

## Maintaining Compliance with the JJDP Act in North Carolina

### Introduction

The Juvenile Justice and Delinquency Prevention Act was originally passed in 1974 and last reauthorized in 2002. Since its passage in 1974, the Juvenile Justice and Delinquency Prevention (JJDP) Act has changed the way states and communities deal with troubled youth. The original goals of the Act and of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) were simple: to help state and local governments prevent and control juvenile delinquency and to improve the juvenile justice system. These goals were reaffirmed in the reauthorization of the Act in 2002. An important element of the JJDP Act is to protect juveniles in the juvenile justice system from inappropriate placements and from the harm—both physical and psychological—that can occur as a result of exposure to adult inmates. Yet another important element of the JJDP Act emphasizes the need for community-based treatment for juvenile offenders. In passing the JJDP Act, Congress recognized that keeping children in the community is critical to their successful treatment<sup>1</sup>.

The JJDP Act established four core protection requirements to include the (1) deinstitutionalization of status offenders<sup>2</sup> (DSO), (2) separation of juvenile and

adult offenders (separation), (3) removal of juveniles from adult jails and lockups<sup>3</sup> (jail removal), and (4) reduction of disproportionate minority contact (DMC), where it exists. Participating states and territories must comply with all four core requirements to receive grant funds under the JJDP Act. Meeting these core protections is essential to creating a fair, consistent, and effective juvenile justice system that advances the goals of the JJDP Act.

### Deinstitutionalization of Status Offenders as a Core Requirement

The DSO Core Requirement has been part of the JJDP Act since its inception in 1974. Framers of the JJDP Act of 1974 felt that holding status and non-offenders<sup>4</sup> in secure<sup>5</sup> confinement was an inappropriate strategy for handling juveniles that had not engaged in any criminal behavior. Historically, status offenders, when handled in the same manner as delinquents, had been placed in environments that lead to physical and emotional harm. This punishment of status offenders, often abused and neglected children, simply represented a continuation of the cycle of mistreatment.

<sup>1</sup> Office of Juvenile Justice and Delinquency Prevention. (2003). *Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002*.

<sup>2</sup> A status offender is a juvenile offender who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult. Examples of status offenses include, but are not limited to, truancy, curfew violation, runaway, underage possession and/or consumption of tobacco products, underage consumption of alcohol, underage possession of alcohol, underage purchase of alcohol, and driving after consuming under 21. The maximum age for a person to be considered a status offender is 17 years old.

<sup>3</sup> Lockup refers to secure police department facilities and secure Sheriff's Office facilities (excluding jails).

<sup>4</sup> Non-offender refers to a juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct of the juvenile. These cases are referred to as Children in Need of Services (CHINS), Children in Protective Services (CHIPS), and Families in Need of Services (FINS).

<sup>5</sup> Secure, by definition of the JJDP Act, refers to a facility with construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

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As amended by the JJDP Act of 2002, the DSO requirement currently reads as follows: “juveniles who are charged with or have committed an offense that would not be criminal if committed by an adult...shall not be placed in secure detention facilities or secure correctional facilities.” Juveniles held non-securely are not subject to the DSO requirement.

### **Separation of Juvenile and Adult Offenders as a Core Requirement**

The separation requirement has been part of the JJDP Act since its inception in 1974. It was passed by Congress in response to the fact that juveniles placed in adult facilities who had contact with adult inmates and correctional staff were frequently victims of physical, mental, sexual and emotional abuse, and the discovery that juveniles in contact with adult prisoners were exposed to the tools and training necessary to engage in criminal behavior. The separation requirement maintains the safety of juveniles while focusing attention on their diversion to community resources.

The JJDP Act of 2002, as amended, provides that “juveniles alleged to be or found to be delinquent,” as well as status offenders and non-offenders, “will not be detained or confined in any institution in which they have contact with adult inmates.”

### **Removal of Juveniles from Adult Jails and Lockups as a Core Requirement**

An amendment to the JJDP Act in 1980 added the jail removal requirement in part as a method of addressing the unintended consequence of the separation requirement. In order to meet the separation requirement, many juveniles were held in solitary confinement for long periods of time.

The removal of juveniles from adult jails and lockups is supported by widespread consensus on the appropriate handling of juveniles. The intent of jail removal is not to release juveniles who need to be securely detained, but to promote the appropriate secure confinement of these juveniles in juvenile facilities. Juvenile facilities can provide both public safety and specific evaluation and treatment needs of juveniles.

The JJDP Act, as amended in 1980 by Congress, stated that “...no juvenile shall be detained or confined in any jail or lockup for adults.” However, the JJDP Act of 2002 provides the following exception: “juveniles who are accused of non-status offenses who are detained in such jail and lockup for a period not to exceed six hours for processing or release, while awaiting transfer to a juvenile facility, or in which period such juveniles make a court appearance, and only if such juveniles do not have contact with adult inmates.”

Juveniles held non-securely are not subject to this JJDP Act regulation. In addition, juveniles who are transferred to adult court or those whose cases are filed directly in adult court are not considered juveniles under the JJDP Act and are therefore excluded from the regulations.

### **Disproportionate Minority Contact (DMC) as a Core Requirement**

Data have shown that the majority of states in our country disproportionately detain or confine minority juveniles. In 1988, Congress took note of this problem by focusing state attention on the phenomenon of disproportionate minority confinement in the juvenile justice system. The 1992 amendments required states to determine if minority juveniles were disproportionately confined in secure detention and correctional facilities and, if so, to address any features of their juvenile justice systems that may account for the disproportionate confinement of minority juveniles. This core requirement neither required nor established numerical standards or quotas in order for a state to achieve or maintain compliance. Rather, it required states to identify whether minority juveniles were disproportionately detained or confined in secure facilities, provide a complete assessment of why disproportionate minority confinement exists, and provide an intervention plan that seeks to reduce the disproportionate confinement of minority juveniles in secure facilities.

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As amended by the JJDP Act of 2002, the concept of disproportionate minority confinement has been broadened to address the disproportionate numbers of minority youth who come into contact with the juvenile justice system at any point. The amended 2002 Act requires states to “address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of the minority groups, who come into contact with the juvenile justice system.”<sup>6</sup>

### An Overview of the JJDP Act Holding Regulations

The following charts show a breakdown of how the JJDP Act holding regulations apply to facilities across the compliance monitoring universe:

Table 1

<b>An Overview of JJDP Act Regulations for Adult Jails and Lockups (Secure Police Depts.)</b>	
<b>Accused juvenile status offender, non-offender, civil-type juvenile offender, or alien juvenile</b>	Secure holding prohibited.
<b>Adjudicated juvenile status offender</b>	Secure holding prohibited.
<b>Accused juvenile delinquent</b>	Secure hold limited to up to six hours for identification, processing, release to parents, or transfer to a juvenile facility or six hours prior to and six hours after a court appearance.  Juvenile must be sight and sound separated from adults.
<b>Adjudicated juvenile delinquent</b>	Secure hold limited to up to six hours for identification, processing, release to parents, or transfer to a juvenile facility or six hours prior to and six hours after a court appearance.  Juvenile must be sight and sound separated from adults.

<sup>6</sup> For more information on the Disproportionate Minority Contact (DMC) core requirement, see the Winter 2006 edition of *SystemStats* entitled “Disproportionate Minority Contact Reduction Initiatives in North Carolina”.

Table 2

<b>An Overview of JJDP Act Regulations for Secure Juvenile Detention or Juvenile Correctional Facilities</b>	
<b>Non-offenders</b>	Secure holding prohibited.
<b>Accused juvenile status offender</b>	Secure hold limited to 24 hours prior to and 24 hours after an initial court appearance (excluding weekends and holidays).
<b>Adjudicated juvenile status offender</b>	Secure holding prohibited.
<b>Accused juvenile delinquent</b>	No restrictions on holding.
<b>Adjudicated juvenile delinquent</b>	No restrictions on holding.

**The Compliance Monitoring Universe and Data Collection**

In accordance with the conditions of the JJDP Act and participation in the Formula Grant Program, a state must provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to ensure compliance with the first three core requirements (DSO, separation, and jail removal) are achieved. As part of an adequate system of monitoring facilities, states must annually complete monitoring tasks which include (1) identification of the monitoring universe, (2) classification of the monitoring universe (secure vs. non-secure), (3) inspection of facilities, and (4) data collection and data verification.

Each year the Governor’s Crime Commission (GCC) identifies and classifies all facilities to determine whether they fall under the purview of the JJDP Act.

The GCC conducts onsite visits at a minimum of 10% of all secure sheriff’s offices, jails, and police departments (secure departments known as lockups under the JJDP Act) across North Carolina each year. All juvenile detention centers, Youth Development Centers (YDCs), and multipurpose juvenile homes are visited at least every other year.

The GCC receives data from all county jails and secure sheriff’s office facilities, secure police departments, juvenile detention centers, youth development centers, and multipurpose juvenile homes. Data are collected from jails, sheriff’s office facilities, and police departments on a quarterly basis, while juvenile facilities report biannually. Data are self-reported by jails, sheriff’s office facilities, and police departments while the NC Department of Juvenile Justice and Delinquency Prevention reports data to the GCC on juvenile facilities.

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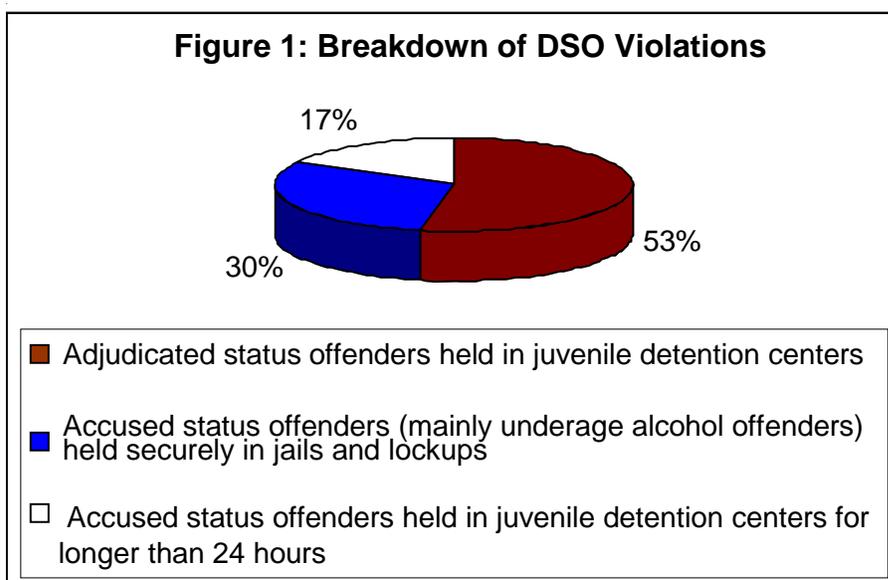
Each year, North Carolina is responsible for reporting incidents of non-compliance to the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP). Reported violations are reviewed by the OJJDP in the form of an annual report. If North Carolina has demonstrated compliance with the core requirements of the JJDP Act, the state will receive its full allocation of formula grant funds. However, if the state has not demonstrated compliance with the core requirements, the state's formula grant allotment will be reduced by 20 percent for each core requirement not in compliance. Further, the state must agree to expend 50 percent of the state's remaining allocation for that year to achieve compliance with the core requirement(s) not in compliance. In 2005, North Carolina received approximately \$1.6 million in formula grant funds. Hypothetically, if North Carolina would have been found out of compliance with one of the core requirements in 2005, it would have lost approximately \$320,000 of its formula grant allocation. This hypothetical illustrates how maintaining compliance with the JJDP Act is not only important for ensuring the safety of juveniles, but also the negative impact that non-compliance would have on the state's ability to receive its full allocation of formula grant funds.

Source: 2005 Governor's Crime Commission Compliance Data

### Incidents of Non-Compliance with the DSO Core Requirement

While North Carolina has seen a reduction of the overall number of violations over the last few years, it does continue to see some common reasons that contribute to violations of the DSO requirement. In calendar year (CY) 2003, North Carolina had 428 violations of the DSO requirement. The state reported finding a total of 367 violations of the DSO requirement in CY 2005, a 14.3% decrease over the two year period.

In CY 2005, over fifty-two percent of the reported DSO violations occurred as a result of adjudicated status offenders being held in juvenile detention centers (N = 194, 52.9%). Accused status offenders (mostly underage alcohol offenders<sup>7</sup>) held securely in adult jails and lockups accounted for 110, or roughly 30%, of all DSO violations. Accused status offenders held in juvenile detention centers for longer than 24 hours accounted for the remaining 17.2% of all DSO non-compliant incidents (N = 63).



<sup>7</sup> This refers to underage alcohol possession, underage alcohol purchase, underage alcohol consumption, or driving after consuming under [the age of] 21.

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There has been an overall reduction in violations concerning the deinstitutionalization of status offenders (DSO) requirement over the two year time span between CY 2003 and 2005, mainly due to the fact that there was a 46.6% decrease in the number of accused status offenders held in juvenile detention centers for longer than 24 hours. However, the number of violations remained roughly the same over the course of two years when focusing on accused status offenders held securely in adult jails and lockups (6.8% decrease) and adjudicated status offenders held in juvenile detention centers (1.0% increase).

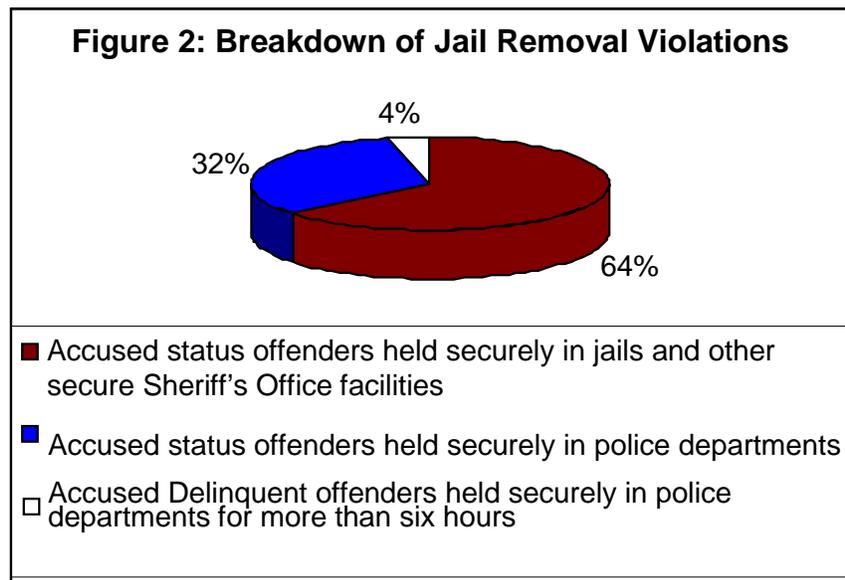
### Incidents of Non-Compliance with the Separation Core Requirement

In CY 2005, all violations of the Separation core requirement occurred in county jails and other secure sheriff's facilities across the state. All 71 incidents of

non-compliance were a result of status offenders having contact with adult offenders in secure areas of these facilities. Roughly 73% of all separation violations (N = 52) occurred as a result of underage 16-17 year old alcohol offenders being held securely in county jails for short amounts of time and not having complete sight and sound separation while in custody. In most cases, these underage alcohol offenders have contact with other adult offenders because NC Administrative Code 10A NCAC 14J.0303 only guarantees physical separation during sleeping hours.

There has been a 36.6% reduction in violations of the separation requirement between CY 2003 and 2005. This decrease can be contributed to the reduced number of underage 16-17 year old alcohol offenders being held securely in jails. These youthful alcohol offenders are receiving non-secure placements and/or citations for their offenses more often than in the past.

Source: 2005 Governor's Crime Commission Compliance Data



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### Incidents of Non-Compliance with the Jail Removal Core Requirement

There has been a slight reduction in jail removal violations between CY 2003 and 2005 (Figure 2, page 6). Over the two year span, incidents of non-compliance in this particular area declined by 4.2%. In CY 2005, many of the 114 jail removal violations occurred due to underage 16-17 year old alcohol offenders being held securely in county jails and other sheriff's office facilities across the state (N = 53, 46.5%). Other status offenders, excluding underage alcohol offenders, being held securely in a sheriff's office facility contributed to approximately 18% of all jail removal violations across the state (N = 20). Just over 32% of the jail removal incidents of non-compliance were caused by accused status offenders being placed in secure areas of police departments (N = 37), while a small percentage (3.5%) of violations were caused by delinquent criminal-type offenders under 16 years old being placed in secure areas for more than six consecutive hours (N = 4).

### Violation Reductions in North Carolina

The differences between North Carolina General Statutes and the JJDP Act can be quite perplexing. North Carolina has been able to reduce the number of non-compliant incidents in recent years by providing a better understanding of the JJDP Act to key stakeholders throughout the system. Police chiefs, sheriffs, court counselors, judges, magistrates, facility directors and many other criminal and juvenile justice professionals have been provided with a detailed explanation of the JJDP Act and the potential consequences for being out of compliance with any of the core requirements. Through onsite visits and educational materials distributed throughout the state, the GCC has reduced violations by providing training and technical assistance to the individual agencies and departments on the ways to comply with both the federal act and our state's statutes simultaneously.

### Contrasts between the federal JJDP Act and the North Carolina General Statutes

There are several noticeable differences when comparing juvenile holding regulations contained within the North Carolina statutes and those contained within the JJDP Act. First and foremost, the JJDP Act considers anyone under 18 years old whose most serious charge is an underage alcohol offense to be a status offender. However, under North Carolina G.S. §18B-302 (b), an individual under 18 years old and charged with an underage alcohol offense (considered to be a status offense under federal definition) would be considered an adult and could be held in a county jail. This difference can be a major barrier to achieving compliance when trying to eliminate the secure holding of status offenders in adult facilities such as jails.

Next, the JJDP Act only allows for accused delinquent offenders [under 16 years old] to be held for up to six hours for purposes of identification, processing, or release. In contrast, North Carolina G.S. §7B-1901(b) allows for temporary custody of these juveniles for up to 12 hours in a law enforcement agency. This difference so far has not caused major problems with staying in compliance with the jail removal requirement, but does allow the chance for it to become a problem in the future.

Finally, under the JJDP Act, an accused status offender may be held for up to 24 hours prior to an initial court appearance and for up to 24 hours after an initial court appearance, excluding weekends or holidays. However, under North Carolina G.S. §7B-1903, an accused status offender may be held in a juvenile detention center for up to 24 hours, excluding weekends or holidays, or where circumstances require for a period not to exceed 72 hours. This slight contrast can lead to accused status offenders being held longer than 24 hours due to 72 hours being permitted within North Carolina G.S. §7B-1903.

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### **Recommendations and Discussion**

While the Governor's Crime Commission has reduced incidents of JJDP Act non-compliance by providing training and technical assistance to key stakeholders in the justice system, it will be necessary to consider some modifications to existing North Carolina General Statutes and policies in order to achieve full compliance in the future.

#### *Recommendation #1- Continue Examining the Possibilities of Changing the State's Age of Criminal Responsibility to 18 years old*

The handling of juveniles is sometimes a complicated manner for those who work in the system. Due to the complexity of our state's juvenile age and the statutes dictating how to handle juvenile offenders, many criminal justice practitioners, especially law enforcement personnel, become reluctant in handling juveniles. For many, the uncertainty resides in our state's somewhat dual juvenile justice system. In North Carolina, a person is considered to be an adult if they are 16 years old and have committed a criminal offense. However, if the person were to be under the age of 18 and commit an undisciplined act, he/she would be considered a juvenile.

Interestingly enough, Administrative Code 10ANCAC 14J.0303 states that "Male inmates under 18 years of age shall be confined in separate cells from *adult* inmates during sleeping hours." Although considered to be an adult within the criminal justice system, the separation requirement of this Administrative Code points to the youthfulness of these 16 and 17 year old offenders.

North Carolina should continue to look at all of the issues when considering a modification of the state's age of criminal responsibility. Changing the age of criminal responsibility to 18 would help the state to achieve full compliance while helping to reassure that the state is committed to achieving the intended goals of the JJDP Act.

#### *Recommendation #2- Modify Underage Alcohol Possession and Underage Alcohol Purchase Offenses to be Non-Detainable Misdemeanors*

While underage alcohol offenses such as underage possession of alcohol and underage purchase of alcohol are criminal offenses in North Carolina, the federal JJDP Act recognizes these offenses as status offenses. For the most part, when a youthful offender (under 18) is placed in jail for one of these offenses, the state must report a violation in each of the three core requirement areas (DSO, jail removal, and separation). The majority of youthful offenders placed in an adult jail on one of these underage alcohol offenses often have contact with adult offenders (18 and up). Juveniles having contact with adults in a jail setting has been found to cause the majority of the state's JJDP Act separation requirement violations in each of the last few years.

There is much disparity among handling the problem of underage alcohol offenses across the state. Ways of dealing with this particular set of juvenile offenders varies from county to county, which oftentimes lead to different outcomes for these types of offenders. In some areas of the state, juveniles are simply warned and turned over to their parent(s) or guardian. In other areas of the state, minors in possession of alcohol are cited on the scene. Finally, other minors charged across the state with purchasing and/or possessing alcohol are placed in jail for a short amount of time.

A possible solution would be to eliminate the possibility of first-time underage alcohol offenders from being placed in jail. Some states consider underage possession and underage purchase of alcohol as civil offenses rather than criminal offenses. License suspension/revocation, fines, and community service are just a few of the punishments commonly used for first-time underage alcohol offenders in these states. In the state of Maryland, first-time underage alcohol possession offenders under 21 years old are given a \$500 fine. Minors who are charged with a second-time underage alcohol offense are charged a \$1000 fine.<sup>8</sup>

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<sup>8</sup> Wicomico County (MD) Underage Drinking Coalition's Facts and Information. (n.d.). Retrieved July 31, 2006, from <http://www.alcoholtalk.org/chart.html>

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According to the Vermont Department of Liquor Control, the first offense of any underage alcohol law would be considered a civil offense. Offenders (under 21) could be fined up to \$300 and would have to complete a teen alcohol safety program at their own expense. If the person failed to complete the requirements, his/her driver's license would be suspended. However, a second offense would carry more severe consequences and would be considered a criminal offense. If convicted, the guilty individual could be fined up to \$600 and/or receive up to 30 days in jail.<sup>9</sup>

### Recommendation #3- Modify Existing Juvenile Code to Limit the Amount of Time an Accused Status Offender Can Be Held

Under North Carolina G.S. §7B-1903(b)(7) and (8), an accused status offender may be held in a juvenile detention center for up to 24 hours, excluding weekends or holidays, or where circumstances require for a period not to exceed 72 hours. However, according to the JJDP Act DSO requirement, holding an accused status offender in a juvenile detention center is limited to 24 hours before and after an initial court appearance. The "where circumstances require" portion of the state statute could allow an accused status offender to be held for up to 72 hours (even without using the exception of holidays and weekends). Modifying the maximum time limit of holding accused status offenders to 24 hours before and after an initial court appearance (excluding weekends or holidays) would align the North Carolina Juvenile Code with the federal JJDP Act. Due to roughly 20% of all DSO violations in 2005 being caused by accused status offenders being held for over the 24 hour limit in juvenile detention centers, the implications of such a change could reduce violations drastically.

### Recommendation #4- Modify G.S. §7B-1900 to Comport With the JJDP Act Regulations

The JJDP Act states that "no juvenile shall be detained or confined in any jail or lockup for adults." This includes secure holding of status offenders in police and sheriff department offices as well as jails and lockups. When examining North Carolina's General Statutes, the meaning of temporary custody is explained, but is left as a broad definition. There is no stipulation as to exactly what type of holding (i.e., secure or non-secure) is allowed under temporary custody.

Modifications to North Carolina G.S. §7B-1900 should prohibit status offenders from being held in areas deemed to be secure under the JJDP Act definition (see footnote #4 for definition of secure) while awaiting appropriate placement or release. Prohibiting the secure holding of status offenders under temporary custody would certainly reduce the number of DSO incidents of non-compliance. By removing the possibility of different interpretations of the statute within law enforcement, there would be more uniformity across the state in terms of handling juveniles under the temporary custody statute.

**For additional information on the JJDP Act and Compliance Monitoring visit the following links:**

**North Carolina Governor's Crime Commission:**  
[www.ncgccd.org](http://www.ncgccd.org)

**Office of Juvenile Justice and Delinquency Prevention:** <http://ojjdp.ncjrs.org/compliance/index.html>

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<sup>9</sup> Vermont Department of Liquor Control. (2006). *Preventing Underage Drinking Parties: A Breakdown In Our Community*. Retrieved July 31, 2006, from Publications section via <http://www.state.vt.us/dlc/education/ctap.html>

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Prior SystemStats and reports include:

Criminal Justice Funding in North Carolina: A System in Crisis

Governor's Crime Commission Legislative Agenda

The Nature and Scope of Hispanic/Latino Gangs in North Carolina

Automation and Technology Capabilities Survey: Domestic Violence and Sexual Assault Service Providers (SystemStats)

DMC Minority Contact Reduction Initiative in North Carolina (SystemStats)

Juvenile Structured Day and Alternative Learning Programs: Impact and Process Study (SystemStats)

Basic Domestic Violence/Sexual Assault Service Provision: A Statewide Statistical Profile

Law Enforcement Tools for Latino Communities

Dispositional Outcomes of Domestic Violence Exparte and Domestic Violence Protective Orders (SystemStats)

Domestic Violence Shelters and Minorities

North Carolina Citizens' Perceptions of Crime and Victimization (SystemStats)

Methamphetamine Fact Sheet (SystemStats)

Recruitment and Retention of Sworn Police Personnel (SystemStats)

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## **SYSTEMSTATS**

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The Governor's Crime Commission was established in 1977 by the North Carolina General Assembly under G.S. 143B-479. Its primary duty is "to be the chief advisory body to the Governor and the Secretary of the Department of Crime Control and Public Safety for the development and implementation of criminal justice policy." The Crime Commission is always open to comments and suggestions from the general public as well as criminal justice officials. Please contact us and let us know your thoughts and feelings on the information contained in this publication or on any other criminal justice issue of concern to you.

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