

Deinstitutionalization of Status Offenders (DSO) under the Juvenile Justice and Delinquency Prevention Act (JJDPa)

FAQ for Juvenile Facilities

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Juvenile Justice and Delinquency Prevention Act

1. What is the deinstitutionalization of status offenders requirement under the JJDPa?

Answer: Under the Deinstitutionalization of Status Offenders (DSO) requirement, youth who commit “status offenses” cannot be placed in secure residential facilities. A “status offender” is a youth charged with an act that is only considered illegal because of their age. Such as truancy, violating curfew, or running away from home.

2. What juvenile facilities is the Nebraska Crime Commission (NCC) required to monitor for the deinstitutionalization of status offender’s requirement under the JJDPa?

Answer: Under the JJDPa, the Nebraska Crime Commission (NCC) must monitor all public and private secure residential facilities to ensure status offenders and non-offenders are not held in locked confinement. Monitored facilities include residential child-caring agencies. If any facility houses youth in a 24-hour facility, we will be monitoring that facility, including shelters and group homes.

Under Nebraska definition, NCC would be monitoring any “juvenile facility.”

A Juvenile facility means a residential child-caring agency as defined in section 71-1926, a juvenile detention facility or staff secure juvenile facility as defined in this section, a facility operated by the Department of Correctional Services that houses youth under the age of majority, or a youth rehabilitation and treatment center. (83-4,125(3))

3. What is the Crime Commission's responsibility under the JJDPa regarding the DSO core requirement?

Answer: The NCC must create a list of all public and private facilities in which law enforcement or criminal or juvenile court authority detain juveniles and/or adult inmates. Once that list is created, NCC must verify with each facility if they are "secure" or "non-secure." If a facility is secure, the NCC must obtain data annually to determine if status offenders were housed during the previous fiscal year. The NCC must also go on site once every three years to confirm secure/non-secure status. Facilities designated non-secure do not have to provide data annually. The Crime Commission's responsibility is only to report the compliance data to the federal government. The Crime Commission is not monitoring for compliance with any other law or regulation, or telling a facility they must make a change, or to stop accepting placements.

4. What authority does the Crime Commission have to monitor our facility for compliance with the JJDPa?

Answer: The Nebraska Crime Commission was granted the monitoring authority to conduct onsite inspections every three years as well as review records to verify compliance by Executive Order 95-10 signed by Governor Nelson. This order designates the Nebraska Crime Commission as the Designated State Agency in Nebraska.

5. What does it mean to be "out of compliance" with the deinstitutionalization of status offenders requirement under the JJDPa?

Answer: Out of compliance means Nebraska exceeded the allowable threshold number of status offenders placed in secure facilities during the reporting fiscal year. The threshold is determined by the federal government and changes each year.

6. Does Nebraska's participation with the JJDPa eliminate any placement options for Probation?

Answer: No. Nebraska's participation with the JJDPa does not change any of the existing placement options for Probation. Participation with the JJDPa simply requires monitoring and data reporting of any facility deemed secure under the JJDPa by the NCC. It does not mean placement options for Probation are now limited to facilities designated "non-secure."

The NCC's activities under the JJDPa and the Probation Administration's youth placement decisions are entirely independent. The only impact Probation Administration placements have on the NCC's activities under the JJDPa is if status offenders are placed in secure placements. NCC's activities under the JJDPa have no bearing on Probation Administration's placement responsibilities.

7. What is the impact if Nebraska is out of compliance with the deinstitutionalization of status offenders requirement under the JJDPa?

Answer: If Nebraska fails to demonstrate compliance with any of the core requirements in a given year, Nebraska will receive a reduction in its formula grant for the subsequent fiscal year by 20 percent for each requirement with which the state is noncompliant. Failing to demonstrate compliance with the DSO core requirement means a status offender(s) was placed in a facility meeting the definition of secure. If the number of status offenders exceeds the threshold determined by the federal Department of Justice, Nebraska will be out of compliance. The federal government will penalize NE with a reduced funding allocation.

Nebraska, or a facility in Nebraska, is not required to change licensing, definitions, policy, or procedures in Nebraska because of the Act.

8. What is the impact on Nebraska facilities if designated as secure under the Federal Act?

Answer: There is no impact, per se, on the facility other than the need for the facility to assist the NCC with monitoring and data reporting. The NCC is only monitoring for status offenders. A secure facility can continue to house delinquent youth. If status offenders continue to be placed in facilities designated secure under the federal Act, the Crime Commission must report those counts to the federal government. The federal government will penalize Nebraska with a reduced funding allocation if out of compliance. The federal government will not punish a facility for holding status offenders. The Crime Commission will report which agencies caused Nebraska to be out of compliance.

9. What will be required of secure facilities?

Answer: The Crime Commission, as part of its responsibilities under the JJDPa, will request data annually and conduct site visits every three years to report counts to the federal government to determine if the number of status offenders placed in secure facilities exceeds the federal threshold.

Crime Commission visiting a facility to determine secure or non-secure status under the JJDPa

1. Is NCC checking to see if our facility is complying with our DHHS licensure requirements?

Answer: No. The NCC does not monitor for compliance with DHHS licensing requirements or standards. The NCC is checking only for compliance with the core requirements of the JJDPa, including whether a facility has any construction features to physically restrict movements and activities of the youth residing in the facility. This includes locked doors, fences, and other physical structures.

2. Is NCC checking to see if our facility is in compliance with any state definition of secure, non-secure, staff secure or any other requirement under Nebraska law?

Answer: No. The definitions under Nebraska law are irrelevant for purposes of NCC monitoring under the JJDPa. Only the federal definitions are being considered for the purposes of the JJDPa.

3. Does the way a facility is licensed or what definition our facility aligns with in state statute change how the Crime Commission evaluates our facility as secure or non-secure under the JJDPa?

Answer: No. NCC is only considering how the JJDPa defines secure. State statute is not relevant or considered for this purpose.

Nebraska, or a facility in Nebraska, is not required to change licensing, definitions, policy, or procedures in Nebraska because of the Act.

4. If our facility is designated as non-secure, what are we required to do?

Answer: Nothing at this time. The Crime Commission will reach out in the future to determine if this designation has changed.

5. If staff can unlock the door, swipe a key card, or enter a pin number to unlock a door when a youth wants to leave, doesn't that make our facility non-secure or staff secure?

Answer: No. Under the JJDPa, a facility does not meet the definition of "secure" if the restriction of movement or activity is provided solely by facility staff. However, if a staff member must unlock a door using a key, typed code, or badge swipe, the facility is considered secure for purposes of the Act. In that situation, the restriction of movement results from the locked door itself, not merely from the presence of staff.

To put another way:

If the only thing between a youth and an unlocked door is a staff member, the restriction of movement on the youth is only through staff. That would be non-secure or "staff-secure."

If the only thing between a youth and a locked door is a staff member, that would **not** be staff-secure. Because the door is locked, the building is secure because of the door, not because of the staff. If there were no staff in the room at all and the youth couldn't leave because the door is locked, that would make it secure (staff are not the ones securing the exit, a locked door is).

6. If schools, dining halls, etc. are locked, does that make the entire campus secure?

Answer: No. The federal requirements apply only to buildings that provide 24-hour residential care, meaning the facilities where youth can sleep overnight. These residential buildings trigger the JJDPa and require the NCC to know whether the facility is designated as secure or non-secure for purposes of placing status offenders.

Buildings that are not used for overnight residential purposes such as schools, classrooms, dining halls, recreation centers, or other daytime use facilities are not subject to this requirement. These buildings may be secure or locked from the inside, and status offenders may enter and use them during the day without violating federal law.

Nebraska Laws and Regulations vs. the Federal Act (JJDPa)

1. The Crime Commission has said that our facility is secure, but we are not a Juvenile Detention Facility. How are we secure?

Answer: Under the Federal Act a secure building is any residential, correctional, or detention facility that includes construction features designed to physically restrict the movements and activities of person in custody, such as locked rooms and buildings, fences, or other physical structures. In Nebraska, a 'juvenile facility' is not inherently 'non-secure' by definition; security status is determined by the facility's physical construction and restrictive features rather than its license or service type.

Designation as a "juvenile facility" or a "juvenile detention facility" under state statute is irrelevant for purposes of monitoring for compliance with the JJDPa.

2. What is the difference between a Juvenile Detention Facility and a Juvenile Facility under state law?

Answer: A **juvenile detention facility** means an institution operated by a political subdivision or political subdivisions for the secure detention and treatment of persons younger than eighteen years of age, including persons under the jurisdiction of a juvenile court, who are serving a sentence pursuant to a conviction in a county or district court or who are detained while waiting disposition of charges against them. Juvenile detention facility does not include any institution operated by the department. (83-4,125(2))

A **Juvenile facility** means a residential child-caring agency as defined in section 71-1926, a juvenile detention facility or staff secure juvenile facility as defined in this section, a facility operated by the Department of Correctional Services that houses youth under the age of majority, or a youth rehabilitation and treatment center. (83-4,125(3))

A **Residential child-caring agency** means a person that provides care for four or more children and that is not a foster family home as defined in section [71-1901](#).

3. What facilities, as defined in NE statute, does the NCC monitor for deinstitutionalization of status offenders pursuant to the federal act?

Answer: The NCC would monitor all facilities listed in the “juvenile facility” definition.

4. Does the Residential Child Caring Agency statutes or regulations require facilities with Residential Child Caring Agency licenses be non-secure?

Answer: The NCC did not find any statute requiring a residential child caring agency be secure. NRS 71-1927 does not say residential child caring agencies cannot be secure because a “juvenile detention facility” is not a residential child caring agency for purposes of licensing. NRS 71-1927 is saying a juvenile detention facility is not a residential child caring agency for purposes of licensure. Juvenile detention facilities do not go through the Children's Residential Facilities and Placing Licensure Act to obtain a license to operate. That is all this statute is saying. Juvenile detention facility has its own definition.

The NCC did not find in DHHS licensing of residential child caring facilities regulations that the facility must be non-secure. NCC encourages the facility to consult with DHHS licensing and legal counsel regarding the requirements of a Residential Child Caring Facility license.

5. Does state law need to change to continue to allow status offenders in our residential child caring facility?

Answer: The NCC has not identified a NE statute that prohibits status offenders from being placed in a residential child caring facility that is secure, other than reference to shelters in the alternatives to detention definition. If a facility is an alternative to detention, the facility should consult with legal counsel to determine if they meet the statutory requirements to house status offenders.

Facilities and system stakeholders should review NE statutes to make that determination. The statute does say a status offender cannot be placed in a **juvenile detention facility**. Those are two different things.

43-251.01(6): A juvenile alleged to be a juvenile as described in subdivision (3) of section [43-247](#) shall not be placed in a juvenile detention facility, including a wing labeled as staff secure at such facility, unless the designated staff secure portion of the facility fully complies with subdivision (5) of section [83-4.125](#) and the ingress and egress to the facility are restricted solely through staff supervision;

6. Does the Nebraska definition of a secure facility differ from the JJDPa definition?

Answer: Below are the relevant definitions in Nebraska statute. The JJDPa and NE statutes align when determining the meaning of secure; detention; residential facility; status offender and non-offender. Nebraska statute explicitly states that status offenders cannot be placed in juvenile detention facilities. The JJDPa does not allow status offenders in **any** secure placement.

§43-245

(3) **Alternative to detention** means a program or directive that increases supervision of a youth in the community in an effort to ensure the youth attends court and refrains from committing a new law violation. Alternative to detention includes, but is not limited to, electronic monitoring, day and evening reporting centers, house arrest, tracking, family crisis response, and temporary shelter placement. Except for the use of manually controlled delayed egress of not more than thirty seconds, placements that utilize physical construction or hardware to restrain a youth's freedom of movement and ingress and egress from placement are not considered alternatives to detention;

(10) **Detention** means the temporary care of a juvenile in a physically restrictive facility designed with constructions or fixtures to control the movement of the juvenile to secure the juvenile's lawful custody;

(17) **Nonoffender** means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section [43-247](#);

(25) **Secure detention** means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;

(27) **Status offender** means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3)(b) of section [43-247](#) and sections [53-180.01](#) and [53-180.02](#);

§83-4,125

(2) **Juvenile detention facility** means an institution operated by a political subdivision or political subdivisions for the secure detention and treatment of persons younger than eighteen years of age, including persons under the jurisdiction of a juvenile court, who are serving a sentence pursuant to a conviction in a county or district court or who are detained while waiting disposition of charges against them. Juvenile detention facility does not include any institution operated by the department;

(3) **Juvenile facility** means a residential child-caring agency as defined in section [71-1926](#), a juvenile detention facility or staff secure juvenile facility as defined in this section, a facility operated by the Department of Correctional Services that houses youth under the age of majority, or a youth rehabilitation and treatment center;

§71-1926: For purposes of the Children's Residential Facilities and Placing Licensure Act:

(1) **Care** means the provision of room and board and the exercise of concern and responsibility for the safety and welfare of children on a twenty-four-hour-per-day basis in settings that serve as the out-of-home placement for children;

(7) **Residential child-caring agency** means a person that provides care for four or more children and that is not a foster family home as defined in section [71-1901](#).

(6) **Person** includes bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations;

§43-251.01(6): A juvenile alleged to be a juvenile as described in subdivision (3) of section [43-247](#) shall not be placed in a juvenile detention facility, including a wing labeled as staff secure at such facility, unless the designated staff secure portion of the facility fully complies with subdivision (5) of section [83-4,125](#) and the ingress and egress to the facility are restricted solely through staff supervision;

7. Does a secure designation change our facility from “juvenile facility” as defined in Nebraska statute to a “juvenile detention facility” as defined in Nebraska statute?

Answer: No. If a “juvenile facility” is determined to be secure by the JJDP definition, that does not mean NCC has now designated it as a “juvenile detention facility.” It simply means that juvenile facility includes construction features designed to physically restrict the movements and activities of the youth (e.g. locks the doors from the inside) and it is now on the list of facilities NCC must visit and receive data from to check status offender placements.

The way a facility is defined in Nebraska statute or what type of licensure a facility has is irrelevant when it comes to the Crime Commission’s responsibility under the JJDP. It is irrelevant if a facility is violating Nebraska law or the requirements under their license for the purposes of making the secure/non-secure designation under the JJDP. That is not what NCC is checking. (If a facility is within the scope of Jail Standards and they are violating Jail Standards, that is a different issue).

Nebraska, or a facility in Nebraska, is not required to change licensing, definitions, policy, or procedures in Nebraska because of the Act.

Being Designated “Secure” under the JJDP

1. Does it mean status offenders can no longer be placed here?

Answer: The NCC is not providing facilities instruction to house or not house status offenders. If a facility believes they meet the requirements in Nebraska to house status offenders, the NCC is not disputing that. However, if a facility is designated secure under the JJDP, every status offender housed in that facility is a violation of the JJDP and counted in a determination of non-compliance with the deinstitutionalization of status offender core requirement. The NCC would encourage facilities and Probation Administration to determine the best placements for status offenders and if it is the desire to place them in secure facilities.

2. Does it mean our facility is no longer a placement option for Probation, status or delinquent?

Answer: No. The Crime Commission does not regulate or control Probation’s placement of juveniles. This only relates to the JJDP and monitoring Nebraska’s compliance with the Federal Act. This designation of secure does not change probation’s classification of facilities or placement options. It would be a determination that needs to be made by Probation if or when youth may be placed there.

3. Does the secure classification under the JJDP change my Residential Child Caring Facility License or any other license our facility has under NE law?

Answer: No. A building that is secure under the Act does not change its licensure status in Nebraska. Facilities are not required to modify their licensing category, statutory definitions, policies, or procedures in Nebraska solely because of the Act. However, NCC is responsible for reviewing its operations to monitor for compliance with the Act. If any existing Nebraska licensing requirements, policies, or procedures conflict with the Act, the Act will override those provisions only for the limited purpose of monitoring and ensuring compliance with the Act.

4. Our facility was told by Probation/Licensing Authority/Nebraska Law that we are non-secure. How can the Crime Commission designate us as secure?

Answer: Probation, Licensing Authority, and Nebraska law may correctly designate the facility as non-secure under state law. However, the Crime Commission follows the federal requirements of the JJDP, which may apply a stricter definition of what constitutes a secure versus a non-secure facility. To remain eligible for Title II funding, Nebraska must monitor for facility compliance with the federal standards.

5. If designated “secure,” what are we required to do?

Answer: Allow site visits and inspections from the NCC every three years and maintain and submit detention records annually in order for NCC to determine the number of status offenders held.

6. What happens if status offenders are placed in our facility?

Answer: Nebraska would have a DSO violation for every status offender placed in the facility. If Nebraska exceeds the allowable compliance rate, the state may be determined to be out of compliance with the DSO requirement, potentially resulting in a reduction of up to 20% of Nebraska's federal juvenile justice funding for that core requirement.

7. Are we doing something wrong, violating a law, or violating our Residential Child Caring Agency license if we are designated secure?

Answer: No, not necessarily. NCC is **not** monitoring facilities for compliance with state law or to inform them they are doing something wrong. NCC is only monitoring to determine the facility's status as secure or non-secure for purposes of the JJDPA. NCC will not tell a facility they must be secure or non-secure.

The Crime Commission has identified no law or regulation requiring a residential child caring facility to be non-secure. Licensing under the *Children's Residential Facilities and Placing Licensure Act* does not differentiate between secure and non-secure facility types.

The facility should consult with legal counsel to determine if using construction features designed to physically restrict the movements and activities of persons, such as locked rooms and buildings, fences, or other physical structures violates any state law when it comes to how the facility is being used. For example, if a shelter is being used as an "alternative to detention," the Nebraska definition for alternative to detention includes "shelter" and that, except for the use of manually controlled delayed egress of not more than thirty seconds, placements that utilize physical construction or hardware to restrain a youth's freedom of movement and ingress and egress from placement are not considered alternatives to detention. Again, NCC is not monitoring to determine if a shelter is complying with the state definition of an alternative to detention.

8. Do we have to change our facility hardware to become "non-secure"?

Answer: No. If a facility **chooses** to become "non-secure" for purposes under the JJDPA, a delayed egress door of not more than 30 seconds may be utilized. The facility could also change to restricting the movement and activity of youth only through staff and "unlock" the doors from the inside.

NCC is not instructing any facility to change from "secure" to "non-secure."

9. Does it change the status of our facility in any way under Nebraska law, DHHS licensing, or Probation Service Definitions?

Answer: No. The designation of secure is only for purposes of NCC monitoring under the JJDPA. NCC designation of a facility is completely independent of a facility's status under Nebraska law or regulations.