

Division of Child and Family Services
NRS Revisions/Additions
For Consideration to address Compliance Efforts with the
Juvenile Justice Delinquency Prevention Act (JJDP)

DRAFT

Attachment 6

I. JUVENILE JURISDICTION

OJJDP Guidance: JUVENILES WHO REACH THE AGE OF FULL CRIMINAL RESPONSIBILITY AFTER ARREST OR ADJUDICATION – Individuals who commit an offense while still a juvenile and who have reached the age of full criminal responsibility only after arrest or adjudication, but remain under juvenile court jurisdiction, are not adult inmates and need not be separated from juveniles until they have reached the state’s maximum age of extended juvenile jurisdiction. By contrast, individuals who are under juvenile court jurisdiction and who subsequently commit a separate offense after reaching the age of full criminal responsibility, are adult inmates, who must not have sight or sound contact with juvenile detainees.

State recommendation: OJJDP’s guidance does not address parole violations, which seem to be the area of most of the confusion. However, the state does recommend revising NRS 62B.340 to add when juvenile court supervision ends.

Proposed Revisions to section of NRS 62B

1. **NRS 62B.340 Child who is on probation or who violates condition of parole.** The juvenile court has exclusive original jurisdiction over any child who is:
 1. On probation; or
 2. Released on parole from a state facility for the detention of children and who violates any condition of the child’s parole.
 3. *The juvenile court shall terminate jurisdiction if a child 18+ under juvenile court supervision violates the conditions of parole/probation and is placed in an adult jail. (The child is considered an adult)*
 4. *The juvenile court is not required to terminate jurisdiction if a child 18+ under juvenile court supervision violates the conditions of parole/probation and is placed in a juvenile facility. (The child is considered a juvenile)*

Note: A federal violation occurs when an individual 18+ is placed in an adult jail or lockup but remains under juvenile court supervision and placed back into a juvenile facilitation on a revocation.

II JUVENILES IN ADULT JAILS

OJJDP Guidance: Pursuant to 34 U.S.C. § 11133(a)(13), no juvenile shall be detained or confined in any jail or lockup for adults, with exceptions described below. Juveniles who are accused of status offenses, juveniles who are not accused of any offense, and juveniles who have been adjudicated as delinquent may not be detained or confined for any length of time in an adult jail or lockup. The following four statutory exceptions apply to the jail removal requirement.

- 6-hour rule: The jail removal requirement at [34 U.S.C. § 11133\(a\)\(13\)\(A\)](#) allows the detention or confinement in an adult jail or lockup of juveniles accused of delinquent offenses (i.e., offenses that would be a criminal offense if committed by an adult), under the following circumstances:
 - a) A juvenile accused of a delinquent offense may be detained for no more than 6 hours for the purposes of processing or release or while awaiting transfer to a juvenile facility.
 - b) A juvenile who has been adjudicated as delinquent may not be detained in an adult jail or lockup, for any length of time, without resulting in an instance of noncompliance with the jail removal requirement.

The following three exceptions allow states to detain or confine juveniles accused of non-status offenses in adult jails or lockups for more than 6 hours while awaiting an initial court appearance and so long as the juveniles do not have sight or sound contact with adult inmates, and the state has in effect a policy that requires individuals who work with such juveniles and adult inmates to be trained and certified to work with juveniles.

- Rural exceptions: The exception found at [34 U.S.C. § 11133\(a\)\(13\)\(B\)\(ii\)\(I\)](#) provides that juveniles accused of non-status offenses may be detained or confined in jails or lockups for adults for as long as 48 hours (excluding Saturdays, Sundays, and legal appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel).
- Weather exceptions: Under [34 U.S.C. § 11133\(a\)\(13\)\(B\)\(ii\)\(II\)](#), states may detain a juvenile accused of a delinquent offense in an adult jail or lockup, if the facility is located where conditions of distance to be traveled or the lack of highway, road, or transportation does not allow for court appearances within 48 hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed an additional 48 hours) delay is excusable.
- Safety exceptions: Under [34 U.S.C. § 11133\(a\)\(13\)\(B\)\(ii\)\(III\)](#), if the adult jail or lockup is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), a juvenile accused of a delinquent offense may be detained therein and his or her court.

State recommendation: Federal requirements and state law are in conflict. Recommend deleting NRS 62E.710 in its entirety, as it is used frequently for parole and probation violations. Federal requirements prohibit the placement of individuals under 18 in an adult jail which prompts the removal of NRS 62E.710.1, and federal law does not allow an individual to be treated as both a juvenile and an adult which prompts the removal of NRS

62E.710.2. A federal violation occurs when an individual 18+ is placed in an adult jail or lockup but remains under juvenile court supervision and placed back into a juvenile facilitation on a revocation.

Proposed Elimination of NRS 6E.710

~~1. NRS 62E.710 The juvenile court may order any child who is:~~

~~1. Less than 18 years of age and who has been adjudicated delinquent and placed on probation by the juvenile court to be placed in a facility for the detention of children for not more than 30 days for the violation of probation.~~

~~2. At least 18 years of age but less than 21 years of age and who has been placed on probation by the juvenile court or who has been released on parole to be placed in a county jail for not more than 30 days for the violation of probation or parole.~~

OJJDP Guidance: Under Section [223\(a\)\(11\)\(B\)](#), on or after December 21, 2021, a juvenile who is charged as an adult cannot be detained in an adult jail or lockup or have sight or sound contact with adult inmates in a secure adult facility, unless one of the exceptions (listed on the previous page) are met.

State recommendation: Federal requirements and state law are in conflict as state law allows for juvenile charged as adults to be placed in an adult jail. Recommend revisions to NRS 62B.335 and NRS 62B.330.

Proposed Revision to NRS 62B.335

1. **NRS 62B.335 Jurisdiction over adult charged with certain delinquent acts committed as child.**

8. A person held in custody pursuant to this section must **not** be held in the state prison, a county or city jail or detention facility for adults. *Juveniles shall be kept sight and sound separated from adult offenders and shall be housed/placed in a juvenile facility until they reach the full age of majority or are convicted in adult criminal court. and is A juvenile, who is charged as an adult, is* entitled to bail as established in criminal proceedings.

Proposed Revision to NRS 62B.330

2. **NRS 62B.330 Child alleged or adjudicated to have committed delinquent act; acts deemed not to be delinquent.**

3. For the purposes of this section, each of the following acts shall be deemed not to be a delinquent act; *however, a juvenile is such until they reach the state's full age of majority pursuant to NRS 62A.030 and shall be treated as such for housing and placement until they reach the full age of majority or are convicted in adult criminal court. ,and the juvenile court may conduct does not have jurisdiction over a person who is charged with committing such an act:*

4. *Juveniles shall be kept sight and sound separated from adult offenders and shall be housed/placed in a juvenile facility until they reach the full age of majority or are convicted in adult criminal court.*

III INTEREST OF JUVENILE FOR JUVENILES IN ADULT JAILS (CHARGED AS AN ADULT & PENDING TRIAL AS AN ADULT)

OJJDP Guidance: Juveniles who have been transferred, certified, or waived to criminal court, and are therefore charged as adults, may not be detained in an adult jail or lockup or have sight or sound contact with adult inmates in a secure facility, unless it is pursuant to one of the exceptions at [34 U.S.C. § 11133\(a\)\(13\)\(B\)](#).

However, a court may determine that it would be in the interest of justice to do so consistent with [34 U.S.C. § 11133\(a\)\(11\)\(B\)](#). See Section 223(a)(11)(B) above, which applies to juveniles charged as adults. If a juvenile who has been charged as an adult has been convicted and sentenced for the criminal offense, however, Section 223(a)(11)(B) no longer applies.

The Interest of Justice permits a juvenile to be detained in a jail or lockup for adults or have sight or sound contact with adult inmates in a secure facility. If the court makes an initial determination that it is in the Interest of Justice to detain a juvenile under those circumstances, the court must hold a hearing at least every 30 days (at least every 45 days in a rural jurisdiction) to review whether it is still in the Interest of Justice to continue to detain the juvenile in an adult jail or lockup or such that he had contact with adult inmates in a secure facility. In determining whether it is in the Interest of Justice to detain (or continue to detain) a juvenile, the court must consider:

1. the age of the juvenile;
2. the physical and mental maturity of the juvenile;
3. The present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;
4. the nature and circumstances of the alleged offense;
5. the juvenile's history of prior delinquent acts;
6. the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also
7. any other relevant factor(s)

The maximum amount of time that a juvenile charged as an adult may be detained in an adult jail or lockup or have sight or sound contact with adult inmates in a secure facility is 180 days, unless the court determines, in writing, that there is good cause for such an extension, or the juvenile expressly waives this 180-day limit.

State recommendation: The state does not recommend any changes in NRS regarding certification or direct file, except for the placement of youth while they are pending trial in adult criminal court. An individual under the age of 18 must be placed/housed with juveniles. If the state does not want to house juveniles charged as adults in juvenile facilities, the state may adopt the placement in adult jails under the Interest of Justice and include it into NRS.

New Section in NRS 62B or NRS for court hearings: Interest of Justice; Juveniles charged as adults, pending trial, and housed in an adult facility.

1. NRS 62B or NRS for court hearings:

1. A child who is housed in a secure facility may not be held in:

(1) an adult facility

(2) a facility that permits sight or sound contact with adult inmates; unless a court finds, after a hearing, that it is in the best interest of justice for the child to be housed in an adult facility or a facility permitting sight or sound contact with adult inmates.

2. If a court orders a child to be housed in an adult facility or a facility permitting sight or sound contact with adult inmates, the court shall issue its decision in writing and shall consider the following when making the determination:

(1) the age of the child

(2) the physical and mental maturity of the child

(3) the present mental state of the child, including whether the child presents an imminent risk of harm to the child or others

(4) the nature and circumstances of the alleged offense

(5) any prior history of delinquent or criminal acts of the child

(6) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the child but also to protect the safety of the public as well as the safety of other detained children; and

(7) any other relevant factors.

3. If a court determines it is in the best interests of justice for the child to be housed in an adult facility or a facility permitting sight or sound contact with adult inmates, the court may order that the child be held in an adult facility or a facility permitting sight or sound contact with adult inmates for not more than one hundred eighty (180) days.

4. The court may extend the one hundred eighty (180) day period described in subsection (d) for one (1) or more additional sixty (60) day periods, if the court finds, in writing, that there is good cause to extend the child's placement in an adult facility or a facility permitting sight or sound contact with adult inmates. However, the child may waive the good cause requirement if the child prefers to keep the same placement.

5. If the court orders a child to be housed in an adult facility or a facility permitting sight or sound contact with adult inmates, the court shall hold a hearing at least one (1) time every thirty (30) days to review whether it is still in the interests of justice to house the arrestee in the adult facility or the facility permitting sight or sound contact with adult inmates. The same criteria in Section 2 shall be used.

IV TRAINING

OJJDP Guidance: In order to comply with the separation requirement, states must also have in effect a policy that requires individuals who work with both juveniles and adult inmates, including in collocated facilities, to have been trained and certified to work with juveniles.

State recommendation: Add a statement in NRS indicating that staff in adult secure facilities responsible for supervising juvenile meet the same training requirements for staff who work with juveniles in a secure setting as found in [NRS 62B.250](#) and [NAC 62B.100](#). Further, this new section should include a certification for those staff trained to work with juveniles.

New Section in NRS 209 and NRS 211: Training for staff supervising youthful offenders or charged youthful offenders.

1. *NRS 209 and NRS 211:*

- 1. A “youthful offender” means an offender who is less than 18 years of age pursuant to NRS 209.345.3.*
- 2. Staff responsible for daily supervision of youthful offenders must meet and maintain the same training requirements stat who supervise juvenile offenders pursuant to NRS 62B.215 and NAC 62B.100.*
- 3. Each facility shall ensure that staff responsible for daily supervision of youthful offenders are trained and certified in accordance with Section 2.*
- 4. Each facility shall maintain training records in accordance with this section, and may provide verification to the Division of Child and Family Services upon request.*

V. COMPLIANCE EFFORTS

OJJDP Guidance: States participating in the Formula Grants Program must provide for an effective system of monitoring lockups, lockups, detention facilities, and correctional facilities to ensure that they meet the core requirements, pursuant to the monitoring and reporting requirement at [34 U.S.C. § 11133\(a\)\(14\)](#). The state’s monitoring system, if it is to comply with the statutory and regulatory monitoring requirements, must include all lockups, lockups, secure detention facilities, and secure correctional facilities (prisons).

States are required under [34 U.S.C. § 11133\(a\)\(1\) and \(2\)](#) to designate an agency (referred to as the Designated State Agency, or the DSA) and provide satisfactory evidence that the DSA has authority, by legislation, if necessary, to administer the Title II Formula Grants Program, including monitoring for compliance with the deinstitutionalization of status offenders (DSO), Section 223(a)(11)(B), separation, and jail removal requirements.

There are eight elements of an effective system of monitoring. For each of the following elements, the state should include a description of its specific policies and procedures:

1. Compliance Monitoring Policies and Procedures
2. Monitoring Authority
3. Violation Procedures
4. Adherence to Federal Definitions
5. Identification of the Monitoring Universe
6. Classification of the Monitoring Universe
7. Inspection of Facilities

8. Compliance Data Collection and Verification

State recommendation: Add a statement in NRS 62B and NRS 211 identifying DCFS as the DSA with the authority to contact both adult and juvenile secure facilities as needed for investigations and instances of noncompliance, inspect both adult and juvenile secure facilities, and request and obtain data from both adult and juvenile secure facilities.

Proposed Language for NRS 62B and NRS 211: **Compliance Efforts:** Juvenile Justice Delinquency Prevention Act

The State, through the Division of Child and Family Services, as the Designated State Agency, shall provide for an effective system of monitoring both adult and juvenile jails, lockups, detention facilities, court holding facilities, and correctional facilities to ensure that the core requirements of the Juvenile Justice Delinquency Prevention Act. 34 U.S.C. § 11133(a)(14).

- 1. Adult and juvenile facilities that have locked rooms/cells or mechanical structures (including court holding) shall report to the Division of Child and Family any children securely held in their facility, annually, or more often as needed. (Need regs for specific data measures and timeframes)
 - a. Securely held means “not free to leave”.**
- 2. The Division shall monitor all adult and juvenile secure facilities as needed, through data gathering, on-site visits, and investigations of alleged instances of non-compliance. All secure facilities (including courts holdings as identified in Section 1) shall comply with requests for data and make allowances for on-site visits.*
- 3. Both adult and juvenile jails, lockups, detention facilities, court holding facilities, and correctional facilities must notify Division of Child and Family Services, as the Designated State Agency, of moves to a new location, openings, and closures.*
- 4. The Division may report confirmed instances of non-compliance to the governing body of the facility.*