FROM THE
NATIONAL
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ASSOCIATION

UNLOCKING THE DOORS FOR STATUS OFFENDERS: THE STATE OF THE STATES

Prepared by the National Criminal Justice Association
for the
U. S. Department of Justice,
Office of Juvenile Justice and Delinquency Prevention

Washington, D. C.
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PREFACE

ACKNOWLEDGMENTS

I have spent a significant portion of my professional life monitoring implementation of the Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974, as amended, for the states. The opportunity to review the history and status of the JJDPA and the deinstitutionalization of status offenders (DSO) provision and to hypothesize a bit about the future was a privilege and challenge for me.

Many individuals contributed to this paper and for those contributions I am extremely grateful.

First and foremost, I want to thank the individual who in essence commissioned this paper -- John J. Wilson, deputy administrator of the U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), who was acting OJJDP administrator at the time. John has devoted most of his career with the Justice Department to helping to guide JJDPA implementation. His recollections, advice, and familiarity with sometimes baffling legal issues were of monumental help to me. Moreover, it was high praise to be entrusted by John with this task and I appreciate his confidence in me.

This paper could not have been completed without the help of my associates at the National Criminal Justice Association (NCJA). Lisa Doyle Moran, NCJA assistant director for legal affairs, Nadine M. Rapacioli, NCJA staff attorney, and John I. Nadolenco, NCJA legal researcher, all took crash courses on the JJDPA and contributed substantially to the paper. Lisa supervised project legal research and helped me think through the paper's scope and organization. John researched and summarized state code provisions and developed an historical time line of the JJDPA for incorporation in the paper as an appendix. Nadine helped to put the final touches on the paper. Robert A. Kapler, NCJA senior staff associate, did the critical final editing of this paper and made certain that we had produced a comprehensible and readable document. Patrick M. Meacham, NCJA senior staff associate, Robert G. Landis, former NCJA staff associate, and summer interns Sharan Suri and Jennifer A. Juersivich helped to collect and analyze information concerning the status of states' implementation of the DSO provision. Paul E. Lawrence, NCJA director of administration and information systems, as always, is to be credited with making the end product of our collective efforts look good. Without the support of Carolyn J. Reid, NCJA administrative assistant, and Wanda A. Meredith, former NCJA secretary/receptionist, this project could not possibly have been completed.

A great many talented and dedicated individuals have participated in JJDPA implementation in the states over the years. I benefited greatly from the recollections of a number of these individuals, all former state-level juvenile justice planners in their respective states, in particular: Dolores A. Kozloski, deputy director of the National Criminal Justice Reference Service; Sandy Mays, deputy director of the Wyoming Division of Criminal Investigation; Steven P. Nelson, executive director of the Montana Conservation Corps; James Kane, deputy director of the Delaware Criminal Justice Council; Barbara McDonald, director of research and planning for the Chicago Police Department; John C. Patterson, senior program director for Nonprofit Risk Management Center; Morris H. Silver, director of employer services for the New York State Department of Labor; and Ann Jaede, program director with the Minnesota Office of Strategic and Long Range Planning.

I also want to thank Robert J. Baughman, executive director, and Brian Bumbarger, information services director, for the Coalition for Juvenile Justice, and Hunter Hurst, director of the National Center for Juvenile Justice, and his staff, for their help on this project.

The JJDPA has influenced significantly the current state of the art in juvenile justice and delinquency prevention. It is a story worth telling and I am pleased to have had that opportunity.

Gwen A. Holden
Executive Vice President

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INTRODUCTION: THE DSO MANDATE

The juvenile justice reform bill that would go on to have the most lasting and far-reaching impact on the states was introduced in the Congress in 1972 by Sen. Birch Bayh (D-Ind.), chair of the Senate Judiciary Committee's Subcommittee on Juvenile Delinquency. When the 92nd Congress concluded the following year with no final action on the measure, Bayh reintroduced the bill in July 1974 during the first session of the 93rd Congress and it was passed. President Ford signed the bill into law on Sept. 7, 1974.

Certainly, the heart of the Juvenile Justice and Delinquency Prevention Act of 1974,[1] as amended (JJDPA) is its mandate that states[2] discontinue the then-common practice of confining status offenders and nonoffenders in juvenile detention and correctional facilities. Enactment of the JJDPA's deinstitutionalization or "DSO" mandate spoke legions about the Congress' impression of the nation's handling of its troubled youth and the condition of its juvenile justice system in the 1970's. Moreover, the JJDPA, with its emphasis on diversion, treatment and rehabilitation, and community-based programs and services, provided sharp insight into the direction the Congress wished state, local, and federal governments to pursue to remedy the country's juvenile delinquency problem.

Over the past two decades, the JJDPA has had a profound effect on the laws, policies, and practices that provide the framework for the operation of states' juvenile justice systems. This article was prepared to commemorate the 20th anniversary of the Congress' passage of the JJDPA and examines states' progress toward achieving the DSO requirement.

The article also is intended to provide insight into the history, current status, accomplishments, and outstanding challenges of the JJDPA. (See Appendix A.)

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[1] Pub. L. 93-415 (codified as amended at 42 U.S.C. §§5601 et.seq. (1983 & Supp. 1994)).

[2] For purposes of this study, the insular areas and territories of the United States, including the District of Columbia, are considered states and are referred to as such.

Genesis of the JJDPA Mandates

The DSO provision is one of the two original mandates of the JJDPA, which made an unprecedented foray into states' social and justice policy. The DSO mandate, as enacted in 1974, required states to "provide within two years ... that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities."[3]

In addition to the DSO requirement, the JJDPA mandated that juveniles be separated by sight and sound from adult offenders in detention and correctional facilities.[4]

The Congress amended the JJDPA in 1977 to explicitly bring "nonoffenders," such as dependent and neglected youths, under the DSO provision and to provide states with broader alternative placement options for status offenders and nonoffenders -- including no placement -- by removing the requirement that deinstitutionalized youths be placed in shelter facilities. The 1977 amendments also gave states an additional three years -- up to a total of five years -- in which to comply with the DSO mandate.

In 1980, the Congress specified that status offenders and nonoffenders must be removed from "secure" juvenile detention and correctional facilities. The 1980 amendments defined secure detention facilities as "any public or private residential facility which --

> (A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and
>
> (B) is used for the temporary placement of any juvenile who is accused of having committed an offense, of any nonoffender, or of any other individual accused of having committed a criminal offense."[5]

Secure correctional facilities were defined as "any public or private residential facility which --

> (A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and

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[3] Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, §223(a)(12).

[4] The sight and sound separation mandate is codified at 42 U.S.C. §5633(a)(13)(Supp. 1994).

[5] Juvenile Justice Amendments of 1980, Pub.L. 96-509 (codified at 42 U.S.C. §5603(12)(1983)).

(B) is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense, any nonoffender, or any other individual convicted of a criminal offense."[6]

The Congress in 1980 added a third mandate to the JJDPA that prohibited participating states' from detaining juveniles in jails and local lockups.[7] Most recently, in 1992, the Congress added a fourth mandate to the JJDPA requiring that states receiving JJDPA formula grants provide assurances that they will develop and implement plans to reduce overrepresentation of minorities in the juvenile justice system.[8] A state is subject to the JJDPA's disproportionate minority confinement (DMC) mandate if the proportion of minority juveniles confined in that state's detention and correctional facilities exceeds the aggregate proportion of all minority groups in the general population.

Also in 1980, the Congress made its last major substantive change to the DSO mandate by approving an exception to the mandate for status offenders and nonoffenders who are found to have violated a valid court order (VCO).

The VCO exception was enacted by the Congress at the urging of a vocal body of juvenile court judges who believed that the DSO mandate unduly hampered the juvenile courts' ability to deal with certain juveniles, particularly chronic runaways. In response, the 1980 amendments to the JJDPA provided for a VCO exception to the DSO requirement.[9] Under the exception, a status offender or nonoffender can be institutionalized upon a finding that he violated a VCO. The VCO procedure provides the juvenile with a number of procedural due process rights, such as court hearings, confrontation rights, and the right to notification of the charges against him.

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6 Juvenile Justice Amendments of 1980, Pub.L. 96-509 (codified at 42 U.S.C. §5603(13)(1983)).

7 The jail removal mandate is codified 42 U.S.C. §5633(a)(14)(Supp. 1994).

8 The overrepresentation of minorities mandate is codified at 42 U.S.C. §5633(a)(23)(Supp. 1994).

9 Pub.L. 96-509 (codified as amended at 46 U.S.C. §5603(16)(Supp. 1994)).

A Financial Incentive for DSO

The DSO provision of the JJDPA sought to stop states from confining status offenders in juvenile detention and correctional facilities. To that end, the JJDPA offered financial incentives to states if they agreed to stop confining status offenders and nonoffenders and remove any qualifying youths so confined.

The JJDPA mandates were established as conditions to which states were required to agree to receive statutorily prescribed allotments of juvenile justice formula grant funds each fiscal year. States also were required under the JJDPA to monitor their progress toward achieving these mandates and to provide annual progress reports to the U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), the federal JJDPA-administering agency. If a state failed to make the prescribed progress toward achieving JJDPA goals, it could become ineligible for continued JJDPA formula grant funding, barring a temporary reprieve from the OJJDP administrator.[10]

In 1992, the Congress acted to accelerate states' progress toward full compliance with JJDPA mandates by requiring that 25 percent of a state's formula grant allotment be withheld annually for each mandate with which that state was out of compliance.[11] The Congress further required in the 1992 amendments that a state from which funds are withheld due to noncompliance must direct the entirety of its remaining formula grant funds to achieving full compliance with the mandates.[12]

The Congress' numerous amendments to the JJDPA's DSO requirement over the past 20 years have at various stages helped or hindered states' progress toward full compliance. Amendments to lengthen the time frame for compliance with the mandate; establish a "substantial compliance" standard;[13] provide the OJJDP administrator

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[10] 42 U.S.C. §5633(c)(Supp. 1994).

[11] 42 U.S.C. §5633(c)(3)(A)(Supp. 1994).

[12] 42 U.S.C. §5633(c)(3)(B)(Supp. 1994).

[13] To encourage participation in the grant program and in recognition of the obstacles faced by the states, the Congress amended the Act in 1977 to provide a "substantial compliance" provision to the DSO requirement, codified at 42 U. S. C. 5633(c). Under the provision, substantial compliance was defined as a 75 percent reduction in the number of institutionalized status offenders and nonoffenders. If a state could demonstrate substantial compliance and a commitment toward full compliance, the state was given an additional two years to reach full compliance. The 1980 amendments amended the provision to provide

discretionary authority to offer states' temporary reprieves from compliance deadlines; and establish a VCO exception to DSO have been among those of greatest significance to the states.

Parameters for states' compliance with the DSO mandate were established with more specificity through the OJJDP's definition of key terms used in the act and the development of program guidelines. Definitions of status offenders, nonoffenders, and secure correctional and detention facilities; and guidelines for implementing the VCO exception and creating a de minimis exception[14] standard to full compliance with the DSO mandate have been among the most critical factors affecting states' DSO compliance.

No federal initiative before the JJDPA had attempted to bring about such sweeping reform in the states through a grant-in-aid program. None was to have as significant and lasting an effect in the states.

I. A FEDERAL MANDATE FOR CHANGE

The JJDPA was enacted after some 25 years of halting movement by the Congress toward enacting and financing a major national initiative to address juvenile delinquency and reform the juvenile justice system.

The earliest federal efforts at juvenile justice reform began with the creation in 1948 of a federal Interdepartmental Committee on Children and Youth and had produced limited measures aimed at improving coordination of federal youth-related agencies and programs. The committee sponsored national forums, conferences, and commissions to promote discussion of delinquency prevention and the juvenile justice system; and provided small amounts of incentive funding for state and local delinquency prevention initiatives. (See Exhibit 1.)

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that a state was in substantial compliance with the DSO requirement if it could show that not less than 75 percent of status offenders and nonoffenders were deinstitutionalized or the removal of 100 percent of such juveniles from secure correctional facilities.

[14] The OJJDP recognized the hardship faced by the states in reaching full compliance with the DSO requirement. In response, the OJJDP issued guidelines in 1981 that allowed for full compliance with "de minimis" exceptions to the DSO requirement. Under the guidelines, a state that had less than 29.4 DSO violations per 100,000 juveniles would be in full compliance with de minimis exceptions if it was against state law to institutionalize status offenders and nonoffenders and if the state had a plan to eliminate any non-compliance within a reasonable time.

Exhibit 1

INDEX OF FEDERAL JUVENILE DELINQUENCY ACTIVITY PRIOR TO PASSAGE OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

1912 Children's Bureau created by act of the Congress. The act directed the Bureau "to investigate and report ... on all matters pertaining to the welfare of children and child life among all classes of our people and shall especially investigate the questions of infant mortality, the birth rate, orphanage, juvenile courts, desertion, dangerous occupations, accidents, and diseases of children, employment, legislation affecting children in the several states and territories."

1948 Interdepartmental Committee on Children and Youth established. Its purpose was to develop closer relationships among federal agencies concerned with children and youth.

1950 The Midcentury White House Conference on Children and Youth met in Washington, D. C. The conference considered methods to strengthen juvenile courts, development of juvenile police services, and studied prevention and treatment services of social agencies, police, courts, institutions, and after-care agencies.

1961 President's Committee on Juvenile Delinquency and Youth Crime established. It recommended enactment of the Juvenile Delinquency and Youth Offenses Control Act of 1961.

1961 Juvenile Delinquency and Youth Offenses Control Act of 1961 enacted. It had a three year authorization for the purpose of demonstrating new methods of delinquency prevention and control.

1964 Juvenile Delinquency and Youth Offenses Control Act extended to carry out a special demonstration project in Washington, D. C. The act was subsequently extended through fiscal year 1967.

1968 Juvenile Delinquency Prevention and Control Act of 1968 enacted. This act assigned to HEW responsibility for developing a national approach to the problems of Juvenile Delinquency. States were to prepare and implement comprehensive juvenile delinquency plans and, upon approval, receive federal funds to carry out prevention, rehabilitation, training, and research programs.

1968 Omnibus Crime Control and Safe Streets Act of 1968 enacted. This act provided block grants to states in order to improve and strengthen law enforcement. While not specifically mentioning Juvenile Delinquency this Act's broad crime control and prevention mandate authorized funding of delinquency control and prevention programs.

1971 Juvenile Delinquency Prevention and Control Act extended for one year. The Interdepartmental Council to Coordinate all Federal Juvenile Delinquency Programs was established by this act.

1971 Omnibus Crime Control and Safe Streets Act amended. The definition of law enforcement was amended to specifically include programs related to prevention, control, and reduction of juvenile delinquency. Grants were authorized for community-based juvenile delinquency prevention programming and correctional programs.

1972 Juvenile Delinquency Prevention Act enacted. This act was an extension of the Juvenile Delinquency Prevention and Control Act of 1971. Under the act, HEW was to fund preventive programs outside the juvenile justice system. Efforts to combat delinquency within the juvenile justice system were to be assisted through the Omnibus Crime Control and Safe Streets Act by the Law Enforcement Assistance Administration.

1973 Omnibus Crime Control and Safe Streets Act amended. The act now specifically required that there be a juvenile delinquency component to the comprehensive state plan for the improvement of law enforcement and criminal justice.

1974 Juvenile Justice and Delinquency Prevention Act of 1974 enacted. This act provides, for the first time, a unified national program to deal with juvenile delinquency prevention and control within the context of the total law enforcement and criminal justice effort.

SOURCE: U. S. DEPARTMENT OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, OFFICE OF GENERAL COUNSEL, *Indexed Legislative History of the Juvenile Justice and Delinquency Prevention Act of 1974*, at 2, (Oct. 29, 1974).

JJDPA: A New Approach

The JJDPA placed substantially greater emphasis on prevention than had earlier federal juvenile justice grant-in-aid initiatives and, by focusing on keeping juveniles out of the juvenile justice system, contrasted sharply with its principal contemporary in the federal legislative arena: the Omnibus Crime Control and Safe Streets Act of 1968.[15] The law enforcement-oriented anti-crime act created the U. S. Department of Justice, Law Enforcement Assistance Administration (LEAA) grant program to help states enhance their crime control capacities.

The JJDPA, unlike previous federal juvenile justice legislative initiatives, sought to push states to abandon an historically institution-centered, largely punitive approach to handling troubled youth in favor of a strategy that would divert most juveniles from the justice system and place those youths who required some level of intervention in less restrictive, services-intensive community-based programs. According to Sen. Bayh, the measure authorized financial incentives to "encourage the development of programs and services designed to prevent delinquency, to divert juveniles from the juvenile justice system and to provide community-based alternatives to traditional detention and correctional facilities used for the confinement of juveniles."[16]

The Massachusetts DSO Experiment

Inclusion of a DSO mandate in the JJDPA was sparked by the commonwealth of Massachusetts' closing down all of its juvenile institutions by 1972, two years before the JJDPA's introduction in the Congress. Having unsuccessfully attempted to implement new services and programs in his first year as commissioner of Massachusetts' Department of Youth Services, Jerome Miller, with the support of Gov. Francis Sargent (D), closed

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[15] Pub.L. 90-351 (codified as amended at 42 U.S.C. §§3711 et.seq. (1977 & Supp. 1994)).

[16] CONG. REC. S9291 (daily ed. May 30, 1974) (statement of Sen. Bayh), *reprinted in* U. S. Department of Justice, Law Enforcement Assistance Administration, Office of General Counsel, INDEXED LEGISLATIVE HISTORY OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, at 313 (Oct. 29, 1974).

the Institute for Juvenile Guidance in Bridgewater in 1970.[17] Over the next two years, Miller shut down Massachusetts' remaining training schools, in Lyman, Shirley, Oakdale, and Lancaster.[18]

Miller knew that the success of Massachusetts' experiment with DSO would depend upon his ability to move an institution-centered juvenile justice program to a community-based network of programs and services for troubled youth. Before closing the institutions, Miller sought to lay the foundation for that transition by decentralizing the Department of Youth Services with the creation of seven regional offices and a purchase-of-services program that would provide the department with the means and resources to purchase beds, equipment, and services from private companies.[19] Miller had hoped that his controversial dismantling of the department's institutional structure would prompt rapid growth in the services sector. However, with few private juvenile programs and services available in the community at that time, many of the youths affected by Miller's DSO initiative were released into the community without services or supervision.

Miller's closing of Massachusetts' juvenile institutions -- and his governor's support for that action -- stunned public policymakers and justice officials across the country. Many of these officials shared Miller's frustration with an intransigent, costly, and bureaucratic juvenile justice system that seemed resistant to reform and innovation. But they were less than sanguine about the potential outcome of the total policy and operational shift that Miller had effected so rapidly within the department. Miller's supporters and critics alike anxiously awaited reports on the progress of the commonwealth's DSO experiment.

However, the Congress chose not to wait for final word on Massachusetts' experience to assess the merits of forging ahead with DSO. The Congress elected to challenge states to follow the commonwealth's lead, at least with respect to status offenders, by mandating in the 1974 act that states "provide within two years ... that juveniles

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[17] MASSACHUSETTS DEPARTMENT OF YOUTH SERVICES, *Background DYS*, at 2 (Oct. 15, 1993).

[18] *Id.*

[19] *Id.*

who are charged with or who have committed offenses that would not be criminal if committed by an adult, shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities."[20]

A Growing Federal Role in Delinquency Prevention

When the Congress, acting on the recommendation of President Johnson's Commission on Law Enforcement and the Administration of Justice, passed the Omnibus Crime Control and Safe Streets Act in 1968, it was demonstrating its new enthusiasm for a stronger federal role in helping states and local governments prevent and control crime. A lingering commitment to a federal role in state and local crime control efforts helped to generate the momentum that was needed to finally put in place a significant federal juvenile justice initiative in 1974.

The Safe Streets Act created the Justice Department's LEAA and authorized funding for the largest federal crime control grant program in the nation's history. In its 1967 report, the president's commission had observed that an increased federal role was appropriate given the national, as well as state and local, nature of the crime phenomenon. The commission recommended that a major program be established within the Justice Department that would " ... give State and local agencies an opportunity to gain on crime rather than barely stay abreast of it, by making funds, research, and technical assistance available ... ."[21]

An Identity Crisis

The Safe Streets Act and its LEAA grant program also created some early obstacles for the JJDPA's supporters in the Congress. Whether the new federal grant program would be located in the Justice Department's LEAA or the U. S. Department of Health, Education, and Welfare (HEW) became one of the central issues debated by the Congress.

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[20] Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, §223(a)(12).

[21] PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, *The Challenge of Crime in a Free Society*, at 284 (February 1967).

Bayh argued strenuously, during Senate consideration of JJDPA legislation, that the HEW was "the best placement" for a program that was intended to "provide leadership in preventing delinquency and `minimizing' contact with the juvenile justice system."[22] Bayh asserted that the LEAA program had provided neither adequate leadership nor resources to the juvenile justice field.[23] On the other hand, Sen. Roman Hruska (R-Neb.), a cosponsor of the JJDPA legislation and a major supporter of the Safe Streets Act program, in Senate floor debate on the bill asserted that with the LEAA federal and state grant-making structures already in place, the "LEAA is the obvious and natural agency to administer" the juvenile justice grant program.[24] Hruska strongly disagreed with Bayh's characterization of the LEAA as lacking in its commitment to, and leadership in, the juvenile justice field. Hruska asserted that "[a]lthough the LEAA was never given primary responsibility" for juvenile justice, it nevertheless "has assumed the dominant position" in that area.[25] Hruska pointed out to the Senate that both the "National Governors' Conference and the National Conference of State Planning Agency Directors have endorsed putting the juvenile delinquency program in the LEAA."[26] The National Conference of State Legislature's (NCSL) public safety task force had made a similar recommendation to the NCSL membership, Hruska noted.[27]

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[22] ADDITIONAL VIEWS OF SENATOR BAYH, *reprinted in* U. S. DEPARTMENT OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, OFFICE OF GENERAL COUNSEL, INDEXED LEGISLATIVE HISTORY OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, at 305 (Oct. 29, 1974).

[23] *Id.*

[24] CONG. REC. S12834 (daily ed. July 18, 1974) (statement of Sen. Hruska), *reprinted in* U. S. Department of Justice, Law Enforcement Assistance Administration, Office of General Counsel, INDEXED LEGISLATIVE HISTORY OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, at 317 (Oct. 29, 1974).

[25] *Id.*

[26] CONG. REC. S13499 (daily ed., July 25, 1974) (statement of Sen. Hruska), *reprinted in* U. S. Department of Justice, Law Enforcement Assistance Administration, Office of General Counsel, INDEXED LEGISLATIVE HISTORY OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, at 344 (Oct. 29, 1974). The National Governors' Conference is the predecessor of the National Governors' Association. Sen. Hruska's citing of the National Conference of State Planning Agency Directors was an incorrect reference to the National Conference of State Criminal Justice Planning Administrators (NCSCJPA), the predecessor of the National Criminal Justice Association.

[27] *Id.*

In the end, Bayh acceded to Hruska in a compromise agreement that provided for the creation of an LEAA associate administrator for the new juvenile justice and delinquency prevention program and required the LEAA and the states to maintain the same level of LEAA funding for juvenile justice and delinquency prevention programs as in 1972, the so-called "maintenance of effort" provision.[28]

The Congress directed the Justice Department to establish and fund the OJJDP in the LEAA.[29] The OJJDP would be headed by an LEAA associate administrator who would report to the LEAA administrator.[30] The states' congressionally mandated, gubernatorially appointed JJDPA state advisory groups (SAG) would serve in advisory capacities to their respective states' LEAA state planning agency board; the SAGs would have no final say on states' allocations of JJDPA formula grants.[31]

Later JJDPA amendments would provide the program with some of the autonomy and independence from the LEAA and successor Justice Department-administered state and local criminal justice assistance programs that juvenile justice advocates had sought initially. In reauthorizing the JJDPA in 1977, the Congress reaffirmed the JJDPA associate administrator's authority to control the allocation of LEAA maintenance-of-effort dollars.[32] In the 1980 JJDPA reauthorization, the Congress established the OJJDP as a separate entity within the Justice Department's Office of Justice Assistance, Research and Statistics, to be headed by an administrator, "under the general authority of the Attorney General."[33] The 1980 amendments also authorized state chief executives to designate the SAG as the supervisory board, with authority to approve state juvenile justice plans, grant allocations, and awards. In the 1984 JJDPA reauthorization, 10 years after the JJDPA's enactment, the Congress created the OJP, with the OJJDP designated as one of three independent program bureaus (with the National Institute of

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[28] Juvenile Justice and Delinquency Prevention Act of 1974, Pub.L. 93-415, §544.

[29] Juvenile Justice and Delinquency Prevention Act of 1974, Pub.L. 93-415, §201.

[30] *Id.*

[31] Juvenile Justice and Delinquency Prevention Act of 1974, Pub.L. 93-415, §223(a)(3).

[32] Juvenile Justice Amendments of 1977, Pub. L. 95-115.

[33] Juvenile Justice Amendments of 1980, Pub. L. 96-509 (codified as amended at 42 U.S.C. §5611(Supp. 1994)). The Office of Justice Assistance, Research, and Statistics succeeded the LEAA and is the predecessor of today's Office of Justice Programs (OJP).

Justice and the Bureau of Justice Statistics) and with two others (the Bureau of Justice Assistance and the Office for Victims of Crime) remaining under the authority of the assistant attorney general for the OJP. [34]

II. IMPLEMENTING THE DSO MANDATE

The JJDPA's enactment in 1974 was received as a mixed blessing by the states. While it provided political impetus and a promise of increased financial assistance to reform the juvenile justice system, the JJDPA appeared to be asking states to undertake disproportionately costly and potentially controversial changes in laws, policies, and practices.

By early November 1975, nine states -- Alabama, Colorado, Hawaii, Kansas, Oklahoma, Rhode Island, Utah, West Virginia, and Wyoming -- and one U. S. territory -- American Samoa -- had made preliminary decisions to decline participation in the JJDPA. [35] Escalating concerns that they could not in good faith comply with JJDPA mandates and that federal support for the JJDPA funds never would reach sufficient levels to support these efforts were at the root of the states' decisions not to participate in the act. In the end, 15 jurisdictions -- 13 states and two territories -- declined to participate in the JJDPA for fiscal year 1975.[36] The following fiscal year, 13 states and one territory did not participate in the JJDPA.[37]

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[34] Division II (Juvenile Justice, Runaway Youth, and Missing Children's Act Amedments of 1984) of the Comprehensive Crime Control Act of 1984, Pub. L. 98-473 (codified as amended at 42 U.S.C. §§5611(b), 5633(b)).

[35] *Id.*, at 5.

[36] NATIONAL CONFERENCE OF STATE CRIMINAL JUSTICE PLANNING ADMINISTRATORS, *Report to the National SPA Conference on the Status of the Juvenile Justice and Delinquency Prevention Act of 1974*, at 10 (April 22, 1977).

[37] *Id.*

Doubts, Questions in the States

States generally were philosophically and politically inclined toward the juvenile justice system reform movement that the JJDPA seemed to symbolize. However, they were troubled by what they believed to be an absence of adequate federal funding to help them implement the DSO and sight and sound separation mandates.

Moreover, the states feared that the JJDPA would be placed in stiff competition with the LEAA for increasingly scarce grant-in-aid dollars. Having peaked in fiscal year 1972 at almost $1 billion, federal funding for justice-related programs was on the decline.

States likewise were concerned that once they commenced what promised to be complicated and costly efforts to comply with the JJDPA mandates, the Congress would shift its juvenile justice priorities or abandon them entirely. States already had seen this happen with the LEAA program, for which every reauthorization brought new congressional earmarkings affecting the availability and use of funds and recently, less funding.

In addition, early tensions between the new juvenile justice program and its six-year-old criminal justice counterpart continued to present major obstacles to JJDPA implementation both within the Justice Department and in the states. These tensions were compounded by the perceptions of the respective programs' federal and state constituencies and staffs that the goals of the two programs were in conflict: prevention versus enforcement.

Finally, several states questioned whether, under their state's constitution or state statutes, they in fact had the authority to implement the DSO requirement, particularly when DSO implementation might involve states' imposition of requirements on local units of government. Some states expressed the belief that they would need to enact special state legislation in order to pursue compliance with JJDPA mandates.[38] One state pointed out that the governor did not have the authority to require its locally administered correctional system to deinstitutionalize status offenders and nonoffenders. Other states suggested that the JJDPA's requirements were too rigid. Many states believed that new, non-institutional community-based programs and services would have to be put in place in order to support DSO and asserted that the act's time frame and resources were too limited to support such efforts.

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[38] NATIONAL CONFERENCE OF STATE CRIMINAL JUSTICE PLANNING ADMINISTRATORS, *Report to the National SPA Conference on the Status of the Juvenile Justice and Delinquency Prevention Act of 1975* (sic) (Nov. 1, 1975).

This was of particular concern to rural states where noninstitutional programs and services for juveniles were scarce to nonexistent.

Financial Woes

The absence of a commitment from either the White House or the Congress to fully fund JJDPA implementation created early doubts about, and hazards for, the fledgling juvenile justice program. From the beginning, the Congress and the president appeared to be unprepared to provide even the funding initially authorized to implement the JJDPA over the ensuing three fiscal years.

President Ford, in his remarks at the signing ceremony for the JJDPA, lauded the measure's goals, but stated that he would not seek to fully fund the bill "until the general need for restricting Federal funding is abated."[39] In the next year, Ford sought to delay expenditure of $10 million of the JJDPA's fiscal year 1976 appropriation to fiscal year 1977, an action that ultimately was rejected by the Congress.

The Congress seemed equally unenthusiastic about fully funding the JJDPA to its authorized spending level. In fiscal year 1975, the JJDPA was funded at $25 million, despite a $75 million authorized appropriation level. Likewise, in fiscal years 1976 and 1977, the JJDPA was funded below its authorized appropriation level: $50 million in fiscal year 1976 against a $125 million authorization level and $75 million for fiscal year 1977 with an authorization level of $150 million.

The JJDPA and the LEAA

The JJDPA's relationship with the LEAA program was more than a fiscal concern to the states. The Omnibus Crime Control Act of 1970 amended the Safe Streets Act to allow the states to use crime control funds to support "... development and operation of community based delinquent prevention and correctional programs, emphasizing halfway houses and other community based rehabilitation centers for initial preconviction of (sic)

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[39] Statement by the President [Gerald R. Ford] Following Signing the Bill [Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415] Into Law, While Expressing Reservations About Certain of Its Provisions. September 8, 1974, 10 WEEKLY COMP. PRES. DOC. 1101-47 (Sept. 16, 1974), *reprinted in* U. S. DEPARTMENT OF JUSTICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, OFFICE OF GENERAL COUNSEL, INDEXED LEGISLATIVE HISTORY OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, at 313 (Oct. 29, 1974).

postconviction referral of offenders; expanded probationary programs, including paraprofessional and volunteer participation; and community service centers for the guidance and supervision of potential repeat youthful offenders."[40]

The Congress, in 1972, had attempted to further clarify the relationship between the Safe Street's Act's LEAA and HEW's juvenile justice grant program, specifying that "LEAA was to assist agencies within the juvenile justice system and HEW was to assist programs outside of the juvenile justice system."[41] The 1972 Juvenile Delinquency Prevention Act also provided that states' plans for the use of the HEW-administered juvenile justice funds be included in a single integrated criminal justice plan that would meet the requirements of both the LEAA and HEW programs.[42]

An Early Reprieve

In May 1976, Bayh, the JJDPA's chief advocate, startled the states when he suggested that the act's mandates might be "too inflexible."[43] In an oversight hearing of the Senate juvenile delinquency subcommittee, Bayh referred to the requirement that states achieve DSO in two years as a "benchmark" rather than a definitive compliance standard and postulated that 75 percent compliance with the DSO mandate might be acceptable to him.[44] Bayh asked then-LEAA administrator Richard W. Velde if he and his staff would work with the senator to

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[40] Omnibus Crime Control Act of 1970, Pub. L. No. 91-644 (codified at 42 U.S.C. §3731(b)(8)(1977)).

[41] Committee on Education and Labor, Juvenile Delinquency Prevention Act of 1974, H. R. Rep. No. 93-1135, 93rd Cong., 2nd Sess. (1974), at 4, *reprinted in* U. S. Department of Justice, Law Enforcement Assistance Administration, Office of General Counsel, INDEXED LEGISLATIVE HISTORY OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, at 64 (Oct. 29, 1974).

[42] *Id.*

[43] *Ford Administration Stifles Juvenile Justice Program: Part II - 1976*, Hearing on Oversight and Reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415 and S. 2212/Pub. L. 94-503) Before the SENATE COMM. ON JUDICIARY, SUBCOMM. TO INVESTIGATE JUVENILE DELINQUENCY, 94th Cong., 2nd Sess., at 45 (May 20, 1977). (statement of Sen. Birch Bayh, chair., SENATE COMM. ON JUDICIARY, SUBCOMM. TO INVESTIGATE JUVENILE DELINQUENCY.)

[44] *Id.* at 46.

clarify the DSO mandate; Velde responded enthusiastically in the affirmative.[45] Following up on his discussion with Bayh, Velde wrote a memorandum to LEAA officials responsible for acting on states' compliance plans directed them to inform the states "... that no plan [would] be rejected at this time for non-compliance with Section 223(a)(12) until you have the benefit of decisions reached between our (LEAA) staff and Senator Bayh."[46] By mid-summer 1976, these negotiations had produced a "substantial compliance standard" for the DSO mandate, under which states would be required to reduce the number of status offenders and nonoffenders confined in their detention and correctional institutions by 75 percent over a two-year period that would commence with approval of the first juvenile justice plan.[47]

Bayh's action in agreeing to modify the DSO mandate helped the program over one of its earliest hurdles. But Bayh's decision had an even broader and longer lasting impact on the JJDPA program. It marked the beginning of a federal/state partnership that produced further adjustments in the compliance time frame, as well as carefully crafted definitions and guidelines to help states implement the DSO and other JJDPA mandates. Although the strength of this partnership was often tested over the course of the JJDPA's history, it provided a vehicle for considering the practical effects of political, economic, and other factors on the states' abilities to pursue DSO compliance.

At the same time, however, the JJDPA's call for "immediate and comprehensive action by the Federal Government to reduce and prevent delinquency,"[48] contrasted sharply with the LEAA program objective to assert a federal role in "assist[ing] State and local governments in strengthening and improving law enforcement at every

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[45] *Id.* at 79.

[46] NATIONAL CONFERENCE OF STATE CRIMINAL JUSTICE PLANNING ADMINISTRATORS, *Report to the National SPA Conference on the Status of the Juvenile Justice and Delinquency Prevention Act of 1974*, at 1 (May 31, 1976).

[47] NATIONAL CONFERENCE OF STATE CRIMINAL JUSTICE PLANNING ADMINISTRATORS, *Report to the National SPA Conference on the Status of the Juvenile Justice and Delinquency Prevention Act of 1974*, at 1 (July 31, 1976).

[48] Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, §5601.

level by national assistance."[49] From the very beginning, the JJDPA's perceptibly "soft side" objectives and advocacy lobby collided with the Safe Streets Act's substantial constituency of law enforcement officials.

In early 1976, with JJDPA implementation barely under way in the states, the Congress, the states, and the act's growing constituency began to look toward JJDPA reauthorization. The 1974 JJDPA legislation would expire on Sept. 30, 1977, and under congressional procedures, the Congress was required to indicate its intent to continue the measure by May 15 of the preceding year. The state JJDPA administering agencies, for the most part the same state agencies that administered the LEAA program, moved quickly to show their lack of enthusiasm for the program. In January 1976, the NCSCJPA adopted a resolution that urged the Congress not to continue the separate statutory authorization for the JJDPA, but to integrate fully federally funded juvenile justice initiatives into the LEAA program and increase LEAA funding to accommodate that move.[50]

In the event that the Congress chose not to integrate the JJDPA and LEAA programs, the NCSCJPA called upon the Congress to back off from the act's mandates and give states increased flexibility to determine how to use their JJDPA dollars. The NCSCJPA argued further that "substantive standards," such as the DSO mandate, "should not be federally imposed" on JJDPA administration.[51] The NCSCJPA recommended that the DSO and sight and sound separation provisions be amended to reduce the compliance standards from full compliance to a "good faith effort" on each state's part.[52]

Finally, the NCSCJPA urged the Congress to bring JJDPA guidelines in line with those of the LEAA. "Administrative mechanisms which are different from or more complex than those contained in the [Safe Streets Act] should be eliminated."[53]

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[49] Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, Declarations and Purposes.

[50] NATIONAL CONFERENCE OF STATE CRIMINAL JUSTICE PLANNING ADMINISTRATORS, *Report to the National SPA Conference on the Status of the Juvenile Justice and Delinquency Prevention Act of 1974*, at 1 (Feb. 2, 1976).

[51] *Id.* at 2.

[52] *Id.*

[53] *Id.*

The JJDPA and the LEAA continued their rocky relationship through the latter half of the 1970's both within the federal bureaucracy and in the states. Even the Congress began to pit the two programs against each other. In 1977, President Carter in his first federal budget asked the Congress to increase funding for the JJDPA for fiscal year 1978 from the $30 million recommended by the previous administration to $75 million. Carter proposed to effect this increase by reducing funding for the LEAA program in an amount equal to the proposed $45 million increase for the JJDPA.[54] As the LEAA program's popularity appeared to wane on Capitol Hill, the JJDPA's appeared to grow. Finally in 1980, the Congress refused to provide further appropriations for the LEAA program. Beginning in fiscal year 1981, the LEAA program wound down its operations and prepared to shut its doors.

Lingering Doubts

By early 1977, notwithstanding their philosophical support for the JJDPA's principles and the recent progress made in modifying the DSO requirement, most states had not fully committed themselves to participation in the JJDPA program. As of April 1977, 10 states had indicated their intention to decline fiscal year 1977 JJDPA formula grant awards.[55] A NCSCJPA status report on JJDPA implementation provides insight into the array of issues and concerns that affected states' decisions about participation in the act.

> Arizona has applied for and received formula grant allocations under the Juvenile Justice and Delinquency Prevention Act since that federal assistance became available in Fiscal Year 1975; but Arizona has not spent any of the formula grant funds. Dean Cook, Deputy Director, Arizona SPA, said the state did not "formally commit itself to the Act" until earlier this month, being "half in and half out" of the program to that time. Cook said the Governor and the SPA have been "hung up" by certain requirements of the Act that are believed beyond the authority of the chief executive and the SPA to fulfill, among them, statewide coordination of "existing juvenile delinquency programs and other related programs, such as education, health and welfare ..." (Section 223a(10)). An additional "hang up" has been $5 to $6 million in "hidden costs" identified as incident to bringing about compliance with the deinstitutionalization and separation requirements. There is currently a draft of a bill on deinstitutionalization of status offenders in

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[54] NATIONAL CONFERENCE OF STATE CRIMINAL JUSTICE PLANNING ADMINISTRATORS, *Report to the National SPA Conference on the Status of the Juvenile Justice and Delinquency Prevention Act of 1974*, at 2 (April 22, 1977).

[55] NATIONAL CONFERENCE OF STATE CRIMINAL JUSTICE PLANNING ADMINISTRATORS, *Report to the National SPA Conference on the Status of the Juvenile Justice and Delinquency Prevention Act of 1974*, at 11 (April 22, 1977). These states were: Kansas, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Utah, West Virginia, and Wyoming.

the Arizona state legislature, but a key problem has been what to do with status offenders once they have been removed from institutions -- if you implement the LEAA juvenile justice program, you have to have alternative shelter facilities, Cook said, "and there isn't enough money."

Missouri also had, until recently, refused to expend its juvenile justice formula grant awards. In late December the Missouri supervisory board determined it was prepared to go forward with allocation of its juvenile justice funds. Jay Sondhi, executive director, Missouri SPA said his board has been reluctant to act on the formula grant allocations because of continuing uncertainty about the future of the juvenile justice programs and the nature and extent of the compliance requirements.

If the Juvenile Justice Act has had any effect in Maryland, where deinstitutionalization and separation provisions were on the books prior to passage of that measure, it has been "moral suasion against those who have rolled back," from those initiatives, says John O'Donnell, deputy director, Maryland SPA. The Act has provided a "legal backing" to pursuit of deinstitutionalization and separation objectives and "some funding" for projects that would otherwise not have received support from state and local resources, he continued.

In New York, the Act has had a substantial impact as a catalyst to bringing about new legislation, changes in regulations governing management of delinquents and status offenders and, significantly, in creating "one more forum for interagency cooperation" in juvenile justice and delinquency prevention programming, says Morris Silver, Juvenile Justice Specialist, New York SPA. The juvenile justice money has allowed and sanctioned SPA involvement in programming for delinquent and predelinquent youth and facilitated the SPA's assumption of a key interagency coordinating function among state units charged with responsibilities in those areas.

Nebraska is not participating in LEAA's juvenile justice program and has not since that program's inception. Philosophically deinstitutionalization of status offenders and separation of adult and juvenile offenders are acceptable ideals but "the legislature is uneasy about getting committed" where its ability to comply fully with those provisions is uncertain, explains Harris Owens, executive director, Nebraska SPA. "We have an existing statute on separation but the stickler is 12 (Section 223(a) (12) of the Act by which deinstitutionalization is required.) We're moving, rather slowly, in that direction without the Act. But it is difficult to do. There is a shortage of money." -- A shortage Nebraska does not believe would be met with the resources currently available under the Act.

Oklahoma has also stayed outside the juvenile justice program despite major initiatives in that state to deinstitutionalize status offenders and provide separate facilities for adult and youthful offenders. "Oklahoma has more (alternatives care) facilities (for youth) in place than any other state," says Donald Bown, executive director, Oklahoma SPA. "But there is no way we could give the assurances (required by the Act). Bown says he is less concerned about LEAA's enforcement of such assurances than what occurs when an instance of non-compliance is discovered by a unit or organization within the state; by participating in the program, Oklahoma would be bringing the assurances to bear on individuals who do not know they are liable for enforcement of those provisions and, in fact, cannot bring about compliance. Bown says he believes Oklahoma is in "better shape" with respect to the deinstitutionalization and separation requirements than many states. Oklahoma would consider participating in LEAA's juvenile justice program if the compliance requirements were "softened" to allow the state to proceed with pursuit of those objectives at a pace appropriate to that jurisdiction.

The Juvenile Justice and Delinquency Prevention Act has had a "definite" impact in Utah, says Robert Andersen, executive director, Utah SPA. Utah has not, however, participated in LEAA's juvenile justice program since that program's creation. The Act has served as a "stimulus" to state action on deinstitutionalization and separation: "We have proceeded along precisely as we should be, without the federal act and a lot of screwy regulations." Gary Webster, juvenile justice specialist, Utah SPA, says the

Act is philosophically acceptable to the state. The measure "embellishes a number of admirable undertakings but is so absolute it leaves a state no option to go at its own pace", Webster continued. For Utah the Act "set the stage to go forward" and has provided a "good philosophy and a sound basis in thought," he concluded.

Rhode Island is a relatively new participant in the juvenile justice program and here LEAA's efforts to monitor for compliance with the special Part E corrections requirements have been the cause of some concern about what the SPA will confront when that agency begins to examine the states' progress toward meeting the deinstitutionalization and separation requirements. The SPA's experience under the Part E monitoring, which has been particularly intensive in the New England region, was, says Patrick Fingliss, executive director, Rhode Island SPA, a major element in policy decisions relative to whether that state would participate in the juvenile justice program. Rhode Island, which sat out the Fiscal Year 1975 cycle of that program, recently received its Fiscal Year 1976 juvenile justice formula grant award. The Rhode Island SPA will submit its application against that state's Fiscal Year 1977 juvenile justice allocation in February.[56]

Changing Times

In the 1980's, the Congress began to broaden the scope and focus of the JJDPA, to show, as then-Rep. Ike Andrews (D-N.C.), chairman of the House Education and Labor Committee's Subcommittee on Juvenile Justice, was quoted as saying, that "deinstitutionalization is not the only flag the Juvenile Justice Act has to fly."[57] Bayh, who as the JJDPA's author had focused almost exclusively on diverting juveniles from the justice system, now sought to amend the act to direct some of its resources to the violent juvenile offender.

In successive reauthorizations, the Congress continued to broaden the scope of the JJDPA.

- In the Juvenile Justice Amendments of 1977,[58] the Congress placed an emphasis on prevention and treatment programs.
- The Juvenile Justice Amendments of 1980 added the jail removal requirement under which states had to remove juveniles from adult jails and lockups.[59] The 1980 amendments also placed an

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[56] NATIONAL CONFERENCE OF STATE CRIMINAL JUSTICE PLANNING ADMINISTRATORS, *Report to the National SPA Conference on the Status of the Juvenile Justice and Delinquency Prevention Act of 1974* at 1-3 (Jan. 17, 1977).

[57] NATIONAL CRIMINAL JUSTICE ASSOCIATION, *Report to the National Criminal Justice Association on the Status of the Juvenile Justice and Delinquency Prevention Act of 1974 As Amended*, at 1, (April 15, 1980).

[58] Pub.L. 95-115.

[59] Pub.L. 96-509 (codified as amended at 42 U.S.C. §5633(a)(14) (Supp. 1994)).

emphasis on juveniles who commit serious crimes and on dealing with learning disabled and handicapped juveniles.

- The 1984 amendments[60] placed an even greater emphasis on juveniles who commit serious crimes. In an effort to address delinquency-related problems, the 1984 amendments also provided for enhanced parental involvement and efforts to strengthen the family unit.[61]
- The 1988 reauthorization added the requirement that the state plan address the problem of overrepresentation of minority youth in the juvenile justice system.[62]
- The Juvenile Justice and Delinquency Prevention Amendments of 1992 included initiatives to address gender bias in the treatment of juveniles.[63] The 1992 reauthorization also addressed the prevention and treatment of juvenile-related problems in rural areas and the problem of hate crimes committed by or against juveniles.[64] The DSO requirement also was amended expressly to require that states address the deinstitutionalization of alien youth in secure custody.[65]

Also in 1992, the definition of "valid court order" was amended to include a new requirement. Before a VCO is issued, an appropriate public agency other than a court or law enforcement agency must review the behavior that caused the juvenile to be brought before the court, determine that all other dispositions short of secure detention have been exhausted or are inappropriate, and submit to the court a written report containing the agency's conclusions.[66]

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[60] Pub.L. 98-473.

[61] Pub.L. 98-473 (codified as amended at 42 U.S.C. §5633(a)(17) (Supp. 1994)).

[62] Pub.L. 100-690 (codified as amended at 42 U.S.C. §5633(a)(23) (Supp. 1994)).

[63] Pub.L. 102-586 (codified as amended in scattered sections of 42 U.S.C.)).

[64] *Id.*

[65] *Id.*

[66] Pub.L. No. 102-586 (codified as amended at 42 U.S.C. §5603(16) (Supp. 1994)).

III. THE STATE OF THE STATES' DSO COMPLIANCE[67]

The majority of states today are in compliance with the JJDPA's DSO mandate. As of the OJJDP's preliminary analysis of states' December 1992 monitoring reports, eight states and territories had achieved full compliance with the DSO mandate. [68] Of the 57 states and territories participating in the JJDPA, 29 states were in full compliance with the DSO mandate with de minimis exceptions. [69] (See Exhibit 2.)

The monitoring reports of the 10 other states were under review by the OJJDP and 10 states had not submitted a 1992 monitoring report as of the OJJDP's release of its preliminary report.

One state, South Dakota, was not due to make a 1992 compliance report, having begun its participation in the JJDPA that year.

DSO As a Change Agent

Since 1974, the JJDPA's DSO mandate has served as an important agent for change in virtually every state's juvenile justice system. For some states, the DSO mandate provided the impetus for change; in other states, the DSO mandate offered federal leadership and resources to support state initiatives that already were contemplated or under way at the time of the JJDPA's passage.

Likewise, states have employed various strategies to achieve compliance with the DSO mandate. Some states sought to implement the DSO requirement through legislative action. Others concentrated on changing policies and practices regarding the handling of status offenders and nonoffenders. A few states' efforts to

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[67] The majority of the information in this chapter was derived from telephone conversations with and written responses to an informal NCJA survey of individuals who were or currently are involved with the states' DSO activities.

[68] U. S. DEPARTMENT OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, 1992 *Compliance Monitoring Data, Summary of State Compliance with the Juvenile Justice and Delinquency Prevention Act of 1974, as Amended,* at 1 (Preliminary Report, Aug. 9, 1994). The jurisdictions are American Samoa, Minnesota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, the Virgin Islands, and West Virginia.

[69] The states of Kentucky and Wyoming currently are not participating in the JJDPA.

Exhibit 2

COMPLIANCE

State	Full Compliance w/zero violations	Full Compliance w/De minimis exceptions (<29.4/100,000)	States that have submitted reports currently being processed	States that have not submitted a report	States not required to submit report	States not participating
Alabama		x				
Alaska			x			
Arizona		x				
Arkansas		x				
California		x				
Colorado			x			
Connecticut		x				
Delaware		x				
D. C.				x		
Florida		x				
Georgia		x				
Hawaii		x				
Idaho		x				
Illinois				x		
Indiana		x				
Iowa		x				
Kansas				x		
Kentucky						x
Louisiana		x				
Maine			x			
Maryland		x				
Massachusetts			x			
Michigan				x		
Minnesota	x					
Mississippi				x		
Missouri		x				
Montana		x				
Nebraska		x				
Nevada				x		
New Hampshire			x			
New Jersey		x				
New Mexico				x		

Exhibit 2

COMPLIANCE

State	Full Compliance w/zero violations	Full Compliance w/De minimis exceptions (<29.4/100,000)	States that have submitted reports currently being processed	States that have not submitted a report	States not required to submit report	States not participating
New York			x			
North Carolina		x				
North Dakota		x				
Ohio		x				
Oklahoma		x				
Oregon	x					
Pennsylvania	x					
Rhode Island	x					
South Carolina			x			
South Dakota					x	
Tennessee		x				
Texas		x				
Utah		x				
Vermont		x				
Virginia		x				
Washington		x				
West Virginia	x					
Wisconsin		x				
Wyoming						x
American Samoa	x					
Guam				x		
No. Marianas				x		
Palau				x		
Puerto Rico	x					
Virgin Islands	x					

Source: U. S. DEPARTMENT OF JUSTICE, OFFICE JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *1992 Compliance Monitoring Data, Summary of State Compliance with the Juvenile Justice and Delinquency Prevention Act of 1974, as Amended*, (Preliminary Report, Aug. 9, 1994).

implement the DSO mandate were reinforced by court actions. The majority of states used a combination of strategies to achieve compliance with the DSO mandate.

The JJDPA's DSO mandate was the principal catalyst for juvenile justice system reform in many states. In Louisiana, confinement of status offenders in juvenile detention and correctional facilities was not prohibited under law or state policy and such offenders routinely were confined in these juvenile facilities. The DSO mandate provided the state of Louisiana with the impetus to undertake a major juvenile code reform initiative. A juvenile code with a prohibition on institutionalizing status offenders became the foundation for the state's DSO accomplishments. A decade after the JJDPA's enactment, the state of Louisiana was in full compliance with the DSO mandate.[70]

Many states achieved compliance with the DSO mandate through a combination of legislative, administrative, and program strategies. The Alabama Department of Economic and Community Affairs' Law Enforcement Planning Section, the state JJDPA-administering body, reports that DSO requirements were met in that state by creating alternative services for the court's use in handling status offenders and nonoffenders and by enacting legislation that gave the state's Department of Youth Services (DYS) the exclusive authority to license juvenile detention and correctional facilities. The DYS will withhold licensing from any facility that house status offenders or nonoffenders.[71]

In some states, the JJDPA's DSO mandate provided reinforcement for and useful resources to help pursue a juvenile justice reform initiative that already was under way. The New Mexico state legislature's 1972 children's code revisions included a DSO requirement that prohibited place of status offenders in state juvenile institutions. The code gave counties until July 1, 1976, to achieve compliance with the requirement and provided an exception to

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[70] Response of Dolores Kozloski, former juvenile justice specialist for the state of Louisiana, to the NCJA DSO Implementation Survey (June 28, 1994).

[71] ALABAMA DEPARTMENT OF ECONOMIC AND COMMUNITY AFFAIRS, LAW ENFORCEMENT PLANNING SECTION, DEINSTITUTIONALIZATION OF STATUS OFFENDERS IN ALABAMA, at 1 (July 15, 1994).

the DSO requirement for a 60-day diagnostic period. Juvenile justice officials in New Mexico viewed the JJDPA as a source of funding to implement the state's own DSO strategy.[72]

Likewise in the state of New York, the JJDPA with its DSO mandate helped advance efforts already under way to reform the state's juvenile justice system. Having been influenced by reports of the commonwealth of Massachusetts' experiment with DSO, the state used the JJDPA's mandate to help focus its reform efforts and marshal criminal justice officials' interest and support for that movement. The JJDPA provided critical seed money for developing new and innovative youth programs to support the state's DSO initiative.[73]

In a few other states, the JJDPA was regarded as an unwanted and inappropriate infringement on states' rights. These states believed that the act forced them to make questionable and costly changes with inadequate funding and in an unrealistically short time frame. In Montana, education, creation of a network of alternative services for juveniles, and "persistence" were principal elements of the state's effort to overcome opposition to and implement the DSO mandate. A concerted effort was undertaken to persuade the public, legislators, and justice officials that DSO was a desirable and achievable goal.[74]

In Delaware, legislative change and JJDPA funding were the key ingredients for DSO compliance. In this state, the DSO mandates reached beyond status offenders and nonoffenders to help affect a DSO policy across the state's entire juvenile justice system. In 1988, the state closed its correctional facility for female juveniles after steadily reducing its population over the previous 10 years. From 1978 to 1979, the number of female juveniles incarcerated in Delaware's juvenile correctional facilities dropped from 80 to 20. For that same period, the incarcerated male juvenile population declined from 240 to 160. An average of 90 juvenile males currently are confined in Delaware facilities annually.[75]

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[72] Response of John C. Patterson, former juvenile justice specialist for the state of New Mexico, to the NCJA DSO Implementation Survey (May 12, 1994).

[73] Telephone response of Morris Silver, former juvenile justice specialist for the state of New York, to the NCJA DSO Implementation Survey (May 9, 1994).

[74] Response of Steve P. Nelsen, former juvenile justice specialist for the state of Montana, to the NCJA DSO Implementation Survey (May 9, 1994).

[75] Telephone conversation with James Kane, deputy director, Delaware Criminal Justice Council.

A Closer Look at States' DSO Compliance Strategies

The principal means by which states have sought to implement and institutionalize the DSO mandate has been through legislative and executive actions. Statutes, gubernatorial executive orders, and sometimes a combination of both, set the parameters for, and provide for the enforcement of, DSO in the states.

However, a few states were prompted toward action on the DSO mandate by state court decisions that preceded passage of legislation or issuance of an executive order.

As states' statutory DSO provisions and executive orders suggest, states have used a variety of approaches to achieve compliance with the DSO requirement. This variety results, in part, from the flexibility that the OJJDP's regulations have allowed states in implementing their own programs as they desired.

Moreover, DSO supporters themselves have disagreed about DSO goals. While some have argued that the chief goal should be to remove inappropriately incarcerated juveniles from institutions altogether, others have postulated that the goal is to develop alternatives to incarceration. These differences, as well as others, have manifested themselves in the codes of the different states. Finally, the goal of many juvenile advocates has been for jurisdictions to provide community-based services to status offenders, as opposed to any sort of institutionalization. This goal is also reflected in numerous statutory schemes.

State Statutory Provisions[76]

The DSO requirement is premised upon the proposition that all status offenders and nonoffenders should be deinstitutionalized. Every state has passed DSO legislation in an effort to comply with the JJDPA. (See Appendices B and C.)

In the vast majority of cases, state statutory schemes treat the detention of status offenders and non-offenders, such as an abused or neglected children, similarly. The principal difference among various state statutes

[76] In addition to legislation, some states have attempted to achieve DSO through administrative rules adopted by appropriate state agencies or through executive orders. Such administrative rules and executive orders are not reflected in the analysis below. Therefore, a conclusion that a state is not in compliance with the JJDPA is not warranted solely because the state's statutory scheme does not require the DSO of all status offenders and nonoffenders.

is that individual states exercise different options for dealing with nonoffenders. For example, nonoffenders may be eligible to be sent to a foster home; however, this option may not be available for a status offender.

States have dealt with the definition of status offenders in various ways. Some states specifically provide a definition of "status offender" in their statutes and require that status offenders not be placed in secure detention. Approximately 20 states and the District of Columbia specifically define status offenders in the same way as the JJDPA.

Other states do not specifically define status offender in their statutes, but do include provisions that address certain categories of status offenders, such as runaways or truants. For example, Arkansas' definition of "family in need of services" includes a family whose child is a truant, disobedient, or a runaway.[77] The majority of states statutorily require the DSO of the status offenders they address.

A few states, including Mississippi and West Virginia, encompass a number of status offenses under their definition of "delinquent." In Mississippi, repeat truants are considered delinquents,[78] and in West Virginia certain disobedient children and truants likewise are considered to be delinquent.[79] The manner in which a state defines its terms may be crucial in determining whether a state statutory scheme complies with the JJDPA's requirements. Classifying a child as a delinquent is significant if the state allows for the institutionalization of delinquents. A truant in Mississippi would be considered a delinquent by the state and could be institutionalized, while the JJDPA would consider the child a status offender and prohibit institutionalization.

State statutes also differ on the question of whether a status offender may be taken into custody. While the majority of states specifically allow status offenders to be taken into custody for a limited period of time, a substantial minority do not grant explicitly such authority to their law enforcement officers. A typical state allows a child to be taken into custody by court order, pursuant to the laws of arrest, or under certain special circumstances. For example, in Ohio, a juvenile may be taken into custody by a law enforcement officer if there are reasonable grounds to believe that the child is in danger or poses a danger to himself or others, is a runaway, or is a threat to

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[77] ARK. CODE ANN. §9-27-303(16) (Michie 1993).

[78] MISS. CODE ANN. §43-21-105(i), (j) (1993).

[79] W. VA. CODE §49-1-4 (1993).

leave or be taken from the jurisdiction.[80] North Carolina's statute, however, excludes a number of status offenders from the list that grants officers authority to take a juvenile into custody.[81] Therefore, it is at least arguable that law enforcement officers may not take excluded status offenders into custody, unless by court order or if the circumstances would allow a lawful arrest. Police practice may vary in ways that affect compliance with the JJDPA. For example, it may be department policy that status offenders are not taken into custody.

Under the OJJDP's monitoring policy for determining whether a state is in compliance with the DSO requirement, holding a status offender for less than 24 hours (not including weekends or holidays) does not need to be reported as a violation of the mandate. A number of state statutes provide that status offenders may be held for up to 24 hours. However, approximately 10 states allow at least some status offenders to be securely detained for a period exceeding 24 hours. For example, under North Dakota's scheme, a status offender who was deemed to require physical restriction could be detained until his detention hearing, which is required within 96 hours.[82] Ohio provides that certain status offenders may be confined in a place of juvenile detention for up to 90 days.[83]

With the exception of the VCO provision, the JJDPA does not exempt any status offenders from the DSO requirement. However, a substantial minority of states appear to provide for exceptions that allow a status offender to be securely detained, in contradiction to the JJDPA, if certain circumstances are present. State statutes commonly provide that a status offender could be detained if he poses a threat to himself or others, is a risk not to appear at subsequent court hearings, or is a risk to leave or to be taken from the jurisdiction. Michigan, for example, allows a child to be held in custody only if he has a history of failing to appear at court proceedings, is a runaway, has violated a VCO, or poses a danger to himself or others.[84]

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[80] OHIO REV. CODE ANN. §2151.31 (Anderson 1994).

[81] N.C. GEN. STAT. §7A-571 (1989).

[82] N.D. CENT. CODE §27-20-17(2) (1993).

[83] OHIO REV. CODE ANN. §2151.34 (Anderson 1994).

[84] MICH. COMP. LAWS §712A.15 (1994-5).

The "VCO" Exception

The VCO provision was created by the Congress in 1980 as an exception to the DSO requirement. The VCO exception, which has been further clarified by OJJDP regulations, allows juvenile courts to detain or confine status offenders in a secure facility if the they violate a VCO. The provision allows a state to authorize a secure confinement disposition for a status offender who is a VCO violator, to adjudicate a status offender as a delinquent if the status offender acted in violation of a VCO, or to use the court's contempt power.

Some states' common law or statutory schemes allow the courts to rely on the court's traditional contempt power to "bootstrap" a status offender into a delinquent. Although a criminal contempt of court can be committed by an adult, it is the OJJDP's position that the juvenile remains a status offender under the JJDPA and therefore, the procedural safeguards for a VCO violator continue to apply.[85] Here, too, there are differences among the states. Some states do not give their juvenile courts this ability to "bootstrap" a status offense into a delinquency and expressly require the courts to stay within the bounds of the VCO. Other states explicitly confer bootstrapping power on their juvenile courts. Other states have not legislated on this subject, leaving it to the courts to determine whether "bootstrapping" is consistent with the state's statutory scheme. The OJJDP has indicated that "bootstrapping" is not consistent with OJJDP policy.[86] The majority of the states do not use the VCO provision in any form.

DSO and the Courts

The DSO as a concept has had widespread support. Even before states adopted legislation or took executive action to achieve compliance with the JJDPA's mandates, a number of state courts took DSO into their own hands. The West Virginia Supreme Court of Appeals, the state's highest court, ruled that the secure detention of status offenders violated the state constitution. In the case Harris v. Caledine,[87] Gilbert Harris, a juvenile, was

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[85] John Wilson, *The Valid Court Order Exception -- Meeting the Need for the Enforcement of Court Orders*, 3 CHILD. LEGAL RTS. J. 10 (1982).

[86] *See* 47 *Fed. Reg.* 21226 (1982).

[87] 160 W. Va. 172 (1977).

determined to be a truant and placed in secure detention. At the time, the state's statutory scheme treated status offenders the same as delinquents. The court ruled that secure detention of status offenders violated the due process and equal protection clauses of the state constitution and constituted cruel and unusual punishment in violation of the state constitution.

In Doe v. Norris,[88] the Supreme Court of Tennessee ruled that secure detention of status offenders violated the due process and equal protection clauses of the state and federal constitutions. As of 1988, Tennessee law allowed for status offenders (encompassed under the state's definition of "unruly child") to be commingled with delinquents. Doe brought a class action suit on behalf of all unruly children in the state that had been placed in secure detention with delinquents arguing that secure detention of status offenders was unconstitutional.

The court ruled that the due process clauses of the state and federal constitutions were violated by the state's practice because secure detention amounts to punishment of the plaintiffs without an adjudication of guilt. The court relied upon the U. S. Supreme Court decision in Schall v. Martin,[89] that held punishment imposed without a prior adjudication of guilt is per se illegitimate. Because status offenders are not found "guilty" of any crime, secure detention is an illegitimate punishment.

The court also ruled that state practice also violated the state and federal equal protection clauses. Secure detention of status offenders infringed on the fundamental right to personal liberty. While the court ruled that the state had a compelling interest in commingling delinquents with status offenders, the court ruled that there were other ways the state could achieve its interests short of commingling.

Subsequently, both West Virginia and Tennessee adopted legislation requiring the DSO of status offenders.

Assessing States' Progress

No long-term effort to record and chronicle the history of the JJDPA has been undertaken over the past 20 years. Likewise, no written record has been maintained nor work produced on the JJDPA's DSO mandate as an important factor of that history.

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[88] 751 S.W.2d 834 (1988).

[89] 467 U.S. 253 (1984).

However, the information that is available on states' progress in implementing DSO -- both empirical and anecdotal -- indicates that the DSO initiative has had a profound effect in the states.

A 1988 U. S. General Accounting Office (GAO) study that encompassed a look at states' efforts to meet the DSO mandate found that "in the aggregate, states report achieving almost a 95-percent reduction in detention of status offenders since joining the [JJDPA] program."[90] The congressionally mandated study, undertaken by the GAO for the Senate Judiciary Committee and the House Committee on Education and Labor, the JJDPA's congressional oversight committees, concluded that

> [s]tates 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.[91]

In the past two decades, states have made great strides toward achieving the JJDPA's DSO objective. Notwithstanding early doubts about the federal commitment to DSO and their ability to comply with that mandate, states moved forward aggressively to reform their laws, policies, and practices for handling status offenders and nonoffenders. They enacted and amended statutes and secured executive orders in support of DSO. They revised juvenile intake policies and built and financed noninstitutional programs and services for these youths at the community level. And the states made a commitment to enforcing the DSO compliance standard.

States have stuck with the DSO despite a sometimes wavering federal commitment to the JJDPA. Throughout its history, the JJDPA has had few aggressive advocates in the White House and many detractors. In 12 of the JJDPA program's 20 years, incumbent presidents have recommended termination of the JJDPA and its programs. The Congress has never funded the JJDPA at its authorized appropriation level in the 13 fiscal years that specific dollar amounts were enumerated. (See Exhibit 3.)

States have withstood sharp shifts in national crime priorities and policies and challenges to the integrity of states' DSO laws and policies that could have arisen from the Congress' enactment of the VCO. Not since the 1977

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[90] U. S. GENERAL ACCOUNTING OFFICE, *Noncriminal Juveniles: Detentions Have Been Reduced but Better Monitoring is Needed*, at 3 (April 1991).

[91] *Id.* at 83, 84. The Anti-Drug Abuse Act of 1988 (Pub. L. No. 100-690, §7295(b)) required the GAO to report by Oct. 1, 1991, to the chairs of the Senate Judiciary Committee and the House Committee on Education and Labor on the status of court-ordered detention of status offenders.

Exhibit 3

Comparison of Authorized and Appropriated Funding Levels for the Juvenile Justice and Delinquency Prevention Act of 1974, as Amended

Fiscal Years 1975-1995[92]
(in thousands of dollars)

Fiscal Year	Authorized	Appropriated[93]
1975	$ 75,000	$ 25,000
1976	125000	50000
1977	150000	75000
1978	150000	100000
1979	175000	100000
1980	200000	100000
1981	200000	97069
1982	200000	70000
1983	200000	70000
1984	200000	70155
1985	"such funds as are appropriate"[94]	70240
1986	"such funds as are appropriate"	67260
1987	"such funds as are appropriate"	70182
1988	"such funds as are appropriate"	66692
1989	"such funds as are necessary"	66692
1990	"such funds as are necessary"	70497
1991	"such funds as are necessary"	71799
1992	"such funds as are necessary"	72500
1993	150000	73000
1994	150000	85000
1995	150000	100000

Source: Public Laws; U. S. Department of Justice, Office of Justice Programs' Budget Office and Office of Juvenile Justice and Delinquency Prevention

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[92] The Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (JJDPA) was signed into law by the President Gerald R. Ford on Sept. 7, 1974. Almost a month later, on Oct. 5, 1974, the JJDPA received its first appropriation in the amount of $25 million for fiscal year 1975.

[93] These figures reflect appropriations for Parts A, B, and C of Title II of the JJDPA which include the state juvenile justice formula and special emphasis discretionary grant programs.

[94] For fiscal years 1985-1992, the Congress did not enumerate specific appropriations for Parts A, B, and C of Title II, choosing instead to direct the appropriations committees to provide "such funds as are appropriate" or "such sums as are necessary" for JJDPA programs in each of those fiscal years.

JJDPA reauthorization have states mounted any effort to moderate significantly or undo the DSO requirement. Despite the vagaries of politics and the economy, they have continued to move forward to achieve a goal set 20 years ago.

However, the states' ability to sustain their accomplishments will depend upon their ability to overcome some long-standing -- and more recent -- hurdles.

IV. SUSTAINING DSO COMPLIANCE IN THE STATES

Despite the DSO initiative's general acceptance in the states, its implementation has been difficult. Doubts about the propriety, efficacy, and cost of deinstitutionalizing status offenders inhibited states' early progress in moving forward on this sweeping juvenile justice reform initiative.

Today, even those states that have achieved full compliance with the DSO mandate face numerous challenges to sustaining and building on their accomplishments.

Challenges to Sustaining DSO

Challenges to DSO implementation are many and varied. Some have concerned sustaining an interest in, and support for, the JJDPA itself. These challenges have emanated from the Congress and the White House and have directly affected JJDPA programs and states' capacities to meet the act's objectives: flagging political support; shifting priorities; inconsistent appropriations levels; earmarkings of appropriations for special interests; and an expansion of the number and scope of substantive issues to be addressed by the act and its resources. Among these challenges, issues surrounding application of the VCO exception to the DSO mandate are most pressing.

Other issues that have created notable difficulties for states in achieving compliance with the DSO mandate reflect outstanding problems in the juvenile justice field itself. In this category of challenges, dealing with the chronic status offender, particularly runaways, stands out as among the greatest obstacles to full compliance with the DSO mandate.

However, many of the issues that have presented the greatest challenges for the JJDPA since the 1980's have evolved in a broader national political, social and justice policy, and economic context. Those challenges include: competing domestic priorities; escalating public concern about crime and violence; the national debt; and fiscal conditions in the states. These issues present even greater and potentially more long-term challenges to the integrity and viability of states' DSO achievements.

Changing National Priorities and Policies

Crime policy in this country historically has been short term in scope and focus. It is characterized by frequent shifts in priorities and often is victimized by public pressure for quick solutions that can be costly and sometimes fall short of achieving their intended objectives.

Today, crime tops the list of public priorities. A Louis Harris & Associates telephone poll taken in early August 1994 found that 46 percent of persons surveyed believed crime to be the most serious problem facing the country today, a rate nearly double the percentage of individuals who listed health care as the nation's top issue. According to a *New York Times* article on the Louis Harris poll, other problems such as drugs, employment, and the economy also were mentioned.[95]

By contrast, the public appears to be less than sanguine about the appropriateness or potential effectiveness of government involvement in crime control. According to the *Times* article, 24 percent of individuals responding to the Harris poll said that crime was the top priority for the government to address, while 53 percent cited health care as the most important issue for government attention.[96]

Getting Tough

Public policymakers' preoccupation with this country's violence problem has shifted crime policy and the bulk of public crime dollars toward punishment-oriented initiatives. Moreover, against the backdrop of congressional efforts to control spending and reduce the national debt, public dollars have become scarce and the

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[95] Mike Kagay, *Top Woe: Health or Crime*, THE N.Y. TIMES, Aug. 7, 1994, at A24.

[96] *Id.*

competition for them increasingly fierce. At this writing, the Congress, on the verge of passing a multi-billion dollar omnibus crime package, is engaged in an intense struggle to mediate the conflicting punishment and prevention goals of its members.

In the states, where the fiscal situation is moderately better than at the federal level, governors have pushed crime to the top of their agendas. With states' budgets back on track and most states in better fiscal condition in 1994 than in any year since 1990, states are looking to spend money to attack juvenile crime and violence.[97] In their state-of-the-state addresses, several governors announced that they will seek new laws to bar juveniles from carrying guns and to provide for tougher sentences for repeat juvenile offenders.[98] Other governors' budgets included proposals to establish "boot camps" for juvenile offenders.[99]

According to the April 1994 *The Fiscal Survey of States*, a twice-yearly fiscal analysis of states' revenues and expenditures published jointly by the NGA and the National Association of State Budget Officers, while states' fiscal year 1995 budgets generally reflect little increase in spending to expand existing or add new services and programs, several governors are targeting spending for initiatives to curb violent juvenile crime.[100] The *Survey* notes that governors' juvenile crime and violence proposals "focus on building separate facilities for juvenile offenders, changing laws in order to prosecute and sentence juveniles as adults for violent crimes, and expanding the use of boot camps."[101]

Outlook for the Future

The JJDPA is remarkable in its longevity and the quality and quantity of its achievements. It has survived the decline and ultimate demise of the Safe Street's Act's LEAA program and the Congress' creation of successor

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[97] NATIONAL GOVERNORS' ASSOCIATION/NATIONAL ASSOCIATION OF STATE BUDGET OFFICERS, *The Fiscal Survey of States*, at vii (April 1994).

[98] NATIONAL CRIMINAL JUSTICE ASSOCIATION, *Justice Bulletin*, at 3 (February 1993).

[99] *Id.*

[100] NATIONAL GOVERNORS' ASSOCIATION/NATIONAL ASSOCIATION OF STATE BUDGET OFFICERS, *The Fiscal Survey of States*, at vii (April 1994).

[101] *Id.* at 7.

federal crime control grant-in-aid programs in the Justice Department; the war on drugs of the 1980's, which featured the Congress' creation of a federal Office of National Drug Control Policy and enactment of two major anti-drug measures; and escalating public outcry about the country's violence problem that has produced dramatic increases in corrections spending in the states and by the federal government and a host of changes in federal and state laws to punish perpetrators of serious and violent crimes, including serious and violent juvenile offenders.

Little empirical information exists upon which to base an assessment of the overall outlook for the DSO initiative in the states. Anecdotal information indicates that many states expect to be able to sustain full compliance with the DSO mandate, but anticipate facing future political and economic challenges as they attempt to keep their programs intact.

The survival of a state's DSO policy likely will depend in large part on how firmly installed it has become in laws, policies, and practices. A former state official stated that the development of a dedicated revenue source for local DSO programs and services has helped to ensure that a commitment to DSO is sustained.

Support for DSO sometimes comes from unanticipated sources. One former state official postulated that the state's correctional crowding problem will serve only to reinforce the state's DSO policy even if it is subjected to political challenge.

The majority of states have achieved compliance with the DSO mandate and remain committed to its purposes. To sustain these accomplishments, states may be forced to hold fast in the face of the toughest challenges yet.

Contempt and the Valid Court Order

The Congress included in its 1980 amendments to the JJDPA a provision intended to respond to juvenile court judges' concerns that the DSO mandate would deprive them of an important option for handling certain status offenders. That provision, the VCO exception, permitted judges to confine status offenders in secure detention facilities for limited periods of time if those youth were found to have violated a VCO.

Escalating concerns that juvenile courts in some cases may be overusing the VCO exception are prompting a continuing look at the implementation of the provision by the Congress, through the General Accounting Office, and by the OJJDP.

While some courts continue to use their traditional contempt powers to "bootstrap" a status offender into a delinquent, the use of secure detention or confinement continues to be governed by the VCO procedural requirements, according to the OJJDP. The OJJDP constantly has taken the position that because an adult is not subject to an adjudication and order governing future conduct based upon a status offense, a juvenile who violates such an order must still be considered a status offender for purposes of the JJDPA's DSO requirement.

This position appears to comport with the intent of the Congress. In 1977, the LEAA's Office of General Counsel issued Legal Opinion 77-25, which stated that a status offender who violates a court order remains a status offender unless the violative act would itself be criminal if committed by an adult and until the juvenile was charged with (or adjudicated for) committing the particular offense. This is the case even when a state code classifies the violation as a delinquent act because the underlying conduct would not be a criminal act if committed by an adult.

On May 17, 1982, the OJJDP published for public comment in the *Federal Register* proposed guidelines regulating the new VCO amendment. The OJJDP stated "[o]ne rationale for the amendment was to *obviate* the need for courts to use their criminal contempt power as a means of obtaining compliance with court orders. Further, OJJDP's legal counsel has ruled that a violation of a court order by a status offender is an insufficient legal basis to categorize the juvenile as a criminal-type or delinquent offender, thus removing the juvenile from the deinstitutionalization requirement" (emphasis added).[102] This statement indicates the OJJDP's intent that courts must follow the VCO procedures even when using their traditional contempt powers or a state's delinquency classification as the authority to employ the VCO exception.

Many appellate courts have used a rationale similar to the OJJDP's in dealing with situations in which lower courts "bootstrap" by using criminal contempt powers. In the 1992 Florida case, A.A. v. Cornell Rolle,[103] a juvenile was found guilty by a trial court of indirect contempt for violating a VCO that prohibited him from running from his placement. Subsequently, the juvenile was placed into secure detention for contempt of court. The Florida Supreme Court reversed, holding that the lower court could not use its criminal contempt authority in this manner

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[102] 47 Fed. Reg. 21226 (1982).

[103] 604 So. 2d. 813 (Fla. 1992).

without violating state law implementing the JJDPA. According to the court, "juveniles may not be incarcerated for contempt of court by being placed in secure detention facilities."[104]

In N.J.R. v. State,[105] the Indiana Court of Appeals ruled that the detention of a juvenile charged with criminal contempt was a violation of that state's statutory scheme. The Superior Court of Pennsylvania reached a similar result in In Interest of Tasseing H.,[106] which held that "to permit a court to adjudicate a child delinquent on the basis of the acts presently in question through the use of the court's contempt power would permit the court to accomplish indirectly that which it could not accomplish directly."[107]

In In re Ronald S.,[108] a child in California violated a VCO by running away from a crisis center. The juvenile court judge reclassified the juvenile as a delinquent and ordered secure detention. The juvenile's petition for a writ of habeas corpus was granted by the California Court of Appeals, which found the juvenile judge's practice inappropriate because it allowed the court to do indirectly what state law directly prohibited. The court in the case, however, reluctantly granted the child's habeas corpus petition, stating that while "it may seem ridiculous to place a runaway in a nonsecure setting, nevertheless, that is what the legislature has ordained."[109] The court also suggested amendments to the state's juvenile code. According to the court, the legislature should either remove status offenders from the juvenile court's jurisdiction or give the court the tools to deal with recidivist status offenders. At one point, the court said that "[i]f the juvenile court is to be saddled with the responsibility for [status offenders], it must also be afforded the tools and authorities to handle those cases ... It is simply not fair to a juvenile court judge to whom the community looks for help to so restrict him that he cannot put his orders or decisions into effect. However, some do and in these cases the juvenile court judge must have the authority to detain in a secure

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[104] *Id.* at 818-9.

[105] 439 N.E.2d 725 (Ind. Ct. App. 1982).

[106] 422 A.2d 530 (Pa. Super. Ct. 1980).

[107] *Id.* at 537.

[108] 69 Cal. App. 3d 866 (Cal. Ct. App. 1977).

[109] *Id.* at 873.

facility -- if [status offenders] are to remain in the juvenile court."[110] The 1980 VCO amendment directly responded to this court's concerns.

In W.M. v. State of Indiana,[111] the juvenile court held that a status offender could be found in contempt and institutionalized based on a statutory provision that preserved the court's contempt powers. However, the Court of Appeals of Indiana reversed, and ruled that the provision preserving the court's contempt powers was meant only to allow the parents of juveniles before the court to be found in contempt, and not the juveniles themselves. The court continued that "juveniles whose acts are not crimes for adults ... cannot be incarcerate[d] [under the contempt provision] when the underlying act is a status offense."[112]

Some courts, however, have reached an opposite result. The Alaska Supreme Court in L.A.M. v. State[113] upheld the lower court's use of criminal contempt power to bootstrap a juvenile to delinquency status, reasoning that when lesser measures fail, confinement should be allowed for repeat status offenders.

The Supreme Court of Minnesota also preserved the lower courts' use of their traditional contempt power, but in a more limited context than the court in Alaska allowed. In the Minnesota case of In State ex rel. L.E.A. v. Hammergren,[114] the court held that only in the most egregious circumstances should the court exercise its contempt powers in a manner that would result in a status offender being incarcerated. Nevertheless, if the record showed that "all less restrictive alternatives have failed,"[115] the court then could rely on its contempt power and institutionalize a status offender.

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[110] *Id.* at 875.

[111] 437 N.E.2d 1028 (Ind. Ct. App. 1982).

[112] *Id.* at 1033.

[113] 547 P.2d 827 (Alaska 1976).

[114] 294 N.W.2d 705 (Minn. 1980).

[115] *Id.* at 707-8.

Finally, the U. S. Court of Appeals for the Sixth Circuit ruled in Parker v. Turner[116] that a state's juvenile courts have the same contempt powers as any other court in the state. Thus, a status offender may be found in contempt and securely detained.

While the OJJDP has taken no position on whether "bootstrapping" is permissible or consistent with a particular state's law or statutory scheme, the OJJDP has stated clearly that if "bootstrapping" is used, it is subject to the VCO exception.

A number of states allow for "statutory bootstrapping" through recidivist status offender statutes. For example, Rhode Island defines a "delinquent" as a juvenile who has violated any law more than once.[117] Consequently, a child who commits two status offenses may be considered a delinquent under state law. Under a Nevada statute, a "chronic offender," including a chronic status offender, may be placed in secure detention facilities.[118] Minnesota and Idaho have similar provisions.[119] Under these provisions, the VCO exception is inapplicable and any use of this authority to detain or confine a status offender results in a violation of the DSO mandate.

Private Right of Action

The U. S. Court of Appeals for the Sixth Circuit ruled in 1994 that a violation of the jail removal mandate of the JJDPA constitutes the deprivation of a right that is actionable under 42 U.S.C. §1983, a federal statute that allows individuals to recover damages for violations of their civil rights by government officials. Therefore, the court held that the protections of the JJDPA are enforceable through a private right of action.

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[116] 626 F. 2d 1 (6th Cir. 1980).

[117] R.I. Gen. Laws §14-1-3(F) (1993).

[118] Nev. Rev. Stat. §62.211(2) (1993).

[119] Minn. Stat. §260.015 (1994); Idaho Code §16-1814A (1993).

In Horn v. Madison County Fiscal Court,[120] Christopher Horn, a 17-year-old boy, pleaded guilty to robbery. As a condition of his release, the court ordered Horn to remain "within arms' reach of his parents."[121] Horn subsequently ran away from home but eventually turned himself in. Horn was placed in an adult jail that was used intermittently as a juvenile holding facility. Under state law, a juvenile offender could be lodged in the facility for up to 24 hours. Authorities periodically checked on Horn and allowed him to watch television. Less than an hour after being received at the center, authorities found Horn hanging from the bunk of his cell with a bed sheet tied around his neck. The authorities were able to save Horn's life, but the boy suffered permanent brain damage and was confined to a wheelchair.

A §1983 suit was filed on behalf of Horn against the county seeking damages for injuries sustained in the attempted suicide. The trial court ruled in favor of the county, finding that the JJDPA did not create a private right of action under §1983.

The appellate court reversed this part of the trial court's decision and held that a violation of the JJDPA creates a private right of action. Violations of federal statutes are actionable only if they create enforceable rights and the Congress has not foreclosed such enforcement in the statute itself. The U. S. Supreme Court held in Wilder v. Virginia,[122] that conditions placed on the disbursement of federal funds to a state may confer enforceable rights upon the intended beneficiaries of the funding.

The Sixth Circuit found that juveniles unquestionably were intended to benefit under the JJDPA, and that the legislation provided for the required amount of specificity in its mandates. The JJDPA's provisions were found to be mandatory because a state would lose federal funding if it was not in compliance. The court ultimately held that the alleged violation of the JJDPA constituted the deprivation of a right that is actionable under §1983. The court noted that, although neither the U. S. Supreme Court nor any other federal appellate court has ruled on this issue, a number of federal district courts have ruled similarly.

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[120] 22 F.3d 653 (6th Cir. 1994).

[121] *Id.* at 655.

[122] 496 U. S. 498 (1990).

Despite this ruling, the court refused to find the authorities liable because the violation of the JJDPA did not proximately cause Horn's injuries. There was no proof at trial that these injuries would not have occurred if Horn was placed in a secure juvenile facility, as opposed to a juvenile holding facility of a jail.

Although the only provision at issue in the case was the jail removal requirement, the rationale the court used suggests that each of the JJDPA's mandates creates a private right of action because juveniles were meant to benefit from each of the requirements and the statute does not foreclose private enforcement.

The Chronic Status Offender

Certainly, one of the principal issues affecting states' compliance with the DSO mandate concerns the handling of juveniles on the extreme edge of the status offender classification. Among them are runaways or juveniles with emotional or behavior problems, who are chronically at risk and who come perilously close to the status offender classification's common border with delinquency.

The chronic status offender has created a policy dilemma for juvenile justice officials over the appropriateness of employing confinement in a secure juvenile facility to intervene in the behavior of these youth.

The chronic status offender is the most difficult of the status offender classifications to place and the least amenable to community-based intervention strategies. Often programs and services for these youths are scarce. The chronic status offender generally is in urgent need of help from social services, educational, and juvenile justice officials to keep him from moving further into the juvenile justice system. If his behavior is caused or substantially affected by physical or mental health problems, he also may need help from other services outside the juvenile justice community.

As states endeavor to complete and sustain DSO compliance, chronic status offenders will constitute the majority of juveniles who will be subject to secure detention.

The problem of the chronic status offender, like issues concerning application of the VCO provision, raises the possibility that decisions could be made with regard to the handling of these youth that would effectively undermine states' DSO efforts and therefore the efficacy of the DSO mandate itself. For some judges and juvenile justice officials, the loss of an option to hold these youth means the loss of an opportunity to help them. These officials argue that without the ability to hold these youth, the only alternative might be their continued placement

and failure in inappropriate treatment settings or their release with the possibility that they will cause themselves or the community serious harm. The risk is that another major DSO exception could be created for these youth that then would be applied to a greater-than-necessary number of status offenders.

In the 1980's, several states undertook reviews of DSO statutes enacted as recently as the year before, having concluded that certain obstacles, including the chronic status offender, might exist to full implementation of a policy that would prohibit secure confinement of status offenders and nonoffenders. A February 1980 review by the Illinois Law Enforcement Commission's (ILEC) Juvenile Justice Division of then-pending Senate Bill 346, the state's DSO statute that became law on Sept. 7, 1979, discusses the problem posed by the chronic runaway in bringing about full implementation of that measure:

> The chronic or habitual runaway appears to pose a different problem.[123] Local authorities feel that this youth will not "stay put" if placed in non-secure care, particularly if the non-secure setting is a foster home. With the exception of Cook County, no analysis has been attempted to determine how many youth might be considered chronic runaways. However, comments of local personnel suggest that the number in most sites is a handful during any given year. Nevertheless, these youth appear to be a painful thorn in the side of justice and social service personnel who encounter them. (footnote added)
>
> Previously, these juveniles were detained for a variety of reasons. In a very few instances those interviewed felt detention was therapeutic for such youth. More often justice system personnel felt detention was necessary to assure the child's presence at court. Most frequently, however, the decision to detain seems to emerge out of great frustration and a feeling that there is simply nothing else to do with the youth.[124]

The ILEC found that the chronic status offender's environment is characterized by failure and rejection beginning with a total breakdown in the child's relationship with his family and carrying forward into out-of-home placements and school. "Without altering the history of rejection and stabilizing the lives of these youth, the

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[123] In previous paragraphs, the ILEC discussed the out-of-state runaway, concluding that the problem associated with these youth is not one of large scale in most jurisdictions of the state but is "a great annoyance for justice system personnel." The ILEC noted a need for procedural changes in managing these youths and dissemination of information concerning the services of the state's interstate compact coordinator to relieve some of the pressure felt by the police in situations involving out-of-state runaways. The ILEC also pointed out the need to address food and shelter requirements associated with management of these youth. See ILLINOIS LAW ENFORCEMENT COMMISSION, JUVENILE JUSTICE DIVISION, *Implementation of Senate Bill 346*, at 25 (February 1980). In addition to activities in Illinois and Minnesota, the states of Maryland and Washington are similarly reported to be reassessing their current DSO statutes.

[124] ILEC at 25-26.

outcome will be a return home followed by subsequent runaway episodes or a return to the streets," the ILEC report concluded.[125]

The ILEC report suggests that chronic runaways more than any other status offenders require "a continuum of services if their needs are to be adequately addressed".[126]

Minnesota legislators likewise undertook a review of the state's DSO provisions in 1980 in response to concerns that, without a sanction for securely confining certain status offenders, these youths would not be available for or receptive to treatment.

Although justice and social services officials, juvenile justice advocacy groups, and private services providers have continued their search for effective programs and services for chronic status offenders, much remains to be done in this area. A 1992 report by the National Coalition for the Mentally Ill in the Criminal Justice System asserts that status offenders and delinquents with emotional and behavior problems "place great stress on the [juvenile justice] system and that their needs have been largely ignored."[127] Observing that little progress was made in the previous decade in developing knowledge about this special group of juveniles, the coalition points out that

> We still know very little about the mental health needs of youth who are involved in the juvenile justice system. There are no good national studies on the number of such youth who come in contact with the juvenile justice system. Systematic information on how services are organized and delivered across the country, or on how the mental health and juvenile justice systems coordinate their efforts, does not exist. Moreover, we have no adequate information on what services are provided, their quality and whether or not they make a difference.[128]

Now, with two decades of progress on the DSO initiative behind them, federal and state governments likely will need to turn their attention to the needs of this particularly problematic population of troubled youths.

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[125] ILEC at 26.

[126] ILEC at 27.

[127] NATIONAL Coalition FOR THE MENTALLY ILL IN THE CRIMINAL JUSTICE SYSTEM, *Responding to the Mental Health Needs of Youth in the Juvenile Justice System*, at 1 (November 1992)

[128] *Id.*

V. CONCLUSION: MEETING THE TEST OF TIME

Two decades have passed since the Congress enacted the JJDPA, setting in motion in the states a national movement to reform the laws, policies, and practices of the nation's juvenile justice system. A principal objective of the JJDPA was to halt the practice of confining status offenders and nonoffenders, such as dependent and neglected youth, in secure juvenile detention and correctional institutions.

The JJDPA was a major departure from any previous grant-in-aid legislation in its focus on promoting specific changes in states' juvenile justice laws, policies, and practices. The JJDPA's DSO mandate raised the issue in the states of the treatment of status offenders. The DSO mandate called upon the states to re-examine the practices of their juvenile justice systems, abandon traditional institution-based approaches to handling non-criminal troubled youth, and make a commitment to pursuing legal, administrative, and physical remedies to achieve DSO.

The JJDPA has had a tremendous impact on juvenile justice practices in this country. Its mandates and challenges to public policymakers and juvenile justice officials have withstood the test of time, weathering changes in the demographics of juvenile crime and shifts in public expectations and policies that shape crime and social policy.

Now, after two decades, the JJDPA faces its most critical test: whether the accomplishments of the last 20 years can be sustained.

Juvenile crime is a high priority in the states today. Virtually every governor has moved reducing juvenile crime and improving the quality of preventive and correctional services for juveniles to the top page of his agenda. The challenge to states will be to retain their focus on prevention despite the escalating pressures for more punitive approaches to resolving the violence problem. Practical and economic considerations associated with this nation's correctional crowding problem, as some have observed, are likely to provide a measure of reinforcement for the continued development of noninstitutional approaches to dealing with the least violent and serious offenders.

Moreover, DSO remains a central theme in the juvenile justice and related social services fields. For example, an $800,000 grant from the Robert Wood Johnson Foundation has established a DSO project at the Robert

F. Kennedy Memorial in Massachusetts.[129] This National Juvenile Justice Reform Project aims to help states reduce the use of juvenile detention and correctional facilities in handling juvenile offenders.[130] The project's goal is to provide incentives to states and local jurisdictions to expand community-based programs and services for juveniles as alternatives to institutional placements.[131] Work in these arenas also is likely to provide reinforcement for states' DSO accomplishments.

But whatever the future may bring for this country's juvenile justice system, one thing seems certain: Because of the JJDPA there will be no wholesale return to confining status offenders and nonoffenders in secure correctional and detention facilities in this country.

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[129] Criminal Justice Newsletter, *Project Aims to Replicate Massachusetts Experiment* (June 15, 1994).

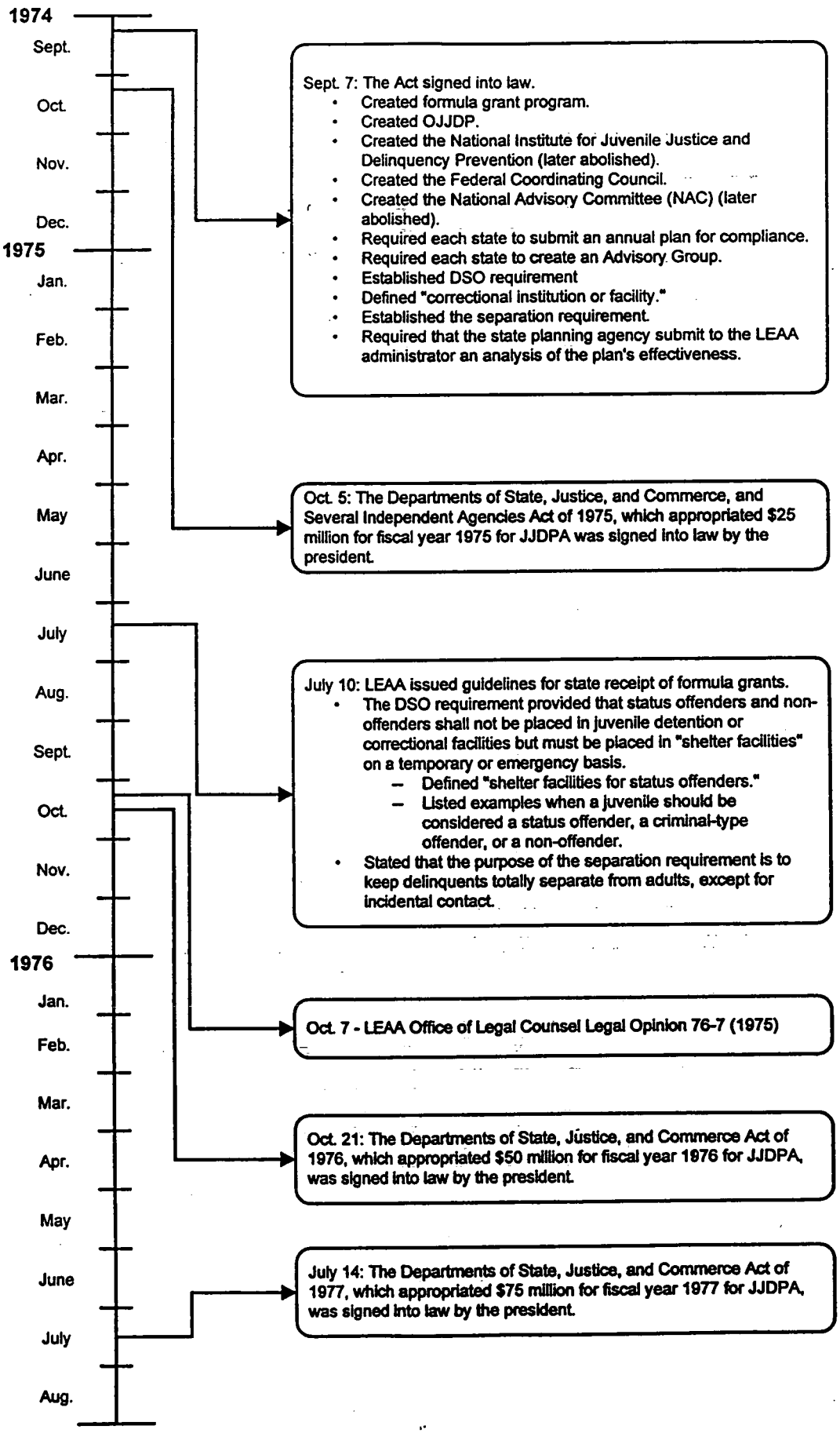
[130] *Id.*

[131] *Id.*

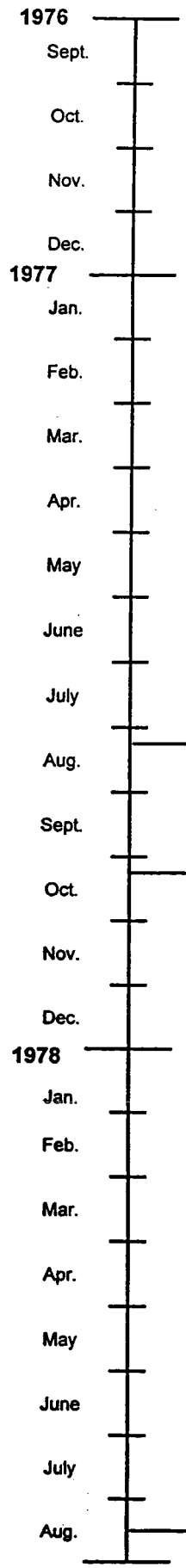
APPENDICES

APPENDIX A: HISTORY OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

History of the Juvenile Justice and Delinquency Prevention Act



History of the Juvenile Justice and Delinquency Prevention Act



Aug. 2: The Departments of State, Justice, and Commerce Act of 1978, which appropriated $100 million for fiscal year 1978 for JJDPA, was signed into law by the president.

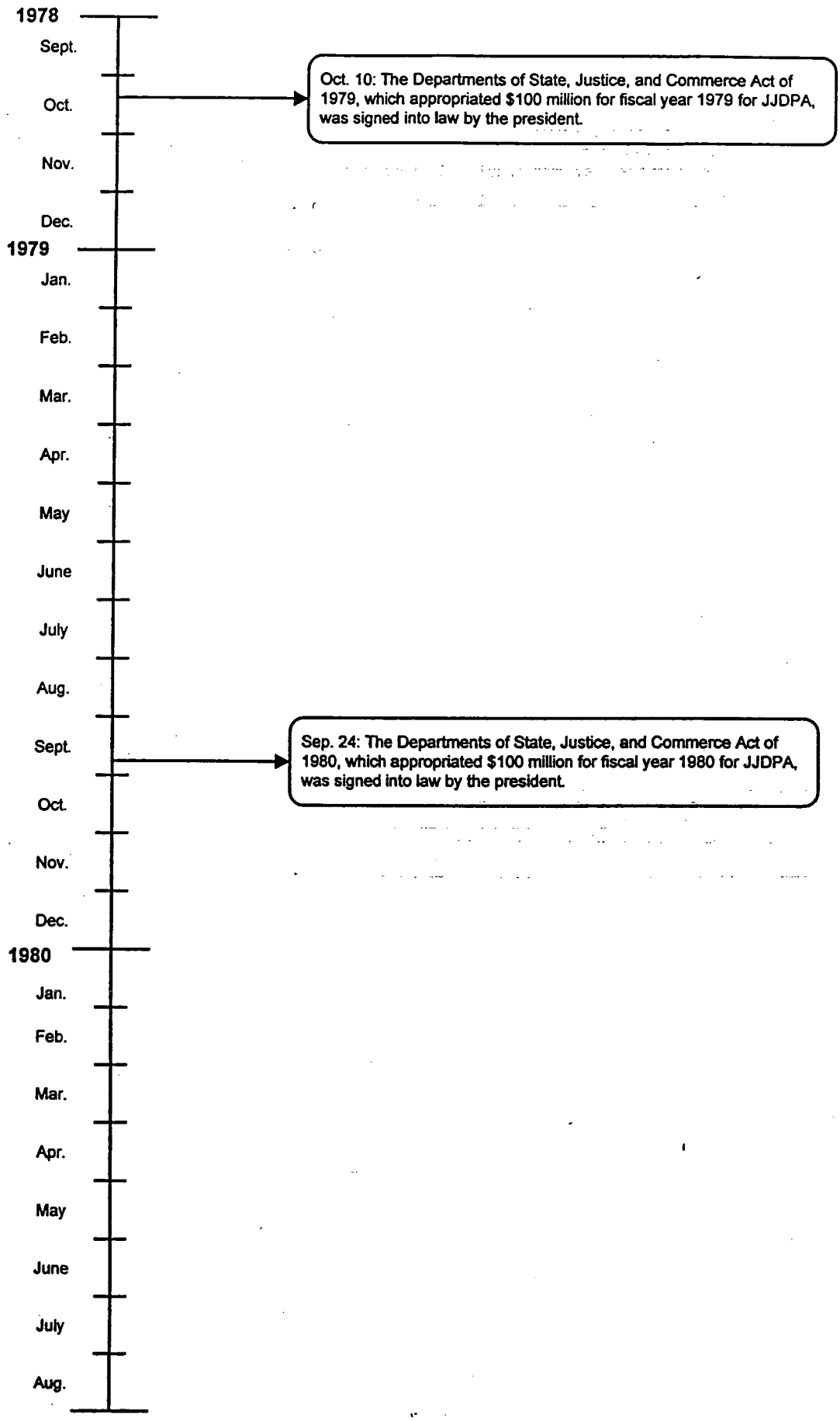
Oct. 3: The Juvenile Justice Amendments of 1977 were signed into law.

- Increased the amount of time within which a state must comply with the DSO requirement to three years.
  - Failure to reach full compliance with the DSO requirement within three years made the state ineligible for funding, unless the state was found to be in "substantial compliance."
  - Required a state to provide an annual report reviewing progress made on the DSO requirement. For purposes of monitoring compliance with the DSO requirement, the number of accused status offenders and non-offenders held in juvenile detention or correctional facilities did not include those held less than 24 hours following initial police contact or those held less than 24 hours following initial court contact.
- Separation requirement expanded to include delinquents, status offenders, and non-offenders.
- Emphasized prevention and treatment programs.

Aug. 16: The LEAA issued guidelines for the implementation of the 1977 amendments.

- Each state was required to submit a report on its compliance with the DSO and the separation requirement. To demonstrate compliance the state must include information for both the baseline and the current reporting periods.

History of the Juvenile Justice and Delinquency Prevention Act



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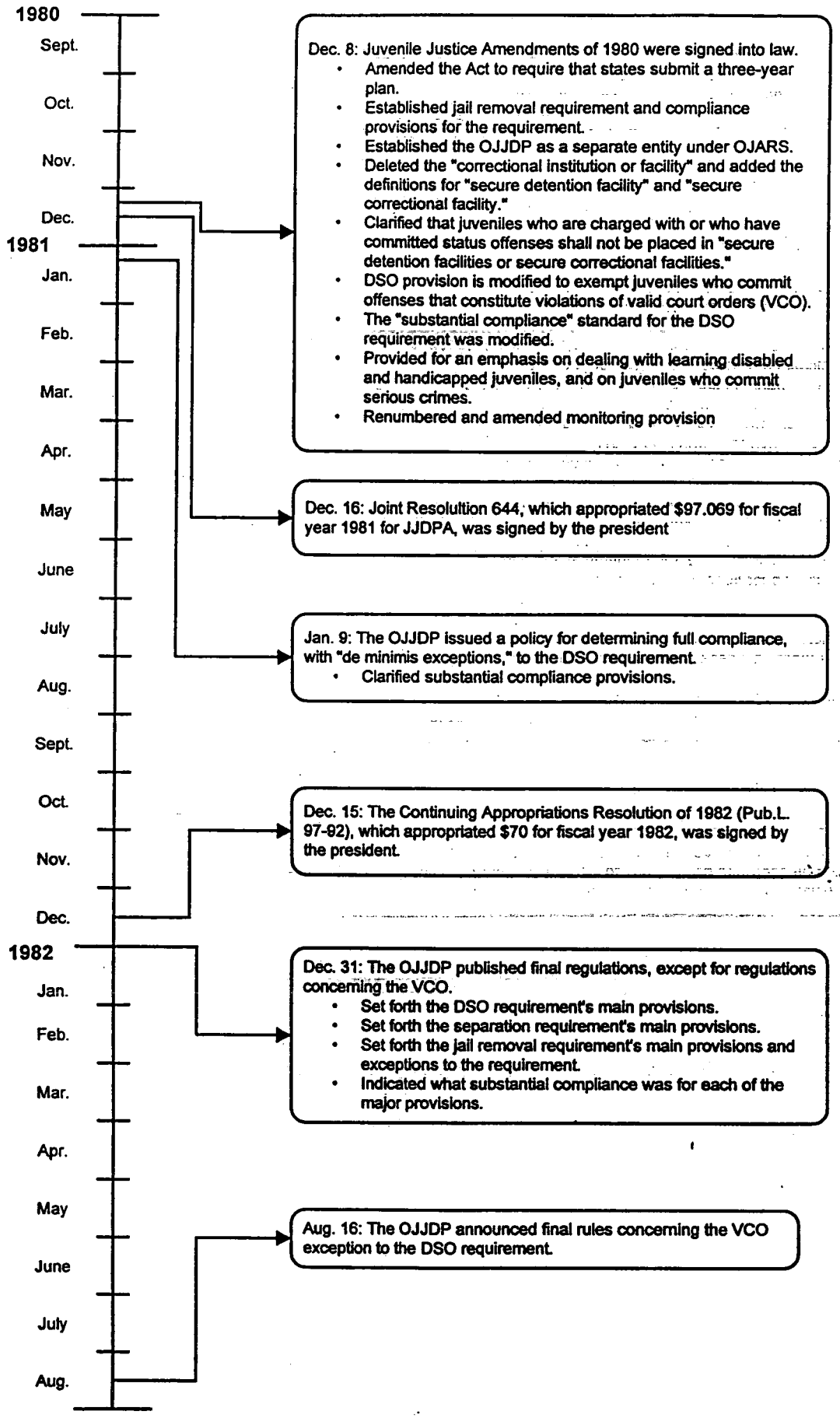

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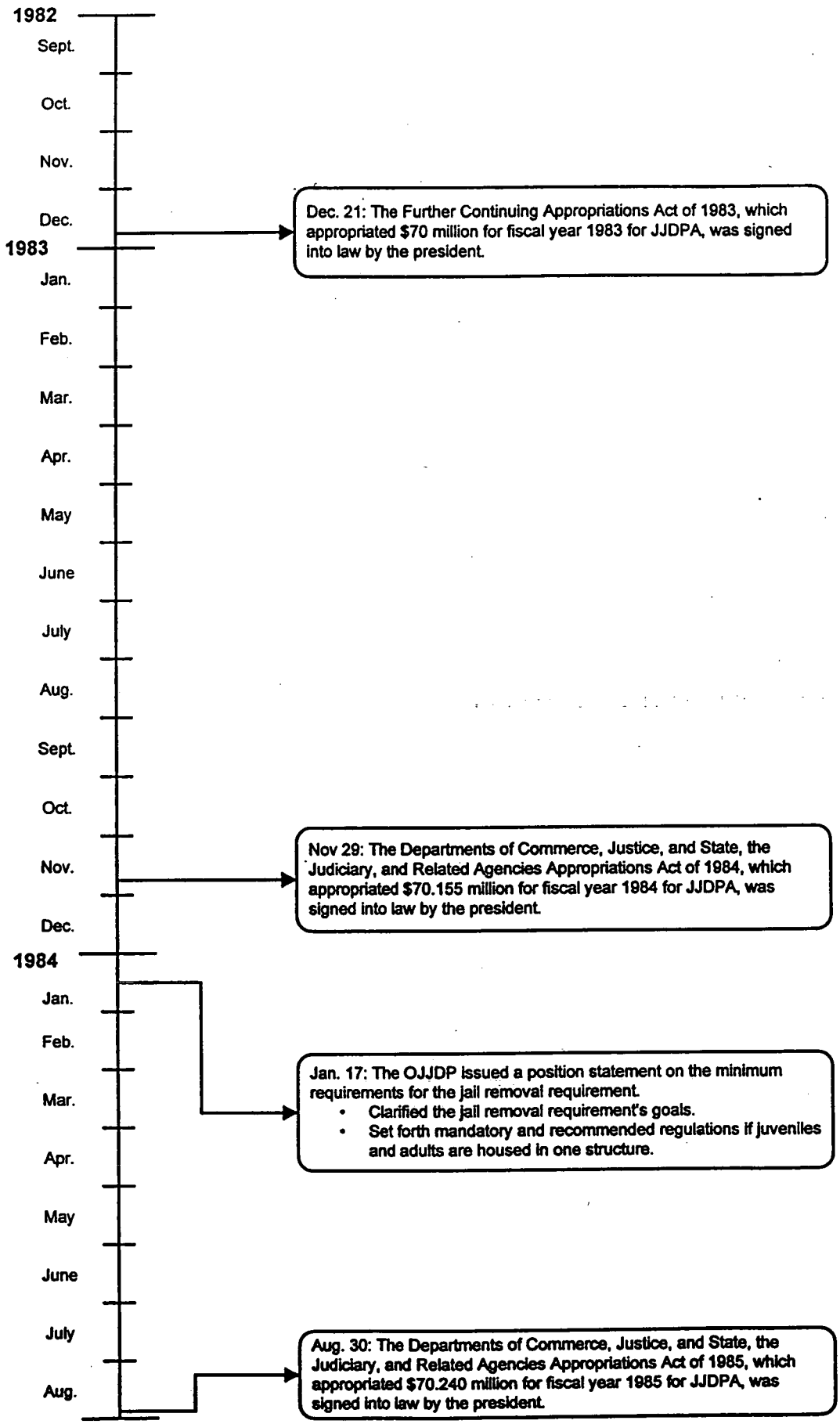

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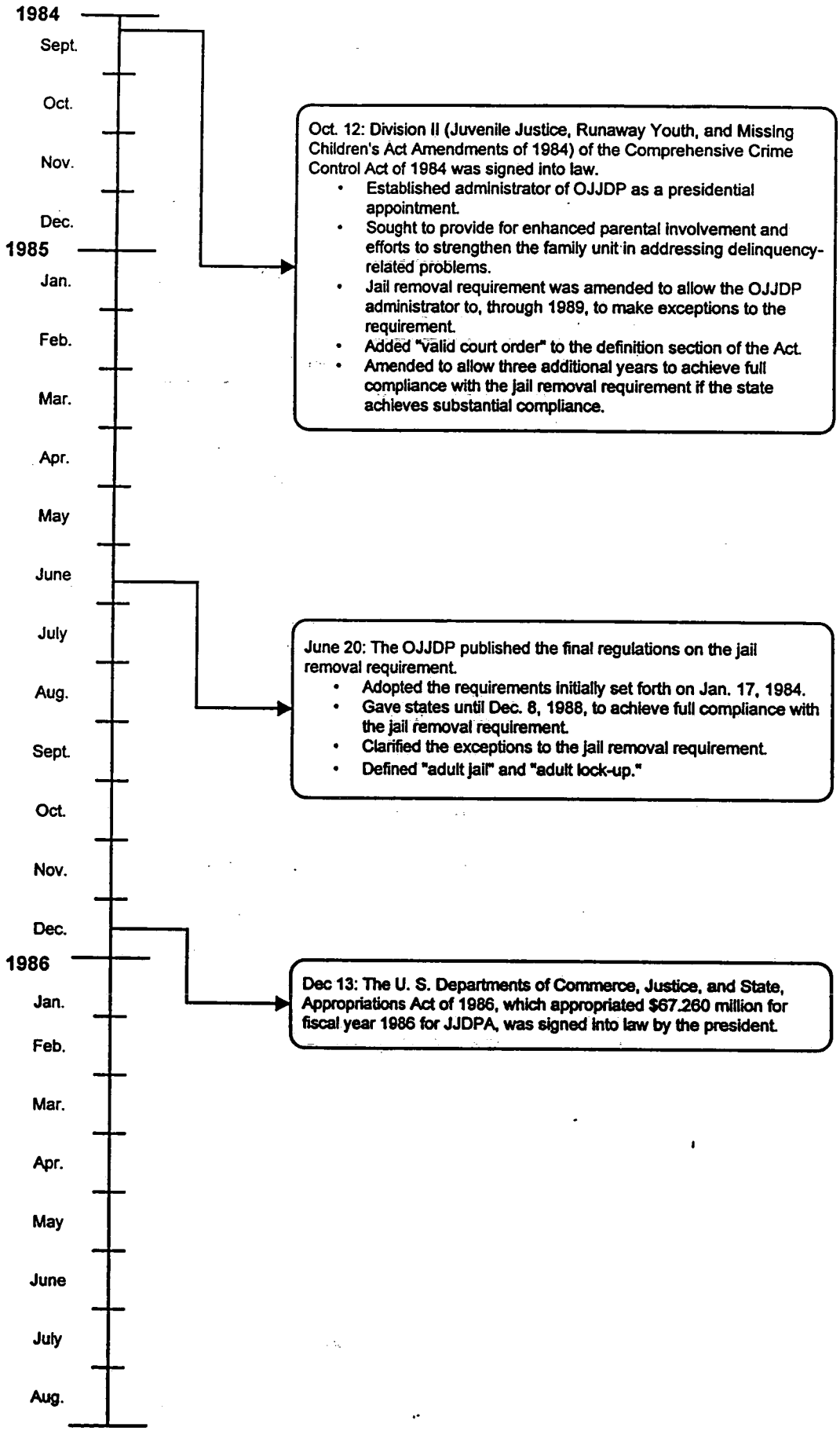

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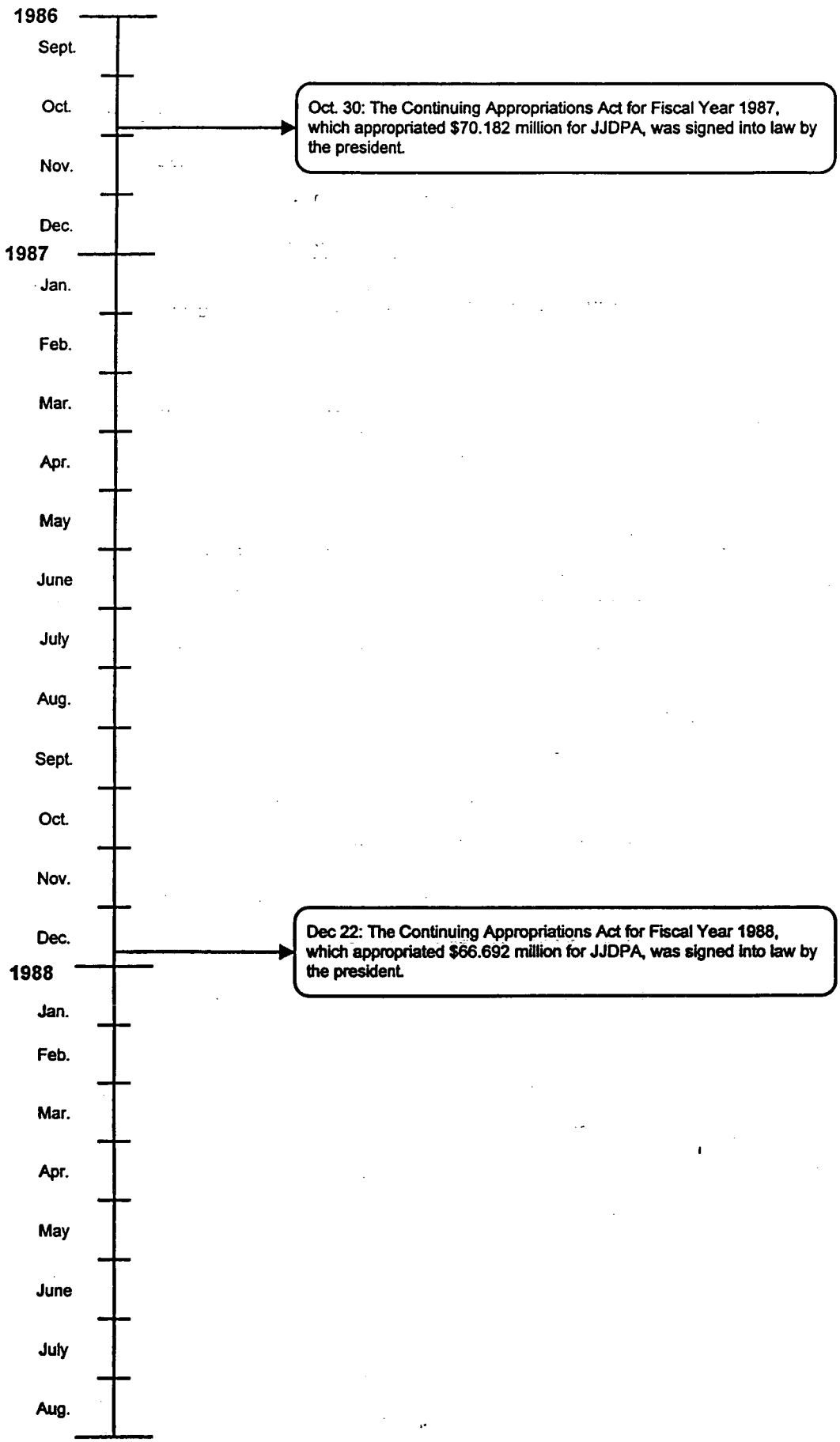

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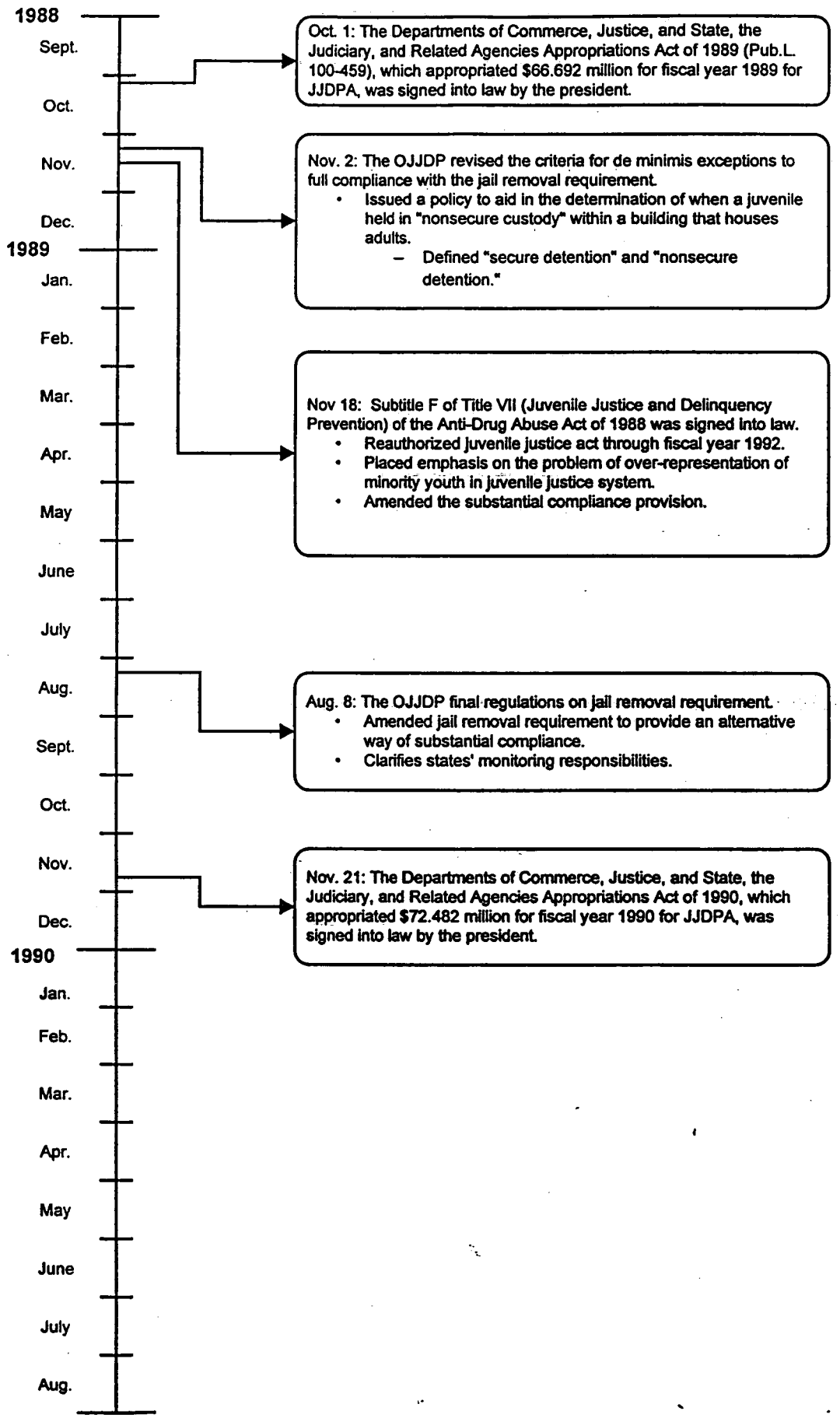

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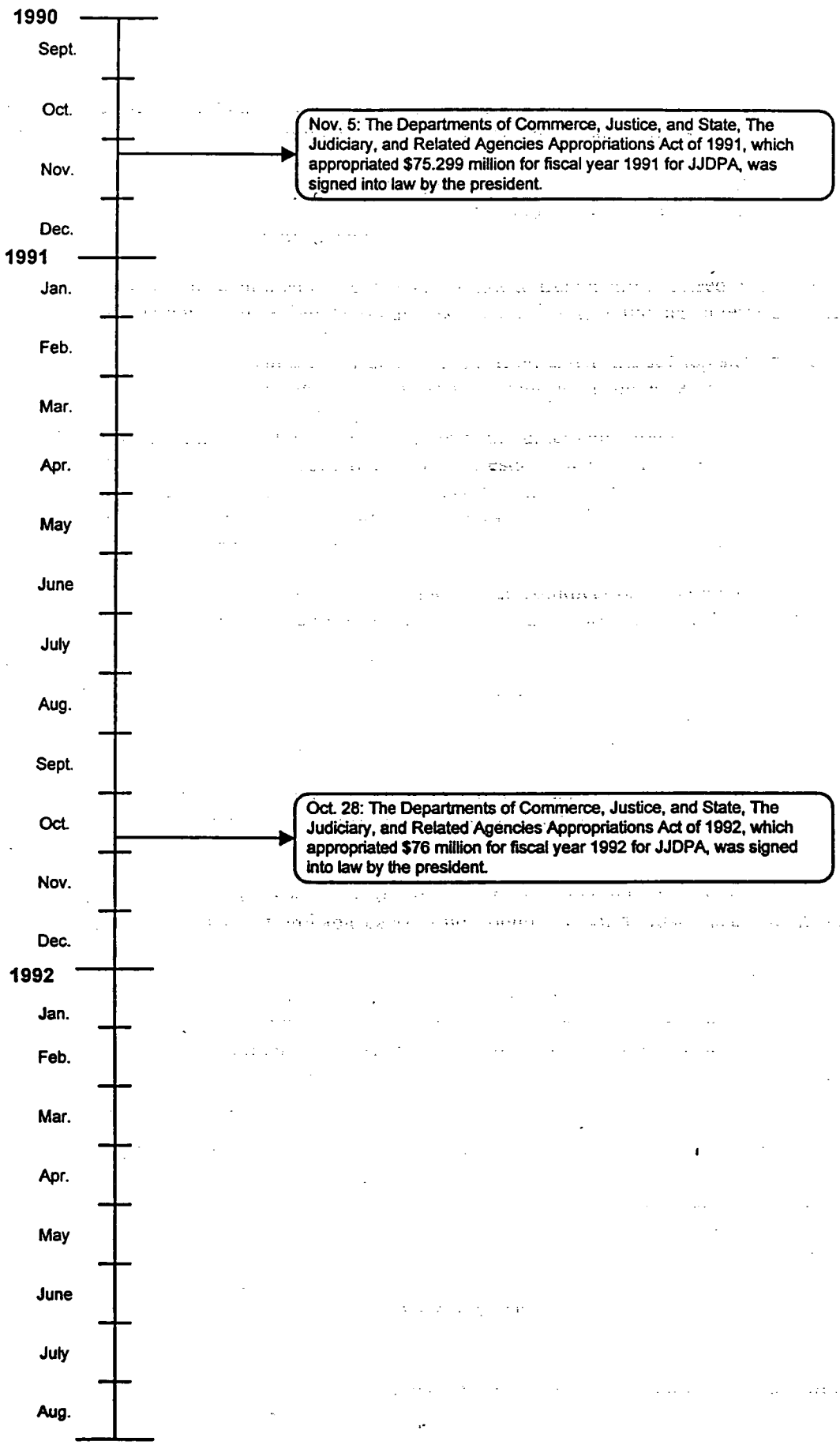

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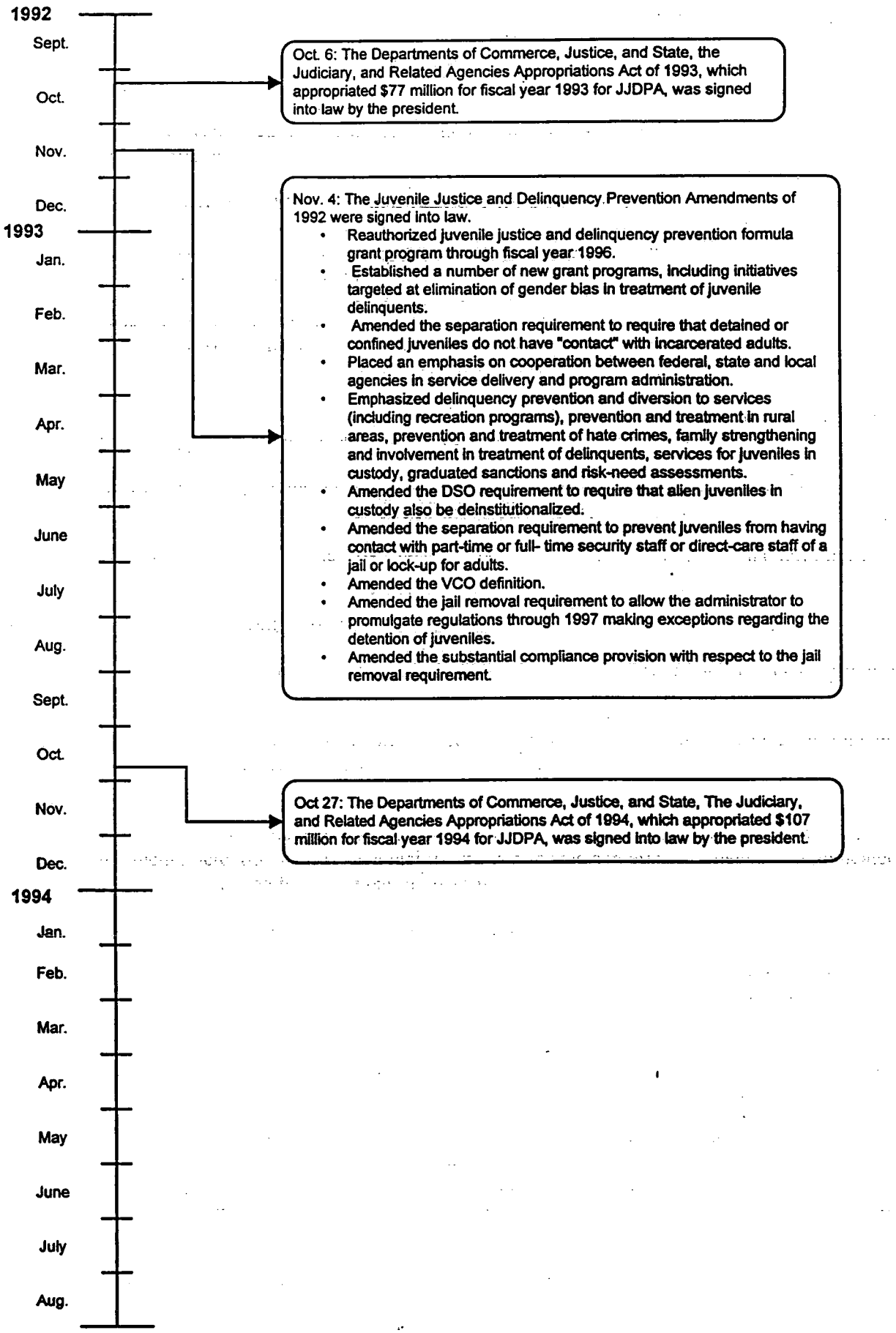

APPENDIX B: CITATIONS FOR STATE DSO STATUTORY PROVISIONS

Citations for State DSO Statutory Provisions

Alabama ALA. CODE § 12-15-1(4) et seq. (1993)

Alaska ALASKA STAT. § 47.10.010 et seq. (1992)

Arizona ARIZ. REV. STAT. ANN. § 8-201 et seq. (1993)

Arkansas ARK. CODE ANN. § 9-27-303 et seq. (1992)

California CAL. WELF. & INST. CODE § 207 et seq. (1993)

Colorado COLO. REV. STAT. § 19-2-101 et seq. (1993)

Connecticut CONN. GEN. STAT. § 46b-120 (1993)

Delaware DEL. CODE ANN. tit. 10, § 901 et seq. (1993)

District of Columbia D.C. CODE ANN. § 16-2301 et seq. (1992)

Florida FLA. STAT. ch. 39.037 et seq. (1992)

Georgia GA. CODE ANN. § 15-11-2 et seq. (1991)

Hawaii HAW. REV. STAT. § 571-2 et seq. (1993)

Idaho IDAHO CODE § 16-1801 (1993)

Illinois ILL. REV. STAT. ch. 705, para. 405 (1993)

Indiana IND. CODE § 31-6-4-1 et seq. (1991)

Iowa IOWA CODE § 232.19 et seq. (1990)

Kansas KAN. STAT. ANN. § 38-1502 et seq. (1994)

Kentucky KY. REV. STAT. ANN. § 600.030 et seq. (1993)

Louisiana LA. REV. STAT. ANN. § 730 et seq. (1993)

Maine ME. REV. STAT. ANN. tit. 15, § 3203-A et seq. (1993)

Maryland MD. CODE ANN., CTS. & JUD. PROC. § 3-801 et seq. (1994)

Massachusetts MASS. GEN. L. ch. 119, § 39 et seq. (1994)

Michigan MICH. COMP. LAWS § 712A et seq. (1994-5)

Minnesota MINN. STAT. § 260.012 et seq. (1994)

Mississippi MISS. CODE ANN. § 43-21-105 et seq. (1993)

Missouri MO. REV. STAT. § 211.031 et seq. (1993)

Montana MONT. CODE ANN. § 41-5-103 et seq. (1992)

Nebraska NEB. REV. STAT. § 43-248 et seq. (1988)

Nevada NEV. REV. STAT. § 62.040 et seq. (1993)

New Hampshire N.H. REV. STAT. ANN § 169-D et seq. (1993)

New Jersey N.J. REV. STAT. § 2A:4A-22 et seq. (1994)

New Mexico N.M. STAT. ANN. § 32A-3A-2 et seq. (Michie 1994)

New York FAM. CT. ACT § 712 et seq. (1994)

North Carolina N. C. GEN. STAT. § 7A-517 et seq. (1989)

North Dakota N. D. CENT. CODE § 27-20-2 et seq (1993)

Ohio OHIO REV. CODE ANN. § 2151.022 et seq. (Anderson 1994)

Oklahoma OKLA. STAT. ANN. tit. 10, § 1101 et seq. (1994)

Oregon OR. REV. STAT. § 419.476 et seq. (1992)

Pennsylvania PA. STAT. ANN. § 42.6302 et seq. (1994)

Rhode Island R. I. GEN. LAWS § 14-1-3 et seq. (1993)

South Carolina S. C. CODE ANN. § 20-7-30 et seq. (Law. Co-op. 1993)

South Dakota S. D. CODIFIED LAWS ANN. § 26-7A-6 et seq. (1994)

Tennessee TENN. CODE ANN. § 37-1-102 et seq. (1993)

Texas TEX. FAM. CODE ANN. § 51.03 et seq. (West 1994)

Utah UTAH CODE ANN. § 78-3a-16 et seq. (1993)

Vermont VT. STAT. ANN. tit. 33, § 5502 et seq. (1993)

Virginia VA. CODE ANN. § 16.1-228 et seq. (1994)

Washington WASH. REV. CODE § 13.32A.020 et seq. (1994)

West Virginia W. VA. CODE § 49-1-4 et seq. (1993)

Wisconsin WIS. STAT. § 48.13 et seq. (1993)

Wyoming WYO. STAT. § 14-6-201 et seq. (1993)

APPENDIX C: SUMMARIES OF STATES' STATUTORY DSO PROVISIONS

Summaries of State Statutory DSO Provisions[132]

Alabama ALA. CODE § 12-15-1(4) et seq. (1993)

- § 12-15-1(4) defines a "child in need of supervision" as a child who is habitually truant from school; disobeys reasonable demands; or committed a non-criminal and non-status offense, and is in need of care.
- § 12-15-59 provides that a child in need of supervision (and delinquent or dependent children) shall be immediately released except if no parent, or child is a threat to himself or others, or if the child has a history of failing to appear at court proceedings.
- § 12-15-71(c) provides the courts with alternatives on how to treat a child in need of supervision: allow child to remain with parents, transfer legal custody, take action that is in the best interests of the child.
- § 12-15-71(d) provides that no child by virtue of a disposition under this section shall be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of a crime.
- § 12-15-71(e) provides that no child in need of supervision, unless also found to be delinquent, shall be committed to or placed in an institution or facility established for the care and rehabilitation of delinquent children unless the court finds upon a further hearing that the child is not amenable to treatment or rehabilitation under any prior disposition or unless such child is again alleged to be in need of supervision and the court, after hearing, so finds.
- § 12-15-75 provides that a child on probation incident to an adjudication as a delinquent or child in need of supervision who violates the terms of his probation or aftercare may be proceeded against for a revocation of such order.

Alaska ALASKA STAT. § 47.10.010 et seq. (1992)

- § 47-10-010 applies to children in need of aid, which includes runaways.
- Under § 47-10-140 a police officer may arrest a minor who violated a statute or ordinance in the officer's presence or is a fugitive from justice. The officer may also continue a citizen's arrest. The officer may have the minor detained in a juvenile detention facility if it is necessary to protect the minor or the community.
  - -- A hearing to determine whether there is probable cause that the juvenile is a delinquent is to be held within 48 hours. If probable cause is not found, the court must release the juvenile and close the case.
- § 47.10.141 is a special provision dealing with runaway and missing children. A police officer may take such youths into protective custody; however, if the minor is not otherwise subject to arrest or detention, the officer must honor the minor's preference and a) return the minor to his parent(s)/custodian; b) take the

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[132] Citations are to state official or annotated codes.

Many states provide specific definitions for certain categories of status offenders, such as "disobedients," "truants," and "runaways." The analysis below uses the general definition of these terms. Unless otherwise indicated, "truant" refers to a child who has been absent from school on a regular basis without sufficient cause; "runaway" refers to a child who, without good or lawful reason, runs away from home; and a "disobedient" is a child who disobeys the reasonable and lawful demands of his parent(s) or guardian(s).

Unless otherwise indicated, "delinquent" is defined to include children who commit an act that would be criminal if committed by an adult.

minor to a nearby location agreed to by the minor and his parent(s)/custodian; or c) take the minor to an officer specified by the Department of Health.

Arizona ARIZ. REV. STAT. ANN. § 8-201 et seq. (1993)

- § 8-201(13) defines "incorrigible child" to include a child one who refuses to obey reasonable orders or who commits a status offense.
- § 8-223(C) allows an incorrigible child to be taken into temporary custody. However, (G) limits when a police officer must take a child into temporary custody to a situation in which the officer has reasonable grounds to believe that 1) the child has committed a delinquent act and 2) the child has been apprehended in commission of the act or in fresh pursuit.
- § 8-226(C) provides that a child may be nonsecurely detained if necessary to obtain the child's identification information for up to six hours until arrangements for transportation to a shelter care facility, home, or other appropriate place can be made.
- Under § 8-207(B), a child by virtue of a juvenile court order shall not be transferred or committed to an institution used primarily for the executions of sentences of persons convicted of a crime.
- Under § 8-241, an incorrigible child may be awarded to the care of his parents or a reputable citizen, to the protective supervision of a probation department, or to a public agency.
- § 8-248 provides that the juvenile court may use its contempt powers to punish juveniles that have not complied with any lawful court order.

Arkansas ARK. CODE ANN. § 9-27-303 et seq. (1992)

- § 9-27-303(16) defines a "family in need of services" as a family whose juvenile evidences behavior that includes, but is not limited to, the following: being a truant, habitually disobedient, or a runaway.
- § 9-27-332 allows a court, with respect to a family in need of services, to order family services or transfer custody to Department of Health and Human Services or other agency responsible for the care of juveniles, or to another relative or individual.
- § 9-27-336(a) provides that a juvenile that is a member of a family in need of services shall not be placed or detained in a secure detention facility, in a facility utilized for the detention of alleged or adjudicated juveniles, or in a facility used for the detention of adults.

California CAL. WELF. & INST. CODE § 207 et seq. (1993)

- § WI.601(a) provides that any disobedient, curfew violator, or truant is within the jurisdiction of the juvenile court.
- § WI.207(a) provides that no minor, who is taken into custody solely on the ground that he is a person described by § 601 shall be detained in any jail, lockup, or juvenile hall, or other secure facility . If any such minor is detained, he shall be held in a shelter-care facility or crisis resolution home or in a nonsecure facility.
  - -- § WI.207(b) provides for exceptions to the DSO requirement (when a juvenile under § 601 can be held in secure detention): for up to 12 hours while determining if the juvenile has any outstanding warrants, for up to 24 hours while trying to locate parent's for the juveniles return, for up to 72 hours if the juvenile cannot reasonably be returned within 24 hours due to the distance of the parents/guardian from the juvenile.

Colorado COLO. REV. STAT. § 19-2-101 et seq. (1993)

- § 19-2-101(4) defines a "delinquent" to include a child who has violated any statute or ordinance.
- § 19-2-203(2) provides that a juvenile taken into custody should be released to his parents unless there has been a determination that the juvenile's welfare or protection of the community requires detention.
- § 19-2-204(1) provides that a juvenile taken into custody but who does not require physical restriction should be placed in a temporary care facility and shall not be placed in detention. A juvenile taken into custody is entitled to a detention hearing within 48 hours. The court may further detain the juvenile if it finds the juvenile to be a threat to himself or the community. (4)(a) provides that no jail shall receive a juvenile for detention unless he has been ordered by the court to be held for criminal proceedings as an adult.
- § 19-3-102(1)(f) defines neglected or dependent children to include runaways and children beyond the control of their parents.
- Under § 19-3-401, a child may be taken into custody if the officer has a reasonable belief that he is a runaway.
- Under § 19-3-403, a child taken into custody is placed with the county department of social services shall be afforded a hearing within 72 hours to determine whether further custody is necessary.
- According to the state's Department of Public Safety, HB90-1093, effective 1990, removes from the children's code all previous references to holding dependent and neglected juveniles in detention. Such juveniles may be held in detention, but for no more than 24 hours.

Connecticut CONN. GEN. STAT. § 46b-120 (1993)

- § 46b-120 defines a "family in need of services" as one whose child is a runaway, is beyond control of parents or guardians, has engaged in indecent or immoral conduct, or is a truant.
- § 46b-133 provides that no child shall be detained following a hearing after arrest unless there is probable cause to believe the child will run away, it is in the best interest of the child, or the child presents a threat.
- Under § 46b-149, a child may be held in the temporary custody of a person or agency if there is a strong probability the child will do something injurious to himself or others, or that he will run away. A hearing on temporary custody shall be held within 10 days and, following such hearing, the judge may order the temporary custody to continue.
- A delinquent is defined by § 46b-120 to include a child who violates any order of the superior court. Further, § 46b-148 provides that a child whose family has been determined to be in need of services who violates a valid court order (VCO) may have a petition filed against him by his probation officer alleging that the child has committed a delinquent act by violating the VCO. Such child may be proceeded against as a delinquent child.

Delaware DEL. CODE ANN. tit. 10, § 901 et seq. (1993)

- § 10-901 provides definitions for "dependent child," "neglected child," and "truancy." The section also defines "nonamenable child" as a child who is not amenable to the rehabilitative processes of the family court.
- Under § 10-933, an officer may take a child into custody if he believes the child is dependent, neglected, or delinquent. If the child's parents or guardian cannot be located, the officer shall: 1) with respect to a child not charged with a delinquent act, contact Child Protective Services which shall provide shelter care for the child and attempt to locate the child's parents or guardian; 2) with respect to a child charged with a delinquent act, the child may be brought directly before the court.
- § 10-936A(a) provides that no child alleged to be delinquent may be held in secure detention pending adjudication unless there are no less restrictive means to assure the child will attend his adjudicatory hearing and the child is a fugitive from another jurisdiction, the child has failed to appear at previous hearings, the

child is charged with a felony or certain misdemeanors, or the child has failed to comply with court-ordered placement. Under (b), the court must release nonoffenders pending adjudication or place them in the care of the Department for Services for Children.

- § 10-937(i)(2) states that no dependent or neglected child may be placed in secure detention unless the child is also charged with delinquency or is found to have committed a delinquent act.

District of Columbia D.C. CODE ANN. § 16-2301 et seq. (1992)

- § 16-2301(8) defines "child in need of supervision" to include a child who has committed an offense that can only be committed by children.
- Under § 16-2309, a child may be taken into custody by an officer who has reasonable grounds to believe that the child has committed a delinquent act.
- § 16-2310 allows children in need of supervision to be placed in detention prior to the initial hearing if detention is required to protect the child or others, or to ensure appearance. Under § 16-2312, the child must be released if the judge, at the hearing, finds there is not probable cause to support the allegations in the petition.
- § 16-2311 provides for the release of a child in custody. However, a child may also be brought before the Director of Social Services, who shall release the child after a review unless detention or shelter care is required.
- Under § 16-2313, an child alleged to be in need or supervision or delinquent may be detained, while awaiting disposition, only in a foster or group home, or in a detention home for allegedly delinquent children or children alleged to be in need of supervision. There may not be commingling with those who have been adjudicated to be delinquent. Further, under § 16-2320(d), no child found to be in need of supervision, unless also found delinquent, shall be committed to or placed in an institution for delinquent children.

Florida FLA. STAT. ch. 39.037 et seq. (1992)

- § 39.01(8) defines a "child in need of services" as a child who does not have a delinquency proceeding pending against him, and who is a persistent runaway, is habitually truant from school, or persistently disobeys the reasonable and lawful demands of his parents or guardian.
- Under § 39.037, a child may be taken into custody for a delinquent act or violation of law, pursuant to a court order, or for failing to appear at a court hearing. However, the detention criteria of § 39.044 must be met. Under § 39.038(1), a child taken into custody shall be released as soon as it is reasonably possible. Under § 39.038(5), an officer may take a child into temporary custody, not to exceed six hours, for identification procedures.
- § 39.042 sets forth the policy that all determinations of detention (secure, nonsecure, or home) shall be made based upon findings that the child is at risk not to appear, is a threat to himself or others, or has a history of committing serious property offenses. Further, a child shall not be placed in detention if there is a less restrictive alternative.
- § 39.043 states that a child who has committed a delinquent act or other violation of law or alleged to be in need of supervision shall not be placed in secure, nonsecure, or home detention for any of the following reasons: to punish, treat, or rehabilitate; to permit convenient administrative access to the child; to facilitate interrogation or investigation; or a lack of more appropriate facilities.
- Under § 39.044(1), the intake counselor makes the initial determination on what should be done with a child in custody. Every effort shall be made to release the child from custody. Under (2), a child who was in secure detention prior to the hearing may be detained by the court if he is charged with a delinquent act. If so,

there must be a hearing within 24 hours to determine whether there is probable cause that the juvenile committed the alleged delinquent act. (10) is the state's VCO order provision, which grants the child in a contempt proceeding numerous procedural rights.

- § 39.444 provides that the court should limit the use of its contempt powers in child-in-need-of-services cases. However, the general rule is that the court may punish for contempt any person interfering with the administration of any provision.

Georgia GA. CODE ANN. § 15-11-2 et seq. (1991)

- § 15-11-2(11) defines "status offender" as a juvenile charged or adjudicated to have committed an offense that would not be criminal if committed by an adult. An "unruly child", under (12), includes a child that has committed an offense applicable only to a child, as well as truants, disobedients, runaways, and loiterers.

- § 15-11-17 allows an unruly child to be taken into custody.

- § 15-11-18.1 states that a juvenile should be released prior to adjudication unless there is probable cause to believe that the juvenile did the act he is accused of and there is clear and convincing evidence that the juvenile's freedom should be restrained. Such interim restraint shall not be imposed to punish. § 15-11-18 provides that a child taken into custody shall not be detained unless he may flee, it is necessary for the protection of the child or of others, the child has no parent or guardian, or there is a court order.

- § 15-11-19(e) specifically applies to the detention treatment of an unruly child and provides that a person who has taken an unruly child into custody shall not exercise custody over the child except for a period of 12 hours. If a parent or guardian has not taken custody at the end of the 12-hour period, or if an intake officer has not made a detention decision, the child shall be released. In no case shall the child in custody be detained in a jail.

  -- The general rule under § 15-11-19 is that an attempt should be made to release a child taken into custody to his parents or guardian.

- § 15-11-20(e) provides that an unruly child or a child alleged to be unruly may be detained in shelter care only in a foster home or a licensed welfare agency for up to 72 hours (judge can extend an extra 48 hours). However, no child alleged or found to be unruly who has not previously been adjudicated to be unruly may be detained in a secure juvenile detention facility unless the child is a runaway or it is necessary to ensure presence at court appearance. The child may not be placed in a detention home or center for delinquents.

- § 15-11-33(c) deals with the dispositional hearing for an unruly or delinquent child. If the court finds (beyond a reasonable doubt) that the child committed the act alleged, it shall conduct a dispositional hearing to determine if the child needs treatment, rehabilitation, or supervision. If the child is to be held in custody at a detention facility between the adjudicatory hearing and the dispositional hearing, the court shall conduct the dispositional hearing within 30 days. If the court finds that the child does not need treatment, rehabilitation, or supervision, the child shall be released from any detention.

- § 15-11-36 states that if a child is found to be unruly, the court may make any disposition authorized for a delinquent, except that if commitment is ordered, the court shall first find that the child is not amenable to treatment or rehabilitation.

- § 15-11-62 allows the court to punish a person for contempt for disobeying a court order.

Hawaii HAW. REV. STAT. § 571-2 et seq. (1993)

- § 571-2 defines "status offender."

- Under § 571-31, a status offender may be taken into custody if there are reasonable grounds to believe the child violated the law, is neglected, is beyond control, is a truant, or violated a curfew.

- § 571-32(d) provides that no child shall be held for more than 24 hours in a detention facility except by judicial order. If there is probable cause to believe that the child committed a crime, then he may be securely detained. Under (e) a child that is neglected, beyond control, a truant, or a violator of curfew may be held, following a hearing, in a shelter but may not be securely detained in a detention facility for juveniles for longer than 24 hours unless the child has violated a VCO.

- § 571-31 gives courts broad contempt powers and allows a child to be taken into custody and detained for a violation of a court order. Further, § 571-32(e) allows for detention in a secure facility for violation of a VCO. However, the general contempt of court provision, § 571-81, is applicable only to adults.

Idaho IDAHO CODE § 16-1801 (1993)

- § 16-1801's statement of legislative intent suggests that "secure facilities" are intended only for delinquent youth.

- Under § 16-1811(1), an officer may take a status offender into custody. However, status offenders shall not be placed in any jail facility but may be placed in juvenile shelter care facilities, except in the case of runaways if there is a specific request from another jurisdiction to hold the child pending transportation arrangements.

- § 16-1814A is a habitual status offender provision that allows the court to deal with a third time status offender. The provision allows the court to use § 16-1814's alternatives to dealing with juveniles, including committing the child to detention.

Illinois ILL. REV. STAT. ch. 705, para. 405 (1993)

- § 405/1-4.1 states that, except for minors accused of violating a VCO, any minor accused of a violation that would not be illegal if committed by an adult cannot be placed in a jail, municipal lockup, or secure correctional facility.

Indiana IND. CODE § 31-6-4-1 et seq. (1991)

- § 31-6-4-1 defines "delinquent" to include runaways, truants, children who habitually disobey the reasonable commands of parents or guardians, and curfew violators.

- § 31-6-4-4(b) allows an officer to take delinquents into custody.

- § 31-6-4-6.5(a) prohibits a delinquent from being held in a secure facility or a shelter care facility that houses persons charged with or imprisoned for crimes. Subsection (b) allows a delinquent to be placed in a secure facility for up to six hours for identification, investigation, or processing purposes. The delinquent may also be placed in a juvenile detention facility for up to 24 hours (defined by § 31-6.1-21-3 as a secure facility that is only used for the lawful custody and treatment of juveniles).

Iowa IOWA CODE § 232.19 et seq. (1990)

- § 232.19 allows a child to be taken into custody for a delinquent act, if an officer has reasonable grounds to believe that the child is a runaway, or if the child committed a material violation of a dispositional order.

- § 232.21(1) provides that no child shall be placed in shelter care (defined as the temporary care of a child in a physically unrestrictive facility) unless the child so desires, the child has no parent or guardian, or it is necessary to hold the child until his parents arrive. (2) provides that a child held in shelter care may only be held in a licensed foster home, a juvenile shelter care home (defined as a physically unrestrictive facility used for the shelter care of children), or in another licensed or suitable institution.

  -- § 223.21(3) allows more restrictive detention if there are reasonable grounds to be concerned that the child would not remain in a shelter care facility.

-- The child may be detained for up to 48 hours in the shelter care facility, unless there is a court order allowing extended shelter care.

- § 232.22(1) allows detention (temporary placement in physically restrictive surroundings) only if, among other things, there is probable cause to believe that the child committed a delinquent act and 1) there is a substantial probability that the child will not appear for a subsequent court appearance, or 2) the child may commit an act, if released, resulting in serious bodily harm to others, to the child, or to the property of others.

  -- § 232.22(1)(e) allows the detention of a delinquent who committed certain drug offenses, without requiring findings that the child would not appear, etc.

Kansas KAN. STAT. ANN. § 38-1502 et seq. (1994)

- § 38-1502(a) defines a "child in need of care" to include abused or neglected children, truants, status offenders, and runaways.

- § 38-501(a) allows county commissioners to provide detention homes for children in need of care.

- Under § 38-1527(a), a child may be taken into custody upon the issuance of a court order or if the officer has probable cause to believe that a court order commanding that the child be taken into custody as a child in need of care has been issued. (b) provides that an officer may taken a child in need of care into custody if the officer has reasonable grounds to believe that harm would result to the child if the child were left in his place of residence.

- § 38-1528(a) provides that a child taken into custody should be released unless there are reasonable grounds to believe that such action would not be in the best interest of the child. If the child is held, he should be placed in a shelter facility. If it is determined the child would not remain in a shelter facility, he may be securely detained for up to 24 hours.

- § 38-1563, which lists authorized dispositions of children in need of care, does not provide for the secure detention of such a child.

Kentucky KY. REV. STAT. ANN. § 600.030 et seq. (1993)

- § 600.030 defines "status offender" as a child who commits a crime that would not be a crime if committed by an adult. Status offenders shall not be considered or treated as delinquents. Curfew violations or possession of alcoholic beverages are not status offenses.

- § 610.230(1) provides that no status offender and no child found in contempt of court shall be detained in any jail, police station, lockup, holding facility, or any building attached to a facility holding adult prisoners. A status offender may not be institutionalized for being in contempt.

- § 630.010 states that the state should use separate guidelines in dealing with status offenders. Also, (3) states that detention of a status offender in secure detention should only be used for specific and constructive purposes and only when other, less restrictive measures, have been attempted and proved not feasible. Further, § 630.070 provides that no child shall be placed in a secure detention facility as a form of punishment.

  -- A habitual truant, runaway, or child beyond control of parent/guardian can be taken into custody for up to 48 hours. Under § 630.080, for the court to detain the child in a secure detention facility for more than 48 hours, there must be probable cause to believe that the child committed the alleged status offense. If there is probable cause, child may be detained in secure detention facility only if the state shows there is probable cause to believe that a) all alternatives have been exhausted, b) it is necessary to ensure child's presence at subsequent hearings and the child has failed to appear for such a hearing within the last year, c) the child has runaway from a nonsecure or secure facility, d) the child has runaway from home, e) the child is subject to the interstate compact on runaways, or f) the child is a danger to himself or others.

Louisiana LA. REV. STAT. ANN. § 730 et seq. (1993)

- Under § 730, a "family in need of services" is one whose child is a truant, is a runaway, is ungovernable, or has committed an offense applicable only to children.

- § 736 provides that a child may be taken into custody if the officer has reasonable grounds to believe that the child's family is in need of services and that the child's surroundings are such as to endanger his welfare and that removal appears necessary for his protection.

- § 737 provides that when a child is taken into custody, the child shall be placed in a shelter care facility.

- Under § 792.10, a child taken into custody should be released as soon as possible, unless the court finds that release would be inappropriate, in which case the child can be held in continued custody pursuant to a hearing within 72 hours (§ 792.11). § 792.13 states that continued custody is allowed if there are reasonable grounds to believe that the child is in need of services and that he will not appear as ordered.

Maine ME. REV. STAT. ANN. tit. 15, § 3203-A et seq. (1993)

- Under § 15.3203-A(C), detention of a juvenile, if ordered, must be in the least restrictive residential setting that will serve the purpose, ensure presence at subsequent proceedings, provide care for the juvenile, and prevent harm to the juveniles or others. Under (D), detention may be ordered if there is probable cause to believe that the child has committed a crime that would be a crime if committed by an adult or violated his probation.

- Under § 15.3501(1), a child may be taken into custody if the officer has reasonable grounds to believe that the child is a runaway.

- Under § 15.3501(2), no juvenile may be placed in a secure correctional facility used to detain adults or juveniles accused or adjudicated of committing juvenile crimes.

Maryland MD. CODE ANN., CTS. & JUD. PROC. § 3-801 et seq. (1994)

- § 3-810 defines a "child in need of supervision" to include truants, ungovernables, and children that have committed a crime only applicable to children.
- § 3-814 provides that a child taken into custody should be released with all reasonable speed, except as provided in 3-815.
- § 3-815(b) states that a child in need of supervision may be placed in detention to protect the child or others, if the child is likely to leave the jurisdiction, or if the child has no parents or guardian. If the child is not released, a hearing is required the next court day. Under (h)(2), a child in need of supervision may not be placed in a shelter care facility (temporary care in physically nonrestrictive circumstances) that is not operating in compliance with state licensing laws.
- Under § 3-823(b), a child who is not a delinquent may not be committed or transferred to a facility used for the confinement of delinquent children.

Massachusetts MASS. GEN. L. ch. 119, § 39 et seq. (1994)

- § 119.21 defines a "child in need of services" as a minor under the age of 17 who is a persistent runaway or who disobeys the reasonable commands of his parents or guardian, or a child between the ages of six and 16 who is a truant.
- § 119.39H provides that a child in need of services may only be arrested if he has failed to obey a summons issued or has run away. The section also states that the child shall be released to his parents or placed in a temporary shelter facility, in that order of preference.
- § 119.66 provides that no child under 17 shall be detained in a police lockup, station, or house of detention pending arraignment.
- § 119.52 defines a delinquent child as one who violates any law.

Michigan MICH. COMP. LAWS § 712A et seq. (1994-5)

- Under § 712A.14, an officer can take a child into custody if the child is found violating a law.
- § 712A.15 limits custody, pending a hearing, to circumstances in which the child's home conditions make removal necessary, the child has a history of failing to appear at hearings, the child has run away, the child has violated a VCO, or the offense is serious enough for the child to pose a danger to the public.
- Under § 712A.15(3), runaways, disobedients, or truants shall not be detained in any secure facility designed to physically restrict the movements of alleged or adjudicated juvenile offenders unless the court finds that the child willfully violated a VCO and there is not a less restrictive alternative.

- Under § 712A.16, a child in custody cannot be confined in a prison, jail, police station, lockup, or reformatory where they would commingle with criminal or dissolute persons.

Minnesota MINN. STAT. § 260.012 et seq. (1994)

- § 260.015 defines a "child in need of protection or services" to include truants and runaways. A "delinquent" is defined as a child who violates any law or ordinance, except for "habitual truants," "runaways," and "juvenile petty offenders" defined under this section. Juvenile petty offenders include children who violate a local ordinance that prohibits conduct of children under 18 that would be lawful if committed by an adult.
- Under § 260.165, no child may be taken into custody except by court order, pursuant to laws of arrest, or by a peace officer if the child is a runaway, is endangered, or has violated the terms of his probation or parole.
- Under § 260.171, a child taken into custody should be released unless he poses a threat to himself or others, poses a threat of not returning for a court hearing, or may run away from home. Under 2(b), no child may be held for more than 36 hours after being taken into custody for a delinquent act; (d) provides that a child taken into custody pursuant to a court order or because he is endangered shall not be held in shelter care for more than 72 hours.
- § 260.173 provides that a child taken into custody may be held, for up to 24 hours, in a shelter care facility, secure detention, or in an adult jail (if there is no available juvenile secure detention facility). At the end of the 24 hours, a juvenile may only be detained pursuant to this section. If the child taken into custody is not alleged to be a delinquent, he must be held in the least restrictive setting consistent with the child's health and welfare. Further, a status offender may be placed only in a shelter care facility.
- Under § 260.301's contempt provision, a child under the jurisdiction of the court for reasons other than delinquency may not be adjudicated as a delinquent solely for having disobeyed an order of the court.

Mississippi MISS. CODE ANN. § 43-21-105 et seq. (1993)

- § 43-21-105 defines "delinquent child" to include truants who miss school after being ordered to attend. A "child in need of service" is one who has committed delinquent acts, is a truant, is a runaway, or is habitually disobedient.
- Under § 43-21-303, an officer can take a child into custody only if grounds exist for the arrest of an adult under identical circumstances, there is probable cause to believe the child is a danger to himself or others or that the child is in danger himself, or there is no alternative to custody. Under (4), a child taken into custody must be released within 24 hours, unless the judge allows for temporary custody.
- Under § 43-21-309(4), the child shall be released after the detention hearing unless custody is necessary, circumstances warrant removal from his home, and there is no reasonable alternative, or the circumstances are of an emergency nature.

Missouri MO. REV. STAT. § 211.031 et seq. (1993)

- § 211.063 provides that a child accused of a status offense shall not be placed in secure detention for more than 24 hours unless a determination is made, after a hearing held within 24 hours, that the child has violated a VCO and the child has a history of failing to appear, violence, or of leaving court-ordered placement.

Montana MONT. CODE ANN. § 41-5-103 et seq. (1992)

- § 41-5-103 defines "delinquent youth" to include a youth who violates any condition of his probation. "Youth in need of supervision" is defined to include a youth who commits a status offense, including a youth who violates a state law regarding use of alcohol by minors.

- Under § 41-5-305, a youth may not be placed in a secure detention facility unless he committed an act that would be criminal if committed by an adult, he is a delinquent and has escaped, he violated a VCO, it is necessary to protect him or others, or there are not adequate assurances that he will appear in court as required.

- § 41-5-310 provides that a youth in need of supervision may not be placed in a jail, secure detention facility, or correctional facility.

Nebraska NEB. REV. STAT. § 43-248 et seq. (1988)

- § 43-248 allows an officer to take custody of a juvenile if the juvenile committed a crime in the officer's presence, the officer has reasonable grounds to believe that the child committed a felony, the child is endangered, or the child is a runaway.

- Under § 43-250, the officer must release a juvenile taken into custody or bring the child before a court. The officer may also deliver the child to the Department of Social Services and that department shall temporarily place the juvenile in the least restrictive environment consistent with the interests of the child.

- Under § 43-254, if, pending adjudication, it appears that further detention is needed, the court may order it. Under § 43-255, the juvenile may not be detained in a locked facility for over 24 hours except by court order. The juvenile shall be released within 48 hours unless he has violated a VCO.

- § 43-286 states that no juvenile shall be confined in a jail as a disposition of the court. With regard to uncontrollable children or truants, the court may put the child on probation, commit the child to the Department of Correctional Services, or put child in a suitable family home or institution. If the child violates his probation, the court may make any disposition authorized by this section. If a disobedient or truant violates his probation, the court may commit the child to the Department of Public Institutions or Correctional Services under § 43-287.

- § 43-287 allows a disobedient or truant to be committed to the Department of Social Services.

Nevada NEV. REV. STAT. § 62.040 et seq. (1993)

- § 62.040 provides that courts have jurisdiction over children "in need of supervision": truants, disobedients, those who have committed a crime under state law, and runaways. The provision makes clear that runaways should not be considered delinquents.

- Officers may take a child in need of supervision into custody under § 62.170.

- § 62-170(3) provides that neither a delinquent nor a child in need of supervision may be detained in a facility for the secure detention of juveniles unless there is probable cause that the child is dangerous to himself or the community, the child will run away, the child was brought in pursuant to a court order, or the child is a fugitive from another jurisdiction. Under (4), any child other than a delinquent or a child in need of supervision may not be detained in a secure facility. (5) provides that wherever possible, children in need of supervision should be separated from children charged with delinquent acts. Under (8), a child in need of supervision that was taken into custody must be released within 24 hours unless he is a threat to run away or act in a violent manner, or has violated terms of a consent decree or supervision terms. In such a case, the child may be put in alternative placement (physically non-restrictive). A child must not be detained for more than 48 hours. Under (9), a child in need of supervision need not be released within 24 hours if the court finds the child is a runaway from another state or has violated for a VCO. The child still may be placed only in physically non-restrictive facilities.

- Under § 62.211, a child may be put in a secure facility if he is a chronic offender.

New Hampshire N.H. REV. STAT. ANN § 169-D et seq. (1993)

- § 169-D:2 defines a "child in need of services" to include truants, runaways, and delinquents.

- § 169-D:8 allows a police officer to take a child into custody if there are reasonable grounds to believe that the child is a runaway or there are circumstances posing a danger to the child's welfare.
- § 169-D:9-b states that a child may not be detained in a facility designed to physically restrict the movements and activities of persons in custody.
- Under § 169-D:9-c, a child may be detained in facilities that are not physically restrictive.

New Jersey N.J. REV. STAT. § 2A:4A-22 et seq. (1994)

- § 2A:4A-22 defines a "juvenile family crisis" to include situations in which the juvenile is a runaway or a truant.
- Under § 2A:4A-31, a juvenile may be taken into custody for delinquency. A child may be taken into short-term custody for running away. Under § 2A:4A-32, a juvenile taken into short-term custody shall not be put in a detention facility or jail.
- Under § 2A:4A-34, a juvenile shall be released pending the disposition of his case, unless it would affect the safety of any person. Under (c), a juvenile charged with delinquency shall not be placed in detention unless it is necessary to assure appearance at a court proceeding (based upon a record of failing to appear); it is necessary to protect the community and the juvenile is charged with an non-status offense; the juvenile is charged with a disorderly conduct offense, in which case he may be held temporarily.
  - -- Under (f), no juvenile under 11 shall be placed in detention unless he is charged with an act that would be a crime if committed by an adult.
- § 2A:4A-37(c) states that a juvenile held under the act, or for contempt, shall not be placed in any prison, jail, or lockup.

New Mexico N.M. STAT. ANN. § 32A-3A-2 et seq. (Michie 1994)

- § 32A-3A-2 defines a "family in need of services" to include truants and runaways. § 32A-1-8 gives the court jurisdiction over children of families in need of services.
- Under § 32A-3A-6, before the Department of Corrections can accept the voluntary placement of the child outside of the child's home, the department shall document that efforts have been made to provide the family with affordable services, which would alleviate the conditions leading to the placement request. If the department does accept custody of the child, the child shall be placed in an appropriate facility under § 32A-3B-6, but not in a facility that is intended to incarcerate adults or delinquents.
- § 32A-3B-2 defines "family in need of court-ordered services" to include a family that has refused family services or the families for which the department has exhausted available services and the child is a truant or a runaway.
- Under § 32A-3B-3 provides that a child may be taken into protective custody if he is a runaway or endangered. Under § 32A-3B-4, a child taken into protective custody may not be held involuntarily for more than 48 hours, unless a petition to extend custody is filed.
- Under § 32A-3B-6, unless a child from a family in need of services is alleged to be a delinquent, the child shall not be put in a facility that houses adults or delinquents but may be placed in community-based shelter care facilities.

New York FAM. CT. ACT § 712 et seq. (1994)

- § 712 defines "person in need of supervision" as a male under 16, or female under 18, who is truant, incorrigible, ungovernable, or habitually disobedient.

- § 720 prohibits the secure detention of a child. However, (3) provides that detention of a person in need of supervision shall be allowed in a detention facility that is certified by the state.
- § 729 states that no person may be held for over 72 hours, or the next court day, whichever is sooner, without a hearing pursuant to § 728. After a § 728 hearing, the judge shall release the child if he is in need of supervision rather than a delinquent.
- Under § 779-a, a child who has violated a "disposition" may be declared a delinquent by the court.

North Carolina N. C. GEN. STAT. § 7A-517 et seq. (1989)

- § 7A-517(12) defines a "delinquent" to include juveniles under 16 who have committed a crime or infraction. (28) defines an "undisciplined juvenile" to include truants, disobedients, or runaways.
- § 7A-571 allows the temporary custody of children if an adult could be arrested under the same circumstances, or the child is undisciplined.
- Under § 7A-574, an abused, neglected, or dependent child (non-offender) shall not be placed in secure custody. A judge may only allow secure custody if there is a factual basis to believe the juvenile committed the alleged act and 1) the act would be a felony or misdemeanor against a person 2) the juvenile failed to appear on a pending delinquency charge or on charges for violation of probation or conditional release 3) a delinquency charge is pending against the juvenile 4) there is reasonable cause to believe that the juvenile must be detained for his own protection 5) the juvenile is a runaway and is found inappropriate for nonsecure custody or 6) the juvenile is alleged to be undisciplined and has failed to appear after notice.
- § 7A-577 provides for a hearing to determine whether continued custody is needed, at which the judge should impose the least restrictive measures possible.

North Dakota N. D. CENT. CODE § 27-20-2 et seq (1993)

- § 27-20-02 defines "unruly child" to include truants, disobedients, and status offenders.
- § 27-20-14 provides that a child taken into custody may not be detained or placed in shelter care prior to a detention hearing unless required to protect the child, others, or property, or the child is at risk to abscond or be taken out of the jurisdiction.

- § 27-20-17 requires a detention hearing within 96 hours. Under § 27-20-32, a child found to be unruly may be treated, by the court, like a delinquent, except for commitment to the state industrial school.

  -- The state supreme court has adopted a policy that a hearing for status offenders be held within 24 hours of being placed in detention (whereas the statutes provide for such a hearing within 96 hours).

- Under § 27-20-16, an unruly child may only be detained in a foster home, by a welfare agency, or in a detention home.

- § 27-20-55 provides that the court may punish a person for contempt.

Ohio OHIO REV. CODE ANN. § 2151.022 et seq. (Anderson 1994)

- § 2151.022 defines "unruly child" to include disobedients, truants, and status offenders.

- Under § 2151.31(A), a child may be taken into custody by court order, pursuant to laws of arrest, or by a law enforcement officer if there are reasonable grounds to believe that the child is in danger, exposed to emotional or physical harm, a runaway, or a threat to abscond or be removed from the jurisdiction. Under (C), a child taken into custody shall not be confined in a juvenile detention facility or placed in shelter care before the implementation of the court's final order, unless detention or shelter care is required to protect the child from harm, prevent the child from leaving the jurisdiction, or pursuant to a court order.

- § 2151.34 provides that an alleged unruly child may be confined in a place of juvenile detention for a period not to exceed 90 days.

Oklahoma OKLA. STAT. ANN. tit. 10, § 1101 et seq. (1994)

- § 1101 defines "delinquent" as a child who has violated any law. A "child in need of supervision" includes disobedients, truants, and runaways.

- Under § 1107(A)(1) a child may be taken into custody for violating any law or ordinance or if he is a runaway. (B) authorizes the detention of delinquent children and children in need of supervision.

- § 1107.1 provides that when a child is taken into custody, the child shall be detained only if it is necessary to assure the appearance of the child in court or to protect the child or public. Further, a child in need of supervision may not be placed in detention pending court proceedings, but must be released or placed in shelter or foster care. A runaway may be placed in secure detention if the court finds it is necessary for the safety of the child.

  -- Under (B), no child may be placed in secure detention unless he is an escapee, seriously assaultive, committed a serious crime, etc.

Oregon OR. REV. STAT. § 419.476 et seq. (1992)

- Under § 419.507(1)(b)(B), a court may place a child under the legal custody of the Children Service Division for care, and no child shall be placed in a Department of Corrections institution. Under (4)(a), pursuant to a hearing, the court may order a child over 12 to a detention facility for up to eight days, unless a plan has been approved by the Community Children Commission, in which case the child may be placed in detention for 30 days if the child committed a non-status offense, was on formal probation for an act which would be a crime if committed by an adult, and violated a condition of the probation.

- § 419.517 preserves the court's authority to institute contempt proceedings for failing to comply with a VCO.

- § 419.573(2) provides that a child should be released to his parents after being taken into custody, except if there is an arrest warrant for the child or the child is in need of protection.

- According to § 419.577(1), a child in custody, if not released, should be held in shelter care rather than detention, except as provided in § 419.601, infra, or § 419.507 supra. Under (3), no child shall be held in shelter care or detention for more than 24 hours.

- No child may be held in detention before adjudication under § 419.601 unless the child is a fugitive; committed a crime against a person; committed a drug violation; was on probation having been found in violation of § 419.476(1)(a), and has violated the terms of his probation. (2) calls for the release of a child falling under § 419.573(1) unless there is probable cause to believe that the child falls under § 419.601(1) and there are no less restrictive means for dealing with the child, or the child is a danger to himself or others.

- §§ 419.750 and 760 provide that children violating curfews may be taken into custody and are subject to further proceedings.

Pennsylvania PA. STAT. ANN. § 42.6302 et seq. (1994)

- § 46.6302 defines a "dependent child" to include truants, disobedients, children under 10 who have committed delinquent acts, and dependent children who are also ungovernable.

- § 42.6327(c) makes it unlawful to detain in a jail a person who the personnel have reason to believe is a child. Under (e) a dependent child may be detained in a shelter care facility, and may be detained in the same shelter care facility as delinquents.

Rhode Island R. I. GEN. LAWS § 14-1-3 et seq. (1993)

- § 14-1-3(F) defines "delinquent" to include a child who has committed an offense that would be a felony if committed by an adult, or who has violated any law more than once. Under (G), a "wayward child" includes a runaway, disobedient, truant, a child leading an immoral life, or a child who violated any law.

- § 14-1-16 provides that no child may be ordered detained at the training school unless he is alleged to have committed an act that would be a crime if committed by an adult or violated a VCO.

- Under § 14-1-26.1, a juvenile taken into custody for committing a crime that would not be criminal if committed by an adult shall be held only for identification, investigation, and processing purposes in an unlocked room that is not designated for residential use or secure detention.

South Carolina S. C. CODE ANN. § 20-7-30 et seq. (Law. Co-op. 1993)

- § 20-7-30 defines "status offense" as an offense that would not be a crime if committed by an adult including, but not limited to, incorrigibility, truancy, and running away.

- § 20-7-600(A+B) emphasize the release of a child who is taken into custody. (F) states that a child is eligible for detention in secure juvenile detention facility only if he is charged with a violent crime or a felony, or is a fugitive from another jurisdiction. (G) allows officers to take status offenders into custody. A status offender may not be detained in an adult detention facility or for more than 24 hours in a juvenile detention facility, unless the child violated a VCO. A child who violated a VCO may be held for up to 72 hours.

-- § 20-7-2205 prohibits a status offender or a child who violated his probation from being committed to the custody of a correctional institution operated by the Department of Juvenile Justice.

South Dakota S. D. CODIFIED LAWS ANN. § 26-7A-6 et seq. (1994)

- § 26-7A-7 states that any person who fails to comply with a court order may be held in contempt and subject to punishment for contempt.

- § 26-7A-12 allows a child to be taken into custody if he is endangered or a runaway. Under § 26-7A-20, a child in need of supervision shall be released unless he is a runaway, has failed to comply with a court-ordered program, or is a danger to himself or others. A child in need of supervision may not be placed in detention after the temporary custody hearing unless he violated a VCO.

- § 26-8B-2 defines a "child in need of supervision" to include truants, runaways, and status offenders. Under § 26-8B-3, a child in need of supervision taken into temporary custody shall be released unless his parents cannot be located or it would not be suitable to release him (in which case he may be placed in a shelter facility). A child in need of supervision may be placed in detention for no more than 24 hours if his parents are not available and he has failed to comply with a court-ordered program, is a runaway, or circumstances justify his detention for the protection of the child or others. The shelter or detention authorized must be the least restrictive alternative available. A child in need of supervision found to have violated a VCO may be placed in detention for more than 24 hours if a temporary custody hearing is held.

  -- § 26-8B-6 also allows, as a disposition of the court, a violator of a VCO to be placed in detention.

Tennessee TENN. CODE ANN. § 37-1-102 et seq. (1993)

- § 37-1-102(21) defines an "unruly child" to include truants, runaways, disobedients, and status offenders.

- § 37-1-114(a) provides that a child taken into custody shall not be detained or placed in shelter care before the hearing unless there is probable cause to believe that the child is a delinquent, there is a threat to the child, or the child may abscond. (b) provides that an unruly child may not be detained for more than 24 hours unless there has been a detention hearing and a judicial determination that the child has violated a VCO. If the child violated a VCO, he may be detained for up to 72 hours.

- § 37-1-158 provides that a court may punish a person for contempt for violating a court order.

  -- The U. S. Court of Appeals for the Sixth Circuit held, in Parker v. Turner 626 F.3d 1 (1980), that § 37-1-158 gives Tennessee's juvenile courts the same power to imprison for contempt as any other state courts.

Texas TEX. FAM. CODE ANN. § 51.03 et seq. (West 1994)

- § 2338-1(3) defines "delinquent" to include truants or children who have violated any penal law graded a felony or a misdemeanor punishable by confinement in jail.

- § 2338-1(11) allows an officer to take a child found violating any law or ordinance or a runaway into custody. The child must then be brought before a judge who shall order his release or detention.

- § 2338-1(20) preserves the court's contempt power.

- FAM § 51.03 defines "conduct indicating a need for supervision" to include a child that violated any penal law or ordinance of the state or subdivision thereof of the grade of misdemeanor that is punishable by fine only, or a truant or runaway. "Delinquent conduct" includes violations of penal laws punishable by imprisonment or by confinement in jail, or conduct that violates a lawful court order, except for a violation of the penal laws of the grade of misdemeanor or a violation of a penal ordinance punishable only by a fine.

Utah UTAH CODE ANN. § 78-3a-16 et seq. (1993)

- § 78-3a-29 allows a child to be taken into custody if he violated a law in the presence of a police officer; if he committed an act that would be a felony if committed by an adult; or if he is endangered, a runaway, or a truant. A child taken into custody shall be released, unless his welfare or protection of the community requires his detention. (4)(a) states that a child may not be held in temporary custody longer than is necessary to obtain identification information. If the child is not released, he shall be taken to a place of detention or shelter. (5)(c) provides that a child may not be admitted to detention unless the child is detainable based upon the guidelines or the child has been brought to detention pursuant to a judicial order or division warrant under § 62A-7-112(8).
- Under § 78-3a-30, a child may not be placed in secure detention unless it is unsafe to leave him with his parents or guardian, or the child is detainable under guidelines promulgated by "the division." (4)(a) provides that a child may not be held in detention longer than 48 hours unless by court order.
- Under § 78-3a-52, any person under 18 found in contempt may be punished by a fine up to $200 or detention not to exceed 10 days, or both.

Vermont VT. STAT. ANN. tit. 33, § 5502 et seq. (1993)

- § 5502 defines a "child in need of care or supervision" to include truants and children who are beyond the control of their parents. "Delinquent act" is defined as an act designated as a crime.
- § 5509 gives the commissioner of corrections the authority to act concerning delinquents, while the commissioner of social and rehabilitation services has authority over children in need of supervision.
- § 5510 provides that a child may be taken into custody pursuant to laws of arrest or by court order, or if the officer has reasonable grounds to believe the child is a runaway.
- § 5511 provides that an officer shall release a child in need of care or supervision who has been taken into custody to his parents; deliver the child to the court and notify the parents; or, in the case of a runaway, deliver the child to any organization approved by the social services department.
- § 5513 provides that a child taken into custody may be detained only pursuant to a court order.
- § 5514 provides that a child taken into custody under § 5510 may be provided, by court order, with temporary shelter care or detention prior to a detention hearing, which must be held within 48 hours. The facilities to which a court can order a child include the home of his parents, a foster home, or a detention center for delinquent children.
- § 5528 provides that the court may allow a child in need of care or supervision to remain with his parents, or may place the child under protective supervision, or transfer legal custody of the child.
- § 5539 provides that the juvenile court has the power to punish any person for contempt.

Virginia VA. CODE ANN. § 16.1-228 et seq. (1994)

- § 16.1-228 defines a "child in need of services" to include a child whose behavior presents a serious threat to his well-being. "Child in need of supervision" includes truants and runaways.
- § 16.1-241 gives the court jurisdiction over children in need of services or supervision.
- Under § 16.1-246, no child may be taken into immediate custody except: if the child is alleged to be in need of services and there is a danger to the child's life or health or a danger that the child will not appear; if there is probable cause to believe that the child committed an act that would be a felony if committed by an adult; or if the child has run away.

- Under § 16.1-248.1, a child taken into custody must be released, except he may be detained if: he committed an act that would be a serious felony if committed by an adult; the child is an escapee; the child is a fugitive from another state; the child has failed to appear. A child in need of services or supervision may be detained only until the next day.

Washington WASH. REV. CODE § 13.32A.020 et seq. (1994)

- § 13.32A.030's definition of "at risk youth" includes disobedients and runaways.
- § 13.32A.050 provides that a child may be taken into custody when has runaway from his parents or a placement agency, when there is a danger to the child's safety, or when there is probable cause to believe that the child has violated a court placement order. § 13.32A.065 states that a child may be placed in detention after being taken into custody. The court must have a detention hearing or release the child within 24 hours, unless detention is necessary to assure appearance at a contempt hearing.
- Under § 13.40.040(1) a child may be taken into custody pursuant to a court order if there is probable cause to believe the juvenile has committed an offense or has violated a disposition order or release order, or without a court order, if grounds would exist for the arrest would exist of an adult under identical circumstances. Under (2), a juvenile may not be held in detention unless there is probable cause to believe that the juvenile committed an offense that would a crime if committed by an adult and the juvenile is at risk not to appear for further proceedings, or detention is required to protect the child or others. Under (4), the court shall set a subsequent court appearance. If the child does not attend, he is guilty of the crime of bail jumping.

West Virginia W. VA. CODE § 49-1-4 et seq. (1993)

- § 49-1-4 defines a "delinquent child" to include not only children who committed crimes that would have been crimes if committed by an adult, but also certain disobedients, truants, children who violate a probation order or a contempt order.
- Under § 49-5-8(a), a court may order custody only if an arrest for an adult would be warranted under identical circumstances, the safety of the child demands it, the child is a fugitive, or the child has a history of failing to appear. (b) authorizes a police officer to take a juvenile into custody only when arrest for an adult would be warranted under identical circumstance, there are reasonable grounds to believe that the child is a runaway, it is necessary for the safety of the child, or the child is a fugitive. Upon taking the child into custody, his parents should be notified and he should be released unless the circumstances warrant otherwise. A runaway shall not be held in custody for more that 48 hours without a court order, and in no event for longer than seven days.
- § 49-5-16 provides that a disobedient, truant, or contemnor shall not be placed in secure detention or a facility that houses delinquents or adults. However, a child adjudicated delinquent and who is found in contempt arising out of the proceeding at which he was adjudicated delinquent, may not be housed in a detention facility.
- § 49-5B-3 defines "status offender" as a juvenile charged with delinquency or adjudicated a delinquent for conduct that would not be criminal if committed by an adult.
- § 49-5B-5 provides that the department of welfare shall establish rehabilitative facilities for the lawful custody of status offenders. These facilities should be primarily nonsecure.

Wisconsin WIS. STAT. § 48.13 et seq. (1993)

- § 48.13 gives the court jurisdiction over children in need of services or protection.

- Under § 48.18, a law enforcement officer may take a child in custody if he has reasonable grounds to believe the child violated state or federal law, the child is a run away, or the child has violated the terms of his court-ordered supervision.

- § 48.208 provides that a child may be held in a secure detention facility only if: probable cause exits to believe that the child has committed a delinquent act and the child is a danger to himself or others or is a flight risk; probable cause exists to believe that the child is a fugitive from another jurisdiction; the child consents; probable cause exists to believe that the child has run away from a nonsecure setting.

Wyoming WYO. STAT. § 14-6-201 et seq. (1993)

- § 14-6-201 defines a "child in need of supervision" to include disobedients, truants, and runaways. Beginning on July 1, 1995 the definition will include status offenders. Currently, however, the section defines "status offenders" as children who commit acts that would not be punishable if they were adults.

- Under § 14-6-207, after July 1, 1995, a child in need of supervision shall be placed for shelter care in the least restrictive environment possible. A child alleged to be delinquent or a child in need of supervision shall be detained, if necessary, in a separate detention home or facility from delinquents or unruly children, provided that if the case occurs before July 1, 1995, the child may be detained in a jail so long as he is separated from adults.

- Under § 14-6-209, after a child is placed in shelter care or detention, a detention hearing shall be held within 72 hours. At the hearing, the court will determine if full-time shelter care or detention is required.