



Summary of OJJDP's Jan. 17 Rule on JJDPA

On Aug. 8, 2016, OJJDP issued a notice of proposed rule making regarding the JJDPA.

On Jan. 17, OJJDP issued a partial final rule, noting that comments they received on some issues were numerous and complicated, and required additional time to consider. The new rule released on Jan. 17 includes revisions that are anticipated to reduce the impact on states. According to OJJDP, under the partial final rule, 8 states would be out of compliance based on their 2013 data. This is compare to 48 states under the criteria set out in August's proposed rule.

The following items were included in the final rule:

(1) New standards to determine compliance with the core requirements related to jail removal and separation, and the deinstitutionalization of status offenders.

- The new rule revises the methodology for determining compliance with the first three core requirements of the JJDPA.

- Under this methodology, an average will be created for each core requirement based upon two or more years of data. When appropriate a negative outlier will be discarded from the calculation. Based on the data, a compliance rate that "is not less than one standard deviation above the mean rate will be set as the compliance standard."

- The calculated rate of compliance will be posted on OJJDP's website by Aug. 31 of each year. States that have rates above these standards will be deemed out of compliance.

- **The methodology will not be applied to FY2016 and FY2017 compliance monitoring reports in order to permit a transition period.**

- For FY2016 compliance determination- OJJDP will post standards for determining compliance immediately following publication of the final rule. These standards will be based on CY 2013 data and will be used to make determinations based on states' FY 2016 compliance monitoring report. It will determine if states receive their full FY 2017 formula grant award.

(2) New definition of "detain or confine"-

- Based on comments received by OJJDP, the definition clarifies that it does not include youth who are held while they are awaiting return to their parents, or a child welfare agency.

- The definition states specifically that detain or confine “means to hold, keep, or restrain a person such that he is not free to leave, or such that a reasonable person would believe that he is not free to leave, except that a juvenile held by law enforcement solely for the purpose of returning him to his parent or guardian or pending transfer to the custody of a child welfare or social service agency is not detained or confined.”

- “This revised definition also allows law enforcement to hold juveniles who (for example) are runaways, abandoned, endangered due to mental illness, homelessness, or drug addiction, or are victims of sex trafficking or other crimes, held pending their return to their parent or guardian or while law enforcement locates a safe environment in which to place them.” These youth would “not be considered ‘detained or confined’ at all.”

- The rule clarifies that separation violations can only occur in facilities that are considered jails and lockups for adults, or a secure facility in which adult inmates are held. It does not apply to schools, malls, etc.

- The rule addresses scared straight programs and notes that “whether such programs may result in instances of non-compliance with the separation and/or jail removal requirements will depend on the specific manner in which the program operates and the circumstances of the juvenile’s participation in the program.” Key to this determination is whether the young person was free to leave while in sight and sound contact with adult inmates, and whether their parents gave consent for their participation. Parental consent, they noted, can be withdrawn at any time.

(3) New deadline of Feb. 28 for reporting compliance monitoring data.

-This deadline can be extended to March 31 for states that show good cause.

(4) New requirement that states provide compliance data for 85% of facilities for DSO, and site and sound separation.

- State will be required to collect data for 85 % of facilities, and must show how they will extrapolate and report data in a statistically valid manner for the remaining 15 % of facilities.

(5) New requirement that states provide data for a full 12 months of reporting period.

The following items were held for a later decision:

- (1) New standards for the DMC core requirement.
- (2) A series of additional definitions and changes based on 2002 JJDP.