



## TCCY Initiates Action on DSO Violations

TCCY and the state of Tennessee are faced with the loss of funds to prevent juvenile delinquency.

For the first time in 17 years the state of Tennessee is out of compliance with one of the requirements of the Juvenile Justice and Delinquency Prevention Act. Tennessee had been successful in making changes in its placement of juveniles since the law was enacted in 1974. In 1998-99, because of problems with the placement of status offenders, the state no longer complied with the law. The sanction for violating this law is a loss of funding.

If Tennessee is unable to eliminate these violations, TCCY will lose 25 percent of its federal formula grant funding. This funding is allocated under the JJDP Act based on a population-based formula. For federal fiscal year 1999-2000, TCCY received nearly \$1.2 million on behalf of the state. The agency has been forced to stop soliciting proposals from new grant applicants.

Even though the sanctions are coming from the federal government, state law mirrors federal law, and courts



and lockups that are not in compliance with the JJDP Act are also out of compliance with state law, judicial rulings, attorney general's opinions and Tennessee Rules of Juvenile Procedure.

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### Letter from the Chair of the TCCY Juvenile Justice Committee

From Linda Miller:

As chair of the Juvenile Justice Committee of the Tennessee Commission on Children and Youth, I want to express on behalf of the Commission our concern that compliance with requirements of the Federal Juvenile Justice and Delinquency Prevention (JJDP) Act is of utmost importance to the state of Tennessee. The Commission is particularly distressed with the large number of deinstitutionalization of status offender (DSO) violations that jeopardize the state's eligibility for federal grant funds that benefit the children of Tennessee.

Members of the Commission recently revised and unanimously passed the Enforcement Mechanism as follows.

#### **Enforcement Mechanism for Violations**

In order to assure Tennessee's compliance with the Juvenile Justice and Delinquency Prevention (JJDP) Act core requirements, the Tennessee Commission on Children and Youth (TCCY) will implement the

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## Letter

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following procedures when violations occur. The four core requirements are in the following areas:

**Deinstitutionalization of Status Offenders (DSO), Removal of Children from Adult Jails, Separation of Children from Adults when Placed in Jails, and Address Minority Overrepresentation in Secure Confinement.**

### Reporting and Investigating Violations

- ❑ Tennessee Commission on Children and Youth (TCCY) staff monitors will report violations to the central office and Commission Chairperson on a monthly basis. Monthly reports will be submitted on those counties with a history of excessive DSO violations.
- ❑ TCCY staff monitors will investigate violations to identify the reason and the responsible party for the violation. Investigation may include review of facility files and log books and/or juvenile court records and files.
- ❑ TCCY staff monitors will notify the facility's director of the violation(s) at the time of the on-site visit and in writing. The monitor will also send a letter to the Juvenile Court Judge regarding the violation(s). The letter will offer technical assistance to help avoid future violations.

### Funding Sanctions

- ❑ Counties which hold or place juveniles in facilities in violation of the core requirements of the JJDP Act will be sanctioned through:
  1. Loss of the Reimbursement Account funds (funds to assist counties in paying for alternatives to placement in adult jails), and/or
  2. Ineligibility to apply for Title V funds (federal grant funds used for delinquency prevention). Ineligible counties will be notified in writing.

### Public Sanctions

- ❑ When cooperative efforts have not resulted in strategies to eliminate violations, news releases regarding specific counties and the number of violations they have will be issued as deemed appropriate to generate public support and pressure for compliance.

## Technical Assistance

- ❑ The Tennessee Commission on Children and Youth staff monitors will provide technical assistance and information materials to facility administrators, juvenile court judges and support staff, sheriffs and other law enforcement agencies regarding the law, policies and procedures required for compliance with the JJDP Act.
- ❑ Tennessee Commission on Children and Youth will coordinate Juvenile Justice Teams to develop strategies with local facilities, juvenile court judges and staff to work on reducing DSO violations. These teams will consist of representatives from the Commission, TCCY staff, and relevant agencies including the Department of Children's Services (DCS) where appropriate. Those facilities and juvenile court judges who reduce DSO violations will be appropriately recognized by TCCY.
- ❑ In counties with a history of excessive and increasing violations, TCCY staff monitors will meet with **new** sheriffs, judges and staff, and/or facility administrators to discuss compliance with the JJDP Act.
- ❑ Periodic technical assistance requests will be submitted to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) for statewide or regional training on JJDP Act compliance. This training will be for facilities, juvenile court judges and court staff, Commission members, and TCCY staff.

The use of these strategies should result in sufficient compliance with the Juvenile Justice and Delinquency Prevention Act and reduction of deinstitutionalization of status offender violations and jail removal and separation violations. The Chair of TCCY will assume the responsibility to ensure that the Commission members and staff will diligently monitor the JJDP Act core requirements and implement the Enforcement Mechanism when appropriate.

Without compliance in all counties throughout the state, Tennessee will be in danger of losing even more dollars for these valuable services for children and youth. The Commission on Children and Youth will do everything in its power to ensure that significant efforts are made to move Tennessee into compliance with all requirements of the JJDP Act.

In 1977 in Tennessee, 1,800 youths who had been charged with acts that were illegal only because of their age were held longer than 24 hours in a secure facility. Nationally status offenders were 40 percent of all children detained in 1975 when the law went into effect. By 1978 they were 15 percent, and only 5 percent in the late-1980s. They then rose to about 10 percent in the middle 1990s. Tennessee also made progress and for many years complied with the core requirements of the JJDP Act, which are to:

1. Deinstitutionalize status offenders (DSO);
2. Remove children from adult jails;
3. Separate children from adult offenders; and,
4. Address minority overrepresentation in secure confinement.

The intent of DSO was to:

1. Decrease the probability that status offenders would become criminal offenders;
2. Provide more humane handling of troubled youth ;
3. Provide status offenders due process; and
4. Promote the development of community-based rehabilitation services for them.

DSO was enacted in Tennessee in 1983 when the state lost eligibility for funds because of the number of status offenders incarcerated. The Tennessee law to get children out of adult jails went into effect on January 1, 1985. Tennessee had an immediate and drastic reduction in children in adult jails, and has had no problems complying with this requirement.

The Tennessee Commission on Children and Youth serves as the state advisory group (SAG) for the Office of Juvenile Justice and Delinquency Prevention grant programs. TCCY has the responsibility of allocating funds under two titles of the JJDP ACT, the Federal Formula (Title III) and Title V delinquency prevention grant programs. It also has the responsibility for monitoring the state's compliance with the core requirements.

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The 1999 Compliance Monitoring Report found 783 violations, a 62 percent increase from 1998. The 1998 total was 484 DSO violations for the state, up from 101 in 1990-91.



Monitoring of its core requirements is mandatory in

order for a state to receive federal formula grant funding under the JJDP Act. The TCCY regional coordinators and the juvenile justice staff members monitor facilities for compliance with the JJDP Act. Adult jails, adult lock-ups, juvenile detention centers, temporary holding resources, youth development and training centers and (secure areas of mental health institutes) must be visited at least once a year. Facilities that process a larger number of children are visited more frequently. In addition to observing routine operations of the facility, monitors review records. Additional research and review may be required in cases involving:

- ◆ Violation of Probation;
- ◆ Violation of Aftercare; and
- ◆ Status Offender in Violation of a Valid Court Order.

For probation and aftercare violations, monitors must determine the original offense. Logs should indicate the reasons for probation or aftercare, for example burglary, truancy, etc., to make the monitoring process easier for TCCY monitors and the facilities. The JJDP Act allows detention for violations of valid court orders, but OJJDP due-process regulations protecting the rights of youths must be followed and the hearing must be held on a timely basis, and the file must document compliance with these requirements.

In 1992, specific sanctions were included in the act that cut a state's funding by 25 percent for each core requirement it fails to meet.

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## Problems Contributing to Violations

### **Paperwork that is incomplete or incorrect.**

Monitors must be able to tell from the records that regulations were followed. For example, if an additional, more serious charge is added after a juvenile is processed into a facility, the records must clearly reflect that.

**Local judges and other authorities who disagree with the state and national regulations.** The OJJDP says that some view releasing a child, especially a runaway, after a few hours as an opportunity lost. Nationally, in 1997 four of every 10 detained status offenses were runaways. Out-of-state runaways can be backed out of the violations if this would enable the state to maintain eligibility.

**Violations of Valid Court Orders.** A juvenile may be held longer than 24 hours for violating a valid court order under a 1992 amendment to the JJDP Act. A status offender who violates a specific directive by the court not to do something (stay out of school, run away) is then charged with violating a valid court order. However, the court must strictly comply with a detailed list of due process and record-keeping requirements, and certify that no less restrictive but appropriate alternative was available to meet the needs of the juvenile and the community. If the records do not reflect that these requirements are met, the court is in violation of the 24-hour limit if it holds the young person longer. Congressional debate on the violation of valid court order amendments indicated that its sponsor wanted it to be used primarily for treatment rather than punishment and to give courts flexibility to

deal with recalcitrant youths.

### **Contempt of Court.**

Courts have attempted to transfer these children from the category of status offender to that of delinquent by charging them with criminal

contempt of court, thus getting around the requirements for detaining them for violation of a valid court order. However, a Tennessee Attorney General's Opinion, issued in 1987, finds that a juvenile can be charged as a delinquent for contempt of court only if the underlying behavior was a criminal act.

**Alcohol Offenses.** Although the Tennessee attorney general issued an opinion that alcohol possession or consumption by a juvenile is a delinquent offense, the OJJDP requires Tennessee to count these charges as status offenses because they are not illegal for most adults, only those between 18 and 20 years old. Therefore, children held more than 24 hours on these charges must be counted as DSO violations.

**Failure of Parents to Pick Up Children.** More than a fourth of the 1998-99 violations (27 percent) occurred when parents did not arrive in a timely manner to pick up their children from the detention center. The detention center may chose to assign staff to supervise the child in a non-secure area to avoid incurring a violation.

**Failure of DCS to Pick Up Children in their Custody – Placed in their Custody.** An estimated 17 percent (137) of the violations occurred because the Tennessee Department of Children's Services failed to pick up the child on time. Contributing to this problem was a lack of appropriate placements for children in state custody. The lack of experience of many DCS workers also may have contributed to the problems. In addition to being identified through facility monitoring, excessive stays in temporary placements have been documenting by TCCY's Children's Program Outcome Review Team evaluations and a 1998 evaluation by the Child Welfare League of America.

Thirty-one percent of the violations (240) resulted from juveniles being detained because of truancy, violation of curfew, being a runaway, or under the vague unruly or ungovernable designation. An additional 24 juveniles were held for an excessive time because of violations of Transitional School Rules and Policies. Six of the juveniles held had not been charged with an offense.

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**Situational Causes**

Following judicial elections in August, on Sept. 1, 1998, 42 of the state's 112 juvenile and general sessions court judges hearing juvenile cases were new judges. Many of them were elected with promises to "get tough on crime." Others did not have substantial experience in juvenile court or with juvenile law.

Two of the 17 detention centers with large numbers of violations opened in January 1999. While each was responsible for significant violations in their first six months of operation, TCCY has been working with them to reduce violations.

**Success**

Violations can be reduced. Despite the increases in some areas, efforts to reduce historical violations have been extremely successful in Hamilton County. Recent efforts in Davidson, Knox and Shelby Counties have had a significant impact in reducing violations. Though still high, the East Tennessee Regional Juvenile Services Center in Knox County reduced its violations by 55 percent from 1997-98 to 1998-99.

Although the number of African-American youths detained in secure facilities continues to be of concern, the state is in compliance with the three other core requirements of the JJDP Act. TCCY monitors data from 180 facilities, including all adult facilities - 95 jails and 25 lockups. No accused status offenders or non-offenders and only five accused delinquent offenders were securely detained in adult facilities in 1998-99. The number of children in adult jails has been reduced from approximately 10,000 in 1980. Only once since 1991-92 has the number of youths improperly detained in adult facilities reached double digits. In 1994-95, 10 youths were improperly detained.

Only nine youths were held within sight and sound of adult offenders in Tennessee in 1998-1999.

**Definitions**

Federal Law says "juveniles ... charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations, of valid court orders, or alien juveniles in custody, or such non-offenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities."



A **status offense** is illegal only because of the age of the offender - an offense applicable only to a child. Common status offenses are truancy, running away from home or a residential treatment program, and curfew violations, illegal possession and consumption of alcohol, unruly, ungovernable behavior, and possession of tobacco products. These children are classified under state law as unruly.

**Detention** under Tennessee law is confinement in a secure or closed facility designated by the court or other authority as a place of confinement for juveniles. It is different from shelter care, which means temporary care of a child in physically unrestricted facilities.

An **unruly child** is defined in TCA at 37-1-103(b)23 as a child who is "in need of treatment and rehabilitation" and habitually truant or habitually disobedient of reasonable and lawful commands of parents or guardians "to the degree that such child's health and safety are endangered" are unruly.

**Conclusion**

Unquestionably, status offenders are some of the most difficult children handled by the juvenile courts and DCS, but compliance with DSO requirements is essential and attainable. TCCY has stepped up monitoring on a monthly basis, and hopes that concerted efforts by juvenile courts, DCS and communities will result in compliance in the near future.

## Counties with DSO Violations (January to June 1999)

Blount	42
Bradley	2
Campbell	1
Carter	2
Coffee	3
Davidson	38
DeKalb	1
Dickson	6
Dyer	1
Greene	1
Hawkins	2
Haywood	3
Jefferson	2
Knox	37
Loudon	4
Madison	3
Maury	3
Montgomery	2
Putnam	4
Rhea	2
Robertson	1
Rutherford	81
Scott	1
Sequatchie	1
Shelby	126
Sumner	4
Tipton	12
Unicoi	2
Washington	1
Weakley	8
Williamson	4
Tennessee Total (1st Half FY1999)	400
1998 Population <18	1,355,319
No. Referred to Juvenile Court for Status Offenses 1998	21,531

## Additional Information Sources

“Juvenile Offenders and Victims: 1999 National Report,”

Center for Juvenile Justice. (Available at [www.ncjrs.org/html/ojjdp/nationalreport99/toc.html](http://www.ncjrs.org/html/ojjdp/nationalreport99/toc.html) or (800) 638-8736.

U.S. Department of Justice OJJDP, 810 Seventh Street, NW, Washington, DC 20531, (202) 307-5911 or [askjj@ojp.usdoj.gov](mailto:askjj@ojp.usdoj.gov).

Bureau of Justice Statistics, 810 7th St., NW, Washington, DC 20531, (202) 307-0765 or [www.ojp.usdoj.gov/bjs/](http://www.ojp.usdoj.gov/bjs/).

Juvenile Justice Clearinghouse, 800-638-8736 and [askncjrs@ncjrs.org](mailto:askncjrs@ncjrs.org).

## TCCY to Seek Nominations for Youth Excellence Award

TCCY will be seeking nominations for a new award, the Youth Excellence Award. The purpose is to recognize and honor a young adult who has made great strides in his or her life after past involvement with the juvenile justice system. The winner will have overcome great obstacles and be currently making positive contributions to society.

The award is modeled on the national Coalition for Juvenile Justice Spirit of Youth Award.

- ◆ The award recipient must be:
- ◆ Under 28 years of age;
- ◆ Not a member of the Commission or the Coalition for Juvenile Justice;
- ◆ A person who was involved in the court system as a juvenile; and
- ◆ Currently is involved, directly or indirectly, in bettering the lives of at-risk youth.

The award will be presented in March 2001, at the 13<sup>th</sup> Annual Children’s Advocacy Day.

Please contact TCCY at (615) 741-2633 for more information about the award.

*The Advocate* is published by the Tennessee Commission on Children and Youth as an information forum on children's issues. The Tennessee Commission on Children and Youth, an independent state agency, serves as an advocacy agency and information resource for planning and coordination of policies, programs, and services on behalf of the state's children and youth. The 21-member Commission, appointed by the governor, works with other agencies and with regional councils on children and youth in each development district to collect information and solve problems in children's services. To receive *The Advocate*, contact Fay L. Delk, Publications Editor, Tennessee Commission on Children and Youth, 710 James Robertson Parkway, 9th Floor, Nashville, TN 37243-0800. Phone: (615) 741-2633. Fax No.: (615) 741-5956.

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# Tennessee Ranks 45th on National KIDS COUNT Ranking

The Kids Count National Data Book, published annually, once again placed Tennessee 45<sup>th</sup> in its ranking of states on indicators of child well-being.

“The news is mixed and helps us see where we are doing well and where we need improvement,” said Linda O’Neal, executive director of the Tennessee Commission on Children and Youth. “The state results are better on five of the measures, remained the same on two, and worse on three.”

Thanks to the state’s healthy economy the number of children whose parents were underemployed fell by 26 percent from 1990 to 1997. This also resulted in 5 percent fewer children living in poverty, in contrast to the national statistics, which grew by the same percentage. The percent of children living with working parents in Tennessee is substantially higher than the national rate, but the median hourly wages for child care workers in Tennessee are 59 percent of the median hourly wages for all workers.

The only other category in which the state’s figures did not track the federal figures was teen violent deaths, which rose by 3 percent. Nationally, the teen death rate was down by 18 percent. The teen homicide rate in Tennessee continued to rise after the national rate began to fall. More recent data suggests that the state’s rate began to fall in 1998. Nationally, the teen motor vehicle fatality rate appears to have decreased more than Tennessee’s rate between 1990 and 1999.

The state has improved on many measures of child health. A higher percentage of children in Tennessee

are covered by health insurance and a slightly higher percentage of Tennessee’s 2-year-olds had received recommended immunizations than in the nation. Both the infant mortality rate and the child death rate have fallen, though they continue to lag behind the rest of the country.

An area of good news is the juvenile crime arrest data. Though still unacceptably high, the juvenile violent crime arrest rate in Tennessee is substantially lower than the national rate (72 percent of the national rate). The juvenile property crime arrest rate in Tennessee is also lower than the national rate (79 percent of the national rate).

“One area of concern is the percent of children living in families headed by a single parent,” said O’Neal. “Almost one in three Tennessee children lives in a single-parent family, higher than the national rate.”

The book focuses on the lack of connection between poor people and their communities, especially inner city and rural poor people. This keeps them shut out of the job market and prevents them from getting needed services.

“It’s shocking to realize that even though almost half of the state’s children had a computer in their homes,” O’Neal said, “more than one in 10 (11 percent) couldn’t call 911 from home because they didn’t have a telephone.”

TCCY is the Tennessee partner of the KIDS COUNT program, which is funded by the Annie E. Casey Foundation.

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# Meetings and Events

## Council Activities

### South Central

Community Asset Mapping Meetings:

July 24, Pulaski Recreation Center,

July 25, TVEC, Waynesboro,

Each session: 9:30 a.m. to 12 a.m.

Aug. 22, Regional Meeting, C-PORT,

Henry Horton State Park, 9:30 a.m. to 1 p.m.

### Upper Cumberland

July 21, Early Reading Forum, Crossville Depot, 9 a.m. - 12 noon.

### Mid-Cumberland

July 21, Dickson County Foster Care Picnic.

July 26, Juvenile Justice Committee Meeting.

July 28, Robertson County Meeting.

Aug. 4, Rutherford County Meeting, 11:30 a.m.

Aug. 20, Council Board Meeting, 11:30 a.m.

Aug. 17, Cheatham County Meeting, 1:30 p.m.

Aug. 21, Sumner County Meeting.

Aug. 24, Wilson County Meeting, 12 noon.

Sept. 1, Rutherford County Meeting, 11:30 a.m.

Sept. 11/15 (TBA), Quarterly Meeting, TBA.

### Memphis/Shelby

Aug. 2, Prevention Committee, Room B-1, Shelby County Schools Board of Education, 9 a.m.

### Commission on Children and Youth

July 11-12, Room 16, Legislative Plaza, Nashville.

Oct 12-13, Montgomery Bell State Park. Call (615) 741-2633 for information.

### C-PORT Review Schedule

July 17-21, East Region. Exit Conference- Aug. 4, 10:30 a.m.

Aug. 14-18, Northwest Region. Exit Conference Aug. 25, 10 a.m.

Sept. 11-15, Northeast Region. Exit

Conference-Sept. 26 at 9 a.m.

Call (615) 741-2633 for more information.

### Special Events

August 6-9, Tennessee Council of Juvenile and Family Court Judges/Tennessee Juvenile Court Services Association 17th Joint Conference on Juvenile Justice. Marriott Trade Center, Chattanooga. Contact (615) 741-3980.

July 31-Aug. 4, Life Space Crisis Intervention: The Skill of Reclaiming Youth with Self-Defeating Patterns of Behavior, Youth Villages, Nashville. For more information, contact (615) 250-7200.

July 17-21, Institute for Child Advocacy Ministry, Alex Haley Farm, Clinton, Tenn. For more information contact (202) 662-3583.

**For more updated information on TCCY and child advocacy events, see the TCCY web Events Calendar at [www.state.tn.us/tccy/events.html](http://www.state.tn.us/tccy/events.html).**



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