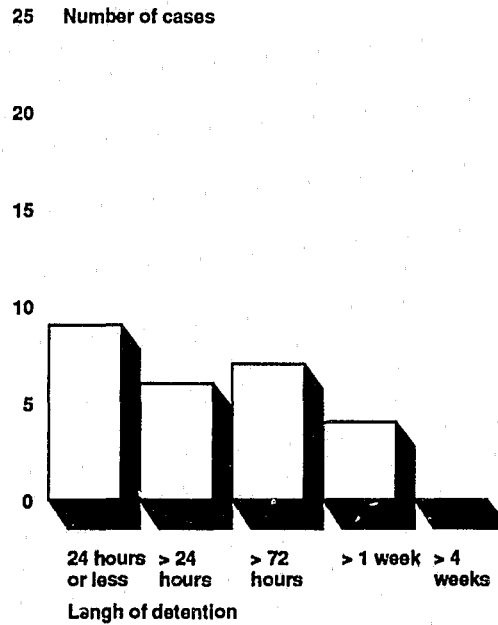
Source: County records.

Figure III.2: Length of Detention, Upper East Tennessee Regional Juvenile Detention Center



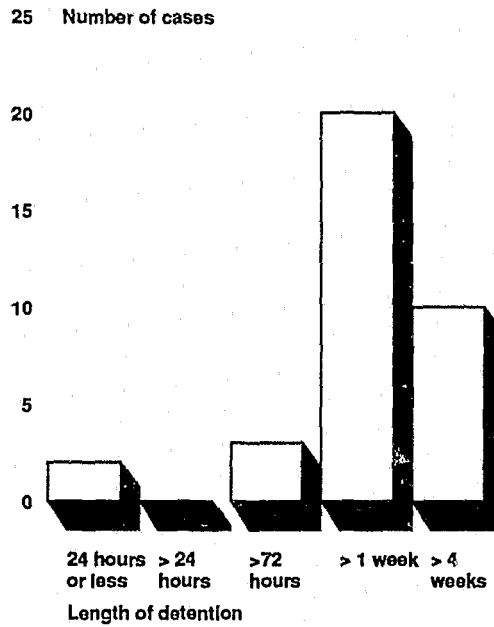
Note: Official hours exclude the weekends and holidays before the juvenile sees the judge.
Source: Upper East Tennessee Regional Juvenile Detention Center.

Figure III.3: Length of Detention, Salt Lake Detention Center, Utah



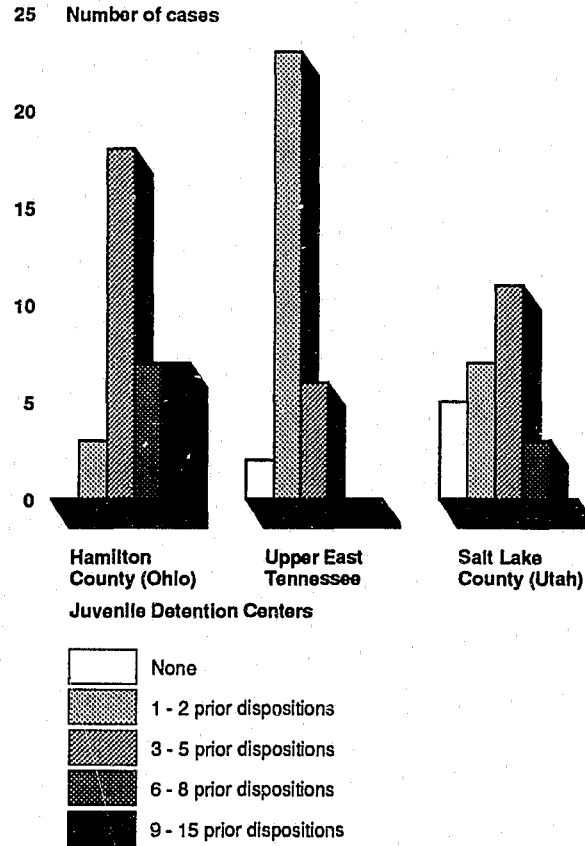
Note: Official hours exclude the weekends and holidays before the juvenile sees the judge.
Source: Salt Lake Detention Center.

**Figure III.4: Length of Detention,
Hamilton County Juvenile Court Youth
Center, Ohio**



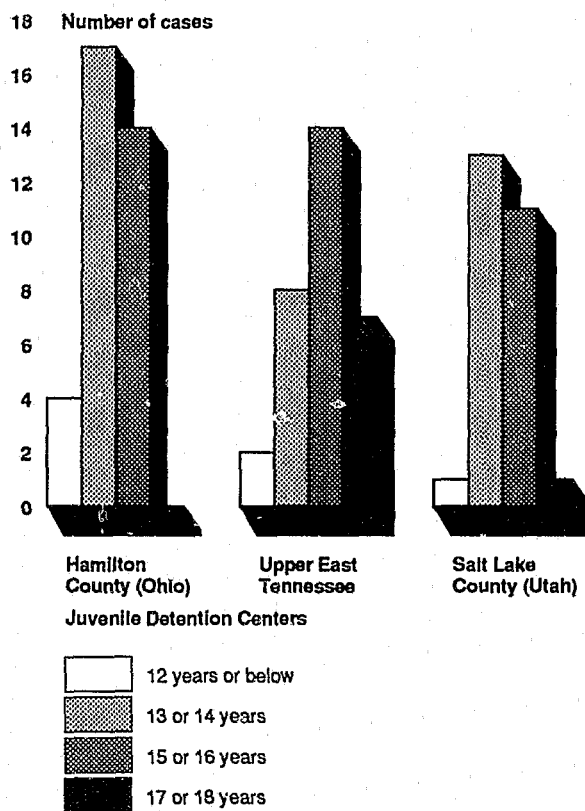
Note: Official hours exclude the weekends and holidays before the juvenile sees the judge.
Source: Hamilton County Juvenile Court Youth Center.

Figure III.5: Prior Convictions



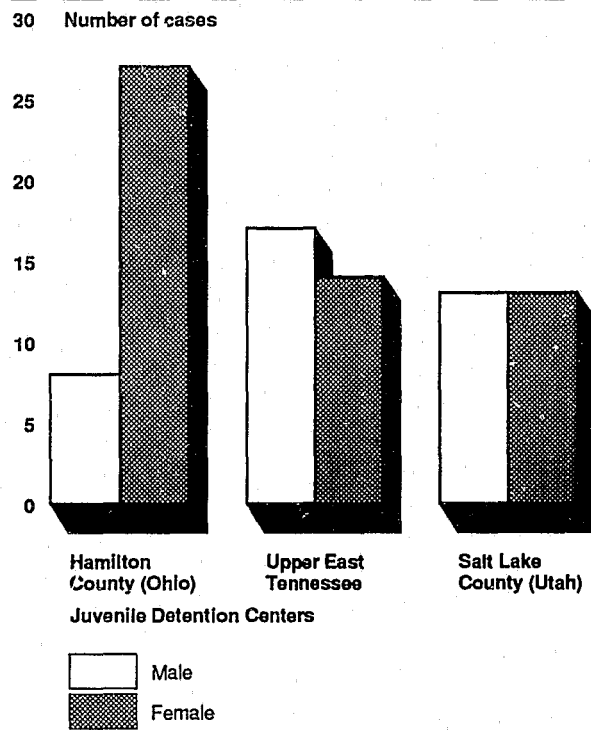
Source: County records.

Figure III.6: Age of Juvenile Status Offenders



Source: County records.

Figure III.7: Gender of Juvenile Status Offenders



Source: County records.

VCO Exclusions, 1983-1988

| State | 1983 | | 1984 | |
|----------------------|----------|----------|----------|----------|
| | Reported | Approved | Reported | Approved |
| Alabama | 2 | 2 | 2 | 2 |
| Alaska | 56 | 56 | 45 | 45 |
| Arizona | 3 | 3 | N | N |
| California | 8 | 8 | 7 | 7 |
| Colorado | 148 | 148 | 38 | 38 |
| Connecticut | N | N | 14 | 14 |
| District of Columbia | N | N | 1 | 1 |
| Florida | 909 | 909 | 1,558 | 1,558 |
| Georgia | 12 | 12 | 13 | 13 |
| Hawaii | N | N | 56 | 56 |
| Idaho | 94 | 94 | N | N |
| Illinois | 11 | 11 | 25 | 25 |
| Indiana | N | N | 71 | 71 |
| Iowa | N | N | N | N |
| Kansas | N | N | N | N |
| Kentucky | N | N | 20 | 20 |
| Louisiana | 159 | 159 | 143 | 143 |
| Maryland | N | N | N | N |
| Michigan | 33 | 33 | 25 | 25 |
| Minnesota | 15 | 15 | 16 | 16 |
| Mississippi | 4 | 4 | 8 | 8 |
| Missouri | 594 | 594 | 512 | 512 |
| Montana | 11 | 11 | 8 | 8 |
| Nebraska | 215 | 215 | 18 | 18 |
| New Hampshire | 49 | 49 | 59 | 59 |
| New Mexico | N | N | N | N |
| New York | N | N | N | N |
| North Carolina | N | N | 3 | 3 |
| Ohio | 2,320 | 2,320 | 664 | 664 |
| Oregon | 100 | 100 | N | N |
| Rhode Island | N | N | N | N |
| South Carolina | N | N | N | N |
| Tennessee | 524 | 524 | 69 | 69 |
| Texas | 33 | 33 | N | N |
| Utah | 1,419 | 1,419 | 1,325 | 1,325 |
| Washington | 55 | 55 | 116 | 116 |
| West Virginia | 40 | 40 | N | N |
| Wisconsin | N | N | N | N |
| Total VCO | 6,814 | 6,814 | 4,816 | 4,816 |

Legend

N = Not claimed

Source: OJJDP.

**Appendix IV
VCO Exclusions, 1983-1988**

| 1985 | | 1986 | | 1987 | | 1988 | |
|----------|----------|----------|----------|----------|----------|----------|----------|
| Reported | Approved | Reported | Approved | Reported | Approved | Reported | Approved |
| 3 | 3 | 4 | 0 | 5 | 0 | 6 | 0 |
| 22 | 22 | 4 | 4 | N | N | 2 | 2 |
| N | N | 161 | 161 | 14 | 14 | 14 | 14 |
| 5 | 5 | 13 | 13 | 46 | 0 | 152 | 0 |
| 48 | 48 | 18 | 18 | N | N | N | N |
| 22 | 22 | 50 | 50 | 22 | 22 | 17 | 17 |
| 10 | 10 | 13 | 13 | 11 | 11 | 14 | 14 |
| 2,271 | 2,271 | 2,126 | 2,126 | 2,394 | 0 | N | N |
| 32 | 32 | 13 | 13 | 18 | 0 | 184 | 184 |
| NP | NP | NP | NP | NP | NP | 35 | 35 |
| 59 | 59 | 51 | 51 | 25 | 25 | 304 | 304 |
| 126 | 0 | 217 | 0 | 94 | 0 | N | N |
| 4 | 4 | N | N | 87 | 87 | 267 | 267 |
| N | N | N | N | 6 | 0 | N | N |
| 46 | 46 | 56 | 56 | N | N | N | N |
| 114 | 114 | N | N | N | N | 31 | 31 |
| 205 | 205 | 172 | 172 | 147 | 0 | 124 | 0 |
| N | N | N | N | 36 | 36 | N | N |
| 47 | 47 | 1 | 1 | 8 | 8 | 63 | 63 |
| 8 | 8 | 8 | 8 | 10 | 0 | N | N |
| N | N | N | N | N | N | N | N |
| 503 | 503 | 503 | 503 | 388 | 0 | 381 | 381 |
| 8 | 8 | 3 | 3 | 5 | 5 | 4 | 4 |
| 36 | 36 | 36 | 36 | 58 | 58 | 58 | 58 |
| 18 | 18 | N | N | N | N | N | N |
| 4 | 4 | 1 | 1 | N | N | N | N |
| N | N | N | N | N | N | 158 | 0 |
| N | N | N | N | N | N | N | N |
| 735 | 735 | 811 | 811 | 1,573 | 1,573 | 2,380 | 2,380 |
| N | N | N | N | N | N | N | N |
| 5 | 5 | 5 | 5 | N | N | N | N |
| N | N | N | N | N | N | 270 | 0 |
| 224 | 224 | 372 | 372 | 316 | 316 | 316 | 316 |
| 546 | 546 | 441 | 441 | N | N | 39 | 39 |
| 1,351 | 1,351 | 1,617 | 1,617 | 1,493 | 66 | 39 | 39 |
| 69 | 69 | 109 | 109 | 24 | 24 | 131 | 131 |
| N | N | N | N | 6 | 6 | 1 | 1 |
| 159 | 159 | 517 | 517 | 355 | 355 | 355 | 355 |
| 6,680 | 6,554 | 7,322 | 7,101 | 7,141 | 2,606 | 5,345 | 4,635 |

States' 1988 VCO and DSO Rates

| State | Approved VCO exclusion rate | DSO rate |
|---------------------------|--------------------------------|-----------------------|
| Alabama | 0 | 2.95 |
| Alaska | 1.20 | 5.40 |
| Arizona | 1.47 | 24.60 |
| Arkansas | 0 | 1.23 |
| California | 0 | 3.60 |
| Colorado | 0 | 23.37 |
| Connecticut | 2.24 | 3.79 |
| Delaware | 0 | 4.82 |
| District of Columbia | 10.14 | 3.60 |
| Florida | 0 | 20.60 |
| Georgia | 10.36 | 24.90 ^a |
| Hawaii | 12.20 | 22.29 |
| Idaho | 100 | 17.97 |
| Illinois | 0 | 2.81 |
| Indiana | 18.28 | 30.80 ^b |
| Iowa | 0 | 0 |
| Kansas | 0 | 8.73 |
| Kentucky | 3.16 | 28.80 ^a |
| Louisiana | 0 | 10.70 |
| Maine | 0 | 0 |
| Maryland | 0 | 0.09 |
| Massachusetts | 0 | 2.10 |
| Michigan | 2.57 | 4.20 |
| Minnesota | 0 | 0.27 |
| Mississippi | 0 | 13.85 |
| Missouri | 29.04 | 15.20 |
| Montana | 1.80 | 1.80 |
| Nebraska | 13.71 | 29.10 |
| Nevada | 0 | 1,226.70 ^c |
| New Hampshire | 0 | 0 |
| New Jersey | 0 | 1.04 |
| New Mexico | 0 | 102.90 ^b |
| New York | 0 | 3.66 |
| North Carolina | 0 | 27.90 |
| North Dakota ^d | | |
| Ohio | 84.31 | 29.10 |
| Oklahoma | 0 | 17.50 |
| Oregon | 0 | 3.01 |

(continued)

Appendix V
States' 1988 VCO and DSO Rates

| State | Approved VCO exclusion rate | DSO rate |
|---------------------------|--|-----------------|
| Pennsylvania | 0 | 0 |
| Rhode Island | 0 | 0 |
| South Carolina | 0 | 28.80 |
| South Dakota ^d | | |
| Tennessee | 25.22 | 6.80 |
| Texas | 0.78 | 11.13 |
| Utah | 6.20 | 12.55 |
| Vermont | 0 | 2.83 |
| Virginia | 0 | 4.40 |
| Washington | 11.01 | 2.10 |
| West Virginia | 0.21 | 0.64 |
| Wisconsin | 27.89 | 9.59 |
| Wyoming ^d | | |

Note: The rates are per 100,000 juveniles in the state. VCO rates are for VCO exclusions approved by OJJDP. All disapproved VCO exclusions are considered DSO violations and included in the DSO violation rate.

^aExcludes the secure detention of out-of-state runaways.

^bAccording to OJJDP, Indiana and New Mexico have changed their laws to comply with the DSO requirements, thereby enabling them to meet the de minimis threshold.

^cNevada had 3 years to reduce its DSO rate after joining the program in 1987.

^dDid not participate in 1988.

Source: OJJDP.

Comments From the Department of Justice



U.S. Department of Justice

Washington, D.C. 20530

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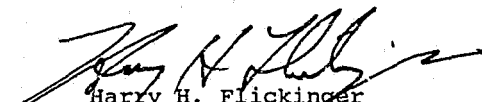
Richard L. Fogel
Assistant Comptroller General
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

The following information is being provided in response to your request to the Attorney General, dated January 28, 1991, for comments on the General Accounting Office (GAO) draft report entitled, "Juvenile Detention: Progress Made to Reduce Court Ordered Detention of Non-Criminal Juveniles." The Department generally agrees with GAO's findings and recommendations as stated in its report, and has informally provided technical comments to GAO. The Department's only substantive concern with this report relates to GAO's discussion of the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) plans to continue audits of state compliance monitoring. On page 40, GAO states that "according to OJJDP officials, it has not planned to do more audits as of October 1, 1990." More recently, based on its determination that audits are a useful program management tool, OJJDP has decided to establish a regular five-year cycle for follow-up audits beginning in 1991. OJJDP, documented this decision in its November 7, 1990, proposed response to the Department Inspector General's finding on this matter. The Department requests that GAO modify its report to reflect this intention.

We appreciate the opportunity to comment on the draft report and hope that you find our comments both constructive and beneficial.

Sincerely,


Harry H. Flickinger
Assistant Attorney General
for Administration

Now on page 25.

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