Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended

Preface

The purpose of this manual is to assist states in monitoring for and achieving compliance with three of the four core requirements[1] of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended.[2] The three core requirements addressed in this manual are deinstitutionalization of status offenders, removal of juveniles from adult jails and lockups, and separating adult offenders from juveniles in institutions. The fourth core protection requirement, disproportionate minority contact, has a separate manual, the *Disproportionate Minority Confinement Contact Technical Assistance Manual*, which was revised and updated in July 2009.

This manual was first published in December 2001 and updated in September 2003 and January 2007 to comply with the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. The JJDP Act was reauthorized in 2002 and took effect on October 1, 2003.

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Table of Contents

Section 1: Background of the Juvenile Justice and Delinquency Prevention Act

1.1 Deinstitutionalization of Status Offenders
1.2 Separation of Juveniles From Adult Offenders (Separation)
1.3 Removal of Juveniles From Adult Jails and Lockups (Jail Removal)
1.4 Reduction of Disproportionate Minority Contact

Section 2: Monitoring for Compliance: Adult Jails and Lockups

2.1 Definitions Related to Adult Jails and Lockups
2.2 Definitions of Secure and Nonsecure Custody of Juveniles Held in Adult Jails and Lockups
    Secure Custody
    Nonsecure Custody
2.3 Compliance With Deinstitutionalization of Status Offenders
    Prohibition on Secure Holding
    Youth Handgun Safety Act Exemption
    Monitoring for Deinstitutionalization of Status Offenders
2.4 Compliance With Jail Removal
    Prohibition and Exceptions to the Secure Holding of Juveniles
    Six-Hour Hold Exception
    Removal (Rural) Exception
    Transfer or Waiver Exception
2.5 Compliance With Separation
    Juveniles Shall Not Have Contact With Adult Inmates
    Administrative Transfers
    Transferred, Certified, or Waived Juveniles
2.6 Facility Reporting Requirements

Section 3: Monitoring for Compliance: Juvenile Facilities

3.1 Definitions Related to Juvenile Facilities
3.2 Compliance With Deinstitutionalization of Status Offenders
    Secure Holding of Status Offenders—Prohibitions and Exceptions
    Youth Handgun Safety Act Exception
    Out-of-State Runaways
    Federal Wards
    Exception for Status Offenders Who Violate a Valid Court Order
3.3 Compliance With Jail Removal
3.4 Compliance With Separation
    Transferred, Waived, or Certified Youth
    Adults Under the Jurisdiction of the Juvenile Court
3.5 Facility Reporting Requirements

Section 4: Monitoring for Compliance: Other Facilities

4.1 Collocated Facilities
- Classifying Facilities
- Definitions
- Criteria for Collocated Facilities
- Annual Onsite Review Requirement
- Collocated Facility Reporting Requirement

4.2 Court Holding Facilities
4.3 Adult Prisons
- Status Offenders
- Delinquent Offenders
- Transferred, Waived, or Certified Juveniles

4.4 Nonsecure Community-Based Programs and Facilities
4.5 Secure Mental Health Treatment Units

Section 5: State Monitoring of Facilities

5.1 Adequate System of Monitoring for Compliance
5.2 Native American Tribes
- Monitoring Facilities on Native American Reservations
- Grants to Native American Tribes

5.3 Out-of-State Juveniles

Section 6: Reporting Requirements

6.1 Annual Compliance Monitoring Report Requirement
6.2 Deadline To Submit Annual Report
6.3 Reporting Requirements
- Deinstitutionalization of Status Offenders
- Jail Removal
- Separation

6.4 Technical Assistance Reporting Tool
6.5 Monitoring Report Exemption
6.6 Anti-Fraud Warning
6.7 Annual Report to the Governor and Legislature

Section 7: Standards for Demonstrating Compliance

7.1 Grant Funds Affected by Compliance
- Formula Grant Funds
- Community Prevention Grant Funds—State Eligibility
- Community Prevention Grant Funds—Unit of Local Government Eligibility

7.2 Deadline for Establishing Eligibility for Formula Grant Funds
7.3 Demonstrating Compliance: Deinstitutionalization of Status Offenders
- Criterion A
- Criterion B

Criterion C
7.4 Demonstrating Compliance: Jail Removal
Numerical *De Minimis* Standard
Substantive *De Minimis* Standard
7.5 Demonstrating Compliance: Separation

Section 8: Definitions

Appendixes

A. Juvenile Justice and Delinquency Prevention Act of 1974, as amended
B. Formula Grants Consolidated Regulation, 28 CFR Part 31
C. Federal Register, January 9, 1981, Policy and Criteria for *De Minimis* Exceptions to Full Compliance With Deinstitutionalization Requirement of Juvenile Justice and Delinquency Prevention Act
D. Federal Register, August 16, 1982, Valid Court Order Criteria
E. Federal Register, November 2, 1988, Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of Final Policy
F. Federal Register, November 2, 1988, Criteria for *De Minimis* Exceptions to Full Compliance With the Jail Removal Requirement; Final Rule
G. Federal Register, August 1, 1994, Delinquency Prevention Program Guideline
H. Valid Court Order Checklist
I. Collocated Facilities Checklists
J. Technical Assistance Tool: Annual Compliance Monitoring Report, Paper Format
K. Age of Full Criminal Responsibility and Maximum Age of Extended Juvenile Court Jurisdiction—50-State Survey

Section 1: Background of the Juvenile Justice and Delinquency Prevention Act

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. A second important element in the 1974 Act was 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 emphasized 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.

The JJDP Act, through the 2002 reauthorization, establishes four core requirements with which participating states and territories must comply to receive grants[3] under the JJDP Act:

- Deinstitutionalization of status offenders (DSO).
- Separation of juveniles from adults in institutions (separation).
- Removal of juveniles from adult jails and lockups (jail removal).
- Reduction of disproportionate minority contact (DMC), where it exists.

Meeting the core requirements is essential to creating a fair, consistent, and effective juvenile justice system that advances the important goals of the JJDP Act.

Each participating state must develop and implement a strategy for achieving and maintaining compliance with the four core requirements as part of its annual Formula Grants State Plan. A state's level of compliance with each of the four core requirements determines eligibility for its continued participation in the Formula Grants programs. For example, failure to achieve or maintain compliance, despite good faith efforts, reduces the Formula Grant to the state by 20 percent for each core requirement not met. In addition, the noncompliant state must agree to expend 50 percent of the state's allocation for that year to achieve compliance with the core requirement(s) with which it is not in compliance.

As part of the strategy for maintaining compliance, states must provide for an adequate system of monitoring to ensure that the core requirements are met.

States must visit and collect information from facilities to demonstrate compliance with the JJDP Act. On an annual basis, each state submits this information in the form of a compliance monitoring report to OJJDP. The report provides compliance data and a detailed description of how the state is meeting the core requirements. The following four sections contain information on each of the core requirements.

1.1 Deinstitutionalization of Status Offenders

The Deinstitutionalization of Status Offenders (DSO) provision was included in the original JJDP Act. As enacted in 1974, the Act required states to "provide within three years … that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult (i.e., status offenders), shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities."[4]

A 1977 amendment to the JJDP Act expanded the DSO provision to expressly include nonoffenders such as dependent and neglected youth. It also removed the requirement that these juveniles be placed in shelter facilities, allowing state and local governments additional latitude in the placement of status offenders and nonoffenders.

In 1980, Congress specified that status offenders and nonoffenders must be removed from "secure" juvenile detention and correctional facilities. Congress also added a new jail and lockup removal requirement, which prohibits juveniles—including accused and adjudicated delinquents, status offenders, and nonoffenders—from being detained in adult jails and adult lockups. Congress further amended the JJDP Act that year to allow states to detain or confine status offenders in secure juvenile facilities for the violation of a valid court order.

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—excluding juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar state law; juveniles who are charged with or who have committed a violation of a valid court order; and juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State— shall not be placed in secure detention facilities or secure correctional facilities." In addition, the 2002 Act states that "juveniles who are not charged with any offense and who are aliens or alleged to be dependent, neglected, or abused shall not be placed in secure detention facilities or secure correctional facilities."[5]

1.2 Separation of Juveniles From Adult Inmates (Separation)

Since the inception of the juvenile justice system, the practice of incarcerating juveniles with adult inmates has been criticized. The placement of juveniles in institutions where they are mixed with adult inmates is emotionally and physically traumatic, resulting in further victimization. Moreover, commingling juvenile offenders with adults may provide an education in crime and undercuts the intent of a separate juvenile justice system designed to rehabilitate and treat juvenile offenders.[6]

In one of the original provisions of the JJDP Act, Congress sought to provide separation between adult inmates and juveniles in institutional settings such as jails, lockups,

prisons, and other secure facilities. The JJDP Act of 2002, as amended, provides that "juveniles alleged to be or found to be delinquent," as well as status offenders and nonoffenders, "will not be detained or confined in any institution in which they have contact with adult inmates." The 2002 Act further requires that "there is in effect in the state a policy that requires individuals who work with both such juveniles and such adult inmates, including in collocated facilities, [to] have been trained and certified to work with juveniles."

1.3 Removal of Juveniles From Adult Jails and Lockups (Jail Removal)

Although many of the juveniles taken into police custody and referred to the juvenile court can be released to parental custody to await court action, juveniles who are accused of committing serious crimes and may be a safety risk to the community may be removed from their homes and placed in secure facilities pending court hearings. Prior to the passage of the jail and lockup removal provision in the JJDP Act, this routinely resulted in placing juveniles in adult jails or lockups in danger of physical or emotional harm from adult prisoners. Research has shown that young people held in adult facilities were sexually assaulted five times more often than youth in juvenile facilities, assaulted by staff twice as often, and assaulted with a weapon 50 percent more often.[7]

In an effort to protect juveniles in custody and to meet the 1974 separation requirement of the JJDP Act, jail officials sometimes placed juveniles in solitary confinement. This practice aggravated the psychological effects of jailing and, in some cases, lead to suicide. In fact, juveniles in jails are found to commit suicide eight times more often than those in juvenile detention facilities.[8] Moreover, young people in adult facilities were being deprived of educational and other services provided in juvenile facilities. For these reasons, Congress amended the JJDP Act in 1980 to include the jail and lockup removal requirement, which states that "no juvenile shall be detained or confined in any jail or lockup for adults," a requirement reaffirmed during the reauthorization of the JJDP Act in 2002.[9]

The JJDP Act of 1974, as amended, provides the following exception: "Juveniles who are accused of nonstatus offenses who are detained in such jail and lockup for a period not to exceed 6 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 and only if there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates in collocated facilities have been trained and certified to work with juveniles."[10] Under special circumstances, the Act also provides for a "rural" exception of up to 48 hours (excluding Saturdays, Sundays, and legal holidays). (See section 2.4 of this Guidance Manual for details.)

1.4 Reduction of Disproportionate Minority Contact

In 1988, Congress took note of the phenomenon of disproportionate minority contact (DMC) within the juvenile justice system. In 1992, Congress required states to address disproportionate minority confinement as a condition for receiving 25 percent of the state's Formula Grants program allocation, making it the fourth and final core requirement of the JJDP Act. The 1992 amendments required states to determine if minority juveniles are 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 are 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.

As amended by the reauthorization of the JJDP Act in 2002, the concept of disproportionate minority confinement has been broadened to address the disproportionate numbers of minority youth who come into contact with the justice system at any point. The 2002 reauthorization 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." The *DMC Technical Assistance Manual* is available for download at http://www.ojjdp.gov/compliance/dmc_ta_manual.pdf.

Section 2: Monitoring for Compliance: Adult Jails and Lockups

2.1 Definitions Related to Adult Jails and Lockups

Adult jail. A locked facility, administered by state, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than 1 year. [11]

Adult lockup. A locked facility that is used by a state, unit of local government, or any law enforcement authority to detain or confine adults. Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature that does not hold persons after they have been formally charged.[12]

Civil-type juvenile offender. A juvenile who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic violations and noncriminal fish and game violations.

Collocated facilities. Collocated facilities are facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds. [13] (See section 4).

Nonoffender. Juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes or as an alien juvenile, for reasons other than legally prohibited conduct of the juvenile.[14] These cases are referred to by many names, including Children in Need of Assistance (CINA) and Children in Need of Protective Services (CHIPS).

Related complex of buildings. A related complex of buildings is two or more buildings that share physical features such as walls and fences, or services beyond mechanical services (e.g. heating, air conditioning, water and sewer); or the specialized services such as medical care, food service, laundry, maintenance, engineering services, etc. [15]

Residential. Pertains to facilities having the capacity to securely detain juveniles overnight[16] and may include sleeping, shower and toilet, and day room areas.

Status offender. A juvenile who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.[17] The following are examples of status offenses:

- Truancy.
- Violations of curfew.
- Running away.
- Underage possession and/or consumption of tobacco products.

- Underage alcohol offenses. These offenses are considered status offenses, even though state or local law may consider them delinquent offenses.

2.2 Definitions of Secure and Nonsecure Custody of Juveniles Held in Adult Jails and Lockups

Secure Custody

As used to define a detention or correctional facility, this term includes residential facilities which include 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.[18] Secure detention or confinement may result either from being placed in a locked room or area and/or from being physically secured to a cuffing rail or other stationary object.[19] For the purpose of this policy, the terms “secure detention,” “secure confinement,” and “secure holding” are considered synonymous.

Further guidance in distinguishing nonsecure custody from secure custody comes from the November 2, 1988, Federal Register announcement, Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of Final Policy. The policy states that a secure detention or confinement status has occurred within a jail or lockup facility when a juvenile is physically detained or confined in a locked room, set of rooms, or a cell that is designated, set aside, or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being placed in such a room or enclosure and/or from being physically secured to a cuffing rail or other stationary object.

Also considered secure are those facilities that contain doors with delayed egress devices that have not received written approval by the authority having jurisdiction over fire codes and/or fire inspections in the area in which the facility is located. The egress delay must never exceed the time delay allowed by the fire code applicable to the area in which the facility is located, and the maximum time delay allowed must be specified on the written approval. Facilities that contain devices that exceed a 30-second delay are always considered secure, even though local code may allow for a longer time delay.[20]

As examples, a juvenile placed in the following situations would be considered in a secure custody status:

- A juvenile placed in an unlocked room within the secure perimeter of an adult jail or lockup or a juvenile detention center.

- A juvenile handcuffed to a rail in an otherwise nonsecure area of an adult jail or lockup.

- A juvenile placed in a room that contains doors with unapproved delayed egress devices or approved delayed egress devices with a delay of more than 30 seconds.

- A juvenile being processed in a secure booking area when an unsecure booking area is available within a facility.[21]

- A juvenile left in a secure booking area after being photographed and fingerprinted.

- A juvenile placed in a cell within an adult jail or lockup, whether or not the cell door is locked.

- A juvenile placed in an adult jail/lockup in the same area as an adult that is secured to a cuffing rail, bench, or other construction feature designed, set aside, or used to securely detain individuals.

See “Flowchart To Determine if a Juvenile Is in a Secure or Nonsecure Custody Status in an Adult Jail or Lockup” on page 54.

Nonsecure Custody

A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility but not be in a secure detention or confinement status. OJJDP’s Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups[22]states that all of the following policy criteria, if satisfied, will constitute nonsecure custody of a juvenile in an adult jail or lockup facility:

- The area(s) where the juvenile is held is an unlocked multipurpose area, such as a lobby, office, or interrogation room which is not designated, set aside, or used as a secure detention area or is not part of such an area,[23]or, if a secure area, is used only for processing purposes.[24]

- The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility.

- The use of the area(s) is limited to providing nonsecure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court.

- In no event can the area be designed or intended to be used for residential purposes.

- The juvenile must be under continuous visual supervision (which may include electronic supervision, e.g. camera) by a law enforcement officer or facility staff during the period of time that he or she is in nonsecure custody.[25]

In addition, a juvenile placed in the following situations would be considered in a nonsecure status:

- A juvenile handcuffed to a nonstationary object. If the five criteria listed above are adhered to, handcuffing techniques that do not involve cuffing rails or other stationary objects are considered nonsecure.

- A juvenile being processed through a secure booking area. Where a secure booking area is all that is available and continuous visual supervision is provided throughout the booking process and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with state law and/or judicial rules), the juvenile is not considered to be in a secure detention status. Continued nonsecure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.

- A juvenile placed in a secure police car for transportation. The JJDP Act applies to facilities; therefore, a juvenile placed in a police car for transportation would be in a nonsecure status.

- A juvenile placed in a nonsecure runaway shelter but prevented from leaving because of staff restricting access to exits. A facility may be nonsecure (i.e., staff secure) if physical restriction of movement or activity is provided solely through facility staff.

- A juvenile placed in a room that contains doors with delayed egress devices that have been approved in writing (including a specification of the maximum time delay allowed) by the authority having jurisdiction over fire codes and fire inspections in the area in which the facility is located and that comply with the egress delay established by the authority having jurisdiction over fire codes and fire inspections. In no case shall this delay exceed 30 seconds (see footnote 4 on page 6).

2.3 Compliance With Deinstitutionalization of Status Offenders

Prohibition on Secure Holding

Adult jails and lockups shall not hold status offenders, nonoffenders, alien juveniles, or civil-type juvenile offenders in a secure manner at any time.[26] These juveniles may be detained in a nonsecure area of an adult jail or lockup for processing while awaiting transportation to a nonsecure shelter care facility or a juvenile detention center or while waiting release to a parent or guardian.

Youth Handgun Safety Act Exception

The Youth Handgun Safety Act (18 U.S.C. 922(x)) prohibits possession of a handgun by a minor under the age of 18. There are exceptions to this Act such as using a handgun in a gun safety course or hunting under the supervision of an adult. Because the Youth

Handgun Safety Act applies only to juvenile offenders, and handgun possession, in most cases, would not be a crime if committed by an adult, it fits the definition of a status offense. However, the Violent Crime Control and Law Enforcement Act of 1994, Subtitle B, Youth Handgun Safety, amended the JJDP Act to provide that juveniles who violate United States Code, Title 18, Section 922(x) or a similar state law can be placed in secure detention or secure correctional facilities without violating the DSO requirement. Because of this exception to the JJDP Act, violations of the Youth Handgun Safety Act or a similar state law can be considered either status offenses punishable by detention or confinement or delinquent offenses. The number of these offenders held securely must be reported to OJJDP in the state's annual monitoring report but will not be reported as violations of the DSO or Jail Removal core requirements.

Monitoring for Deinstitutionalization of Status Offenders

Adult jails and lockups should keep records of every juvenile who enters the facility in secure custody status or under court authority. For status offenders, nonoffenders, alien juveniles, and civil-type juvenile offenders, the records should indicate if the juvenile was held securely or nonsecurely. If such a juvenile is held in a secure manner at any time, this hold would count as a violation of both DSO and jail removal. If held in a secure manner and not sight and sound separated from adult detainees while being held securely, the result would be a violation of DSO, separation, and jail removal.

2.4 Compliance With Jail Removal

Prohibition and Exceptions to the Secure Holding of Juveniles

The JJDP Act states that "no juvenile shall be detained or confined in any jail or lockup for adults." There are three exceptions to this requirement:

- A 6-hour hold exception for accused delinquent offenders.
- An exception for accused delinquent offenders in rural areas if certain criteria are met.
- An exception for juveniles waived or transferred to a criminal court.

Six-Hour Hold Exception

The JJDP Act allows for a 6-hour grace period that permits the secure detention in an adult jail or lockup of those juveniles accused of committing criminal-type offenses (i.e., offenses that would be a criminal offense if committed by an adult). Under this exception, the juvenile shall ***not*** have sight or sound contact with adult inmates during the time the juvenile is in a secure custody status in the adult jail or lockup. The 6 hours can be used in the following circumstances:

- An accused delinquent could be detained for up to 6 hours for the purposes of processing or release or transfer to a juvenile facility. Any holding of juveniles should be limited to the absolute minimum time necessary to complete these purposes, not to exceed 6 hours. An accused or adjudicated delinquent could be detained for up to 6 hours before a court appearance and up to an additional 6 hours after a court appearance, but any hold of an adjudicated delinquent that is not related to a court appearance is a violation of jail removal.

The following is noted about this exception:

- The 6-hour time periods cannot be combined to extend the time frame. For example, a juvenile cannot be detained for 4 hours before and 7 hours after the court appearance. [27]

- Once the juvenile has been placed in a secure custody status and the 6-hour period has begun, the facility cannot temporarily take the juvenile out of a secure custody status and begin the 6-hour time period again. For example, if a juvenile was placed in a secure custody status for 4 hours, then was taken to a nonsecure interview room for 1 hour, then was returned to a secure custody status for 2 hours, the total time to report for the jail removal provision is 7 hours and would be a violation of the 6-hour limit.

- A status offender, nonoffender, alien juvenile, or civil-type juvenile offender cannot be securely detained for any length of time in an adult jail or lockup.[28]

- Adjudicated delinquents cannot be held for any length of time in adult jails or lockups as a disposition.

- A juvenile may not be transferred to a jail or lockup from a juvenile detention center for disciplinary reasons.

- Sight and sound separation from adult offenders must be maintained at all times pursuant to the separation requirement.

Removal (Rural) Exception

The JJDP Act allows states to implement a statutory rural exception,[29] allowing the temporary detention beyond the 6-hour limit of juveniles accused of delinquent offenses who are awaiting an initial court appearance within 48 hours (excluding Saturdays, Sundays, and legal holidays). It is important to note that the rural exception does not apply to status offenders. Status offenders may not be held for any length of time in an adult jail or lockup.

States must have received prior approval from OJJDP to use the rural exception.[30] In a request to use the rural exception, states must document, in writing, that all of the following conditions are met in order for an accused juvenile criminal-type offender,

awaiting an initial court appearance, to be detained in an adult jail or lockup under the rural exception:

- The geographic area having jurisdiction over the juvenile must be outside a metropolitan statistical area (i.e., qualify as a “rural” area) as defined by the Office of Management and Budget.

- A determination must be made that there is no existing acceptable alternative placement for the juvenile pursuant to criteria developed by the state and approved by OJJDP.

- The adult jail or lockup must have been certified by the state to provide for the sight and sound separation of juveniles and adult inmates.

- A state policy is in effect that requires individuals who work with both juveniles and adult inmates in collocated facilities to have been trained and certified to work with juveniles.

OJJDP strongly recommends that jails and lockups that incarcerate juveniles provide youth- specific admissions screening and continuous visual supervision of juveniles incarcerated pursuant to this exception.

If all of the above conditions are met, a juvenile awaiting an initial court appearance may be detained for the following time periods:

- Up to 48 hours (excluding Saturdays, Sundays, and legal holidays).

- If the facility is located where conditions of distance to be traveled or the lack of highway, road, or transportation does not allow for court appearances within 48 hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed 48 hours) delay is excusable.

- If the facility is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

These extended time periods cannot be used after the initial court appearance. After the initial court appearance, the 6-hour exception applies and the juvenile could be held only for up to 6 hours prior to and 6 hours after a court appearance.

Transfer or Waiver Exception

If criminal felony charges have been filed against a juvenile in a court exercising criminal jurisdiction, the juvenile can be detained in an adult jail or lockup. The jail and lockup removal requirement does not apply to those juveniles formally waived or

transferred to criminal court and against whom criminal felony charges have been filed or to juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges. Note that waiver or transfer and the filing of criminal felony charges does not transform a juvenile into an adult. Therefore, such a juvenile can be detained (or confined after conviction) in a juvenile facility and commingled with juvenile offenders until that juvenile reaches the state's full age of majority and the state's maximum age of extended juvenile court jurisdiction, at which time, he or she must be separated from the juvenile population within 6 months.

2.5 Compliance With Separation

Juveniles Shall Not Have Contact With Adult Inmates

Separation must be achieved in all secure areas of the facility. Accused or adjudicated delinquent offenders, status offenders, and nonoffenders shall not have contact with adult inmates, including inmate trustees.[31] Contact is defined to include any physical or sustained sight or sound contact. Sight contact is defined as clear visual contact between adult inmates and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between adult inmates and juvenile offenders.

Sight and sound separation may be accomplished architecturally or through policies and procedures such as time phasing the use of an area to prohibit simultaneous use by juveniles and adults. Brief and inadvertent or accidental contacts between juvenile offenders in a secure custody status and adult inmates in secure nonresidential areas of the facility do not count as violations, although facilities must have policies, procedures (e.g. time-phasing), and/or architectural structures in place to ensure sight and sound separation.[32]

Where a secure booking area is all that is available, continuous visual supervision is provided throughout the booking process, and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with state law and/or judicial rules), the juvenile is not considered to be in a secure detention status and separation would not apply during this time. Once the booking process has been completed, the juvenile must be separated immediately from adult inmates.

Facilities must assure that no juvenile offender shall enter under public authority (i.e. while in the care, custody, or under the jurisdiction of law enforcement or the juvenile or criminal court, whichever is applicable), for any amount of time, into a secure setting or secure section of an adult jail, lockup, or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g., Shock Incarceration or Scared Straight).

Administrative Transfers

Adjudicated juvenile offenders cannot be reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of separating juveniles from adult criminals in jails or correctional facilities. A state is not prohibited from placing or transferring an accused or adjudicated delinquent who reaches the state's age of full criminal responsibility to an adult facility when required or authorized by state law. An administrative transfer, however, without statutory direction or authorization, of a juvenile offender to an adult correctional authority or a transfer within a mixed juvenile and adult facility for placement with adult inmates, either before or after a juvenile reaches the age of full criminal responsibility, is prohibited.

Transferred, Certified, or Waived Juveniles

A juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court does not have to be separated from adult criminal offenders. This is due to the fact that such a juvenile is not an accused or adjudicated delinquent (i.e., the juvenile is under a criminal proceeding, not a delinquency proceeding). Likewise, an adult held in an adult jail or lockup for a delinquency proceeding (generally related to a crime committed before reaching the age of full criminal responsibility) can be held securely in an adult jail or lockup because the adult is not a juvenile alleged to be or found to be delinquent. Both types of individuals can be placed wherever the legislature or courts, where authorized, deem appropriate.[33]

OJJDP strongly recommends that jails and lockups that incarcerate juveniles being tried as adults provide sight and sound separation from adult inmates from such youth, in addition to continuous visual supervision of juveniles incarcerated pursuant to this exception.

2.6 Facility Reporting Requirements

States must compile and report compliance monitoring data annually to the Administrator of OJJDP. Section 223(a)(14) of the JJDP Act requires that states have an adequate system of monitoring for compliance with the core requirements.[34] As part of this system, facilities must collect data on juveniles held and must report the data to the state. In addition, the state must conduct regular onsite visits to monitor all adult jails and lockups and verify reported data. As part of an adequate system of compliance monitoring, states should strive to inspect 100 percent of all adult jails and lockups every 3 years.

To demonstrate compliance with the JJDP Act, all adult jails and lockups must report the following:

- Dates covered by the reporting period, as defined by the state monitoring agency.

- Whether the facility held any juveniles in a secure custody status during the reporting period. If no juveniles were held, the remaining reporting items do not apply for this reporting period.

- The total number of accused or adjudicated status offenders (including valid court order violators, youth held in accordance with the Interstate Compact on Juveniles, and alien juveniles) and nonoffenders securely detained for any length of time.

- The total number of accused juvenile criminal-type offenders held securely for any length of time for purposes other than identification, investigation, processing, release, transfer to court, or transfer to a juvenile facility following initial custody.

- The total number of accused juvenile criminal-type offenders held securely in excess of 6 hours (including those held in excess of 6 hours pursuant to the rural exception).

- The total number of accused or adjudicated juvenile criminal-type offenders held securely in excess of 6 hours prior to or following a court appearance or for any length of time not related to a court appearance.

- If the state has received approval to use the *rural exception*, the following must be reported for those adult jails or lockups located in areas where the rural exception applies:

    - The total number of juveniles accused of a criminal-type offense who were held in excess of 6 hours but for less than 48 hours.

    - The total number of juveniles accused of a criminal-type offense who were held in excess of 48 hours but not for more than an additional 48 hours because of conditions of distance or lack of highway, road, or other ground transportation.

    - The total number of juveniles accused of a criminal-type offense who were held in excess of 24 hours but not for more than an additional 24 hours after such time as conditions (e.g., weather) allow for reasonably safe travel.

- The total number of juveniles not separated from adult criminal offenders, including inmate trustees.

Note: To gather data for the DMC requirement, the state should request the race and/or ethnicity of each juvenile offender brought to the facility.

See “Summary of JJDP Act: Adult Jails and Lockups” on page 55.

Section 3: Monitoring for Compliance: Juvenile Facilities

3.1 Definitions Related to Juvenile Facilities

Civil-type juvenile offender. A juvenile offender who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic violations and noncriminal fish and game violations.

Federal ward. An alien juvenile under federal jurisdiction held in state or local facilities.[35] Such juveniles include undocumented immigrant youth and youth in the custody of the Bureau of Indian Affairs.

Nonoffender. A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes or as an alien juvenile, for reasons other than legally prohibited conduct of the juvenile.[36] These cases are referred to by many names, including Children in Need of Assistance (CINA) and Children in Need of Protective Services (CHIPS).

Secure. As used to define a detention or correctional facility, this term includes residential facilities which include 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.[37] Secure detention or confinement may result either from being placed in a locked room or area and/or from being physically secured to a cuffing rail or other stationary object.[38]

Secure detention facility. A public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility, and is used for the temporary placement of any juvenile who is accused of having committed an offense, any juvenile who has been adjudicated delinquent and is awaiting placement, or of any other individual accused of having committed a criminal offense.[39]

Secure correctional facility. A public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility, and is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense or any other individual convicted of a criminal offense.[40]

Staff secure facility. A residential facility (1) which does not include construction features designed to physically restrict the movements and activities of juveniles who are in custody therein, but any such physical restriction of movement or activity is provided solely through staff; (2) which may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual

juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

Facilities that contain doors with delayed egress devices that have received written approval by the authority having jurisdiction over fire codes and/or fire inspections in the area in which the facility is located are also considered to be staff secure. The egress delay must never exceed the time delay allowed by the fire code applicable to the area in which the facility is located, and the maximum time delay allowed must be specified on the written approval. Facilities that contain devices that exceed a 30-second delay are always considered secure, even though local code may allow for a longer time delay.[41]

Status offender. A juvenile who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.[42] The following are examples of status offenses:

- Truancy.
- Violations of curfew.
- Running away.
- Underage possession and/or consumption of tobacco products.
- Underage alcohol offenses. These offenses are considered to be status offenses, even though state law or local ordinance may classify them as delinquent offenses.

3.2 Compliance With Deinstitutionalization of Status Offenders

Secure Holding of Status Offenders—Prohibitions and Exceptions

The JJDP Act provides that status offenders, nonoffenders, and civil-type offenders not be detained or confined in secure detention or correctional facilities.[43] There may be rare situations, however, where short-term secure custody of accused status offenders may be necessary. For example, detention in a juvenile facility for a brief period of time prior to formal juvenile court action for investigative purposes, for identification purposes, or for the purpose of allowing return to the juvenile's parents or guardian may be necessary. Detention for a brief period of time under juvenile court authority may also be necessary in order to arrange for appropriate shelter care placement. Therefore, OJJDP regulations allow a facility to hold an accused status offender in a secure juvenile detention facility for up to 24 hours, exclusive of weekends and legal holidays, prior to an initial court appearance and for an additional 24 hours, exclusive of weekends and legal holidays, immediately following an initial court appearance. The weekend begins when juvenile court closes on Friday and reopens the following Monday.[44]

Status offenders who fail to appear for court hearings remain status offenders; they cannot be upgraded to delinquent offenders for their failure to appear. Similarly, status offenders who violate probation (by committing another status offense) remain status offenders.

Status offenders cannot be securely detained after adjudication unless all of the conditions of the VCO Exception (see below) are met. Juveniles who have committed a violation of the Youth Handgun Safety Act or are held in accordance with the Interstate Compact on Juveniles as enacted by the state are excluded from the DSO requirement in total.

Youth Handgun Safety Act Exception

The Youth Handgun Safety Act, 18 U. S. C. 922(x), prohibits possession of a handgun by a minor under the age of 18. There are exceptions to this Act such as using a handgun in a gun safety course or hunting under the supervision of an adult. Because the Youth Handgun Safety Act applies only to juvenile offenders and handgun possession, in most cases, would not be a crime if committed by an adult, it fits the definition of a status offense. However, the Violent Crime Control and Law Enforcement Act of 1994, Subtitle B, Youth Handgun Safety, amended the JJDP Act to provide that juveniles who violate United States Code, Title 18, Section 922(x), or a similar state law can be placed in secure detention or secure correctional facilities without violating the DSO requirement. Because of this exception to the JJDP Act, violations of the Youth Handgun Safety Act or a similar state law can be considered either status offenses punishable by detention or confinement or delinquent offenses. The number of these offenders held securely must be reported to OJJDP in the state's annual monitoring report.

Out-of-State Runaways

Out-of-state runaways securely held beyond 24 hours solely for the purpose of being returned to proper custody in another state in response to a want, warrant, or request from a jurisdiction in the other state or pursuant to a court order must be reported as violations of the deinstitutionalization of status offenders requirement. Juveniles held pursuant to the Interstate Compact on Juveniles enacted by the state are excluded from the DSO requirements in total.

Federal Wards

The JJDP Act states that " juveniles … who are aliens shall not be placed in secure detention facilities or secure correctional facilities." Federal wards held beyond 24 hours in state and local secure detention and correctional facilities pursuant to a written contract or agreement with a federal agency and for the specific purpose of affecting a jurisdictional transfer or appearance as a material witness or for return to their lawful residence or country of citizenship must be reported as violations of the deinstitutionalization of status offenders requirement.[45]

Exception for Status Offenders Who Violate a Valid Court Order

The Valid Court (VCO) Exception provides that adjudicated status offenders found to have violated a valid court order may be securely detained in a juvenile detention or

correctional facility. The JJDP Act of 1974, as amended, defines a valid court order as a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to such order; and who received, before the issuance of the order, the full due process rights guaranteed to such juvenile by the Constitution of the United States.[46] It is important to note that status offenders who violate a valid court order cannot be held securely in an adult jail or lockup for any length of time.

Because the JJDP Act does not provide substantive legal authority to a state, where state legislation currently prohibits the secure confinement of status offenders who violate a valid court order, legislative amendment is required if a state wanted to have the ability to confine status offenders who violate valid court orders.

For the VCO Exception to apply, the Act requires that the following actions occur when a status offender is taken into custody for violating a valid court order:

- An appropriate public agency must be promptly notified that such juvenile is held in custody for violating such order.

- Not later than 24 hours during which such juvenile is held, an authorized representative of the agency shall interview, in person, such juvenile.

- Not later than 48 hours during which such juvenile is held:

    - Such representative must submit an assessment to the court that issued such order regarding the immediate needs of such juvenile.

    - Such court shall conduct a hearing to determine whether there is reasonable cause to believe that such juvenile violated the order and the appropriate placement of such juvenile pending disposition of the violation alleged.

In the event that the court orders that the juvenile be detained pending the disposition, the disposition hearing should be held as soon as possible while still allowing reasonable time for the court to obtain additional information to enable it to make a disposition in the best interest of the status offender.

Although some states' common laws or statutes allow the courts to use traditional contempt power, failure to appear, or probation violation to upgrade a status offender to a delinquent offender, a status offender held for violating a valid court order remains a status offender, and the VCO violation process must be followed, unless the violation itself is a delinquent act as defined under federal law.

To use the VCO Exception, states must submit, as part of their annual compliance monitoring report, evidence that state law allows for the secure confinement of status offenders who violate a VCO. Moreover, to demonstrate compliance with the process governing the VCO Exception, the state must record, in its annual compliance monitoring report, the total number of status offenders held in any secure detention or

correctional facility pursuant to the VCO Exception. The state must have a system in place to verify whether court orders used to hold status offenders in juvenile detention centers comply with the conditions listed above. At a minimum, the state must randomly verify 10 percent of all adjudicated status offenders held securely because of violating a valid court order; violations of the VCO process, where found, must be projected accordingly. If a system is not in place to monitor compliance with the conditions and process governing the VCO Exception, all uses of the VCO Exception must be reported as violations of DSO.

3.3 Compliance With Jail Removal

The Jail Removal core requirement does not apply to stand-alone juvenile detention and correctional facilities. Juvenile facilities collocated with adult facilities, however, must be monitored to ensure compliance with the collocated facility criteria outlined in section 4 of this Guidance Manual.

A collocated facility is a juvenile facility that is located in the same building, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup.[47] A complex of buildings is considered related when two or more buildings share physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water, and sewer) or share the specialized services that are allowable under Section 31.303(e)(3)(i)(C)(3) of Title 28 of the Code of Federal Regulations, in effect on December 10, 1996.[48] Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with the collocated facility criteria (see section 4).

3.4 Compliance With Separation

Accused or adjudicated delinquent offenders, status offenders, and nonoffenders cannot have contact with adult inmates, including adult inmate trustees. Contact is defined to include any physical or sustained sight and/or sound contact. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders.[49]

It is important to note that the separation requirement prohibits a state from transferring adult offenders to a juvenile correctional authority for placement in a juvenile facility. For example, an adult could not be transferred to a juvenile detention center to alleviate overcrowding in an adult facility.

Adult inmate trustees who perform maintenance or other duties at a secure juvenile detention center or juvenile correctional facility must be sight and sound separated from the juvenile detainees at all times. Separation may be accomplished architecturally or through policies and procedures such as time phasing the use of an area to prohibit simultaneous use by juveniles and adults. The state must monitor all juvenile detention facilities and juvenile training schools for separation.

Transferred, Waived, or Certified Youth

A juvenile who has been transferred, waived, or certified is otherwise under the jurisdiction of a criminal court may be detained or confined in a juvenile correctional facility or juvenile detention center with other juveniles who are under the jurisdiction of the juvenile court. This is not a violation of the separation requirement because the youth is not a juvenile "alleged to be or found to be delinquent" (he or she has been charged with a criminal, not a delinquent act) and the youth is not an "adult inmate." Once the youth reaches the state's full age of majority and the state's maximum age of extended juvenile court jurisdiction, he or she must be separated from the juvenile population within 6 months.

Adults Under the Jurisdiction of the Juvenile Court

An adult held for a delinquency proceeding can be held in a juvenile detention center or a juvenile correctional facility. For example, if a 17-year-old juvenile committed a burglary and was charged with this delinquent offense at age 18, he or she could be held in a juvenile detention center. This does not violate the separation requirement because the 18-year-old adult has not been "arrested and is not in custody for or awaiting trial on a criminal charge, or is not convicted of a criminal charge offense."[50]

3.5 Facility Reporting Requirements

States must compile and report compliance monitoring data annually to the Administrator of OJJDP. Section 223(a)(14) of the JJDP Act requires that states have an adequate system of monitoring for compliance with the core requirements.[51] As part of this system, facilities must collect data on juveniles held and report the data to the state. In addition, the state must conduct regular onsite visits to monitor the all adult jails and lockups and verify reported data. As part of an adequate system of compliance monitoring states should strive to inspect 100 percent of all juvenile detention and correctional facilities every 3 years.

To demonstrate compliance with the JJDP Act, secure juvenile detention or correctional facilities must report the following:

- Dates covered by the reporting period, as designated by the state monitoring agency.
- The total number of nonoffenders held in a secure detention or correctional facility for any length of time.
- The total number of accused status offenders, out-of-state runaways not held pursuant to the Interstate Compact for Juveniles and federal wards, held securely for longer than 24 hours (exclusive of weekends and legal holidays) prior to an initial court appearance and for an additional 24 hours (exclusive of weekends and legal

holidays) immediately following an initial court appearance. Exclude those juveniles held pursuant to the VCO Exclusion provision, pursuant to the Youth Handgun Safety Act or a similar state law, or the Interstate Compact on Juveniles adopted by the state.

- The total number of adjudicated status offenders and nonoffenders, including out-of-state runaways not held pursuant to the Interstate Compact for Juveniles and federal wards, held securely for any length of time, excluding those held pursuant to the VCO Exception provision or pursuant to the Youth Handgun Safety Act or the Interstate Compact on Juveniles adopted by the state.
- The total number of juveniles not separated from adult criminal offenders.
- The state monitoring agency is also required to collect the following:
    - The total number of juvenile offenders held pursuant to the Youth Handgun Safety Act.
    - Total number of federal wards.

See “Summary of the JJDP Act: Juvenile Detention or Correctional Facilities” on page 56.

Section 4: Monitoring for Compliance: Other Facilities

4.1 Collocated Facilities

Classifying Facilities

States must determine whether or not a facility in which juveniles are detained or confined is an adult jail, adult lockup, or a secure juvenile detention center or correctional facility. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups.[52] Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with the four criteria listed in this section. A facility adhering to the four criteria would qualify as a separate secure juvenile detention center or correctional facility for the purpose of monitoring for compliance with DSO, jail removal, and separation.

Definitions

Collocated facilities. Collocated facilities are facilities that are located in the same building or are part of a related complex of buildings located on the same grounds.[53]

Related complex of buildings. A related complex of buildings is two or more buildings that share physical features, such as walls and fences, or services beyond mechanical services (heating, air conditioning, water, and sewer); or the specialized services such as medical care, food service, laundry, maintenance, engineering services, etc.[54]

Criteria for Collocated Facilities

Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

- Separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and incarcerated adults in the facility. Separation can be achieved architecturally or through time phasing of common use nonresidential areas.

- Separate juvenile and adult program areas, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility which provides for a full range of separate program services. No program activities may be shared by juveniles and adults. Time phasing of common use nonresidential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns.

- Separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (medical care, food service, laundry, maintenance and engineering, etc.) who are not normally in

contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations (subject to state standards or licensing requirements). The day-to-day management, security, and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population within the collocated facilities.

- In states that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no state standards or licensing requirements, OJJDP encourages states to establish administrative requirements that authorize the state to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards.

The state must determine that the four criteria are fully met. It is incumbent upon the state to make the determination through an onsite facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria set forth above.

Collocated juvenile detention facilities approved by the state and concurred with by OJJDP before December 10, 1996, may be reviewed against the regulatory criteria and OJJDP policies in effect at the time of the initial approval and concurrence or against the regulatory criteria set forth in this section. It is up to the state monitoring agency to determine which criteria will be used. Facilities approved on or after December 10, 1996, shall be reviewed against the criteria set forth in this section.[55] A monitoring checklist has been developed by OJJDP for each of the criteria. The use of either checklist is optional and may be found in appendix I.

Annual Onsite Review Requirement

An annual onsite review of the facility must be conducted by the compliance monitoring staff person(s) representing or employed by the state agency administering the JJDP Act Formula Grants Program. The purpose of the annual review is to determine if compliance with the criteria listed above is being maintained.

Collocated Facility Reporting Requirements

States must report annually to the Administrator of OJJDP on the results of monitoring for DSO, jail removal, and separation. In addition, the state must conduct annual onsite visits to monitor collocated facilities for the JJDP Act and to verify reported data.

Juvenile facilities collocated with adult facilities are considered adult jails or lockups absent compliance with the four criteria listed in this section and would follow the same reporting requirements as listed for adult jails and lockups in section 2. A collocated

juvenile facility adhering to the four criteria would qualify as a separate secure juvenile detention center or correctional facility and would follow the reporting requirements listed for juvenile facilities in section 3.

4.2 Court Holding Facilities

A court holding facility is a secure facility, other than an adult jail or lockup, that is used to temporarily detain persons immediately before or after detention hearings or other court proceedings. Court holding facilities, where they do not detain individuals overnight (i.e., are not residential) and are not used for punitive purposes or other purposes unrelated to a court appearance, are not considered adult jails or lockups.[56]

A status offender or delinquent offender placed in a court holding facility is exempt from the deinstitutionalization requirement if the facility meets the criteria listed in the definition above. Facilities, however, remain subject to the separation requirements of the JJDP Act. The separation requirements pertain to status offenders, nonoffenders, and alleged or adjudicated delinquent offenders.

It is important to note that court holding facilities impose an inherent or practical time limitation in that juveniles must be brought to and removed from the facility during the same judicial day.

The state must monitor court holding facilities to ensure that they continue to meet the definition and purpose listed above. States should strive to inspect court holding facilities at a rate of 100 percent every 3 years.

A court holding facility that does not meet the definition and purpose listed above must be monitored as an adult jail or lockup.

4.3 Adult Prisons

Status Offenders

The JJDP Act prohibits the placement of status offenders and nonoffenders in secure detention facilities or secure correctional facilities. Holding status offenders or nonoffenders in an adult prison [57]would be an immediate violation of the JJDP Act.

Delinquent Offenders

The JJDP Act states that “no juvenile shall be detained or confined in any jail or lockup for adults....” Therefore, the JJDP Act limits the facilities from which juveniles must be removed to adult jails or lockups. The requirement does not apply to adult prisons. Therefore, holding a delinquent offender in an adult prison is not a violation of the jail removal requirement.

It is important to note that the JJDP Act states that “juveniles alleged to be or found to be delinquent shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or awaiting trial on criminal charges.” Therefore, complete separation must be provided between juvenile delinquent offenders and adult inmates.

Transferred, Waived, or Certified Juveniles

The JJDP Act states that “no juvenile shall be detained or confined in any jail or lockup for adults....” Therefore, it is not a violation of jail removal to hold a juvenile in an adult prison if that juvenile has been formally transferred or direct filed into criminal court and criminal felony or misdemeanor charges have been filed.

Furthermore, a juvenile who has been transferred, waived, or direct filed or is otherwise under the jurisdiction of a criminal court does not have to be separated from adult criminal offenders pursuant to the separation requirements of the JJDP Act. This is due to the fact that such a juvenile is not alleged to be or found to be delinquent (i.e., the juvenile is under a criminal proceeding, not a delinquency proceeding).

OJJDP strongly recommends providing sight and sound separation and continuous visual supervision for any youth under 18 detained or confined in adult facilities.

4.4 Nonsecure Community-Based Programs and Facilities

Nonsecure, community-based programs or facilities are exempt for the purposes of reporting data for compliance with DSO, jail removal, and separation. The core requirements only apply to secure facilities. For example, a nonsecure residential substance abuse treatment program could include both juvenile delinquent or status offenders and adult offenders who are under a sentence for the conviction of a crime.

Pursuant to Section 223(a)(14) of the JJDP Act, states must monitor nonsecure facilities to verify their nonsecure status. If the facility’s status were to change and become secure, the facility must be monitored as an adult jail or lockup, juvenile detention or correctional facility, or other secure institution if it holds both juveniles and adult offenders.

4.5 Secure Mental Health Treatment Units

A juvenile committed to a mental health facility under a separate state law governing civil commitment of individuals for mental health treatment or evaluation would be considered outside the class of juvenile status offenders and nonoffenders. For monitoring purposes, this distinction does not permit placement of status offenders or nonoffenders in a secure mental health facility where the court is exercising its juvenile status offender or nonoffender jurisdiction. The state must ensure that juveniles alleged to be or found to be juvenile status offenders or nonoffenders are not committed under state mental health laws to circumvent the intent of DSO.

There are no restrictions to placing delinquent offenders in a mental health treatment unit. The separation requirement does not apply if the juvenile and adults are held in a mental health facility solely because of a mental health civil commitment.

See “Summary of the JJDP Act: Other Facilities” on page 57.

Section 5: State Monitoring of Facilities

5.1 Adequate System of Monitoring for Compliance

OJJDP reminds the states participating in the JJDP Act that they are required to maintain-an adequate monitoring system for jails, lockups, detention facilities, correctional facilities, and nonsecure facilities to ensure that the core requirements are met.[58] As such, OJJDP strongly recommends that adequate monitoring systems include at least one full-time staff person or their equivalent to coordinate all efforts relevant to compliance monitoring. Similarly, necessary resources must be provided to conduct on-site inspections in the range of law enforcement facilities covered by the statute. On-site monitoring is critical to ensuring that youth are truly protected in facilities as was intended by the JJDP Act. The state must also provide annual reporting of the results of all compliance monitoring to the Administrator of OJJDP. Although OJJDP holds the Designated State Agency (DSA) implementing OJJDP's Formula Grants program[59] responsible for the monitoring effort and the validity of the monitoring report, the DSA may contract with a public or private agency to perform the monitoring function. If selecting another agency, the state must identify in its monitoring plan which agency has been authorized and/or contracted with to assist in the monitoring functions.

Those states participating in the JJDP Act must submit a compliance monitoring plan to OJJDP annually, as part of the Formula Grants Application. As part of an adequate system of monitoring facilities,[60] the state must describe in its plan, how the following tasks that comprise an adequate system for compliance monitoring are achieved. Further, the plan must note the specific agency and employee and/or contractor who completes the task.

- **Policies and procedures.** A state must document, in writing that it has policies and procedures governing the implementation of an adequate compliance monitoring system.[61] It is strongly recommended that these policies and procedures be made available on the DSA's Web site.

- **Monitoring authority.** A state must document and describe the authority under which the DSA tasked with compliance monitoring enters facilities to inspect and collect data from all facilities in the monitoring universe.[62]

- **Monitoring timetable.** States must keep an annual calendar demonstrating when and where compliance monitoring will occur.[63]

- **Violation procedures.** A state's monitoring system must describe procedures established for receiving, investigating, and reporting complaints of violations of the DSO, Jail Removal, and Separation core requirements. This should include both legislative and administrative procedures and sanctions.[64]

- **Barriers and strategies.** States must provide a description of the barriers faced in implementing and maintaining an adequate system of compliance monitoring to

report the level of compliance with the core requirements; this description must include how it plans to overcome those barriers.[65]

- **Definitions.** States may have different definitions for juvenile and criminal justice terms than those provided in the JJDP Act. States must document and ensure that all state definitions that differ from federal definitions, have been identified and will be addressed in the monitoring process. Specifically, states must certify that where state definitions differ from federal definitions, in the monitoring process, federal definitions will be used in the monitoring process.[66]

- **Identification of the monitoring universe.** This refers to the identification of all facilities in the state which hold adults and which might hold juveniles pursuant to public authority. Every facility that has this potential, regardless of the purpose for housing juveniles, comes under the purview of the monitoring requirements, and thus must be classified to determine if it should be included in the monitoring effort. This includes those facilities owned or operated by public and private agencies.[67]

- **Classification of the monitoring universe.** This is the classification of all facilities in the state that might hold juveniles pursuant to public authority. Classification must determine the facility type (e.g. juvenile detention or correctional facility, adult correctional institution, jail, lockup, or other type of secure or nonsecure facility). Moreover, classification also includes determining whether a facility is public or private, residential or nonresidential, and whether the population is juvenile only, adult only or juvenile and adult. While facilities can successfully self-report their own classification, the final classification of a facility must be verified by the DSA while onsite to determine which ones should be considered as a secure detention or correctional facility, adult correctional institution, jail lockup, or other type of secure or nonsecure facility.[68]

- **Inspection of facilities.** Inspection of facilities is necessary to ensure an accurate assessment of each facility's classification, to verify the adequacy of sight and sound separation where both juvenile and adults inmates are present, and to ensure appropriate record keeping. States should strive to inspect 100 percent of all facilities that have public authority to detain or confine juveniles onsite, once every 3 years. The inspection must include:

    - An on-site review of the physical accommodations to determine whether it is a secure or nonsecure facility and in secure facilities whether adequate sight and sound separation between juvenile and adult offenders exists, and

    - An on-site review of the record keeping system, including verification of self-reported data provided by a facility, to determine whether data are valid and maintained in a manner allowing a state to determine compliance with DSO, jail removal, and separation requirements.[69]

- **Data collection and data verification.** Data collection and onsite data verification are required to determine whether facilities in the state are in compliance with the applicable requirements of DSO, jail removal, and separation. Reporting periods for all three core requirements must concur (i.e. the same months of data must be used for each of the core requirements). OJJDP recognizes three data collection periods with the resulting due dates: calendar year, due June 30; federal fiscal year, due March 31; and state fiscal year, due December 31. The length of the reporting period should be 12 months, but in no case less than 6 months. If reporting 6 months of data, the data must be projected for a full year in a statistically valid manner. If the data is self-reported by the facility or is collected and reported by an agency other than the state agency receiving federal grant funds, the plan must describe a statistically valid procedure used to verify the reported data. The DSA must verify, onsite, self-reported data or data provided by another agency. Onsite data verification must involve the review of data self-reported by a facility, including a review of the facility's admissions records and/or booking logs.[70]

5.2 Native American Tribes

Monitoring Facilities on Native American Reservations

The sovereign authority of Native American tribes with regard to civil and criminal jurisdiction over acts committed on a reservation varies from state to state and, in some states, from tribe to tribe within a state. Where a Native American tribe exercises jurisdiction over juvenile offenders through an established tribal court and operates correctional institutions for juvenile and adult offenders and these activities are not subject to state law (i.e., the functions are performed under the sovereign authority of the tribal entity),the state cannot mandate tribal compliance with the core requirements. Therefore, where the state has no authority to regulate or control the law enforcement activities of a sovereign Native American tribal reservation, facilities that are located on such reservations are not required to be included in the inspection cycle.

Grants to Native American Tribes

During the 1988 reauthorization, the JJDP Act was amended to require that a portion of each state's Formula Grant award be made available to fund programs of tribes that perform law enforcement functions. While the Act specifies a minimum level of funding, states may provide any amount in excess of the minimum amount required to accomplish the objectives of the JJDP Act within the tribe. Native American tribes that receive Formula Grant funds as part of the Native American Pass-Through requirement of the JJDP Act must comply with the core requirements, and facilities on the reservation must be monitored by the state. In addition, if the tribe wishes to establish eligibility for Community Prevention Grant funds, the tribe must be in compliance with the core requirements, and facilities on the reservation must be monitored.

5.3 Out-of-State Juveniles

Where there is interstate placement of juveniles and a juvenile is held in a secure facility in violation of the JJDP Act, the receiving state must include the violation in its annual monitoring report. Although only the receiving state must report the violation, it should be noted that neither state is meeting the intent of the core requirements. In addition, a unit of local government cannot establish eligibility for Title V Community Prevention Grant funds if the jurisdiction is in compliance because of sending juveniles to another jurisdiction in violation of the JJDP Act. Juveniles may be held in accordance with the Interstate Compact on Juveniles, as enacted by the state.[71]

Section 6: Reporting Requirements

6.1 Annual Compliance Monitoring Report Requirement

In order to receive its full fiscal year allocation of Formula Grants program funds, a state must first demonstrate compliance with the DSO, jail removal, separation, and DMC core requirements. Compliance with the first three core requirements is demonstrated through data provided in the state's annual Compliance Monitoring Report, of which all data must be analyzed and verified prior to submission. Compliance with disproportionate minority contact is determined by information provided in the state's Comprehensive 3-Year Plan and subsequent 3-Year Plan Updates.

Eligibility for Formula Grant awards is determined prior to the fiscal year for which the award is being made based on data in the compliance monitoring report submitted. For example, in most cases, eligibility for FY 2009 Formula Grants was based on states' 2006 compliance monitoring reports. This time frame provides a state that has identified a compliance problem with sufficient time to request technical assistance, develop a corrective action plan, and take the necessary steps to provide OJJDP with more current data demonstrating compliance, thereby maximizing the state's opportunity to receive its full fiscal year allocation.

6.2 Deadline To Submit Annual Report

OJJDP's Formula Grant Regulation requires states to submit compliance information annually. The reporting period should provide 12 months of data but shall not provide less than 6 months of data. Recognizing that states use various data collection procedures, OJJDP has historically recognized a variety of data collection periods including the calendar year, the federal fiscal year, or the state fiscal year. The data provided for each of the three core requirements must be from the same time period (e.g., a state may not use the calendar year reporting period for DSO, the federal fiscal year for jail removal, and the state fiscal year for separation data); one data collection period must be used for all three core requirements. OJJDP strongly recommends calendar year data collection.

Due dates are as follows: calendar, June 30; federal fiscal year, March 31; and state fiscal year, December 31.

States that fail to adhere to the requirement for the timely submission of this data face a restriction on the drawdown of funds for active Formula Grants program awards.

6.3 Reporting Requirements

Deinstitutionalization of Status Offenders

To demonstrate the extent of compliance with DSO core requirement, the annual report must include, at a minimum, the following information for the current reporting period:

- Dates covered by the current reporting period.[72]

- Total number of public and private secure detention and correctional facilities, including the total number reporting data, and the total number inspected onsite.[73]

- The total number of accused status offenders and nonoffenders, including out-of-state runaways and federal wards, held in any secure detention or correctional facility for longer than 24 hours (not including weekends or holidays), excluding those held pursuant to the VCO Exclusion or pursuant to the Youth Handgun Safety Act or a similar state law. A juvenile who violates this statute, or a similar state law, is excepted from the deinstitutionalization of status offenders requirement.[74]

- The total number of accused status offenders (including valid court order violators, out-of- state runaways, and federal wards, but excluding Youth Handgun Safety Act violators) and nonoffenders securely detained in any adult jail, lockup, or nonapproved collocated facility for any length of time.[75]

- The total number of adjudicated status offenders and nonoffenders, including out-of-state runaways and federal wards, held for any length of time in a secure detention or correctional facility, excluding those held pursuant to the VCO Exclusion or pursuant to the Youth Handgun Safety Act or pursuant to the Interstate Compact on Juveniles.[76]

- The total number of status offenders held in any secure detention or correctional facility pursuant to the VCO Exclusion.[77] The total number of juvenile offenders held pursuant to the Youth Handgun Safety Act.[78]

Jail Removal

To demonstrate the extent of compliance with the jail removal core requirement, the report must include, at a minimum, the following information for the current reporting period:

- Dates covered by the current reporting period.[79]

- The total number of adult jails in the state, including the total number inspected onsite.[80]

- The total number of adult lockups in the state, including the total number inspected onsite.[81]

- The total number of adult jails holding juveniles during the past 12 months.[82]

- The total number of adult lockups holding juveniles during the past 12 months.[83]

- The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and unapproved collocated facilities in excess of 6 hours (including those held pursuant to the rural exception).[84]

- The total number of accused juvenile criminal-type offenders held securely in adult jails, lockups, and unapproved collocated facilities for less than 6 hours for purposes other than identification, investigation, processing, release to parent(s), transfer to court, or transfer to a juvenile facility following initial custody.[85]

- The total number of adjudicated juvenile criminal-type offenders held securely in adult jails or lockups and unapproved collocated facilities in excess of 6 hours prior to or following a court appearance or for any length of time not related to a court appearance.[86]

- The total number of accused and adjudicated status offenders (including valid court order violators) and nonoffenders held securely in adult jails, lockups and unapproved collocated facilities for any length of time.[87]

- The total number of adult jails, lockups, and unapproved collocated facilities in areas meeting the rural exception, including a list of such facilities and the county or jurisdiction in which each is located.[88]

- The total number of juveniles accused of a criminal-type offense who were held in excess of 6 hours but for less than 48 hours in adult jails, lockups, and unapproved collocated facilities pursuant to the rural exception.[89]

- The total number of juveniles accused of a criminal-type offense who were held in excess of 48 hours but not for more than an additional 48 hours in adult jails, lockups, and unapproved collocated facilities pursuant to the rural exception due to conditions of distance or lack of ground transportation.[90]

- The total number of juveniles accused of a criminal-type offense who were held in excess of 48 hours, but not more than an additional 24 hours after the time such conditions as adverse weather allow for reasonably safe travel, in adult jails, lockups and unapproved collocated facilities in areas meeting the rural exception.[91]

Separation

To demonstrate the extent of compliance with the separation core requirement, the report must include, at a minimum, the following information for the current reporting period:

- Dates covered by the current reporting period.[92]

- The total number of facilities used to detain or confine both juvenile offenders and adult criminal offenders during the past 12 months, and the number inspected onsite.[93]

- The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide sight and sound separation.[94]

- The total number of juvenile offenders and nonoffenders not separated from adult criminal offenders in facilities used for the secure detention and confinement of both juveniles and adults.[95]

- The total number of state-approved juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup, including a list of such facilities.[96]

- The total number of juveniles detained in state approved collocated facilities that were not separated from the management, security or direct care staff of the adult jail or lockup.[97]

- The total number of juvenile detention centers located within the same building or on the same grounds as an adult jail or lockup that have not been approved by the state, including a list of such facilities.[98]

- The total number of juveniles detained in collocated facilities not approved by the state who were not sight and sound separated from adult inmates.[99]

6.4 Technical Assistance Reporting Tool

OJJDP has developed a technical assistance tool to help states submit annual compliance monitoring reports. This technical assistance tool is a template to use with the Microsoft Excel spreadsheet program. This template requests all of the information to be submitted to fulfill the reporting requirements listed above. The form may be downloaded from the OJJDP Web site's **compliance monitoring page** at ojjdp.gov/compliance.

States that are considering using this form should note the following:

- The electronic form is a template only—to use it, the state must first have the Microsoft Excel program, version 97 or greater.

- Although it is provided as an electronic template, the form should not be submitted electronically.[100] It must be printed and then sent to OJJDP with all of the requested attachments.

- The state should check for template updates and enhancements before completing its annual monitoring report. New versions of the template can be found at the OJJDP Web site on compliance monitoring at http://www.ojjdp.ncjrs.org/compliance.

6.5 Monitoring Report Exemption

States which have been determined by the OJJDP Administrator to have achieved full compliance with DSO, jail removal, and separation requirements and wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

- The state provides for an adequate system of monitoring jails, law enforcement lockups, and detention facilities, to enable an annual determination of state compliance with Section 223(a)(11),(12), and (13) of the JJDP Act.

- State legislation has been enacted that conforms to the requirements of Section 223(a)(11),(12), and (13) of the JJDP Act.

- The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

    - Authority for enforcement of the statute is assigned.

    - Time frames for monitoring compliance with the statute are specified.

    - Adequate procedures are set forth for enforcement of the statute and the imposition of sanctions for violations.

6.6 Anti-Fraud Warning

The annual compliance monitoring report submitted by the DSA is subject to 42 U.S.C. § 1001, which makes it a crime to knowingly submit false statements to the federal government.

6.7 Annual Report to the Governor and Legislature

The JJDP Act requires the State Advisory Group in each state participating in the Formula Grants program to submit annual recommendations to the state's Governor and legislature regarding the state's compliance with the core requirements. This report is an excellent opportunity for the state agency and the State Advisory Group to make recommendations and report how the state is addressing the core requirements.

Section 7: Standards for Demonstrating Compliance

7.1 Grant Funds Affected by Compliance

If a state demonstrates compliance with the core requirements, it is eligible for Formula Grant funds. Moreover, units of local government and federally recognized tribes that are in compliance with the core requirements are eligible for Title V Community Prevention Grant funds.

Formula Grant Funds

The state must demonstrate the extent to which each of the four core requirements are met. If the state fails to demonstrate the required level of compliance by the end of the fiscal year for which funds are allocated, the state's Formula Grants allotment will be reduced by 20 percent for each such failure in the subsequent fiscal year. Further, the noncompliant state must agree to expend 50 percent of the state's allocation for that year to achieve compliance with the core requirement(s) with which it is not in compliance. If the OJJDP Administrator makes a discretionary determination that the state has substantially complied with the requirement(s) for which there is noncompliance and that the state has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, then the restriction on expenditures will not apply. In order for such a determination to be made, the state must demonstrate that it has diligently carried out the plan approved by OJJDP, demonstrated significant progress toward full compliance, submitted a plan based on an assessment of current barriers to DMC, and provided an assurance that added resources will be expended, from Formula Grants or other fund sources, to achieve compliance.

Where a state's allocation is reduced, the amount available for planning and administration and the required pass-through allocation, other than the State Advisory Group set-aside, will be reduced because they are based on the reduced allocation.

Community Prevention Grant Funds—State Eligibility

A state out of compliance with the JJDP Act may still be awarded Community Prevention Grants if there are units of general local government eligible to receive grant awards based upon their compliance with the core requirements.

Community Prevention Grant Funds—Unit of Local Government Eligibility

For a unit of general local government or federally recognized tribe to be eligible to apply to the state for Title V Community Prevention Grant funds, the unit must be certified by the State Advisory Group as in compliance with the four core requirements. The specific unit of general local government that is seeking certification must demonstrate compliance with the four core requirements. Therefore, a State Advisory Group is not allowed to certify a city's compliance based on the overall compliance

status of the county. The unit of general local government must obtain this certification prior to applying for an award of funds. In determining eligibility, the State Advisory Group must certify only those units of general local government that are within the de minimis parameters provided in sections 7.3, 7.4, and 7.5 and base this determination on the locality's most current census data.

The compliance certification applies to all facilities operated by or contracted by the unit of general local government. This certification is not limited to a specific catchment area within the boundaries of the unit of general local government. Therefore, the certification must also include any facility that the unit of general local government operates, contracts for, or uses inside or outside its boundaries. However, the certification does not apply to facilities operated or controlled by other governmental units within the local governmental boundaries that are not used by the local government.

In order for a unit of general local government to be in compliance with the disproportionate minority contact (DMC) core requirement, the State Advisory Group must certify that the unit of general local government is cooperating in data gathering and analysis to determine if DMC exists. If DMC is found to exist within the boundaries or jurisdiction of the unit of general local government, the unit must be making an adequate effort toward addressing, or assisting the state to address, this issue. The level of cooperation and commitment must be satisfactory to support efforts to achieve the goals of the DMC requirement.

After awards have been made to units of local government, the state must ensure that these communities continue to comply with the four core requirements. Title V awards to units of local government must be in 12-month increments for periods of up to 3 years. Continuation funding for each of the 12-month increments is based on the unit of local government's satisfactory performance and continued compliance with the four core requirements. As part of its Community Prevention Grants program, the state must have a plan which will identify and discontinue all Community Prevention Grants funding to units of local government that fall out of compliance. Completed compliance certification forms should be kept on file for all Community Prevention Grants subawards.

7.2 Deadline for Establishing Eligibility for Formula Grant Funds

The deadline date for a state to demonstrate eligibility for its annual allocation of Formula Grant funds is March 31, or 60 days after OJJDP officially notifies states of their Formula Grant allocation, whichever is later. Demonstrating eligibility includes submitting a complete grant application by this deadline and submitting a monitoring report and other documentation that establishes compliance with the core requirements of the JJDP Act. (For DMC compliance, eligibility is based on a review of the previous fiscal year plan.[101]) If a state cannot meet the deadline for good cause, it may apply for an extension to OJJDP in writing by the application due date. The extension will not be continued past the end of the fiscal year for which the state has applied for funds. The funds for which the state could not demonstrate eligibility will not be held past the end of

the fiscal year for which the state applied for funds, nor will the entire award be held past the end of the fiscal year for which the state applied for funds in order to provide additional time to establish eligibility.

7.3 Demonstrating Compliance: Deinstitutionalization of Status Offenders[102]

Full compliance with DSO is achieved when a state has removed 100 percent of status offenders and nonoffenders from secure detention and correctional facilities. The legal concept of *de minimis*, meaning "the law cares not for small things," is generally applied where small, insignificant or infinitesimal matters are at issue. OJJDP has developed *de minimis* standards for states that have not removed 100 percent of status offenders and nonoffenders from secure detention and correctional facilities. If states that have not achieved 100 percent can demonstrate full compliance with de minimis exceptions pursuant to the OJJDP policy criteria,[103] the state will be determined to be in compliance with DSO. OJJDP has established the following criteria for determining whether a state has demonstrated full compliance with the deinstitutionalization of status offenders requirement.

Criterion A: The extent of noncompliance is insignificant or of slight consequence in terms of the total juvenile population in the state.

In applying criterion A, the following four standards[104] will be used:

- States which have an institutionalization rate less than 5.8 per 100,000 population will be considered to be in full compliance with the *de minimis* exceptions and will not be required to address criteria B and C.

- States whose rate falls between 5.8 and 17.6 per 100,000 population will be eligible for a finding of full compliance with *de minimis* exceptions if they adequately meet criteria B and C.

- States whose rate is above 17.6 but does not exceed 29.4 per 100,000 will be eligible for a finding of full compliance with de minimis exceptions only if they fully satisfy criteria B and C.

- States which have a placement rate in excess of 29.4 per 100,000 population are presumptively ineligible for a finding of full compliance with *de minimis* exceptions because any rate above that level is considered to represent an excessive and significant level of status offenders and nonoffenders held in juvenile detention or correctional facilities.

OJJDP will consider requests for a finding of compliance from such states where the state demonstrates exceptional circumstances which account for the excessive rate. Exceptional circumstances are limited to situations where, but for the exceptional circumstance, the state's institutionalization rate would be within the 29.4 rate established above.

The following will be recognized for consideration as exceptional circumstances:

- Federal wards held under federal statutory authority in a secure state or local detention facility for the sole purpose of effecting a jurisdictional transfer, appearance as a material witness, or for return to their lawful residence or country of citizenship.

- A state has recently enacted changes in state law which have gone into effect and which the state demonstrates can be expected to have a substantial, significant, and positive impact on the state's achieving full compliance with the deinstitutionalization requirement within a reasonable time.

In order to make a determination that a state has demonstrated exceptional circumstances under the first two items above, the state must have developed a separate and specific plan under criterion C, which addresses the problem in a manner that will eliminate the noncompliant instances within a reasonable time.

It is of critical importance that all states seeking a finding of full compliance with de minimis exceptions demonstrate progress toward full compliance annually in order to be eligible for a finding of full compliance with de minimis exceptions.

States may provide additional information that they deem relevant in determining the extent to which the number of noncompliant incidences is insignificant or of slight consequence. Factors such as local practice, available resources, or organizational structure of local government will not be considered relevant by OJJDP in making this determination.

Criterion B: The extent to which the instances of noncompliance were in apparent violation of state law or established executive or judicial policy.

The following information must be provided in response to criterion B and must be sufficient to make a determination as to whether the instances of noncompliance with DSO as reported in the state's monitoring report were in apparent violation of, or departures from, state law or established executive or judicial policy. OJJDP will consider this criterion to be satisfied by those states that demonstrate that all or substantially all of the instances of noncompliance were in apparent violation of, or departures from, state law or established executive or judicial policy. This is because such instances of noncompliance can more readily be eliminated by legal or other enforcement processes. The existence of such law or policy is also an indicator of the commitment of the state to the deinstitutionalization requirement and to achieving and maintaining future 100 percent compliance. Therefore, information should also be included on any newly established law or policy which can reasonably be expected to reduce the state's rate of institutionalization in the future.

- A brief description of the noncompliant incidents must be provided which includes a statement of the circumstances surrounding the instances of noncompliance. (For example: Of 15 status offenders/nonoffenders held in juvenile detention or correctional facilities during the 12-month period for state X, 3 were accused status offenders held in jail in excess of 24 hours, 6 were accused status offenders held in detention facilities in excess of 24 hours, 2 were adjudicated status offenders held in a juvenile correctional facility, 3 were accused status offenders held in excess of 24 hours in a diagnostic evaluation facility, and 1 was an adjudicated status offender placed in a mental health facility pursuant to the court's status offenders jurisdiction.) Do not use actual names of juveniles.

- Describe whether the instances of noncompliance were in apparent violation of state law or established executive or judicial policy. A statement should be made for each circumstance discussed in item 1 above. A copy of the pertinent/applicable law or established policy should be attached. (For example: The three accused status offenders were held in apparent violation of a state law that does not permit the placement of status offenders in jail under any circumstances. Attachment "X" is a copy of this law. The six status offenders held in juvenile detention were placed there pursuant to a disruptive behavior clause in our statute which allows status offenders to be placed in juvenile detention facilities for a period of up to 72 hours if their behavior in a shelter care facility warrants secure placement. Attachment "X" is a copy of this statute. A similar statement must be provided for each circumstance.)

Criterion C: The extent to which an acceptable plan has been developed which is designed to eliminate the noncompliant incidents within a reasonable time, where the instances of noncompliance either (1) indicate a pattern or practice, or (2) appear to be consistent with state law or established executive or judicial policy, or both.

If the state determines that the instances of noncompliance (1) do not indicate a pattern or practice, and (2) are inconsistent with and in apparent violation of state law or established executive or judicial policy, then the state must explain the basis for this determination. In such case no plan would be required as part of the request for a finding of full compliance under this policy.

The following must be addressed as elements of an acceptable plan for the elimination of noncompliant incidents that will result in the modification or enforcement of state law or executive or judicial policy to ensure consistency between the state's practices and the JJDP Act deinstitutionalization requirements.

- If the instances of noncompliance are sanctioned by or consistent with state law or executive or judicial policy, then the plan must detail a strategy to modify the law or policy to prohibit noncompliant placement so that it is consistent with the federal deinstitutionalization requirement.

- If the instances of noncompliance are in apparent violation of state law or established executive or judicial policy, but amount to or constitute a pattern or practice rather than isolated instances of noncompliance, the plan must detail a strategy which will be employed to rapidly identify violations and ensure the prompt enforcement of applicable state law or executive or judicial policy.

- In addition, the plan must be targeted specifically to the agencies, courts, or facilities responsible for the placement of status offenders and nonoffenders in compliance with DSO. It must include a specific strategy to eliminate instances of noncompliance through statutory reform, changes in facility policy and procedure, modification of court policy and practice, or other appropriate means.

If OJJDP makes a finding that a state is in full compliance with de minimis exceptions based, in part, upon the submission of an acceptable plan under criterion C above, the state will be required to include the plan as part of its current or next submitted formula grant plan as appropriate. OJJDP will measure the state's success in implementing the plan by comparison of the data in the next monitoring report indicating the extent to which noncompliant incidences have been eliminated.

Determinations of full compliance status will be made annually by OJJDP following the submission of the annual monitoring report. Any state reporting less than 100 percent compliance in any annual monitoring report would, therefore, be required to follow the above procedures in requesting a finding of full compliance with de minimis exceptions.

7.4 Demonstrating Compliance: Jail Removal

Full compliance is achieved when a state demonstrates that the last submitted monitoring report, covering 12 months of actual data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of jail removal.[105] As with the deinstitutionalization of status offenders requirement, OJJDP has developed *de minimis* standards for states that have not achieved 100 percent removal of juveniles from adult jails and lockups. Full compliance with *de minimis* exceptions is achieved when a state demonstrates that it has met the numerical or substantive de minimis standards below:

Numerical *De Minimis* Standard

To comply with this standard, the state must demonstrate that each of the following two requirements has been met:

- The incidents of noncompliance reported in the state's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the state.[106]

- An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of state law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

Any state whose prior full compliance status is based on having met the numerical de minimis standard must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100 percent) compliance in order to maintain eligibility for a continued finding of full compliance with de minimis exceptions.

Substantive *De Minimis* Standard

To comply with this standard the state must demonstrate that each of the following requirements has been met:

- State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of jail removal.

- All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from the state law, rule, or policy referred to in the preceding item.

- The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances.

- Existing mechanisms for the enforcement of the state law, rule, or policy referred to in the first item of this list are such that the instances of noncompliance are unlikely to recur in the future.

- An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in the preceding item.

Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the annual monitoring report. Any state reporting less than full (100 percent) compliance in its annual monitoring report may request a finding of full compliance with the substantive or numerical de minimis exceptions. The request may be submitted in conjunction with the monitoring report, or as soon thereafter as all information required for a determination is available, or it may be included in the annual state plan and application for the state's Formula Grant award.

7.5 Demonstrating Compliance: Separation

Compliance with Section 223(a)(12) has been achieved when a state can demonstrate that:

- The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of Section 223(a)(12);or

- The instances of noncompliance reported in the last submitted monitoring report do not indicate a pattern or practice but rather constitute isolated instances; and

- Where all instances of noncompliance reported were in violation of or departure from state law, rule, or policy that clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of Section 223(a)(12), existing enforcement mechanisms are such that the instances of noncompliance are unlikely to recur in the future; or

- An acceptable plan has been developed to eliminate the noncompliant incidents.[107]

See “Summary of Standards for Demonstrating Compliance” on page 58.

Section 8: Definitions

Adult inmate. An individual who has reached the age of full criminal responsibility under applicable state law and has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense.[108]

Adult jail. A locked facility, administered by state, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than 1 year.[109]

Adult lockup. A facility that is used by a state, unit of local government, or any law enforcement authority to detain or confine individuals. Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature that does not hold persons after they have been formally charged.[110]

Civil-type juvenile offender. A juvenile offender who has been charged with or adjudicated for an offense that is civil in nature. Examples include noncriminal traffic violations and noncriminal fish and game violations.

Collocated facilities. Collocated facilities are facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds.[111]

Contact (sight and sound). Any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including adult inmate trustees. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders.[112]

Court holding facility. A court holding facility is a secure facility, other than an adult jail or lockup, that is used to temporarily detain persons immediately before or after detention hearings, or other court proceedings. Court holding facilities, where they do not detain individual overnight (i.e. are not residential) and are not used for punitive purposes or other purposes unrelated to a court appearance, are not considered adult jails or lockups for purposes of section 223(a)(14) of the JJDP Act. However, such facilities remain subject to the section 223(a)(13) (42 U.S.C. 5633(a)(14)) separation requirement of the Act.[113]

Criminal-type juvenile offender. A juvenile offender who has been charged with or adjudicated for conduct that would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.[114]

Delayed egress device. A device that precludes the use of exits for a predetermined period of time.

Disproportionate minority contact (DMC). 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 JJDP Act now 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."[115]

Facility. A place, an institution, a building or part thereof, set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies (28 CFR 31.304(c)).[116]

Federal ward. An alien juvenile under federal jurisdiction held in state or local facilities.[117] Such juveniles include undocumented immigrant youth and youth in the custody of the Bureau of Indian Affairs.

Juvenile offender. An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by state law, i.e., a criminal-type offender or a status offender.[118]

Juvenile who is accused of having committed an offense. A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court).[119]

Juvenile who has been adjudicated as having committed an offense. A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.[120]

Lawful custody. The exercise of care, supervision, and control over a juvenile offender or nonoffender pursuant to the provisions of the law or of a judicial order or decree.[121]

Nonoffender. A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes or as an alien juvenile, for reasons other than legally prohibited conduct of the juvenile.[122] These cases are referred to by many names including Children in Need of Assistance (CINA) and Children in Need of Protective Services (CHIPS).

Nonsecure custody. A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility, but not be in a secure detention or confinement status. The November 2, 1988, Federal Register announcement, Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of

Final Policy, states that the following policy criteria, if satisfied, will constitute nonsecure custody of a juvenile in an adult jail or lockup facility:

- The area(s) where the juvenile is held is an unlocked multipurpose area, such as a lobby, office, or interrogation room which is not designated, set aside, or used as a secure detention area or is not part of such an area, or, if a secure area, is used only for processing purposes.

- The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility.

- The use of the area(s) is limited to providing nonsecure custody only long enough for and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court.

- In no event can the area be designed or intended to be used for residential purposes.

- The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in nonsecure custody.

In addition, a juvenile placed in the following situations would be considered in a nonsecure status:

- **If certain criteria are met, a juvenile handcuffed to a nonstationary object.** Handcuffing techniques that do not involve cuffing rails or other stationary objects are considered nonsecure if the five criteria listed above are adhered to.

- **If certain criteria are met, a juvenile being processed through a secure booking area.** Where a secure booking area is all that is available, and continuous visual supervision is provided throughout the booking process, and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with state law and/or judicial rules), the juvenile is not considered to be in a secure detention status. Continued nonsecure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.

- **A juvenile placed in a secure police car for transportation.** The JJDP Act applies to secure detention facilities and secure correctional facilities, so a juvenile placed in a secure police car for transportation would be in a nonsecure status.

- **A juvenile placed in a nonsecure runaway shelter, but prevented from leaving due to staff restricting access to exits.** A facility may be nonsecure if physical restriction of movement or activity is provided solely through facility staff.

Other individual accused of having committed a criminal offense. An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction.[123]

Other individual convicted of a criminal offense. An individual, adult or juvenile, who has been convicted of a criminal offense by a court exercising criminal jurisdiction.[124]

Reasonable cause hearing. In the context of the VCO Exception, the reasonable cause hearing (also referred to as a "probable cause hearing" or "preliminary hearing") is a court proceeding held by a judge to determine whether there is sufficient cause to believe that a juvenile status offender accused of violating a valid court order has violated such an order and to determine the appropriate placement of such juvenile pending disposition of the violation alleged.[125]

Related complex of buildings. Related complex of buildings means 2 or more buildings that share physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer); or the specialized services such as medical care, food service, laundry, maintenance, engineering services, etc.[126]

Residential. Pertains to facilities with the structural and operational capacity to securely detain individuals overnight, and may include sleeping, shower and toilet, and day room areas. [127]

Secure custody. As used to define a detention or correctional facility, this term includes residential facilities that include 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 .[128]

Secure detention facility. A public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility, and is used for the temporary placement of any juvenile who is accused of having committed an offense, any juvenile who has been adjudicated delinquent and is awaiting placement, or of any other individual accused of having committed a criminal offense.[129]

Secure correctional facility. A public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility, and is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense or any other individual convicted of a criminal offense.[130]

Staff secure facility. A residential facility (1) which does not include construction features designed to physically restrict the movements and activities of juveniles who

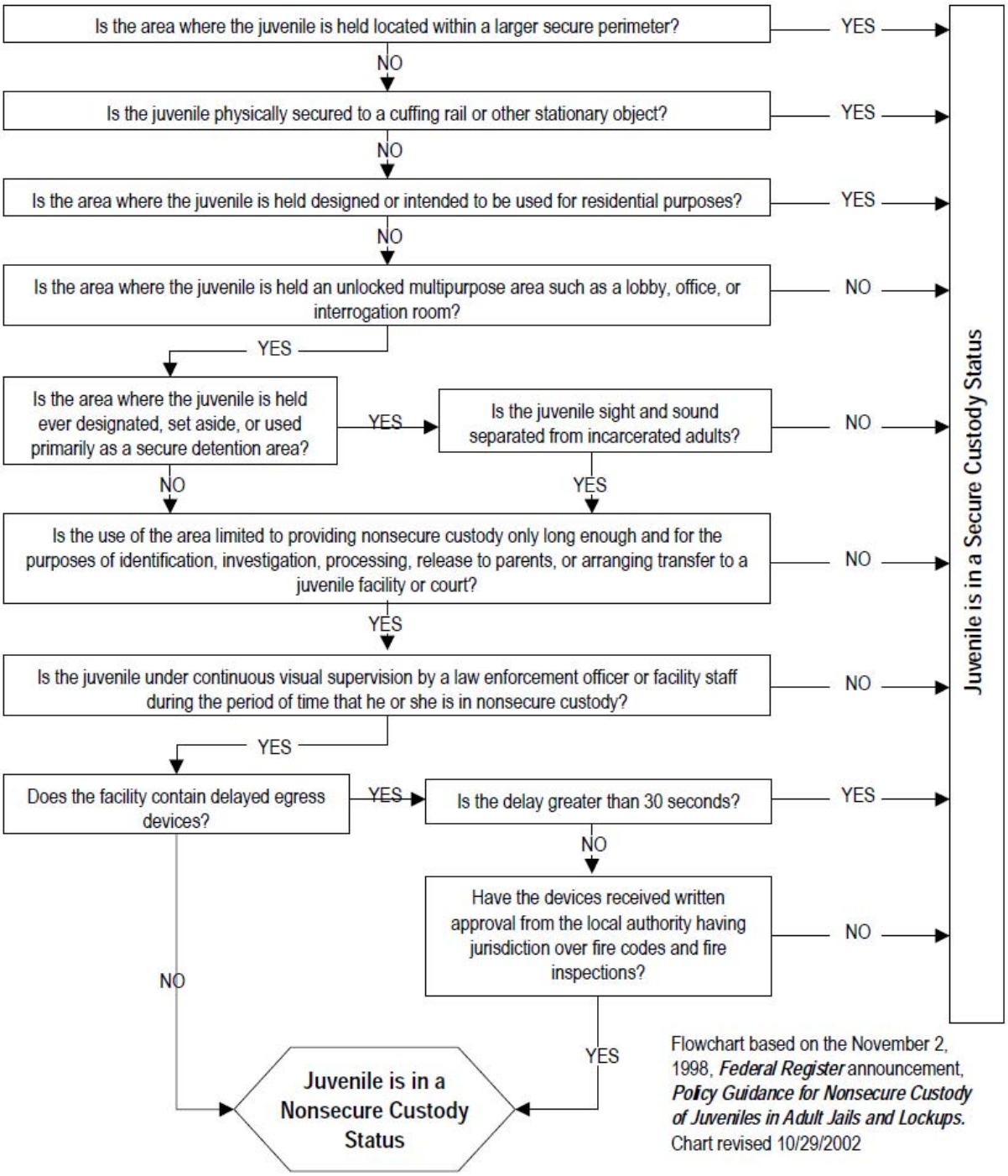
are in custody therein, but any such physical restriction of movement or activity is provided solely through staff; (2) which may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

Status offender. A juvenile who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.[131] The following are examples of status offenses:

- Truancy.
- Violations of curfew.
- Runaway.
- Underage possession and/or consumption of tobacco products.
- Underage alcohol offenses. These offenses are considered status offenses, even though state or local law may consider them delinquent offenses.

Valid court order. A valid court order is a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to the order, and who received, before the issuance of the order, the full due process rights guaranteed to such juvenile by the Constitution of the United States.[132]

Flowchart To Determine if a Juvenile Is in a Secure or Nonsecure Custody Status in an Adult Jail or Lockup



Flowchart based on the November 2, 1998, *Federal Register* announcement, *Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups.* Chart revised 10/29/2002

Summary of JJDP Act: Adult Jails and Lockups	
	Adult Jail and Lockup
Accused juvenile status offender, nonoffender, civil-type juvenile offender, or alien juvenile	Secure holding prohibited.
Adjudicated juvenile status offender	Secure holding prohibited.
Status offender accused of violating a valid court order	Secure holding prohibited.
Status offender adjudicated for violating a valid court order	Secure holding prohibited.
Accused juvenile delinquent	Secure hold limited to up to 6 hours for identification, processing, release to parents, or transfer to a juvenile facility or 6 hours prior to and 6 hours after a court appearance. Juvenile must be sight and sound separated from adults.
Adjudicated juvenile delinquent*	Secure hold limited to up to 6 hours for identification, processing, release to parents, or transfer to a juvenile facility or 6 hours prior to and 6 hours after a court appearance. Juvenile must be sight and sound separated from adults.
Juvenile transferred to criminal court and charged with a misdemeanor	Secure hold limited to 6 hours prior to and 6 hours after a court appearance. Separation is not required.
Juvenile transferred to criminal court and convicted of a misdemeanor	Secure holding prohibited.
Juvenile transferred to criminal court and charged with or convicted of a felony	No restrictions on holding.
Adult accused of or convicted of a crime	No restrictions on holding.

* See "Removal (Rural) Exception" in section 2.4.

Summary of the JJDP Act: Juvenile Detention or Correctional Facilities	
	Secure Juvenile Detention or Juvenile Correctional Facility
Nonoffenders	Secure holding prohibited.
Accused juvenile status offender	Secure hold limited to 24 hours prior to and 24 hours after an initial court appearance (excluding weekends and holidays).
Adjudicated juvenile status offender	Secure holding prohibited.
Status offender accused of violating a valid court order	Juvenile must be interviewed by an appropriate public agency within 24 hours of being placed in secure custody. The court must receive an assessment from the public agency and the juvenile must have a reasonable cause hearing within 48 hours of being placed in secure custody. Time limits exclude weekends and holidays.
Status offender adjudicated for violating a valid court order	No restrictions on holding.
Accused juvenile delinquent	No restrictions on holding.
Adjudicated juvenile delinquent	No restrictions on holding.
Juvenile transferred to criminal court and charged with a misdemeanor	No restrictions on holding.
Juvenile transferred to criminal court and convicted of a misdemeanor	May be held securely until the state's age of majority; must be sight and sound separated from juvenile delinquents within 6 months of reaching the state's age of majority.
Juvenile transferred to criminal court and charged with or convicted of a felony	May be held securely until the state's age of majority; must be sight and sound separated from juvenile delinquents within 6 months of reaching the state's age of majority.
Adult accused of or convicted of a criminal offense	Secure holding prohibited.

Summary of the JJDP Act: Other Facilities					
	Shelter, Group Home, or Other Nonsecure or Staff Secure Facility	**Adult Prison**	**Court Holding Facility (must meet definition)**	**Secure Mental Health Facility**	**Collocated Juvenile Facility**
Accused juvenile status offender or nonoffender	No restrictions on holding.	Secure holding prohibited.	No restrictions if separated from adults.	Status offenders or nonoffenders may not be placed in a secure mental health facility where the court is exercising its juvenile status offender or nonoffender jurisdiction. There are no restrictions on holding any juvenile in a secure mental health facility if the juvenile is held there for the purpose of a mental health civil commitment. The separation requirement does not apply if the juvenile and adults are held in a mental health facility due solely to a mental health civil commitment.	A collocated juvenile facility adhering to the collocated facility criteria qualifies as a separate secure juvenile detention center or correctional facility and has the same holding restrictions as secure juvenile facilities. Absent compliance with the collocated facility criteria, juvenile facilities collocated with adult facilities are considered adult jails or lockups and have the same holding restrictions as adult jails and lockups.
Adjudicated juvenile status offender	No restrictions on holding.	Secure holding prohibited.	No restrictions if separated from adults.		
Status offender accused of violating a valid court order	No restrictions on holding.	Secure holding prohibited.	No restrictions if separated from adults.		
Status offender adjudicated for violating a valid court order	No restrictions on holding.	Secure holding prohibited.	No restrictions if separated from adults.		
Accused juvenile delinquent	No restrictions on holding.	No restrictions if separated from adults.	No restrictions if separated from adults.		
Adjudicated juvenile delinquent	No restrictions on holding.	No restrictions if separated from adults.	No restrictions if separated from adults.		
Juvenile transferred to criminal court and charged with a misdemeanor	No restrictions on holding.	No restrictions on holding.	No restrictions on holding.		
Juvenile transferred to criminal court and convicted of a misdemeanor	No restrictions on holding.	No restrictions on holding.	No restrictions on holding.		
Juvenile transferred to criminal court and charged with or convicted of a felony	No restrictions on holding.	No restrictions on holding.	No restrictions on holding.		
Adult accused of or convicted of a criminal offense	No restrictions on holding.	No restrictions on holding.	No restrictions on holding.		

Summary of Standards for Demonstrating Compliance

Deinstitutionalization of Status Offenders	
Rate per 100,000 juveniles	**Criteria for Compliance**
0.0	The state has demonstrated full compliance.
0.1 to 5.7	The state has demonstrated full compliance with de minimis exceptions.
5.8 to 17.6	The state is eligible for a finding of compliance with de minimis exceptions if it adequately meets two criteria: (a) noncompliant incidents violated state law, and (b) an acceptable plan has been developed that is designed to eliminate the noncompliant incidents.
17.7 to 29.4	The state is eligible for a finding of compliance with de minimis exceptions if it fully satisfies two criteria: (a) noncompliant incidents violated state law, and (b) an acceptable plan has been developed that is designed to eliminate the noncompliant incidents.
29.5 and greater	The state is presumptively ineligible for a finding of full compliance with de minimis exceptions because any rate above this level is considered to represent an excessive and significant level of status offenders and nonoffenders held in juvenile detention or correctional facilities.

Jail Removal	
Rate per 100,000 Juveniles	**Criteria for Compliance**
0.0	The state has demonstrated full compliance.
0.1 to 9.0	The state is eligible for the numerical de minimis exception if the state has developed an acceptable plan to eliminate the noncompliant incidents through the enactment or enforcement of state law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.
9.1 and greater	The State is eligible for the substantive de minimis exception if the state meets five criteria: (a) there are recently enacted changes in state law that are expected to have a significant impact on the state's achieving full compliance; (b) all instances of noncompliance were in violation of state law; (c) the instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances; (d) there are existing mechanisms to effectively enforce state law; and (e) an acceptable plan has been developed to eliminate the noncompliant incidents.

Separation	
Number of Violations	**Criteria for Compliance**
0	The state has demonstrated full compliance.
1 and greater	The state is eligible for a finding of compliance if the instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances and one of the following criteria is satisfied: (a) instances of noncompliance were in violation of state law and existing enforcement mechanisms are such that the instances of noncompliance are unlikely to recur in the future, or (b) an acceptable plan has been developed to eliminate the noncompliant incidents.

Appendix K: Age of Full Criminal Responsibility and Maximum Age of Extended Juvenile Court Jurisdiction—50-State Survey (Prepared by OJJDP Staff) (Last Search Performed on July 27, 2010)

- Yellow highlighting indicates states in which the age of full criminal responsibility and the maximum age of extended juvenile court jurisdiction are the same.
- Orange highlighting indicates states in which the age of full criminal responsibility is under 18.
- Most state statutes do not use the language "age of full criminal responsibility." Instead, they use "upper age of original juvenile court jurisdiction" or a similar term of art.

State	Age of Full Criminal Responsibility	Maximum Age of Extended Juvenile Court Jurisdiction
Alabama	18[1]	20[2]
Alaska	18[3]	18[4]
Arizona	18[5]	20[6]
Arkansas	18[7]	20[8]
California	18[9]	24[10]
Colorado	18[11]	21[12]/*Until full term of court order*[13]
Connecticut	17/18[14]	20[15]
Delaware	18[16]	20[17]

[1] Ala. Code 1975 §§ 12-15-102(3), 12-15-114 (2008).
[2] Ala. Code 1975 §§§ 12-15-102(3), 12-15-114, 12-15-117 (2008).
[3] A.S. § 47.12.020(a) (2005).
[4] A.S. § 47.12.160(c) (2005) (though in special circumstances, an extension past the 19th birthday is possible: "the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it").
[5] A.R.S. § 8-202 (2001).
[6] A.R.S. § 8-341(n) (2009).
[7] A.C.A. § 9-27-306(a)(1) (2009).
[8] A.C.A. § 9-27-306(a)(2) (2009).
[9] Cal. Welf. & Inst. Code § 602(a) (2001).
[10] Cal. Welf. & Inst. Code § 607 (1994).
[11] C.R.S.A. §§ 19-1-103(18), (68) (2008) (definition of juvenile); C.R.S.A. § 19-2-104 (2004) (jurisdiction).
[12] C.R.S.A. § 19-2-601(8)(b) (2008).
[13] C.R.S.A. § 19-2-601 (2008).
[14] S.B. 1196 (2007) raised the age of full criminal responsibility incrementally. On July 1, 2010, the age of full criminal responsibility will be 17; on July 1, 2012, the age of full criminal responsibility will be 18. C.G.S.A.
§ 46(b)-120(1) (2010).
[15] C.G.S.A. § 46(b)-141(a) (2003) (allows for up to 4 years of extended jurisdiction, which, when the age of full criminal responsibility was 16, meant until the youth's 21st birthday). S.B. 1196 appears to be silent on whether
§ 46(b)-141(a) applies to the new age of full criminal responsibility; if it does, then jurisdiction in Connecticut would end when the youth turned 23.
[16] 1 Del.C. § 701 (1972); 10 Del. C. § 921 (2009); 10 Del. C. § 1002.
[17] 1 Del.C. §§ 302, 701; 10 Del.C. § 1009 (2008); 31 Del.C. §§ 5101, 5106-5108 (1996).

District of Columbia	18[18]	20[19]
Florida	18[20]	21[21]
Georgia	17[22]	20[23]
Hawaii	18[24]	*Until full term of court order*[25]
Idaho	18[26]	20[27]
Illinois	17[28]	20[29]
Indiana	18[30]	20[31]
Iowa	18[32]	18[33]
Kansas	18[34]	22[35]
Kentucky	18[36]	18[37]
Louisiana	17[38]	20[39]
Maine	18[40]	20[41]
Maryland	18[42]	20[43]
Massachusetts	17[44]	20[45]
Michigan	17[46]	20[47]
Minnesota	18[48]	20[49]

[18] D.C. ST. § 16-2301 (2008).
[19] D.C. ST. § 2303 (1997).
[20] F.S.A. § 985.03(6) (2008); F.S.A. § 985.0301(1) (2006).
[21] F.S.A. § 985.0301(5)(d) (2006).
[22] Ga. Code Ann. § 15-11-2(2) (2008).
[23] Ga. Code Ann. § 15-11-2(2) (2008).
[24] H.R.S. § 571-11(1) (2009).
[25] H.R.S. § 571-13 (1998).
[26] I.C. § 20-502(11) (2000); I.C. § 20-505 (2005).
[27] I.C. § 20-507 (1995).
[28] 705 I.L.C.S. § 405/5-120 (2010).
[29] 705 I.L.C.S. § 405/5-755 (1999).
[30] I.C. § 31-30-1-1 (2003); I.C. §§ 31-37-1-1, 31-37-2-1 (1997).
[31] I.C. 31-30-2-1(a)(1) (2007).
[32] I.C.A. § 232.2(5) (2009) (definition of child); I.C.A. § 232.8 (2004).
[33] I.C.A. § 232.53 (2009).
[34] K.S.A. § 38-2302(i) (2008); K.S.A. §§ 38-2304(a)-(c) (2008).
[35] K.S.A. § 38-2304(e) (2008).
[36] K.R.S. § 600-020(8) (2008); K.R.S. § 610-010 (2008).
[37] K.R.S. § 610-010(14) (2008).
[38] L.S.A.-Ch.C. Art. § 303 (2001); L.S.A.-Ch.C. Art. §§ 804(1), (3) (2005).
[39] L.S.A.-Ch.C. Art. § 804(1) (2005); L.S.A.-Ch.C. Art. § 897.1(A) (2004); L.S.A.-Ch.C. Art. § 898 (2003); L.S.A.-Ch.C. Art. § 900 (2003);
[40] 15 M.R.S.A. § 3003(14) (2005); 15 M.R.S.A. § 3101(2) (2007).
[41] 15 M.R.S.A. § 3316(2)(A) (2003).
[42] MD Code, Courts and Judicial Proceedings § 3-801(e) (2009); MD Code, Courts and Judicial Proceedings, § 3-8A-03 (2009); MD Code, Courts and Judicial Proceedings, §§ 3-8A-07(b)-(c) (2002).
[43] MD Code, Courts and Judicial Proceedings, § 3-8A-07(a) (2002).
[44] M.G.L.A. 119 § 21 (2008) (definition of child); M.G.L.A. 119 § 58 (1998).
[45] M.G.L.A. 119 § 58(c) (1998); M.G.L.A. 119 § 72(b) (1998); M.G.L.A. 120 § 16 (1996).
[46] MI ST. § 712A.2(a) (2002).
[47] MI ST. § 712A.2a (1999).
[48] M.S.A. § 260B.101(1) (1999).
[49] M.S.A. § 260B.193(5)(b) (2004).

Mississippi	18[50]	19[51]
Missouri	17[52]	20[53]
Montana	18[54]	24[55]
Nebraska	18*[56]	18[57]
Nevada	18[58]	20[59]
New Hampshire	17[60]	20[61]
New Jersey	18[62]	*Until full term of court order*[63]
New Mexico	18[64]	20[65]
New York	16[66]	20[67]
North Carolina	16[68]	20[69]
North Dakota	18[70]	19[71]
Ohio	18[72]	20[73]
Oklahoma	18[74]	18[75]
Oregon	18[76]	24[77]

[50] Miss. Code § 43-21-105(d) (2005) (definition of child); Miss. Code § 43-21-151(1) (1996) (jurisdiction over children).
[51] Miss. Code § 43-21-151(2) (1996).
[52] V.A.M.S. § 211.031 (2005).
[53] V.A.M.S. § 211.041 (2008).
[54] M.C.A. § 41-5-203(1) (2001).
[55] M.C.A. § 41-5-205(3) (2001).
[56] Neb.Rev.St. § 43-247 (2008) (juvenile court has exclusive original jurisdiction over children under age 16 charged with misdemeanors; and concurrent original jurisdiction with the district and county court over children ages 16 and 17 charged with misdemeanors; and concurrent original jurisdiction with the district court over children ages 16 and 17 charged with felonies).
[57] Neb.Rev.St. § 43-245(1) (2009) (defining age of majority); Neb.Rev.St. § 43-289 (1996) (defining termination of jurisdiction).
[58] N.R.S. § 62B.310 (2003); N.R.S. § 62B.330 (2009); N.R.S. § 62B.370(1) (2009).
[59] N.R.S. § 62B.410(2) (2004).
[60] N.H. Rev. Stat. § 169-B:4 (2006).
[61] N.H. Rev. Stat. § 169-B:4 (2006).
[62] N.J.S.A. § 2A:4A-22(a) (1995) (definition of juvenile); N.J.S.A. § 2A:4A-24 (1983) (jurisdiction).
[63] N.J.S.A. § 2A:4A-43(f) (2006).
[64] N.M.S.A. 1978 § 32A-1-4(B) (2009) (definition of child); N.M.S.A. 1978 § 32A-1-8(A) (2009) (jurisdiction).
[65] N.M.S.A. 1978 § 32A-2-19(B) (2009); N.M.S.A. 1978 § 32A-2-23 (2009).
[66] McKinney's Family Court Act § 301.2(1) (2010) (definition of juvenile delinquent); McKinney's Family Court Act § 302.1 (1983) (jurisdiction).
[67] McKinney's Family Court Act § 355.3(6) (2000).
[68] N.C.G.S.A. § 7B-1501(7) (2009) (definition of delinquent juvenile); N.C.G.S.A. § 7B-1601 (2001) (jurisdiction); N.C.G.S.A. § 7B-1604 (1999) (limits on jurisdiction).
[69] N.C.G.S.A. § 7B-2513(a) (2003).
[70] N.D.C.C. § 27-20-02(4) (2009) (definition of child); N.D.C.C. § 27-20-3 (2009) (jurisdiction)
[71] N.D.C.C. § 27-20-36(6) (2007).
[72] R.C. § 2152.02(C) (2000).
[73] R.C. § 2152.02(C)(6) (2000).
[74] 10A Okl.St.Ann. § 2-2-102(B) (2009).
[75] 10A Okl.St.Ann. § 2-2-102(B) (2009).
[76] O.R.S. § 419C.005(1) (2005).
[77] O.R.S. § 419C.005(4)(d) (2005).

Pennsylvania	18[78]	20[79]
Rhode Island	18[80]	20[81]
South Carolina	17[82]	20[83]
South Dakota	18[84]	20[85]
Tennessee	18[86]	18[87]
Texas	17[88]	20[89]
Utah	18[90]	20[91]
Vermont	18[92]	22[93]
Virginia	18[94]	20[95]
Washington	18[96]	20[97]
West Virginia	18[98]	20[99]
Wisconsin	17[100]	24[101]
Wyoming	18[102]	20[103]

[78] 42 Pa.C.S.A. § 6302 (2008).
[79] 42 Pa.C.S.A. § 6302 (2008).
[80] Gen. Laws. 1956 § 14-1-5(1) (1999).
[81] Gen. Laws. 1956 § 14-1-6(a) (2008).
[82] Code 1976 § 63-19-20(1) (2008); Code 1976 § 63-19-1440(A) (2008).
[83] Code 1976 § 63-19-1440(B) (2008).
[84] S.D.C.L. § 26-7A-1(6) (2003) (definition of child); S.D.C.L. § 26-8C-2 (2004) (definition of delinquent child).
[85] S.D.C.L. § 26-7A-1 (2003).
[86] T.C.A. § 31-1-102(4) (2009) (definition of child); T.C.A. § 31-1-103 (2009) (jurisdiction).
[87] T.C.A. § 31-1-102(4)(B) (2009).
[88] T.C.A. Family Code § 51.02(2) (2009); T.C.A. Family Code § 51.04(a) (2001) (jurisdiction).
[89] It appears that TYC may retain jurisdiction over youths until age 21, but these youths must be sight/sound separated from younger children. "A ward of the Texas Youth Commission between the ages of 18 and 21 who has been arrested for, charged with, or convicted of any crime may under no circumstances be housed in the same compartment of a facility as, or permitted regular contact with, any "child" as defined in section 51.02 of the Family Code." Op.Atty.Gen.1991, No. DM-38.
[90] U.C.A. 1953 § 78A-6-103(1)(a) (2009).
[91] U.C.A. 1953 § 78A-6-103(1)(a) (2009); U.C.A. 1953 § 78A-6-118(1) (2008).
[92] 33 V.S.A. § 5103 (2009).
[93] 33 V.S.A. § 5104 (2007).
[94] Va. Code Ann. § 16.1-228 (2008) (definition of child and delinquent child).
[95] Va. Code Ann. § 16.1-242 (1992).
[96] R.C.W.A. § 13.04.030 (2009).
[97] R.C.W.A. § 13.40.300 (2005).
[98] W. Va. Code, § 49-5-1(b) (1998) (definition of child); W. Va. Code, § 49-5-2(b) (2007).
[99] W. Va. Code, § 49-5-2(f) (2007).
[100] W.S.A. § 938.02(10m) (2009) (definition of juvenile); W.S.A. § 938.12 (1995) (jurisdiction).
[101] W.S.A. § 938.355(4)(b) (2009).
[102] W.S.1977 § 14-1-101(a) (2009) (age of majority); W.S.1977 § 14-6-201(a)(iii) (2008) (definition of child); W.S.1977 § 14-6-203 (2009) (jurisdiction).
[103] W.S.1977 § 14-6-231(c)(ii) (1997); W.S.1977 § 14-6-247(d) (2009).

[1] Sometimes referred to as the "core protections," this manual will use the term "core requirements" to emphasize that these protections, designed to keep juveniles safe from harm, are requirements of participation in the JJDP Act.
[2] Since its initial passage in 1974, the Juvenile Justice and Delinquency Prevention Act (Pub.L. 93-415, Title I, § 101, Sept. 7, 1974, 88 Stat. 1109) has been amended four times: 1980 (Pub.L. 96-509, § 3, Dec. 8, 1980, 94 Stat. 2750); 1984 (Pub.L. 98-473, Title II, § 611, Oct. 12, 1984, 98 Stat. 2107); 1992 (Pub.L. 102-586, § 1(a), Nov. 4, 1992, 106 Stat. 4982); and 2002 (Pub.L. 107-273, Div. C, Title II, § 12202, Nov. 2, 2002, 116 Stat. 1869).
[3] Formula Grants and the Title V Community Prevention Grants are the grants that are affected by compliance with the core requirements.
[4] The Senate Report that accompanied the 1974 JJDP Act provided additional support for the importance of the DSO to the legislation's drafters: "It is well documented that youths whose behavior is non criminal—although certainly problematic and troublesome—have inordinately preoccupied the attention and resources of the juvenile justice system. Nearly 40 percent (one-half million per year) of the children brought to the attention of the juvenile justice system have committed no criminal act, in adult terms, and are involved simply because they are juveniles. These juveniles [*sic*] status offenders generally are inappropriate clients for the formal police courts and corrections process of the juvenile justice system. These children and youth should be channeled to those agencies and professions which are mandated and in fact purport to deal with the substantive human and social issues involved in these areas." S. Rep. No. 93-1011, at 5287-88 (1974).
[5] 42 U.S.C. § 5633(a)(11) (2002).
[6] The juvenile court was founded at the turn of the twentieth century, based on a growing understanding that children had abilities and needs distinct from those of adults, particularly in the context of the justice system. As one of the founders of the juvenile court, Judge Julian Mack, wrote, "The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the courtroom are out of place in such hearings. The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work." Julian Mack, The Juvenile Court, 23 HARV. L. REV. 104, 120 (1909).
These principles were strongly reiterated by the Supreme Court in 1967 in its landmark juvenile justice decision, In re Gault, in which the Court stated, "The Juvenile Court movement began in this country at the end of the last century… The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was 'guilty' or 'innocent,' but 'What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.'…The child was to be 'treated' and 'rehabilitated.'" *In re Gault*, 387 U.S. 1, 14-16 (1967).
[7] Dale Parent et al. , Conditions of Confinement: Juvenile Detention and Corrections Facilities Research Summary, Office of Juvenile Justice and Delinquency Prevention (1994) and Martin Forst, Jeffrey Fagan, and T. Scott Vivona, "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy, "Juvenile & Family Court Journal:40(1)(l989).
[8] Michael G. Flaherty, An Assessment of the National Incidence of Juvenile Suicide in Adult Jails, Lockups, and Juvenile Detention Centers, The University of Illinois, Urbana- Champaign (1980).
[9] 42 U.S.C. § 5633(a)(13) (2002).
[10] 42 U.S.C. § 5633(a)(13)(A) (2002).
[11] 28 C.F.R. § 31.304(m) (1996).
[12] 42 U.S.C. § 5603(22) (2002); 28 C.F.R. § 31.304(n) (1996).
[13] 42 U.S.C. § 5603(28) (2002).
[14] 42 U.S.C. § 5633(a)(11) (2002); 28 C.F.R. § 31.304(h) (1996). Although the JJDP Act and the Code of Federal Regulations use the term "alien" juveniles, legal linguistic trends are moving away from the use of this term: in October 2009, the majority in the United States Supreme Court began to refer to these populations as "undocumented immigrants." *Mohawk Industries, Inc. v. Carpenter*, __ U.S. __ (2009) [slip opinion 2].

[15] 42 U.S.C. § 5603(29) (2002).
[16] "Final Revision of the Existing Formula Grants Regulation: Final Rule," 61 Federal Register 238 (10 December 1996), p. 65132 ("A residential area is an area used to confine individuals overnight, and may include sleeping, shower and toilet, and day rooms").
[17] 28 C.F.R. § 31.304(h) (1996).
[18] 28 C.F.R. § 31.304(b) (1996).
[19] 28 C.F.R. § 31.303(d)(1)(i) (1996).
[20] This is the maximum delay allowed by the National Fire Protection Association, as published in the Life Safety Code Handbook. It should be noted that for these devices to be used, the Life Safety Code Handbook dictates that other requirements must be met, such as the existence of an "approved supervised automatic fire detection system or approved supervised automatic sprinkler system."
[21] "Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups: Notice of Final Policy," 53 Federal Register 212 (2 November 1988), p. 44366 ("Where a secure booking area is all that is available, and continuous visual supervision is provided throughout the booking process, and the juvenile only remains in the booking area long enough to be photographed and fingerprinted (consistent with state law and/or judicial rules), the juvenile will not be considered in a secure detention status. Continued nonsecure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area").
[22] "Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups: Notice of Final Policy," 53 Federal Register 212 (2 November 1988), p. 44367 (see appendix E).
[23] An unlocked multipurpose area need not be considered part of a secure detention area if, while the juvenile is in the area, sight and sound separation from adult offenders is maintained at all times.
[24] "Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups: Notice of Final Policy," 53 Federal Register 212 (2 November 1988), p. 44367 ("The following policy criteria, if satisfied, will constitute nonsecure custody of a juvenile in a building that houses an adult jail or lockup facility: (1) The area(s) where the juvenile is held is an unlocked multi-purpose area, such as a lobby, office, or interrogation room which is not designated, set aside or used as a secure detention area or is not a part of such an area, or, if a secure area, is used only for processing purposes").
[25] *Id.* ("the juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in nonsecure custody"); 28 CFR § 31.303(f)(4)(v) (1996) ("OJJDP strongly recommends that jails and lockups that incarcerate juveniles be required to provide youth…continuous visual supervision of juveniles incarcerated pursuant to this exception").
[26] 42 U.S.C. §§ 5633(a)(11)(B), (a)(13) (2002); 28 C.F.R. § 31.304(f) (1996).
[27] 28 C.F.R. §§ 31.303(e)(2) (1996) ("This requirement excepts only those alleged or adjudicated juvenile delinquents placed in a jail or a lockup for up to six hours from the time they enter a secure custody status or immediately before or after a court appearance.")
[28] 42 U.S.C. §§ 5633(a)(11)(B), (a)(13) (2002); 28 C.F.R. § 31.304(f) (1996).
[29] Although cited in regulations as the "removal exception," this provision is more commonly referred to as the "rural exception" and for the purposes of this manual will continue to be referred to as the rural exception.
[30] 28 CFR 31.303(f)(4)(i)(v) (1996).
[31] 42 U.S.C. § 5633(a)(12).
[32] 28 C.F.R. § 31.303(d)(1)(i) (1996) requires that each State "describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term contact includes any physical or sustained sight or sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees…Separation must be accomplished architecturally or through policies and procedures in all secure areas of the facility which include... such areas as admissions, sleeping, and shower and toilet areas."
[33] 28 C.F.R. § 31.303(d)(1)(v) (1996) ("This neither prohibits nor restricts the waiver or transfer of a juvenile to criminal court for prosecution, in accordance with State law, for a criminal felony violation, nor the detention or confinement of a waived or transferred criminal felony violator in an adult facility").
[34] Also see, 28 C.F.R. § 31.303(f)(1)(i) and (f)(5).
[35] 28 C.F.R. § 31.303(c)(3) (1996).
[36] 42 U.S.C. § 5633(a)(11) (2002); 28 C.F.R. § 31.304(i) (1996). Although the JJDP Act and the Code of Federal Regulations use the term "alien" juveniles, legal linguistic trends are moving away from the use of this term: in October 2009, the majority in the United States Supreme Court began to refer to these populations as "undocumented immigrants." *Mohawk Industries, Inc. v. Carpenter*, __ U.S. __ (2009) [slip opinion 2].

[37] 28 C.F.R. § 31.304(b) (1996).
[38] 28 C.F.R. § 31.303(d)(1)(i) (1996).
[39] 42 U.S.C. § 5603(12) (2002).
[40] 42 U.S.C. § 5603(13) (2002).
[41] This is the maximum delay allowed by the National Fire Protection Association, as published in the Life Safety Code Handbook. It should be noted that for these devices to be used, the Life Safety Code Handbook dictates that other requirements must be met, such as the existence of an "approved supervised automatic fire detection system or approved supervised automatic sprinkler system."
[42] 42 U.S.C. § 5633(a)(12) (2002); 28 C.F.R. § 31.304(i) (1996).
[43] 42 U.S.C. § 5633(a)(11) (2002) ("Juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult [status offenders]…shall not be placed in secure detention facilities or secure correctional facilities; and juveniles—(i) who are not charged with any offense; and (ii) who are—(I) aliens; or (II) alleged to be dependent, neglected, or abused; shall not be placed in secure detention facilities or secure correctional facilities").
[44] The 48-hour rule is defined in 42 U.S.C. § 5633(a)(13) (2002) ("provide that no juvenile shall be detained or confined in any jail or lockup for adults except… juveniles who are accused of nonstatus offenses, who are awaiting an initial court appearance that will occur within 48 hours after being taken into custody (*excluding Saturdays, Sundays, and legal holidays*)") [emphasis added].
[45] Because state and local governments do not have jurisdiction over these juveniles, OJJDP will exclude these violations if their presence creates a noncompliance rate in excess of 29. 4 per 100,000 juvenile population.
[46] 42 U.S.C. § 5603(16) (2002); 28 C.F.R. § 31.303(f)(3)(v)(A-H) (1996).
[47] 42 U.S.C. § 5603(28) (2002).
[48] 42 U.S.C. § 5603(29) (2002).
[49] 28 C.F.R. § 31.303(d)(1)(i) (1996).
[50] 42 U.S.C. § 5603(26) (2002).
[51] Also see, 28 C.F.R. § 31.303(f)(1)(i) and (f)(5).
[52] See section 2 for exceptions.
[53] 42 U.S.C. § 5603(28) (2002).
[54] 42 U.S.C. § 5603(29) (2002).
[55] 28 C.F.R. § 31.303(e)(3)(iii) (1996) ("Facilities approved on or after the effective date of this regulation shall be reviewed against the regulatory criteria set forth herein").
[56] "Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups: Notice of Final Policy," 53 Federal Register 212 (2 November 1988), p. 44366.
[57] Prisons are generally longer-term facilities owned by a state or by the Federal Government. Prisons typically hold persons convicted of felonies or with sentences of more than a year; however, sentence length may vary by state. Six states (Connecticut, Rhode Island, Vermont, Delaware, Alaska, and Hawaii) have an integrated correctional system that combines jails and prisons. The term "adult prison" thus also includes any institution used for the postconviction confinement of adult criminal offenders, including work camps and secure facilities located in the community. Bureau of Justice Statistics, "Terms & Definitions: Corrections," Office of Justice Programs, available at: http://bjs.ojp.usdoj.gov/index.cfm?ty=tdtp&tid=1.
[58] 42 U.S.C. § 5633(a)(14) (2002) (the state plan shall "provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraphs (11), (12), and (13) are met").
[59] OJJDP's Formula Grants program provides an annual grant which states may utilize to create, implement, and sustain an effective system for compliance with the core requirements of the JJDP Act.
[60] For more information on what constitutes an adequate system for compliance monitoring, see 28 C.F.R. § 31 *et seq*. (1996).
[61] OJJDP M 7140.7A(1)(2), "OJJDP Guidance Manual, Audit of Compliance Monitoring Systems," August 21, 2000 ("Each grantee must have a written plan providing for an adequate system of monitoring secure and nonsecure facilities to ensure that the requirements of the JJDP Act and the OJJDP Formula Grants Regulation (28 C.F.R. Part 31) are being complied with").
[62] 28 C.F.R. § 31.101 ("The Chief Executive of each State which chooses to apply for a formula grant shall establish or designate a State agency as the sole agency for supervising the preparation and administration of the plan"); OJJDP M 7140.7A(1)(4), "OJJDP Guidance Manual, Audit of Compliance Monitoring Systems," August 21, 2000 ("The agency(s) responsible for monitoring should have legal authority to monitor all facilities in which juveniles

might be placed under court authority. The authority should be sufficiently broad to permit the monitoring agency(s) to require each facility that could be classified").

[63] OJJDP M 7140.7A(2)(18)(d), "OJJDP Guidance Manual, Audit of Compliance Monitoring Systems," August 21, 2000 ("there must be a timetable for carrying out all compliance monitoring tasks.").

[64] 28 C.F.R. § 31.303(f)(1)(iii) (1996).

[65] 28 C.F.R. §§ 31.303(f)(1)(ii)-(iii) (1996).

[66] OJJDP M 7140.7A(1)(5), "OJJDP Guidance Manual, Audit of Compliance Monitoring Systems," August 21, 2000 ("in classifying facilities and identifying the types of behavior of the juveniles to be counted for monitoring purposes, governmental units need to operate under definitions that are compatible with those found in the Formula Grants Regulation at 28 C.F.R. §31.304. Preferably, compatible definitions will be included in the state code. Where this is not the case, monitoring agencies should adopt and follow the OJJDP definitions for monitoring").

[67] 28 C.F.R. § 31.303(f)(1)(i)(A) (1996).

[68] 28 C.F.R. § 31.303(f)(1)(i)(B) (1996).

[69] 28 C.F.R. § 31.303(f)(1)(i)(C) (1996).

[70] 28 C.F.R. § 31.303(f)(1)(i)(D) (1996); OJJDP M 7140.7A(1)(7), (2)(18)(g), "OJJDP Guidance Manual, Audit of Compliance Monitoring Systems," August 21, 2000.

[71] 59 F.R. 39204, 39206 (1994) ("In order for a unit of general local government to be eligible to apply for Title V funds, such unit, or each unit applying in combination, must be certified by the State Advisory Group as in compliance with Sections 223(a)(12)(A), 223(a)(13), 223(a)(14), and 233(a)(23) of the JJDP Act. If a State is not currently in full compliance with any of the first three of these mandates, i.e. the quantifiable mandates, or is in full compliance with de minimis exceptions, only those units of general local government which are within the de minimis parameters provided in 28 CFR 31.303(f)(6)(i) and (f)(6)(iii)(A), based on the locality's most current census data, may be deemed in compliance with the mandates of Sections 223(a)(12)(A), (13), and (14)").

[72] 28 C.F.R. § 31.303(f)(5)(i)(A) (1996).

[73] 28 C.F.R. § 31.303(f)(5)(i)(B) (1996).

[74] 28 C.F.R. § 31.303(f)(5)(i)(C) (1996).

[75] 28 C.F.R. § 31.303(f)(5)(i)(D) (1996).

[76] 28 C.F.R. § 31.303(f)(5)(i)(E) (1996).

[77] 28 C.F.R. § 31.303(f)(5)(i)(F) (1996).

[78] 28 C.F.R. § 31.303(f)(5)(i)(G) (1996).

[79] 28 C.F.R. § 31.303(f)(5)(iv)(A) (1996).

[80] 28 C.F.R. § 31.303(f)(5)(iv)(B) (1996).

[81] 28 C.F.R. § 31.303(f)(5)(iv)(C) (1996).

[82] 28 C.F.R. § 31.303(f)(5)(iv)(D) (1996).

[83] 28 C.F.R. § 31.303(f)(5)(iv)(E) (1996).

[84] 28 C.F.R. § 31.303(f)(5)(iv)(F) (1996).

[85] 28 C.F.R. § 31.303(f)(5)(iv)(G) (1996).

[86] 28 C.F.R. § 31.303(f)(5)(iv)(H) (1996).

[87] 28 C.F.R. § 31.303(f)(5)(iv)(I) (1996).

[88] 28 C.F.R. § 31.303(f)(5)(iv)(J) (1996).

[89] 28 C.F.R. § 31.303(f)(5)(iv)(K) (1996).

[90] 28 C.F.R. § 31.303(f)(5)(iv)(L) (1996).

[91] 28 C.F.R. § 31.303(f)(5)(iv)(M) (1996).

[92] 28 C.F.R. § 31.303(f)(5)(iii)(A) (1996).

[93] 28 C.F.R. § 31.303(f)(5)(iii)(B) (1996).

[94] 28 C.F.R. § 31.303(f)(5)(iii)(C) (1996).

[95] 28 C.F.R. § 31.303(f)(5)(iii)(D) (1996).

[96] 28 C.F.R. § 31.303(f)(5)(iii)(E) (1996).

[97] 28 C.F.R. § 31.303(f)(5)(iii)(F) (1996).

[98] 28 C.F.R. § 31.303(f)(5)(iii)(G) (1996).

[99] 28 C.F.R. § 31.303(f)(5)(iii)(H) (1996).

[100] States may submit their reports electronically if they are scanned and sent as PDF documents, and only if there is an addition of an anti-fraud signature on both sides.

[101] 28 C.F.R. § 31.303(j) (1996).

[102] All from 46 FR 2566; 28 C.F.R. § 31.303(f)(6)(i) (1996).

[103] Federal Register 46, no. 6 (January 9, 1981):2567–2568 (see appendix C).
[104] To establish these numerical standards, in 1980 OJJDP calculated the average rate of DSO violations in eight states (i.e., two states from each of the four Bureau of Census regions). The eight states selected by OJJDP in 1980 were those having the smallest institutionalization rate per 100,000 population and which also had an adequate system of monitoring for compliance. By applying this procedure and utilizing the information provided in the eight states' most recently submitted monitoring reports, OJJDP determined that the eight states' average annual rate was 17.6 incidences of status offenders and nonoffenders held per 100,000 population under 18. In computing the standard deviation from the mean of 17.6, it was determined that a rate of 5.8 per 100,000 was one standard deviation below the mean and 29.4 was one standard deviation above the mean.
[105] From 28 C.F.R. § 31.303(f)(6)(iii) (1996).
[106] Under an exception to the numerical de minimis standard, when the annual rate for a state exceeds 9 incidents of noncompliance per 100,000 juvenile population, the state will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis standard unless the state has recently enacted changes in state law which have gone into effect and which the state demonstrates can reasonably be expected to have a substantial, significant, and positive impact on the state's achieving full (100 percent) compliance or full compliance with de minimis exceptions by the end of the monitoring period immediately following the monitoring period under consideration.
[107] From 28 C.F.R. § 31.303(f)(6)(ii) (1996).
[108] 42 U.S.C. 5603 § 103(26) (2002).
[109] 28 C.F.R. § 31.304(m) (1996).
[110] 42 U.S.C. § 5603(22) (2002); 28 C.F.R. § 31.304(n) (1996).
[111] 42 U.S.C. § 5603(28) (2002).
[112] 28 C.F.R. § 31.303(d) (1996).
[113] "Policy for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of final policy," 53 Federal Register 212 (2 Nov 1988), pp. 44367-44368.
[114] 28 C.F.R. § 31.304(g) (1996).
[115] 42 U.S.C. § 5633(a)(22) (2002).
[116] 28 C.F.R. § 31.304(c) (1996)
[117] 28 C.F.R. § 31.303(c)(3) (1996).
[118] 28 C.F.R. § 31.304(f) (1996).
[119] 28 C.F.R. § 31.304(d) (1996).
[120] 28 C.F.R. § 31.304(e) (1996).
[121] 28 C.F.R. § 31.304(j) (1996).
[122] 42 U.S.C. § 5633(a)(11) (2002); 28 C.F.R. § 31.304(i) (1996). Although the JJDP Act and the Code of Federal Regulations use the term "alien" juveniles, legal linguistic trends are moving away from the use of this term: in October 2009, the majority in the United States Supreme Court began to refer to these populations as "undocumented immigrants." *Mohawk Industries, Inc. v. Carpenter*, __ U.S. __ (2009) [slip opinion 2].
[123] 28 C.F.R. § 31.304(k) (1996).
[124] 28 C.F.R. § 31.304(l) (1996).
[125] 42 U.S.C. § 5633(a)(23)(C)(ii) (2002).
[126] 42 U.S.C. § 5603(28) (2002).
[127] "Final Revision of the Existing Formula Grants Regulation: Final Rule," 61 Federal Register 238 (10 December 1996), p. 65132 ("A residential area is an area used to confine individuals overnight, and may include sleeping, shower and toilet, and day rooms").
[128] 28 C.F.R. § 31.304(b) (1996).
[129] 42 U.S.C. § 5603(12) (2002).
[130] 42 U.S.C. § 5603(13) (2002).
[131] 42 U.S.C. § 5633(a)(12) (2002); 28 C.F.R. § 31.304(h) (1996).
[132] 42 U.S.C. § 5603(16) (2002).