



A Complete Breakdown of America's New Juvenile Justice Law

[January 8, 2019](#) [John Kelly](#)

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

H. R. 6964

To reauthorize and improve the Juvenile Justice and Delinquency Prevention Act of 1974, and for other purposes.

At long last, federal law on a key juvenile justice policy has been dusted off. On December 21, the day the government shut down, President Trump signed into law the Juvenile Justice Reform Act of 2018, an update to the Juvenile Justice and Delinquency Prevention Act (JJDP), which was passed in 1974. It had not been reauthorized since 2002.

The most important part of that process is simply reauthorizing the existing parts of the law, in particular the grant program by which states are rewarded for adhering to four core requirements:

- Not locking up youth for committing status offenses, which includes crimes like truancy that would not be considered a crime for an adult.
- Removal of juvenile offenders from adult jails and prisons, with very limited

exceptions.

- In those very limited exceptions, sight and sound separation of juveniles from adults in facilities.
- Making efforts to research, identify and address disproportional minority contact in the juvenile justice system.

Unauthorized programs are sitting ducks when it comes time to budget trimming, and House spending bills had zeroed out pretty much all juvenile justice funding in recent years. The Senate appropriators continued to support the JJDPDA, preserving its relevance, but of course that could have changed any year.

So reauthorization stabilizes what's already in the JJDPDA. But what is actually new in this year's update of the law? *Youth Services Insider* read all 100 pages in an attempt to break down every change of note.

Big Changes to State Juvenile Justice Plans

This reauthorization did not include the three-year phaseout of the valid court order exception (VCO) that appeared in earlier iterations. This exception permits a system to detain youths for status offenses, but only if they have been previously ordered by a court not to commit those acts.

But the law does require states to limit those detention stays to seven days. And now courts will be required to issue a written order for any VCO-related detention, including the factual basis for determining a violation of it and facts to support the need for detention.

This should help Office of Juvenile Justice and Delinquency Prevention (OJJDP) track use of the VCO. And that may in turn help some advocates and legislators make a renewed push down the road to eliminate it, a move that is supported by the group most responsible for its existence —the National Council of Juvenile and Family Court Judges.

The law does require another gradual phaseout, though. Within three years, states must cease the practice of placing youth who are transferred into adult court in adult jails or lockups. Thus, if a teen is transferred into adult court, he or she cannot enter an adult facility until they turn 18.

The law also instructs states to:

- Phase out use of restraints on juveniles known to be pregnant or in post-partum recovery, unless "credible, reasonable grounds exist."
- Establish plans for the re-entry of incarcerated youth.
- Coordinate with the state education body to ensure the transfer of school records and credits accumulated by detained or committed youths.

- Set up stakeholder groups to periodically review progress on addressing racial disparities, and also collect more data on disparities at particular points in the juvenile justice continuum.

Community-Led Violence Prevention

Beginning in 2009, Rep. Bobby Scott (D-Va.) pursued an ambitious, multi-billion dollar plan to empower communities to address youth violence prevention on a local level. That effort – the Youth Prison Reduction through Opportunities, Mentoring, Intervention, Support, and Education Act, or Youth PROMISE Act – fell by the wayside once the Republicans took control of the House of Representatives.

This law includes a smaller version of Scott's larger vision. Here are the broad strokes of how this program will work.

- States receive the PROMISE grants, then sub-grant to local governments or nonprofit entities. Those recipients are required to work with a local policy board to develop a plan, implement it and then evaluate.
- There is a long list of allowable program areas that can be supported with the grants. Some are familiar juvenile justice related services like restorative justice and alternative schools. But the list includes a much broader range than you'd normally see in a Justice Department program, including housing assistance, home visiting programs and summer jobs.
- The bill authorizes up to \$96 million for this section of the act. If the funding for this section is at \$25 million or below, the number of grants will be between three and five. That assures it's a substantial investment in a few projects instead of a thin spread.
- There is a match requirement of 50 percent for the funds, but it can be done in a mix of cash and in-kind services.

Once the incentive grants have been around for five years, the Government Accountability Office (GAO) will have two years to complete a study on its impact. This gives Scott a foothold to produce a proof of concept for the PROMISE Act structure, perhaps leading to a renewed push at more investment if the GAO report is favorable.

Compliance and State Grants

The JJPDA reauthorization includes formula funds that go out to states in exchange for compliance with the core requirements of the law. The allowable use of formula funds has been expanded to include programs that provide youths with an opportunity to have their juvenile records sealed or expunged.

But most of the changes in the law relate to the monitoring of compliance and consequences of noncompliance. This has been an area of some concern on the part of the Senate Judiciary Committee ever since a whistleblower case revealed some questionable compliance practices in Wisconsin in 2014.

States are docked 20 percent of their formula funds for every core requirement they are not in compliance with. Under the new law, the funds withheld from states for noncompliance will be split two ways.

Half will go back to the administrator's budget to spend on technical assistance. The other half will be divvied up among the "states that did comply." It is not clear in the law whether that refers to the states that comply with one specific core requirement, or if those funds will only be shared by the states that comply with all four. That could get sorted out in guidance from OJJDP.

Each state will now be required to designate one individual whose job is to coordinate compliance efforts and certify them in state reports to OJJDP. The bill makes clear that the administrator of OJJDP "may not determine that a state is 'not out of compliance,'" quite an odd turn of phrase. The guess here is that this is meant to prevent an administrator from overriding a finding of noncompliance to bail a state out.

And finally, to address retroactive compliance problems, the attorney general's office is instructed in the next 180 days to report on the "estimated amount of formula grant funds disbursed by the agency since fiscal year 2010 that did not meet the requirements for awards of formula grants to states." Going forward, the Office of the Inspector General will be responsible for an audit process each year.

Research

The law requires the OJJDP administrator to publish a plan to identify findings and trends in certain subject areas through research grants. It includes some subjects as expected priorities of Congress, including:

- Reducing recidivism.
- Development and use of positive youth measurements that can complement the use of recidivism measures.
- Evaluating the impact and outcomes of trying to prosecute youth as adults. [Note: A federal report on this subject has been delayed for years now].
- The recruitment of quality workforce in juvenile justice-related arenas.
- The law also instructs OJJDP to establish a "national recidivism measure," a uniform method of data collection and technology that states can use to "evaluate data on juvenile recidivism on an annual basis."

“I’m pretty excited about that,” said Joe Vignati, chief of staff at the Georgia Department of Juvenile Justice, about the national recidivism measure. “It’s been needed for a long time, that ability to go apples to apples, and oranges to oranges. It’s a huge undertaking.”

This is not the first attempt at codifying recidivism. OJJDP helped support a mid-2000s effort to nail down a national definition, led by the Council of Juvenile Correctional Administrators, that apparently did not take.

Another wrinkle here: It appears none of the research work will be done by OJJDP anymore. The agency has announced that all of its research-related work and solicitations will be handled by the National Institute of Justice (NIJ), another division of the Justice Department.

“Our research function, we are authorized in act to do it, and we’ll continue to do that,” said OJJDP Administrator Caren Harp, in an interview with *The Chronicle* this summer. “But rather than issue solicitations internally, we will work with NIJ to issue those solicitations. We’ll get the results back, and ultimately decide whether to publish them.”

Technical Assistance

The law expands the amount of the OJJDP budget that can go toward training and technical assistance (TTA) from 2 percent to 5 percent, presumably to account for the fact that half of compliance penalties will be available for this purpose. It also sets out some new expectations in this area.

Part of the TTA budget will be for “periodic training” on implementing the core requirements and improving monitoring compliance. OJJDP will also be responsible for issuing guidance to states on applying for reimbursement on free/reduced price school lunch for incarcerated juveniles.

OJJDP Annual Report

The most recent annual report by OJJDP on its own activities is for fiscal year 2015, and that was posted in 2017. It’s safe to say the process suffers from a lag time that sufficiently renders it meaningless.

This year’s update attempts to correct that by setting a deadline on OJJDP: annual reports must be published within 180 days after *every* fiscal year. The law also tacks on a laundry list of requirements for the report that OJJDP will have to rely on its partners in data collection to produce.

- Among the annual figures Congress wants:
- A monthly snapshot on the use of restraints and isolation.
- Several data points about status offenders, including details about how many are

detained and the findings used to justify detention in these cases.

- How many juveniles are released from custody, and to what living arrangements.
- Number of school-related offenses that end up in court.
- Number of juveniles in secure facilities who are pregnant.
- This represents a pretty significant widening of the scope for OJJDP. The annual report has largely been an internal accounting of grant making and policy activity — these new requirements reframe it as an annual report on juvenile justice practice in America.

Coordinating Council on Juvenile Justice and Delinquency Prevention

This is supposed to be a way to bring in leadership from the Department of Justice and other domestic agencies for collaborative discussion and projects around juvenile justice. *YS* has never really detected any meaningful impact from this venture, and it appears as though the Trump administration has let it die on the vine anyway. According to the council website, it has not met since November of 2016.

Nevertheless, this law makes two updates to the council's process:

- It adds three titles as permanent members: the Secretary of the Interior, the Assistant Secretary for Mental Health and Substance Use, and the Assistant Secretary for Immigration and Customs Enforcement.
- It requires the council to issue a report to two Congressional committees within 120 days of its last meeting in each fiscal year, which should include recommendations but also account for the council's activities.

So it appears the legislators are instructing OJJDP and the White House that this council must at the very least go through the motions.

Including Tribes

Tribal justice has been a small grant carve-out in the past, but the law's stated purpose is "support for state and local programs." This update adds "tribal" justice systems to that purpose, and requires the OJJDP to develop a policy for collaboration with tribes on implementing JJDPA.

The law does maintain at least a small funding stream under Scott's PROMISE grants — at least 11 percent of the incentive grants must go to tribal systems.

Re-Definitions

A major thrust of JJPDA is keeping youth out of adult facilities, and separated from adults in cases where both groups are in the same place. The law has defined adult jails and lockups as only including a “locked” facility. This update expands that to include any “secure” facility, which covers for example a place that is staffed but not locked.

The law has always had a definition of what “adult inmate” means. The update offers further clarification on the other side: two key characteristics that would make a person *not* be an adult inmate:

- At the time of the offense, he or she was younger than the maximum age at which a youth can be held in a juvenile facility under applicable state law.
- He or she was committed to the custody of a juvenile correctional agency by a court of competent jurisdiction or by law.

The first part of this definition is interesting because the maximum age for juvenile facilities is often older than the state’s actual age of jurisdiction, the age at which a person is considered an adult in the eyes of the law. For instance, California’s age of jurisdiction is 18, but its state juvenile facilities are authorized to hold people up to the age of 25.

Under this definition, we suppose this means anyone set for confinement by the state of California cannot be an adult inmate until the age of 25.

New Definitions

This law adds entirely new definitions to JJPDA terminology on several subjects of interest to reform-minded advocates. Among them:

Chemical agent: “Spray or injection used to temporarily incapacitate a person.”

Isolation: “Any instance in which a youth is confined alone for more than 15 minutes in a room or cell,” though a few exceptions are noted, including a fairly nebulous one for the purpose of “calming.”

Racial and ethnic disparity: “Minority youth populations are involved at a decision point in the juvenile justice system at disproportionately higher rates than non-minority youth at that decision point.”

Status offender: A youth who “is charged with or who has committed an offense that would not be criminal if committed by an adult.”