



**STATE OF VERMONT**  
**YOUTH JUSTICE**  
**COMPLIANCE MONITORING**  
**POLICY AND PROCEDURE MANUAL**

**March 2019**

## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>Policies and Procedures Introduction</b>   | <b>3</b>  |
| <b>Format for Policies and Procedures Title and Number</b>                          | <b>4</b>  |
| <b>1.0 Compliance Monitoring Plan</b>   | <b>5</b>  |
| 1.1 Barriers and Strategies   | 6         |
| 1.2 Compliance Violation Procedures   | 8         |
| 1.3 Description of Required Compliance Monitoring Tasks                             | 11        |
| 1.4 Compliance Monitoring Governing Authority                                       | 17        |
| 1.5 Definitions of Terms  | 18        |
| <b>2.0 Overview of the Compliance Monitoring Task</b>                               | <b>20</b> |
| 2.1 Identification of the Monitoring Universe                                       | 21        |
| 2.2 Classification of the Monitoring Universe                                       | 22        |
| 2.3 Inspection of Facilities  | 26        |
| 2.4 Data Collection and Verification  | 31        |
| 2.4.1 Deinstitutionalization of Status Offenders                                    | 34        |
| 2.4.2 Sight and Sound Separation  | 36        |
| 2.4.3 Removal of Juveniles from Adult Jails and Lockups                             | 37        |
| 2.5 Annual Compliance Monitoring Reporting Period                                   | 41        |
| 2.6 Annual Method of Reporting Compliance with the JJDP Act                         | 42        |
| <b>3.0 Core Requirements and OJJDP Regulations by Type of Facility</b>              | <b>43</b> |
| 3.1 Secure and Non-secure Custody   | 44        |
| 3.2 Transferred and Waived Juveniles.....   | 47        |
| 3.3 Court Holding Facilities  | 48        |
| 3.4 Other Types of Facilities   | 50        |
| <b>5.0 OJJDP Published Rates of Compliance</b>                                      | <b>53</b> |
| <b>7.0 Monitoring Universe</b>  | <b>54</b> |
| Attachment A<br>Include Links to Spreadsheet and Vermont Police Contact Information |           |
| Attachment B Violation Form   | 55        |
| Attachment C Violation Letter Template  | 56        |
| Attachment D-1 Training Requirement and Links                                       | 57        |
| Attachment D-2: Monitoring Authority .....  | 58        |
| Attachment E: Definitions .....   | 59        |
| Attachment F: Juvenile Holding Log .....  | 66        |
| Attachment F-1 Secure Classification Certified.....                                 | 67        |
| Attachment G Facility Checklist .....   | 68        |
| Attachment H No Juveniles Detained Document   | 69        |
| Link to 82 FR 4783  | 70        |
| Attachment J Monitoring timetable.....  | 70        |

## **POLICIES AND PROCEDURES INTRODUCTION**

The manual outlines the purpose of youth justice compliance monitoring. It is to ensure that the Core Protections of the Juvenile Justice and Delinquency Prevention Act of 2002, and State of Vermont policies and procedures are met. The federal JJDP Core Protections that Vermont agrees to adhere to are the Deinstitutionalization of Status Offenders (and nonoffenders), Separation of Incarcerated Adults and Juvenile Offenders, and the Removal of Juveniles from Adult Jails and Lockups.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) mandates that states participating in the JJDP Act have an adequate compliance monitoring system which includes the following to be completed annually:

- Identification of the Monitoring Universe
- Classification of Facilities
- Inspection of Facilities
- Data Collection and Data Verification

This Compliance Monitoring Policy and Procedures Manual describes each of these elements in detail and serves as a reference guide for the Department for Children and Families Compliance Monitor. This manual is a compilation of letter templates, forms, statutory requirements and procedures developed to fulfill requirements of statute, regulation, and guidance of OJJDP, and state of Vermont policy. The CM policies & procedures can be made available to law enforcement, corrections, and residential care facilities so that they can self- monitor, and train staff.



## 1.0

### COMPLIANCE MONITORING PLAN

|                                  |                                |
|----------------------------------|--------------------------------|
| <b>Date Issued:</b>              | <b>March 2013</b>              |
| <b>Review Date:</b>              | <b>Annually in January</b>     |
| <b>Last Review:</b>              | <b>March 2019</b>              |
| <b>Related OJJDP Regulation:</b> | <b>JJDPA, ø34 U.S.C. 11101</b> |

#### **Statement of Purpose:**

Every state is mandated by OJJDP to have a written plan, which provides for an adequate system of monitoring all facilities that could possibly hold youth to ensure that the core protections of the JJDP Act are being complied with.

Monitoring compliance affects eligibility for federal formula grant funding and participation in programs available through OJJDP. Noncompliance with any of the three core requirements addressed within will result in a 20% reduction of the funds awarded to the state. An adequate compliance monitoring system highlights challenge areas in the states juvenile justice system.

#### **Policy:**

The compliance monitoring plan must describe:

1. The barriers faced in implementing and maintaining an adequate compliance monitoring system and the strategies to overcome these barriers.
2. The procedures that have been established for the state to receive, investigate, and respond to reports of compliance violations.
3. A detailed description of compliance monitoring tasks.
4. The monitoring authority that has been granted in order to perform the compliance monitoring tasks.
5. The definition of terms that will be used when performing compliance monitoring.

#### **Procedures:**

The compliance monitoring barriers, the violation procedures, the detailed description of the monitoring tasks and the monitoring authority and the use of federal definitions specifically used in compliance monitoring are addressed in the following policies. The Compliance Monitoring policies and procedures should be reviewed and updated annually by the compliance monitor and the juvenile justice specialist.

## 1.1

### BARRIERS AND STRATEGIES

|                     |                             |
|---------------------|-----------------------------|
| <b>Date Issue</b>   | <b>March 2013</b>           |
| <b>Review Date:</b> | <b>January of each Year</b> |
| <b>Last Review:</b> | <b>March 2019</b>           |

#### **Statement of Purpose:**

A description of barriers that challenge the implementation of the compliance monitoring system as well as strategies to overcome these barriers is necessary to maintain integrity within the compliance monitoring system. Barriers to maintaining compliance for law enforcement jurisdictions or facility types may be identified so that other facilities and jurisdictions can consider methods to assure that youth receive the protections of the JJDP Act.

#### **Policy:**

The following procedures to identify barriers and the plans to overcome these barriers will ensure that the Division maintains a monitoring system with integrity that is reviewed and updated annually as needed.

#### **Procedures:**

1. Annually a portion of the agenda of a State Advisory Group (SAG) meeting will be set aside to discuss the current compliance status, the barriers to compliance and a plan to develop and implement state or local strategies to overcome these barriers. This will be recorded in the SAG meeting minutes. Obstacles to compliance and strategies to achieve compliance will be reported to the governor and legislature in the SAG Annual Report and to OJJDP in the annual compliance plan. The DCF Commissioner's Office will work with the JJDP staff in addressing barriers.
2. The compliance monitor, through the JJ Specialist will submit for SAG discussion and action at the designated meeting a report on the:
  - A. Barriers faced in implementing and maintaining a monitoring system and barriers faced in maintaining compliance with the JJDP Act.
  - B. Recommendations for state and local strategies and plans to overcome these barriers.
3. A written plan(s) of action to achieve or maintain JJDP Act compliance may include the following activities:

- A. Pursue state policy or legislation to overcome barriers to monitoring.
- B. Offer and provide training and technical assistance to agencies and facilities requesting it, especially those that have committed violations of the Core Protections of the JJDP Act.
- C. Agreements developed between the DCF and public authorities who have authority to hold youth securely.

**2019 – update to compliance barriers & brief plan to remediate:**

1. VT needs to hire & train a new compliance monitor
2. VT needs to inspect 100% of secure facilities in 2019
3. Need to establish new best practice guidance regarding secure holds of youth and distribute to all public authorities that may hold youth
4. Establish new training guidance for all public authorities that may hold youth re: new OJJDP definitions of “detain and confine”
5. On-site inspections of all court holding will assure that all facility staff understand means to avoid sight & sound contact between youth and adult inmates

## VIOLATION PROCEDURES

**Date Issued:**                    **March 2013**

**Review Date:**                    **January of each Year**

**Last Review:**                    **March 2019**

**Related OJJDP Regulations:**        **none**

**Statement of Purpose:**

After a compliance monitoring system has been established to monitor all of the facilities within the State that may hold juveniles to ensure that the Core Protections of the JJDP Act are being complied with, it is important to then outline the procedures that will be used to collect, receive, investigate, document and respond to reported compliance violations.

The Agency of Human Services has designated the Department for Children and Families the authority to monitor its facilities and contractors. The Department of Public Safety and local law enforcement agencies voluntarily provide information to the Compliance Monitor.

Inspections and/or other tools, which identify incidences of non-compliance or other deficiencies, which may be dangerous to juveniles in secure detention, are only valuable if the compliance monitoring system can take action to correct and/or eliminate the identified problem. Written violation policies and procedures should be made available so all involved parties will know what is expected of them and what action may be taken.

**Policy:**

The DCF is provided authority to monitor and uphold core protections for youth in contact with public authorities who have authority to detain via 33 V.S.A. § 3309; <https://legislature.vermont.gov/statutes/section/33/033/03309>

All classified facilities should have available to them through the compliance monitor, the relevant compliance requirements which are contained in Vermont's Guide for Implementing the Core Protections of the Juvenile Justice and Delinquency Prevention Act. The processes for reporting and collecting violations can take several different forms: through the compliance monitor, the facility itself, the general public, child advocacy groups, attorneys, the Disabilities Rights Counsel, or the agency with oversight authority.

The compliance monitor is responsible for the compliance violation investigation and follows up.

## **Procedures:**

1. The compliance monitor will perform statewide compliance monitoring; a detailed description of this process and tasks is contained in these policies.
2. The compliance monitor will be the primary person to discover, investigate and report compliance violations throughout the state. The Compliance Monitor in concert with the Juvenile Justice specialist will determine any such violations. Violations are mostly found through the review of the Juvenile Holding logs. This review may occur either at the facility during a site visit when the compliance monitor reviews the logs there or when the facility forwards annual holding logs to the compliance office.
3. If and when the Agency of Human Services receives an external report of a possible compliance violation, the compliance monitor will be advised and will investigate the alleged violation.

Independent sources may include but are not limited to:

- The General Public
  - The State Advisory Group
  - Public and private agencies
4. The process used to receive, investigate and respond to compliance violation reports is as follows:
    - A. All alleged reports of compliance violations will be turned over to the compliance monitor. The alleged report may be received through an independent source, at a site visit or from review of the juvenile holding logs.
    - B. If there is an alleged DSO, Jail Removal or Sight and Sound Violation, the compliance monitor will investigate. This will always involve a review of the juvenile's arrest record or incident. This can be done by having the agency where the alleged violation occurred forward the arrest report to the compliance monitor or the juvenile's records can be reviewed at the facility or both. This is done to confirm that the alleged violation actually occurred. In some cases, incorrect information is recorded on the Juvenile Holding log and the entry may only appear to be a violation. After further investigation, it may be revealed that the times or detaining charge(s) were recorded incorrectly. Once confirmed, all violations will be brought to the attention of the facility administrator or contact person to clarify the violations and corrective action that needs to be taken in order to prevent future violations.
    - C. The compliance monitor will complete a Violation Letter on DCF letterhead describing the violation. It will be mailed to the facility administrator or contact person. A copy of the violation Letter is placed in the individual facility file.
    - D. When violation letters are sent to facilities, if fitting, the facility head is asked to make change to policy or practice, and to assure that all facility staff are trained to follow that revised practice. The compliance monitor may offer examples of policy from other facilities that are following the standard. The facility head is asked to confirm the change(s) made and the effective date of change with the compliance monitor.
    - E. The compliance monitor will inform the JJ Specialist of all violations, discuss

the corrective action plan, and cc the violation letter and subsequent correspondence to the Specialist.

F. The compliance monitor may conduct more frequent follow up site visits to facilities where non-compliance or risk is present. Juvenile Holding logs from non-compliant or high-risk facilities may be requested more frequently. The purposes for this are to review the juvenile records and provide technical assistance on the core protections of the JJDP Act.

G. The compliance monitor & or JJ Specialist will provide compliance progress reports to the State Advisory Group annually or more often as needed.

**See Attachment C: Violation Letter (on DCF Letterhead) – Sample**

## 1.3

### DESCRIPTION OF THE REQUIRED OJJDP COMPLIANCE MONITORING TASKS

**Date Issued:** March 2013

**Review Date:** January of each Year

**Last Review:** March 2019

**Statement of Purpose:**

A description of the compliance monitoring tasks and the identification of the agency responsible for completing these tasks is necessary to the monitoring system. The policy contained herein describes a compliance monitoring system. The compliance monitor in Vermont is employed by the Agency of Human Services, Department for Children & Families and is responsible for monitoring facilities and reporting to the Department.

**Policy:**

The compliance monitor and the JJ Specialist will annually review the compliance monitoring tasks that are to be accomplished during the year as outlined in this policy.

**Procedures:**

1. The compliance monitor will schedule a meeting with his/her supervisor annually for purposes of outlining the monitoring tasks for the year.
2. The JJ Specialist may notify the SAG that members or related subcommittee are welcome to attend CM site visit(s).
3. The monitoring tasks include:
  - a. Identification of the Monitoring Universe
  - b. Classification of the Monitoring Universe
  - c. Inspection of Facilities
  - d. Data Collection and Verification
  - e. Progress reports, either verbally or in writing to the JJ Specialist and SAG at the regularly scheduled SAG meetings.
  - f. Complete the OJJDP Annual Compliance Monitoring Report and submit to OJJDP by February 28th each year or other date set by the Office.
  - g. Other duties and responsibilities as required, including training and technical assistance to facilities.

## **Monitoring Timetable**

The monitoring timetable includes the ‘universe’ of all facilities required to be monitored. This document must be reviewed and updated annually with the JJ Specialist.

## **Identification of the Monitoring Universe**

The total Monitoring Universe is defined as all facilities within the State of Vermont, that have authority to hold juveniles securely. There are 111 facilities within the State that require monitoring. It is necessary to update the universe annually. Some communities do not have police departments but may be patrolled by state police, sheriff’s departments, bordering towns or a combination thereof. New police departments developed are found through the Vermont Police Training Academy that keeps an updated list of chiefs and departments. This helps to identify jurisdictions that have closed or consolidated departments.

The monitoring universe also contains residential group homes for youth under the jurisdiction of the juvenile court system. These facilities are inspected per JJDPA legislation and consolidated federal regulations.

## **Classification of the Monitoring Universe**

The classification of the monitoring universe is completed and reviewed annually by the compliance monitor. Facilities are classified as secure or non-secure, residential or nonresidential and public or private. This process is ongoing due to the fact that facilities may upgrade or downgrade the physicality of their buildings and/or build new facilities. Changes in the physical structure of the buildings would either be adding or subtracting secure detention capabilities, which in turn would change the classification from non-secure to secure or vice versa. This is monitored annually through site visits and the law enforcement certification for non-secure classification survey. The survey of non-secure classification is sent to the agency to be completed and returned or completed at site visits for all facilities that are documented to be non-secure from the previous year.

Once the surveys are completed, the information is documented, and the surveys are placed in the respective facility file. If there is any change in the facility’s status, it is noted and the necessary changes to classification are made.

## **Inspection of Facilities**

At least ten percent of all facilities identified in the monitoring universe that may possibly hold juveniles securely are to be inspected annually. All facilities who have the capacity to securely detain youth pursuant to public authority shall be inspected at least once every three years. Adult prisons and jails are spot checked and monitored by the Department of Corrections.

Each facility used by law enforcement, county sheriffs, or state police to securely detain minors shall maintain a lock-up log for all minors securely detained. The log shall contain the identification number, DOB, gender, and race of the youth, the charge, the date and

time locked in secure detention, the date and time released from secure detention, to whom released, and the reason for secure detention. The log shall be kept confidential both by the agency or facility that maintains it, and by the Department that receives copies. To ensure that the requirements of this chapter are met, any secure or non-secure facility whose employees are public authorities with the legal authority to arrest or detain individuals shall provide, upon request and in a timely manner, access to the facility for inspection by the compliance monitor.

In Vermont, site visits are generally conducted during the months of March to November.

Facility inspections confirm the classification (secure or non-secure and determine who is being held there), assess the sight and sound separation levels throughout the facility, and determine if the record keeping system is sufficient to collect the necessary data to determine compliance with the Core Protections of the JJDP Act.

Prior to the inspection of a facility, the site visit is arranged with the contact person at the facility. When arranging the site visit, the authority that the compliance monitor has to inspect the facility should be cited, an explanation of the reason for the site visit, the day, date and time of the site visit and approximately how long the site visit will take.

A minimum of one hour should be allotted for a site visit for each facility. It is best practice when conducting site visits to divide the state up by counties and inspect facilities that are in close proximity to each other within the same county on the same day.

A site visit begins with a tour of the entire facility and questions about any changes since the last inspection. Go through the facility as if you were a juvenile in custody and request to see everywhere a juvenile could possibly be processed and held, in both secure custody (if the facility has secure custody capability) and non-secure custody. Confirm classification by asking if the facility is secure or non-secure. If it is a secure facility, what are the secure detention capabilities? If it is for adults only or juveniles only or adults and juveniles? Is it residential or nonresidential? Is it public or private? At the present time, the only private facilities for juveniles in Vermont are non-secure group homes.

Once classification is confirmed, assess the sight and sound separation levels. Ask how adults and juveniles are kept separate in the secure area(s). Ask for a copy of policies and procedures for the processing of juveniles that are in their custody. If the facility has adult and juvenile cells that are in close proximity to each other, to test the sound separation, it is a good idea to have the person escorting you around the facility to go into an adult cell and you into a juvenile cell, close the doors and see if you can carry on a conversation with each other. Find out how juveniles are processed. Find out where juveniles enter the facility, i.e. sally port, front entrance, side entrance, etc. Find out where the non-secure areas are (if any) and confirm if status offenders (non-delinquents) are held there. Find out how juveniles are monitored while in custody; are camera/video systems used or do personnel supervise youth while they are in custody?

The third task during an inspection at a secure facility is to collect and confirm information on all juveniles held in secure custody. All juveniles that are held in secure custody are required to be recorded on a Juvenile Holding log.

Most facilities that securely detain juveniles use the Juvenile Holding log that is provided by the Compliance Monitor. Information that is required on the lockup log is the juvenile's name or ID, date of birth, sex, race or ethnicity, the detaining offense, date and time in secure detention, date and time released from secure detention, and to whom the juvenile was released to. Most of the facilities that use the Juvenile Holding log form keep it in the booking/processing area in a binder and it is completed at the time of arrest. If the lockup logs have not been forwarded to the compliance monitor already, this is a good time to collect any logs that need collecting. During this time, compare the juvenile holding logs previously received from the facility that are on file to the lockup logs/admission/release records at the facility, to verify their authenticity and accuracy. Any missing information is to be collected at this time as well as correcting any other discrepancies that may exist on the lockup logs. This provides a "check and balance" of the data.

At the completion of the site visit, ask the person who just escorted you around if they have any questions. If they do, do your best to answer them. If you don't know the answer, research it and get back to them with the answer in a timely fashion. Explain the Core Requirements as they relate to their facility and if needed, recommend any changes. Explain what happens if there are any violations and the violation procedure. Ask if they need anything from you and offer any training materials including onsite technical assistance. Also advise them that you will be sending them a memo stating that they comply or not.

After a site visit is completed, it needs to be documented in the Compliance Monitoring Universe Spreadsheet, a tool that provides easy access to frequency of visits and status of violations at each facility.

### **Data Collection and Verification**

The data collected is for all juveniles that are held securely in the State for one year. The reporting cycle runs from October 1<sup>st</sup> through September 30<sup>th</sup>. All facilities that held juveniles securely must report this data to the compliance monitor. These facilities include municipal police stations, sheriff's departments, state police, county jails, local lock-ups, state prisons, court holding facilities and colleges and universities (the University of Vermont is the only college/university that currently has secure detention capabilities).

As stated earlier, this data is obtained through the collection of the juvenile holding logs. Logs are forwarded to the compliance monitor annually. Letters are sent out to facilities to remind them to forward any juvenile holding logs for the specified time period. Lockup logs are also collected throughout the year at site visits. Once the logs are collected, their content is verified for proper detaining offenses and correct secure holding times. If any potential violations are found as a result of information obtained from the lockup logs, it is good practice to exhaust all resources to make sure it is a violation. Contact the facility that has the potential violation and advise them of the situation. Go over the situation with them in detail to make sure all information on the log is correct. Ask for police review of their records to verify or show details in question.

After the information is verified, it is entered into the jail compliance spreadsheet, as is all data that is

obtained via the Juvenile Holding logs. If there is a violation, advise the facility by telephone that they have committed a violation, explain the situation and then advise them formally in writing with a violation letter. CC notification to the JJ Specialist. The violation letter explains which core requirement was violated and why. The letter will contain an offer of technical assistance, training and education to assist in preventing any potential future violations. Corrective action requests are made to assist in preventing future violations.

Facility holding logs are forwarded to the compliance office by mail or e-mail. Facilities that have not securely detained any juveniles throughout the reporting cycle either forward a blank log stating so, send an e-mail advising that no juveniles have been securely detained or a telephone call stating the same. If an agency advises by telephone or voicemail that they did not securely detain any juveniles for the specified time period by that agency, the name of the person and date they called is documented in the CM spreadsheet.

A running tally is kept of all violations committed throughout the reporting cycle. This record should include the initials of the juvenile, the date of the violation, the type of violation and the facility that committed the violation.

The data obtained throughout the reporting cycle, both by lockup logs and site visits, is analyzed to determine the progress toward meeting the core requirements of the JJDP Act. If there are any violations that result from the site visit a Violation Letter is completed and is placed in the agency's folder. An official letter of compliance or noncompliance is sent to every agency within a week after a site visit unless the determination is held up waiting for documentation.

The last quarter of the federal fiscal year is set aside to tie up loose ends and conduct any follow up site visits that have come up as result of data obtained earlier in the reporting cycle. Time is set aside during the last two to three months of the year for administrative tasks including updating policies and procedures, updating the compliance manual, proposing any legislative or policy changes to strengthen or ensure compliance, and planning the site visit schedule for the next reporting cycle. The first two to three months of the new reporting period is reserved for collecting and documenting the data from the previous reporting period as well as completing the annual compliance monitoring report. DMC data is collected and compiled during the last quarter of the federal fiscal year.

### **Monitoring Report Period**

Report period is FFY. During this period, all required data for facilities that report data is collected and documented to determine compliance or progress toward compliance of the core requirements of the JJDP Act.

### **Education**

Education and training on the four core protections of JJDP Act is provided as needed to any agency/facility in the monitoring universe who requests it or that the CM determines would benefit from it.

## **Method of Reporting**

After the data for the current reporting period is collected, reviewed and analyzed, the Annual Compliance Monitoring Report will be completed using the Microsoft Excel template provided by OJJDP. This report should be made available to the JJ Specialist and the SAG at least 4-6 weeks in advance of the date it is due to OJJDP. This report will be submitted to OJJDP by February 28 or per annual guidance each year.

## **Violation Procedures**

When an agency/department commits a violation of the core requirements of the JJDP Act, a memo citing the violation is sent directly to the contact person at the agency (usually the chief of police). The memo requests corrective action and a confirmation and description of that action, or it acknowledges the corrective action that has already been reported to CM. In most cases, this is discussed with the agency contact person and the compliance monitor via telephone or face to face. Any verbal agreements developed at a site visit regarding policy or practice instituted to prevent further violations is put in writing by the compliance monitor and saved to the facility record.



2019 monitoring  
timetable.xlsx

## COMPLIANCE MONITORING AUTHORITY

**Date Issued:** March 2013

**Review Date:** January of each Year

**Last Review:** March 2019

### Statement of Purpose:

The agency responsible for compliance monitoring, the Vermont Agency of Human Service, Department for Children and Families has legal authority to conduct on-site monitoring of all facilities within the State of Vermont that could hold juveniles under public authority. The monitoring authority allows the compliance monitor to require each facility that could be classified as secure to be inspected for purposes of classification, to keep specific juvenile admission and release records and allow the compliance monitor access to these records during the year.

The Children and Family Council for Prevention Programs, created pursuant to Chapter 33 of Title 33 of Vermont Statutes Annotated, serves as Vermont's State Advisory Group pursuant to section 223 of the J)DPA and 28 C.F.R. § 31.302.

Vermont Governor Peter Shumlin designated Vermont's Children and Family Council for Prevention Programs as Vermont's Supervisory Board for purposes of the Juvenile Justice and Delinquency Prevention Act.

An OJJDP compliance audit report from January 2018 found that the State has not adequately designated authority to monitor all facilities covered under the JJDPA. During the 2018 legislative session, the authority to monitor compliance and all aspects of the JJDPA program were clarified and codified here: <https://legislature.vermont.gov/statutes/section/33/033/03309> in 33 V.S.A. § 3309.

### Procedures:

According to OJJDP guidance, effective compliance monitoring and enforcement can only be implemented when the agency's legal responsibility is defined and clearly known to all required parties.

This designation gives the compliance monitor authority to inspect facilities and review their records when a juvenile is held securely. The compliance monitor will at all times abide by the rules of confidentiality of juveniles' names except as may be required to protect the child.

1.5  
**DEFINITIONS OF TERMS**

**Date Issued:** March 2013

**Review Date:** January of each Year

**Last Review:** March 2019

**Related OJJDP Regulations:** JJDP Act; applicable CFR

**Statement of Purpose:**

When classifying facilities and agencies and identifying the types of offenses alleged of the juvenile to be counted for monitoring purposes, the definitions of terms used must be the same as those found in the Formula Grant Regulations.

**Policy:**

The relevant state staff and State Advisory Group will adopt and follow OJJDP definitions for compliance monitoring. These definitions will be used for compliance monitoring and when providing training and technical assistance.

**Procedures:**

1. When identifying and classifying agencies and facilities for the compliance monitoring universe, the following definitions will be used. They are located in the respective section of the JJDPA CFR
  - A. Secure Custody 31.304(b)
  - B. Adult Jail 31.304(m)
  - C. Adult Lockup 31.304(n)
  - D. Facility 31.304
  - E. Juvenile who is accused of having committed an offense 31.304(d)
  
2. The following definitions are located in the JJDP Act:
  - A. Secure detention facility 42 U.S.C. 5603 [103] (12) (A) (B)
  - B. Secure correctional facility 42 U.S.C. 5603 [103] (13) (A) (B)
  - C. Public agency 42 U.S.C. 5603 [103] (11)
  - D. Contact 42 U.S.C. 5603 [103] (25)

E. Adult Inmate 42 U.S.C. 5603 [103] (26)

The definitions from the Consolidated Federal Regulations, the JJDP, and OJJDP definitions are used within this document and compliance monitoring functions.

**See Attachment E** Definitions (pg. 58) this attachment identifies federal definitions and definitions specific to the State of Vermont.

**OVERVIEW OF THE COMPLIANCE  
MONITORING TASKS**

**Date Issued:** March 2013  
**Review Date:** January of each Year  
**Last Review:** March 2019  
**Related OJJDP Regulations:** JJDP Act

**Statement of Purpose:**

The JJDP Act states in section 223(14) that states must provide for an adequate system of monitoring jails, detention facilities, correctional facilities and non-secure facilities to ensure that the core protections of paragraphs (A)(11) DSO; (12) Separation; and (13) Jail Removal are met and for annual reporting of the results for such monitoring to the OJJDP Administrator.

**Policy:**

The major compliance monitoring tasks are as follows and are addressed in the Policies that follow:

1. Identification of the Monitoring Universe
2. Classification of the Monitoring Universe
3. Inspection of facilities
4. Data collection and verification
5. Communication of findings to JJ Specialist and designated department personnel

Reporting and violation issues will also be addressed in these policies:

6. The OJJDP Compliance Monitoring report period
7. The method of reporting
8. Compliance violation issues and the legislative and administrative procedures used to enforce compliance

**Procedures:** To complete the four compliance monitoring tasks and three additional tasks, refer to the policies that follow.

## 2.1

### IDENTIFICATION OF THE MONITORING UNIVERSE

|                                   |                            |
|-----------------------------------|----------------------------|
| <b>Date Issued:</b>               | <b>March 2013</b>          |
| <b>Review Date:</b>               | <b>Annually in January</b> |
| <b>Last Review:</b>               | <b>March 2019</b>          |
| <b>Related OJJDP Regulations:</b> | <b>JJDP Act</b>            |

#### **Statement of Purpose:**

OJJDP requires states participating in the JJDP Act to establish and maintain an adequate monitoring plan and system for purposes of compliance with the Act and for OJJDP Audits. Identification of the monitoring universe, classification of facilities in the monitoring universe, inspection of facilities and data collection and verification are the four compliance monitoring system elements that OJJDP requires be completed annually. This policy addresses the identification of the monitoring universe.

#### **Policy:**

The compliance monitor will maintain a compliance monitoring universe spreadsheet which will list all of the facilities in the state, which might hold juveniles pursuant to public authority. The compliance monitoring universe spreadsheet will be located in the JJDP Compliance Policies and Procedures Manual and will be updated annually at <https://dcf.vermont.gov/sites/dcf/files/FSD/Policies/Compliance-Policy-Procedure.pdf>

The monitoring universe refers to the identification of all facilities which might hold juveniles pursuant to public authority and thus must be classified to determine if they should be included in the monitoring effort. This includes those facilities owned and operated by public or private agencies.

#### **Procedures:**

1. In January of each year the compliance monitor will update the compliance monitoring universe spreadsheet. This list contains all the police departments in the State, names of chiefs of police, mail and email addresses and telephone numbers. This list also contains sheriffs, state police and state prison contact information. A list of all police jurisdictions in the state is kept current by the Vermont Criminal Justice Training Council or Police Academy.
2. The Compliance Monitoring Universe Spreadsheet is updated within the Compliance Policies & Procedures Manual on the DCF public website annually.
3. The identification of the monitoring universe is an ongoing process. During site visits, the

compliance monitor should ask questions during the interview with the agency contact person regarding any proposed new construction or remodeling of the current facility. When speaking with a sheriff's department, the compliance monitor should ask if there are any towns with new police departments or if there are any that are in the planning stages or being proposed. If a new police department is confirmed, it will be added to the monitoring universe, scheduled for a site visit for inspection, classification and data collection and verification.

#### **Attachment A: Monitoring Universe**

Link to Master Agencies List (police departments, sheriffs, state police, Group homes Woodside, department of corrections, prisons)



Universe\_2019  
final.xlsx

## 2.2

### CLASSIFICATION OF THE MONITORING UNIVERSE

|                                   |                             |
|-----------------------------------|-----------------------------|
| <b>Date Issued:</b>               | <b>March 2013</b>           |
| <b>Review Date:</b>               | <b>Annually in January</b>  |
| <b>Last Review:</b>               | <b>March 2019</b>           |
| <b>Related OJJDP Regulations:</b> | <b>JJDP Act; CFR 31.303</b> |

#### **Statement of Purpose:**

OJJDP requires that states participating in the JJDP Act establish and maintain an adequate system of monitoring and plan for compliance with the Act and for OJJDP compliance audits. Identification of the monitoring universe, classification of facilities in the monitoring universe, inspection of facilities and data collection and verification are the four compliance monitoring system elements that OJJDP requires be completed annually. This policy addresses the classification of the monitoring universe.

#### **Policy:**

The compliance monitor will annually classify and/or reclassify all facilities listed in the Monitoring Universe within the Compliance Monitoring Universe spreadsheet.

This is the classification of all facilities to determine which ones should be considered as a secure detention or correctional facility, an adult correctional facility, an adult correctional institution, jail, lockup or other type of secure facility.

The former OJJDP Compliance Monitoring Guidance Manual, page 35, stated: “This is 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 non-secure 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 Compliance Monitor while on-site.”

For purposes of this Policy, and per federal requirements, there will be three categories for classification of each facility:

1. Public or Private (owned by State, local agency or owned by a private nonprofit or for profit agency)

2. secure or non-secure
3. residential or nonresidential

Please refer to the Definitions of Terms policy for definitions of the additional terms which may be needed for classification purposes:

1. Secure
2. Facility
3. Adult jail
4. Adult lockup
5. Secure detention facility
6. Secure correctional facility
7. Private and public agency
8. Temporary holding facility
9. Court holding facility
10. Staff secure facility

For purposes of this policy and for classification purposes, only OJJDP definitions will be used.

**Procedures:**

1. All facilities listed in the compliance monitoring universe must be classified pursuant to the above definitions (secure or non-secure, public or private, residential or nonresidential).
2. Based on the classification and date of last site visit, the list of facilities requiring a site visit during the monitoring year will be generated.
3. The classification of the current facilities may have occurred during the previous monitoring year. This is added to the compliance monitoring universe and scheduled for a site visit as soon as possible. If the compliance monitor becomes aware of a new police department, or an existing facility that has undergone construction or renovation, that facility is added to the compliance monitoring universe and scheduled for a site visit as soon as possible.
4. The classification of facilities is not a one-time occurrence at a specified time during the year. Instead, it is an ongoing process. Classification is verified through site visits as required.

5. When an existing facility is re-classified, it is documented in the individual facility file and in the compliance monitoring universe. The facility is informed in writing of the re-classification and meaning in re: JJDP A regulation and monitoring.
6. The compliance monitor will annually classify county jails; correctional centers, court holding facilities, secure lockups and juvenile detention facilities as public, secure facilities that may be used for the incarceration of juveniles and/or adults. These facilities are subject to periodic site visits and annual data collection and verification.
7. Law Enforcement Certification of Non-secure Classification Surveys will be sent to or completed at site visits to all facilities that are classified as being non-secure. Any changes in classification that result from the data obtained from site visits and the survey will be documented on the master monitoring universe list and on the individual facility folder.

## 2.3

### INSPECTION OF FACILITIES

|                     |                            |
|---------------------|----------------------------|
| <b>Date Issued:</b> | <b>March 2013</b>          |
| <b>Review Date:</b> | <b>Annually in January</b> |
| <b>Last Review:</b> | <b>March 2019</b>          |
| <b>Regulation:</b>  | <b>CFR § 31.303</b>        |

#### **Statement of Purpose:**

Inspection of facilities is required to classify them according to federal regulations and to determine whether or not adequate sight and sound separation exists between juveniles and adult offenders in secure facilities. These inspections are necessary to provide the core protections that are required by the Act and to determine whether or not adequate data are maintained to determine compliance with the three mandated core protections. The inspection process should include a way of reporting compliance with the separation core protection for each secure facility, which holds both juvenile and adult offenders. Reports on each facility's compliance or noncompliance will be made available to the facility as a record of findings of the inspection. Every facility will have the following information kept:

1. Correspondence and forms filed with and from the facility
2. Sight and Sound Separation Checklist
3. Non-secure Certification Form (if applicable)
4. Copy of Violation Letter(s) sent to the facility
5. Facility Floor plan/layout (if available)
6. Copies of Juvenile Holding Logs

When facility files need to be culled, staff will assure that data for at least five years of monitoring be kept available in electronic archives.

Facilities are provided with information to help them adhere to youth protection protocols and state policies.

1. An overview of the JJDP Act and purpose of the core protections.
2. The federal definition of terms used by the compliance monitor
3. An explanation of the core protections and how they relate to the different types of facilities. This should include what constitutes a violation in adult jails and lockups, court

holding facilities and juvenile detention centers.

4. An explanation of secure and non-secure custody and how the core protections relate to both secure and non-secure custody.
5. A sample Juvenile Holding log.
6. The state and local consequences of noncompliance with the JJDP Act.
7. Access to the state CM policies and procedures manual via electronic link.

**Process:**

1. A review of the physical accommodations to determine whether it is a secure or non-secure facility.
2. A walk through or tour of the facility as if the compliance monitor was a juvenile “in custody” to determine the level of sight and sound separation between juveniles and incarcerated adults. At the conclusion of the tour, it is important to ask, “So I have seen every room that I could be held in if I was a juvenile?”
3. A review of the record keeping system to determine whether sufficient data are maintained to determine compliance with Section 223(a)(11), (12), (13) and (22) of the JJDP Act.
4. An exit interview with the facility contact person to discuss site visit findings and concerns, discuss ways to achieve compliance if issues exist, provide any requested DCF materials and answer any other questions or concerns the contact person may have.

The following guidelines will be used to determine which facilities will receive a site visit/inspection:

The requirement per OJJDP regulations is that states should have a statistically sound way of inspecting at least 10% of the facilities annually. Data on all juveniles securely detained must be collected from a minimum of 85% of facilities.

| <u>Type of Facility</u>       | <u>Site Visit / Inspection</u>  |
|-------------------------------|---|
| Adult Correctional Facilities | Classified as secure. In Vermont, they are public, adult only facilities. Only certified, transferred or waived, felony-level (direct file) youth may be detained or sentenced to adult correctional facilities. Statute and policy prohibit the sentencing to this type of facility of any juvenile not filed on as an adult felon. Prior to, or within 3 years of the implementation of the Juvenile Justice Reform Act, Vermont will change statute to prohibit housing youth in adult facilities unless they are convicted of a felony.<br>Site visits/inspections are done at the rate of at least 10% annually and 100% within three years. |

|                                  |  |
|----------------------------------|--|
| Juvenile Correctional Facilities | Classified as secure. In Vermont it is a public, juvenile only facility. VT Statute states that only adjudicated delinquents can be placed in the secure juvenile facility. Those juveniles charged or convicted as adults may also be placed at the juvenile correctional facility according to MOU between the youth and adult probation departments. Inspected annually for DSO and separation. |
| Juvenile Detention Centers       | Classified as secure. In Vermont it is a public, juvenile only facility. Inspected annually for DSO and separation.  |

|  |   |
|--|---|
| Adult jails and Lockups Temporary holding facilities | Classified as secure or non-secure. Public or private. Juveniles and adults. Secure facilities have site visits/inspections at a rate of at least 10% annually and 100% within three years. Non-secure facilities have site visits/inspections at a rate of at least 10% annually and 100% within three years. Non-secure facilities that are not scheduled for an annual site visit will be sent a certification of non-secure custody survey, which is required to be completed and returned. Facilities that do not complete and return the survey will be contacted by the compliance monitor via telephone and the information needed to complete the survey will be obtained by telephone interview and recorded on the survey by the compliance monitor. |
| Group homes Foster homes Shelter cares               | Classified as non-secure. Public or private, for juveniles only. Site visits and inspections are conducted annually by the DCF Residential Program Specialist. CM conducts an annual survey of all facilities with the DCF Residential Licensing Unit Director or designee to assure that security status of facilities has not changed.  |
| Staff secure group homes                             | Classified as non-secure, Site visits occur 10% annually and 100% within three years.   |

|          |   |
|----------|---|
| Airports | Classified as secure or non-secure. Public or private. Juveniles and adults. Currently in Vermont there is one airport that meets the criteria to be included in the monitoring universe; it is a part of the Burlington Police Department. |
|----------|---|

**Procedures:**

1. At least 5 days in advance, the compliance monitor will advise the facility contact person the date and time of the site visit. The compliance monitor will be responsible for maintaining records of when facilities are visited. This will be included with the data obtained for that monitoring year with the annual OJJDP compliance monitoring report.
2. At all site visits a Site Visit Information Sheet will be completed and will be kept in the annual facility site inspection folder. The compliance monitor will determine how records are kept at the facility on juveniles that are held securely and will verify that the records are accurate. OJJDP requires data verification, which is unique to each facility, however the compliance monitor should be able to verify data by reviewing a juveniles' individual arrest record. A review of the records should be conducted to ensure all

facilities keep records consistent with OJJDP rules and regulations and should include at a minimum:

1. Name or ID number
  2. Date of birth/sex/race/ethnicity
  3. Most serious detaining offense
  4. Date and time placed in secure detention
  5. Date and time released from secure detention
  6. Name and relationship of person juvenile was released to
3. At all site visits of facilities that securely detain adults and juveniles, a Facility Checklist will be completed (see attachment) and a copy kept in the facility inspection file. Sight and sound separation questions should be asked at all types of facilities, including those that only hold juveniles. Copies of policies and procedures on how the facility ensures sight and sound separation between adult and juveniles should be obtained and placed in the facility file folder.

Types of questions that should be asked include:

- i.** Where are adult inmates at all times, in all areas when juveniles are in the facility
- ii.** Are adult trustees used in the facility and if so for what purpose
- iii.** Are juveniles supervised at all times
- iv.** What areas are dedicated for juvenile use;
- v.** How is the juvenile brought into the facility and how are they processed through the facility;
- vi.** Is time-phasing used (using the same area for both adults and juveniles just not at the same time);
- vii.** Are policies in place to prohibit contact between adults and juveniles (obtain copies);
- viii.** How are special population needs served (suicidal, intoxication)

The separation levels will be documented on the Sight and Sound Separation Checklist. Document secure and non-secure areas that are used for juveniles. Obtain a copy of the facility's layout or floor plan. If they don't have one available to make a copy of, draw one by hand.

4. The compliance monitor will provide technical assistance to the facilities that are not in compliance with record keeping and/or sight and sound separation requirements. The compliance monitor should tell agencies that they are available to review proposed facility plans prior to construction to ensure that sight and sound separation will be adhered to.

In any case where there is lack of cooperation by an agency in following OJJDP system

requirements, it will be brought to the attention of the JJ Specialist, the SAG, and the DCF administration, as needed for further action.

5. All facilities that are subject to inspections will also be subject to data collection and verification if juveniles are being held securely.

**See Attachment G**

**Site Visit Information**

**See Attachment F-1**

**Law Enforcement Certification of Non-secure  
Classification Form**

## DATA COLLECTION AND VERIFICATION

|                     |                            |
|---------------------|----------------------------|
| <b>Date Issued:</b> | <b>March 2013</b>          |
| <b>Review Date:</b> | <b>Annually in January</b> |
| <b>Last Review:</b> | <b>March 2019</b>          |

### Statement of Purpose:

It is necessary to check each facility's admission and release records to obtain accurate information to determine compliance with sections 223 (11), (12) and (13) of the JJDP Act.

### Policy:

The compliance monitor will be responsible for collecting and verifying data on every juvenile held in those facilities subject to inspections following OJJDP rules and regulations on data collection. Every effort will be made to collect data on juveniles held securely within three months of the close of the monitoring year. The Federal Fiscal year, October 1 through September 30 will be used for each monitoring cycle. The data sets below will be obtained:

#### **Juvenile Detention Centers and Correctional Facilities (Woodside)**

1. Accused status offenders held for a period of time greater than 24 hours exclusive of weekends or holidays, excluding those held as runaways pursuant to the Interstate Compact and those held pursuant to the Youth Handgun Safety Act or a similar state law. (These juveniles are violations of the DSO core requirement).
2. Adjudicated status offenders held for any length of time. (These juveniles are violations of the DSO core requirement).
3. Out-of-state runaways held over the 24-hour reporting exception, excluding those held pursuant to the Interstate Compact. (These juveniles are violations of the DSO core requirement).
4. Federal wards held over the 24-hour reporting exception. (OJJDP excludes them if the allowable rate is exceeded).
5. Nonoffenders held for any length of time. (All nonoffenders held securely are DSO violations).
6. The total number of juvenile offenders held pursuant to the Youth Handgun Safety Act or similar state law. (These juveniles are not violations, but the total number is reported to OJJDP in the annual compliance monitoring report).

## **Adult Jails and Adult Lockups**

1. Accused status offenders and nonoffenders held for any length of time. (These juveniles are violations of the DSO and Jail Removal core requirements.)
2. Adjudicated status offenders and nonoffenders held for any length of time. (These juveniles are violations of the DSO and Jail Removal core requirements.)
3. Adults and juveniles held in secure detention that are not sight and sound separated from each other. (These are violations of the Separation core requirement.)
4. Adjudicated juvenile criminal type offenders held securely in excess of six hours prior to or following a court appearance or for any period of time not related to a court appearance. (These juveniles are violations of the Jail Removal core requirement.)
5. Accused juvenile criminal type offenders held for less than six hours for purposes other than identification, investigation, processing, release to parent(s), transfer to court or transfer to a juvenile facility following initial custody. (These juveniles are violations of the Jail Removal core requirement.)
6. Juveniles held securely in an adult jail or lockup pursuant to public authority as a disposition or as a means to correcting their behavior and are in sight and sound contact with incarcerated adults. (These juveniles are violations of the Separation core requirement. Depending on the situation this can also be a Jail Removal core requirement violation).
7. Youth are prohibited from being placed in any of Vermont's 3 jails under any circumstances. These are monitored by the Department of Corrections annually, and the JJDP compliance monitor within a 3-year cycle.

### **Adult Correctional Facilities**

Any juvenile brought inside (into the secure area) an adult correctional facility pursuant to public authority as a disposition or as a means of correcting their behavior. (These juveniles are violations of the Separation core requirement). VT statute prohibits juveniles under the age of 16 that have not been charged or convicted of a felony from entering adult corrections facilities. Each facility has signage warning of this prohibition. Interdepartmental policy allows for youth charged or adjudicated as adults in criminal court to be housed at the juvenile detention / corrections facility until the youth turns 18 years old.

### **Procedures:**

#### **1. Adult Jails and Adult Lockups**

- During site visits/inspections, the compliance monitor will collect and verify data on juveniles held securely. Any instance where juveniles are securely detained are entered into the DCF spreadsheet, which is used to generate the annual compliance monitoring report. The monthly totals of juveniles securely detained is also tallied on the yearly secure log spreadsheet.

- Site visits will be scheduled so that approximately one third of all facilities are visited annually. This will allow for the OJJDP mandated 100% of all facilities to be visited within a three-year period.
- Facilities that frequently hold juveniles should be visited more frequently, as well as facilities that have had or continue to have violations of the core protections of the JJDP Act.
- Juvenile Holding Logs, (see attachment) will be reviewed during site visits at every facility that is mandated to keep lockup logs. The logs should document each juvenile that is securely detained. Juvenile Holding Logs should be filled out each time a juvenile is placed in secure detention by the arresting officer. The compliance monitor will review the logs at site visits and verify them for accuracy and authenticity. Verification should include reviewing the arrest record or case file on a sample of entries to determine if the time in and out of secure custody is correct and to determine if the most serious charge is listed.
- In cases where additional information is required, the compliance monitor will verify the log entries against individual case files at the facility or at the court. Additional sources of information may include DCF.
- The compliance monitor will retain copies of the Juvenile Holding Logs.

## 2. **Juvenile Detention and Correctional Facilities (Woodside)**

Vermont has one juvenile detention and correctional facility, which is Woodside, located in Colchester, Vt. This facility serves two populations of youth, detention and corrections. When a juvenile offender is placed at Woodside, their information is recorded into the Woodside database.

The juvenile's legal status (status offender, delinquent, or criminal) will be verified by checking the DCF computer database. Since Vermont does not use the VCO exception, if any status offender is securely detained at Woodside, it will be verified. If it is confirmed as a DSO violation, the Woodside Director, the Director of the district office and / or Judge that admitted the youth, and the JJ Specialist will be notified.

3. **Other facilities** classified as secure, public or private, juvenile facilities will be subject to the same data collection sets as juvenile detention centers.

Other facilities classified as secure, public or private, juvenile or adult facilities, will be subject to the same procedures and data sets as jails and lockups.

**See Attachment F - Juvenile Holding Log (sample)**

## **DEINSTITUTIONALIZATION OF STATUS OFFENDERS / DSO**

|                                   |                                  |
|-----------------------------------|----------------------------------|
| <b>Date Issued:</b>               | <b>March 2013</b>                |
| <b>Review Date:</b>               | <b>Annually in January</b>       |
| <b>Last Review:</b>               | <b>March 2019</b>                |
| <b>Related OJJDP Regulations:</b> | <b>JJDP Act<br/>CFR § 31.303</b> |

### **Statement of Purpose:**

The JJDP Act states that no status offenders or nonoffenders may be held in secure facilities. However the JJDP Act provides statutory exceptions and the federal regulations provide a regulatory exception. Both exceptions apply to juvenile detention facilities. Beginning in the FFY2017, OJJDP'S new definition of "detained and confined" and "placed" allow for status offenders who are held for retrieval by a parent, guardian, or child welfare agency may be placed in a non-secure non-residential police facility during hours of operation. In Vermont, at this time, the State does not consider any police facility to be strictly non-secure in that they are operated by public authorities who may hold a person securely as a law enforcement officer.

### **Intent of the DSO Core Requirement**

The DSO Core Requirement has been part of the JJDP Act since the Act's inception in 1974. Its principles are:

1. Holding status offenders and nonoffenders in secure custody may be a means to an end, but it is inappropriate for the handling of juveniles who have not engaged in any criminal behavior.
2. Historically, when status offenders have been handled as delinquents, they have been placed in environments that lead to physical and emotional harm.
3. The punishment of status offenders and abused and neglected children (nonoffenders) is a continuation of the cycle of mistreatment.

### **Statutory Exceptions**

There are three statutory exceptions. The first is possession of a handgun (Youth Safety Handgun Act), the second is the Valid Court Order or VCO (not used in Vermont) and the third is out of state runaways when held pursuant to the Interstate Compact.

Finally, effective during the FFY2017, OJJDP established new definitions of "detain and confine" and "placed" that allows for status offenders to be held in a 'non-secure' and

non-residential facility for the purpose of processing & release to parent, guardian, or public child welfare entity. Although Vermont has police facilities without secure architectural fixtures, all police have the authority to secure youth or adults as prescribed by state statute.

## SIGHT AND SOUND SEPARATION

|                                   |                                  |
|-----------------------------------|----------------------------------|
| <b>Date Issued:</b>               | <b>March 2013</b>                |
| <b>Review Date:</b>               | <b>January of each Year</b>      |
| <b>Last Review:</b>               | <b>March 2019</b>                |
| <b>Related OJJDP Regulations:</b> | <b>JJDP Act<br/>CFR § 31.303</b> |

### **Statement of Purpose:**

Provides that no juvenile will be confined in situations where they have contact with incarcerated adults in secure custody status. The JJDP Act reads:

*“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 JJDP Act of 2002 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.”*

### **Intent of the Separation Core Requirement**

This requirement has been part of the JJDP Act since its inception in 1974.

In addition to protecting juveniles against abuse and corruption, sight and sound separation reinforces acceptable professional guidelines. The separation of juveniles from adults allow for the immediate mobilization of effective, appropriate services for juveniles.

Separation does not apply, nor do any of the requirements apply, to juveniles direct filed, certified or waived to adult court as felons; this changes with the 2018 JJRA and Vermont will change statute to comply with keeping charged, pre-convicted youth out of adult prisons. Currently in VT, juveniles direct filed to adult court as misdemeanants are treated as delinquent youth and protected by the JJDP.

The consolidated federal regulation states: “The term contact is defined to include any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. A juvenile offender in a secure custody status is one who is physically detained or confined in a locked room or other area 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 area and/or from being physically secured to a cuffing rail or other stationary object. Juveniles are not to have any contact with incarcerated adults while they are in secure custody.

Sight & Sound separation does not apply during secure transport by law enforcement.

**Contact** is defined to include any physical or sustained sight and 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.

A juvenile offender in secure custody status is one who is physically detained or confined in a locked room or other area set aside or used for the specific purpose of securely detaining persons who are in law enforcement custody. It may result from being placed in such a room or from being handcuffed to a stationary object or cuffing rail.

Separation must be achieved architecturally or through policies and procedures in all secure areas of the facility, which include, but are not limited to:

Admissions, Sleeping, Shower and toilet areas

Brief and accidental contact between juveniles and incarcerated adults in secure areas of the facility that are dedicated to use by juvenile offenders and which are nonresidential would not require a facility or state to report a violation. Those areas include:

Dining, recreational, educational, vocational, health care, sally ports or other entry areas and passageways (hallways)

Any contact in a dedicated juvenile area, including any residential area of a secure facility, between juveniles in a secure custody status and incarcerated adults would be a violation.

Added during the 2002 reauthorization is a prohibition of “Scared Straight or Shape Up” type of programming. In accordance with current OJJDP policy and proposed regulation, the state must assure that no juvenile offender shall enter under public authority, for any amount of time, into a secure setting or secure section or an adult jail, lockup, or correctional facility as a disposition of an offense or as a means of modifying their behavior.

Although guidance and regulation will change with the reauthorized JJRA of 2018 effective in 2020, the State of Vermont established policy at the adult Department of Corrections and within the DCF that prohibits scared straight type tours.

## **REMOVAL OF JUVENILES FROM ADULT JAILS AND LOCKUPS**

|  |  |
|--|--|
| <b>Date Issued:</b>                      | <b>March 2013</b>                              |
| <b>Review Date:</b>                      | <b>Annually in January</b>                     |
| <b>Last Review:</b>                      | <b>March 2019</b>                              |
| <b>Related OJJDP Regulations:</b>        | <b>JJDP Act<br/>CFR § 31.303</b>               |
| <b>Vermont Statute 33 V.S.A. § 5292.</b> | <b>Detention of minors in adult facilities</b> |

### **Statement of Purpose:**

The JJDP Act states: “Provide that no juvenile shall be detained or confined in any jail or lockup for adults.” There are two reporting exceptions that Vermont uses:

1. The first states that accused criminal-type offenders may be held in a sight and sound separated area for up to 6 hours for processing purposes only.
2. The second states that alleged or adjudicated juvenile criminal-type offenders may be held for up to 6 hours prior to or following a court appearance.

### **Intent of the Jail Removal Core Requirement**

The Jail Removal requirement was added to the JJDP Act in 1980, in part as a method of addressing the unintended consequence of the separation requirement. In order to meet the separation requirement, many juveniles were held in solitary confinement for long periods of time. Research indicated an increase of suicides of those juveniles held in adult jails versus juvenile detention centers.

In order to provide consistent protection of juveniles, the sight and sound separation requirement necessitated the addition of the jail removal requirement. The removal of juveniles from adult jails and lockups is supported by widespread consensus on the appropriate handling of juveniles.

Juveniles held in adult jails and lockups remain at risk for physical, mental and sexual abuse by adult inmates. In addition, they are exposed to and educated about how to become better criminals.

The intent of jail removal is not to release juveniles who, because of their offenses and their history, need to be securely detained but to promote the appropriate secure confinement of these juveniles in juvenile facilities. Juvenile facilities can provide both public safety and specific evaluation and treatment needs of juveniles.

### **Statutory Exception**

Juveniles who are waived into adult court, or their case is filed directly in adult court for felony-level charges are not considered juveniles under the JJDP Act and are therefore excluded from these regulations. (Prison Rape Elimination Act – PREA – prohibits juveniles from contact with adult inmates in a secure setting regardless of the charge or conviction. DCF and DOC have an agreement that allows for most adult-convicted or charged youth to be placed at Woodside secure facility.)

### **Reporting Exception - Six Hour Rule**

Juvenile delinquents (accused and adjudicated) may be held (if separated from incarcerated adults) for up to six hours for identification, processing, and to arrange for release to parents or transfer to a juvenile facility. They may also be held an additional six hours following an initial court appearance. This exception only allows for the short-term secure holding of juvenile offenders for the purposes of identification, processing, investigation and to arrange release. Juveniles can not be sentenced to the jail or lockup. The purpose of this exception is to detain juveniles only long enough to “process” their case.

#### **A. Six Hour Rule**

The six-hour clock starts the moment a juvenile is placed into secure custody status. Once the clock starts it cannot be turned off, even if the juvenile is removed briefly from the locked setting (bathroom break, interview, etc.)

The Six-Hour Rule *does not apply* when:

1. The juvenile is placed into a locked squad car; or
2. The juvenile is handcuffed to him or herself; or
3. The juvenile is in a secure booking area for processing purposes and is under continuous “in-person” supervision and is removed from the secure booking area immediately following the booking process; or
4. The juvenile is placed into an unlocked room with freedom of movement from the facility.

B. The six hours before and after a court appearance cannot be “traded.” The rules allow for up to six hours before court and up to six hours after court. You may not detain a juvenile for four hours before court and then eight hours after court.

### **33 V.S.A. § 5292 Detention in adult facilities of minors charged or adjudicated as delinquents**

(a) A minor charged with a delinquent act shall not be detained under this chapter in a jail or other facility intended or used for the detention of adults unless the child is alleged to have committed a crime punishable by life imprisonment and it appears to the satisfaction of the court that public safety and protection reasonably require such detention.

(b) A minor who has been adjudicated as a delinquent child shall not by virtue of such adjudication be committed or transferred to an institution or other facility used primarily for the execution of sentences of persons convicted of a crime.

(c) The official in charge of a jail or other facility intended or used for the detention of

adult offenders or persons charged with crime shall inform the court immediately when a minor who is or appears to be under the age of 18 years is received at the facility other than pursuant to subsection (a) of this section or section 5293 of this title and shall deliver the minor to the court upon request of the court or transfer the minor to the detention facility designated by the court by order. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

**33 V.S.A. § 5293 Disposition of minors adjudicated as adult offenders; separation of persons under 18 years from adults**

**ANNUAL COMPLIANCE MONITORING  
REPORTING PERIOD**

**Date Issued:** March 2013  
**Review Date:** Annually in January  
**Last Review:** January 2018  
**Related OJJDP Regulations:** 28 CFR 31

**Statement of Purpose:**

28 CFR 31 requires that compliance monitoring reports be submitted by February 28<sup>th</sup> of each year.

**Process:**

Vermont adheres to requirements of the JJDPA CFR and the requirements of the OJJDP.

**Procedures:**

1. All data collected for the OJJDP Annual Compliance Monitoring report will show that it has been collected from October 1<sup>st</sup> through September 30<sup>th</sup> of the respective Federal Fiscal year of the report.
2. The OJJDP Compliance Monitoring Report is located on the OJJDP website and should be completed electronically.

**ANNUAL METHOD OF REPORTING COMPLIANCE  
WITH THE JJDP ACT**

**Date Issued:** March 2013

**Review Date:** Annually in January, annually thereafter

**Last Review:** March 2019

**Statement of Purpose:**

The data and information collected throughout the year must be analyzed, reviewed, and submitted in the OJJDP format for annual Compliance Monitoring Report.

**Process:**

It is the compliance monitor's responsibility to collect, verify, and compile the data each year.

**Procedures:**

On or before February 1st of each year the compliance monitor will have collected and verified the data as listed under data sets.

After all data has been collected and verified the compliance monitor will extract the data that relates to the annual Compliance Monitoring Report and will complete the report within the OJJDP template.

The compliance monitor will provide the statistical tables required for the report.

The compliance monitor will submit a draft of the report to his/her supervisor for review in advance of its completion.

The report will be made available to the SAG and other interested parties.

### 3.0

## CORE REQUIREMENTS AND OJJDP REGULATIONS BY TYPE OF FACILITY

**Date Issued:** March 2013  
**Review Date:** Annually in January  
**Last Review:** March 2019  
**Related Regulations:** JJDP Act; 28 CFR 31

#### Statement of Purpose:

States must use only the federal definitions when monitoring for compliance with the JJDP Act and related regulations. Each type of facility must meet certain criteria in order to be classified as such. This policy is intended to provide the compliance monitor with guidance as it relates to each type of facility recognized by OJJDP. All facilities must fit into one of these categories.

#### Policy:

Within this policy, a summary of the JJDP Act/regulations by type of facility and type of juvenile are provided.

#### Procedures:

The compliance monitor will refer to these charts and the rest of the policies and procedures when assessing compliance at facilities.

| <b><u>Facility</u></b>                         | <b><u>DSO</u></b> | <b><u>Jail Removal</u></b> | <b><u>Separation</u></b> |
|--|-------------------|----------------------------|--------------------------|
| Jails/Lockups                                  | Yes               | Yes                        | Yes                      |
| Juvenile Detention and Correctional Facilities | Yes               | No                         | Yes                      |
| Court Holding                                  | No                | No                         | Yes                      |
| Prisons  | Yes               | No                         | Yes                      |

## 3.1

### SECURE AND NON-SECURE CUSTODY

|                                   |                               |
|-----------------------------------|-------------------------------|
| <b>Date Issued:</b>               | <b>March 2013</b>             |
| <b>Review Date:</b>               | <b>Annually in January</b>    |
| <b>Last Review:</b>               | <b>March 2019</b>             |
| <b>Related OJJDP Regulations:</b> | <b>JJDP Act<br/>28 CFR 31</b> |

#### **Statement of Purpose:**

This policy is intended to provide direction on monitoring secure and non-secure facilities.

#### **Policy:**

During classification of facilities the compliance monitor will make an initial determination based on regulations, licensing requirements and information from previous site visits whether the facility is secure or non-secure. This policy provides guidance on what constitutes a secure facility and what constitutes a non-secure facility. Data and compliance are linked to secure facilities only. The only valid method to confirm classification is through a site visit. If during a site visit it is determined that a facility has changed classification status from non-secure to secure, the compliance monitor should reclassify the facility as secure and immediately ensure that data is being collected. The compliance monitor should also provide the facility with all necessary information and materials that are required for secure facilities for the core protections under that JJDP Act. This should include the Juvenile Holding log and instructions, implementation guide for juveniles in secure facilities and any other training tools as requested by the facility administrator or contact person.

#### **Procedures:**

Secure custody may take place in a detention or correctional facility, or residential facilities having construction features designed to physically restrict the movements and activities of persons in custody (e.g., 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 (i.e., staff secure).

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

1. A juvenile placed in a cell within an adult jail or lockup, whether or not the cell door is locked.
2. A juvenile placed in an unlocked room within the secure perimeter of an adult jail or lockup or a juvenile detention center.
3. A juvenile left in a secure booking area after being photographed and fingerprinted.
4. A juvenile being processed in a secure booking area where an un-secure booking area is available within a facility.

5. A juvenile handcuffed to a rail in an unlocked lobby area of an adult jail or lockup.
6. A juvenile handcuffed to a stationary object in any area of a facility.
7. A juvenile placed in a room that contains egress doors with unapproved delayed egress devices.

Non-Secure Custody is used to define when 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 states that all of the following policy criteria, if satisfied, will constitute non-secure custody of a juvenile in an adult jail or lockup facility:

1. The area where the juvenile is held is an unlocked multi-purpose area, such as a lobby, office, or interrogation room that 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 for processing purposes;
2. The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;
3. The use of the area is limited to providing non-secure 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;
4. In no event can the area be designated or intended to be used for residential purposes
5. 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 non-secure custody.

In addition, a juvenile placed in the following situations would be considered in a non-secure status:

6. A juvenile handcuffed to a non-stationary object: If the five criteria listed above are adhered to, handcuffing techniques that do not involve cuffing rails or other stationary objects are considered non-secure.
7. 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, the juvenile is not considered to be in a secure detention status. Continued non-secure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.
8. A juvenile placed in a secure police car for transportation. The JJDP Act applies only to secure detention facilities and secure correctional facilities, therefore, a juvenile placed in a police car for transportation is in a non-secure status.

9. A juvenile placed in a non-secure runaway shelter but prevented from leaving because of staff restricting access to exits. A facility may be non-secure (i.e., staff secure) if physical restriction of movement or activity is provided solely through facility staff.
10. A juvenile placed in a room that contains doors with delayed egress devices which have received written approval (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 which comply with the egress delay established by the authority having jurisdiction over fire codes and fire inspections.

**TRANSFERRED AND WAIVED JUVENILES**

**Date Issued:** March 2013  
**Review Date:** Annually in January, annually thereafter  
**Last Review:** March 2019

**Related OJJDP Regulations:** JJDPA

**33 V.S.A. § 5204 Transfer from juvenile court**  
<https://legislature.vermont.gov/statutes/section/33/052/05204>

**Statement of Purpose:**

The compliance monitor should exclude juveniles under the age of 18 who are being filed on as adult felons. Minors who are charged or convicted felons are not subject to the JJDPA protections or monitoring.

**Policy:**

It is the responsibility of the compliance monitor to determine if a juvenile case is filed in adult court as felony charge.

**Procedures:**

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 if they are over the age of 16 (state statute). Current practice and agreements dictate that all youth under age 18 be held at the Woodside Youth Facility unless they become unsafe there. The jail and lockup removal requirement does not apply to those juveniles formally transferred or originating in criminal court and against whom criminal felony charges have been filed. 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.

A juvenile who has been charged as a felon does not have to be separated from adult criminal offenders under the JJDPA. 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). The PREA (prison rape elimination act) does require separation of juveniles from adults in an adult facility.

**Effective with the new Juvenile Justice Reform Act, in FFY2020, or within 3 years, the State of Vermont will need to change statute so that only those youth that have been *convicted and sentenced* of a felony will be able to be lodged in an adult prison in order to maintain compliance w/ that JJRA.**

### 3.3

#### COURT HOLDING FACILITIES

|                                   |  |
|-----------------------------------|--|
| <b>Date Issued:</b>               | <b>March 2013</b>                      |
| <b>Review Date:</b>               | <b>Annually in January</b>             |
| <b>Last Review:</b>               | <b>March 2019</b>                      |
| <b>Related OJJDP Regulations:</b> | <b>JJDP Act</b><br><b>CFR § 31.303</b> |

#### **Statement of Purpose:**

Court holding facilities, open during court hours, are subject to the Sight & Sound separation requirements for youth. Inspection should ensure that the facility has the capacity to hold youth without their contact with adult inmates.

#### **Policy:**

This policy will serve as guidance when monitoring court holding facilities.

#### **Procedures:**

1. 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 court appearances, are not considered adult jails or lockups. However, such facilities remain subject to the section 223(a) (12) (Separation) requirement of the Act.
2. If it is a facility that is used for purposes other than court holding or is used for punitive purposes, it no longer qualifies as a court holding facility and should be classified as an adult jail or lockup.
3. The compliance monitor must inspect court holding facilities to ensure that they continue to meet the definition and purpose listed above.
4. It is important to note that court holding facilities have a practical time limitation in that juveniles must be brought to and removed from the facility during the same judicial day.

## Court Holding Facilities Regulations by Core Protections

| <b><u>Type of Juvenile</u></b>                                       | <b><u>Rules</u></b>                                 | <b><u>If not followed, these Core Requirements are violated</u></b> |
|--|---|---|
| Alleged juvenile status offender, nonoffender or civil type offender | No restrictions on holding if separated from adults | Sight and Sound Separation  |
| Adjudicated juvenile status offender or nonoffender                  | No restrictions on holding if separated from adults | Sight and Sound Separation  |
| Alleged juvenile delinquent  | No restrictions on holding if separated from adults | Sight and Sound Separation  |
| Adjudicated juvenile delinquent                                      | No restrictions on holding if separated from adults | Sight and Sound Separation  |
| Juvenile transferred or waived to adult court on felony charges      | JJDP Act does not apply                             | N/A   |

## OTHER TYPES OF FACILITIES

**Date Issued:** March 2013  
**Review Date:** Annually in January

**Last Review:** March 2019

**Related OJJDP Regulations:** JJDP Act  
 CFR § 31.303

**Vermont Statute** 33 V.S.A. § 5292. Detention in adult facilities of minors charged or adjudicated as delinquents  
<https://legislature.vermont.gov/statutes/section/33/052/05292>

### Statement of Purpose:

#### Policy:

The policy will serve as guidance when monitoring other types of facilities.

#### Procedures:

##### Adult Prisons

An adult prison includes any institution used for the post-conviction confinement of adult criminal offenders, including work camps and secure facilities located in the community. In VT, the state Corrections facilities serve as both prisons and detention centers or jails.

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 and 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 core requirement.

VT statute prohibits minor youth prior to the age of 16 from being admitted to adult correctional facilities operated by the state Department of Corrections. Complete separation must be provided between juvenile delinquent offenders and adult inmates and trustees in adult prisons to satisfy the sight and sound separation protection and the PREA requirements.

**33 V.S.A. § 5292. Detention in adult facilities of minors charged or adjudicated as delinquents, 33 V.S.A. § 5292**  
<https://legislature.vermont.gov/statutes/section/33/052/05292>

Vermont recognizes the need to make statute change to comply with the JJRA passed in 2018 regarding pre-trial detention.

'Scared Straight' programs have been recently re-allowed by OJJDP, but Vermont Corrections and DCF policy do not enable or allow these programs.

### Secure Mental Health Facilities

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 non-offenders. For monitoring purposes, this distinction does not permit placement of status offenders or non-offenders in a secure mental health facility where the court is exercising its juvenile status offender or non-offender jurisdiction. The State must ensure that juveniles alleged to be or found to be juvenile status or non-offenders 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 center. 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.

### Non-secure Temporary Holding Facilities, Staff Secure Facilities, Non-secure Shelter or Group Homes

Non-secure, community based programs or facilities are exempt for the purposes of monitoring for compliance with the core requirements. The core protections only apply to secure facilities. For example, a non-secure residential program for treatment of substance abuse could include both juvenile delinquent or status offenders and adult offenders who are under a sentence for the conviction of a crime.

The compliance monitor should survey non-secure facilities that hold juveniles to verify their non-secure status. If the facility's status should change from non-secure to secure, the facility must be monitored as an adult jail or lockup if it holds both juvenile and adult offenders. If it holds only juveniles it must be monitored as a juvenile detention center.

As with other facilities discussed in this manual, classification of the facility is key to understanding how the core requirements apply and what regulations are to be followed. Classification will determine what type of juvenile may be held and for what period of time. The two primary descriptors to determine facility classification is the level of security and the location of the facility. The following chart provides guidance on the classification of temporary holding facilities.

Prior to the establishment of a temporary holding facility, it is recommended that a needs assessment be conducted.

A juvenile can 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 secure detention or confinement status. OJJDP's Policy Guidance for non-secure custody of juveniles in adult jails or lockups states that all of the following policy criteria, if satisfied, will constitute non-secure custody of a juvenile in an adult jail or lockup facility.

1. The area where the juvenile is held is an unlocked multipurpose area, such as

a lobby, office or interrogation room that 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, and at all times, for processing purposes, and,

2. The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody within the facility; and,
3. The use of the area is limited to providing non-secure 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; and,
4. The juvenile must be under continuous visual supervision by law enforcement officer or facility staff during the period of time that he or she is in non-secure custody.

The following are considered to be juveniles in non-secure status:

- A juvenile handcuffed to a non-stationary object. If the 5 criteria listed above are adhered to, handcuffing techniques that do not involve being secure to stationary objects or cuffing rings are considered non-secure.
- 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, the juvenile is not considered to be in a secure detention **status**. Continued non-secure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the secure booking area.
- Any temporary holding facility, secure and non-secure, should have written policies and procedures which correspond to these guidelines. The DCF compliance monitor should provide the facilities with copies of the guidelines and provide technical assistance if needed in writing them.

## Attachment A Compliance Monitoring Universe

The 2019 updated CM universe is attached within this manual on p. 21 under “Identification” section

### Compliance Standard FYY 2018

| <b>DISPROPORTIONATE MINORITY CONTACT</b> |  |
|--|--|
| Full compliance                          | Records which include race and ethnicity are maintained on all juveniles held. |

| Requirement  | Compliance Standard    | Vermont Youth under 18 | Maximum Violations Allowed |
|--------------|------------------------|------------------------|----------------------------|
| DSO          | < 5.85/100,00 Youth    | 116,825                |                            |
| Separation   | .30/ 100,000 youth     | 116,825                | 0                          |
| Jail removal | < 7.04 / 100,000 youth | 116,825                |                            |

**Attachment A**  
**Monitoring Universe**



Universe\_2019  
final.xlsx

Link to all Police Agencies in Vermont:  
<http://vcjtc.vermont.gov/resources/police-contact>

**Attachment B**

**(Insert Annual Report on the Number of Violations by Facility)**

| Violation Report<br>2019 |      |     |                   |              |                     |            |              |
|--------------------------|------|-----|-------------------|--------------|---------------------|------------|--------------|
| Facility                 | Date | DSO | Type of Violation |              | Source of Discovery |            |              |
|                          |      |     | Separation        | Jail Removal | Holding Log         | Site Visit | Other Source |

No violations of the JJDP requirements were found in FFY2018.

**Attachment C**

**Compliance Violation Letter  
(On DCF Letterhead)**

Date:

Name of Agency Administrator or contact person  
Agency name and address

Re: Compliance Violation

Salutation

Violation Narrative: In the body of the memo, cite which core protection(s) are in violation, describe the violation, describe why it is a violation, describe the date the violation was discovered, how when and where the violation was discovered.

Corrective Action: Notice to facility of corrective action that needed if it has not been already done. If corrective action has already taken place and/or discussed with the contact person at the agency, note what has been done and/or discussed. If corrective action has not been completed, set a date by when notice of action should be sent to the compliance monitor.

Technical Assistance: Offer technical assistance and any other help that is deemed appropriate.

Reminder: Remind agency of sanctions that could occur e.g. SAG and Department will not be able to fund prevention programs in communities that do not uphold high standards of core protections for youth.

A copy of this memo is sent to the agency administrator or contact person and a copy is placed in the facility file.

Depending on the nature and severity of a violation, other state or local authorities may be informed of the violation for purposes of encouraging compliance, technical assistance, or to promote youth safety and protections. The CM, and the JJS, will determine who should be made aware of each violation or series of violations that occur.

## **Attachment D**

**All individuals that work with youth and adult inmates have training and certification to work with juveniles.**

### **State Statute and Vermont Police Academy training curricula**

The Office of Juvenile Justice and Delinquency Prevention requires all states to have a policy in place that requires individuals who work with juvenile and adult inmates to have training and certification to work with juveniles. Vermont has no residential facilities that house both populations. Although Vermont has no collocated facilities there are local lock-ups at most police departments that have the authority to detain both juveniles and adults. All police officers in Vermont must be certified by the State of Vermont Criminal Justice Training Council in order to be certified. The links below reference the legislative action requiring certification of all police officers and the juvenile component of the curriculum

<https://legislature.vermont.gov/statutes/section/20/151/02358>

<http://vcjtc.vermont.gov/training/one-and-two>

**Attachment D-2  
authority to monitor**

**33 V.S.A. § 3309**

**§ 3309. Compliance with the Juvenile Justice and Delinquency Prevention Act**

The Department for Children and Families, within the Agency of Human Services, is the State agency designated for supervising the preparation and administration of the Juvenile Justice and Delinquency Prevention Act State Plan and is also designated as the State agency responsible for monitoring and data collection for purposes of compliance with the Juvenile Justice and Delinquency Prevention Act. (Added 2017, No. 201 (Adj. Sess.), § 4, eff. May 30, 2018.)

<https://legislature.vermont.gov/statutes/section/33/033/03309>

## Attachment E Definitions

### I. Federal Definitions

#### Secure Custody 31-304 (b)

Detention or correctional facility, this term also includes residential facilities, which include construction fixtures 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.

Vermont uses this Definition

#### Facility 31-304 (c)

Federal Definition:

A place, institution, 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 or private agencies.

Vermont uses this Definition

#### Adult Jail 31-304 (m)

Federal Definition:

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 jail are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

In Vermont an Adult Jail would be any Correctional Facilities run by the DOC or one of 3 other police facilities (Brattleboro City Jail, Barre City Jail, Orange County Jail) that have residential capacity. The Correctional Facilities do not prohibit those sentenced to more than a year from placement. The 3 community- operated jails are short-term facilities.

#### Adult Lockup 31-304 (n)

Federal Definition

Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged. Adult lockups in Vermont do not have residential capacity.

Vermont uses this Definition

#### Juvenile who has been accused of having committed an offense 31.304 (d)

Federal Definition:

A juvenile who has had a petition filed in 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.

Vermont would not consider a status offense in this in this category unless the status offense was in violation of an existing probation condition generated by an underlying delinquent offense.

Juvenile who has been adjudicated as having committed an offense 31-304(e)

Federal Definition:

A juvenile where the juvenile court has determined that said juvenile is a juvenile offender, i.e., a criminal type offender or a status offender.

Vermont uses same definition.

Status offender 31.304 (h)

Federal Definition

A juvenile who has been charged with or adjudicated for conduct, which would not under the law of the jurisdiction on which the offense was committed, be a crime if committed by an adult. Status offenses include running away, truancy, violations of curfew, underage possession and/or consumption of tobacco products, and motor vehicle/ traffic violation level offenses.

Vermont uses this Definition

Nonoffender 31-304 (l)

Federal Definition

A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency or neglect status for reasons other than legally prohibited conduct of the juvenile.

Vermont uses this Definition

Private agency 31.304(a)

Federal Definition:

Any corporation, foundation, trust, association, cooperative or accredited institution or higher education not under public supervision or control. Any other agency, organization or institution which operates primarily for scientific, education, service charitable or similar public purposes, but which is not under public supervision or control and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by the IRS to be tax exempt under the provisions of section 501 (c) (3) of the 1954 Internal Revenue Code.

Vermont uses this Definition

Sight and Sound Separation 31-303(l) (l)

Federal Definition:

Secure custody occurs when a juvenile offender is detained or confined in a locked room or cell, or is handcuffed to a stationary object. Construction features

are designed to physically restrict the movements and activities of persons in custody, such as locked rooms and buildings, fences or other physical structures. Separation must be achieved architecturally or through policies and procedures in all secured areas. Sight contact occurs when a juvenile has clear visual contact with an incarcerated adult within close proximity. Sound contact is when a juvenile can have direct oral communication with an incarcerated adult.

Vermont uses this Definition

#### Secure Detention Facility 103(12) (A) (B)

##### Federal Definition:

The term “secure detention facility” means any public or private residential facility which:

- A. Includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and
- B. Is used for the temporary placement of any juvenile who is accused of having committed an offense or of any other individual accused of having committed a criminal offense.

Vermont uses this Definition

#### Secure Correctional Facility 103(13) (A) (B)

##### Federal Definition:

The term “secure correctional facility” means any public or private residential facility which:

- A. includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and
- B. is used for 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.

Vermont uses this definition. The secure juvenile facility, Woodside, designates residents as short term (STP) or long term (LTP). Pre-adjudicated youth are rarely designated as LTP however post adjudicated youth are frequently placed in short term status awaiting less secure options.

#### Public Agency 103(11)

##### Federal Definition:

The term “public agency” means any state, unit of local government, combination of such states or units or any department, agency or instrumentality of any of the foregoing.

Vermont uses this Definition

Secure Custody, page 6 (2010 OJJDP Compliance Guidance Manual)

A detention or correctional facility, includes residential facilities having construction features designed to physically restrict the movements and activities of persons in custody (e.g., locked rooms and buildings, fences or other physical structures). It does not include facilities where physical restriction of movement or activity is solely through facility staff (i.e. staff secure).

Vermont uses this Definition

Non-Secure Custody

The following criteria, if satisfied, will constitute non-secure custody of a juvenile in a building that contains an adult jail or lockup: The area where the juvenile is being 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; 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 non-secure custody only long enough and for the purposes of identification, investigation, processing, release to parent, or arranging transfer to an appropriate juvenile facility or to court; in no event can the area be designed for residential purposes and 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 non- secure custody.

Vermont uses this Definition

Court Holding.

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 for purposes of section 223 (a)(13) of the JJDP Act. However, such facilities remain subject to section 223 (a)(12) separation requirement of the JJDP Act.

Vermont uses this Definition

Accused

A juvenile alleged to have committed an offense or charged with committing an offense (not yet adjudicated).

Vermont uses this definition

Adjudicated

The court has determined that it has been proven beyond a reasonable doubt that the juvenile has committed a delinquent act or status offense, or the juvenile has pled guilty to committing a delinquent act or status offense.

Vermont uses this definition

### Delinquent

A person who has committed an offense before reaching the age of 17 which would be a felony or misdemeanor under the criminal code of this state if committed by an adult and is expressly found to be in need of counseling, supervision, treatment or rehabilitation as a consequence thereof.

Vermont uses this definition

### Nonresidential areas

Areas within a secure facility such as sally ports, admissions and processing areas, and areas used for dining, education, recreation, vocational training, health care, the passage of inmates, etc.

Vermont uses this definition

### Residential areas

Areas within a secure facility used for sleeping and hygiene purposes.

Vermont uses this definition

### Time phasing

Use of the same non-residential area for adults and juveniles, but not at the same time. Written policies must be in place to ensure proper use and timing for each area.

Vermont uses this definition. This would apply primarily to court holding facilities but may also be used in an adult correctional facility.

### Juvenile detention center

A secure facility used solely for the lawful custody of accused or adjudicated juvenile offenders and not adjoining an adult jail or lockup.

Vermont definition is the same

### Staff secure facility

A residential facility which does not include construction features designed to physically restrict the movements and activities of juveniles who are in custody therein; which may establish reasonable rules restricting entrance to and egress from the facility and 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.

Vermont uses this definition. In order to be classified as staff secure, the facility must have awake overnight staff for supervision

## **DMC Definitions**

### Arrest Definition:

Youth are considered to be arrested when they are apprehended, stopped, or otherwise contacted by law enforcement agencies and suspected of having committed a delinquent act.

Vermont arrest only includes those individuals who are formally charged by law

enforcement for a criminal or delinquent act. Those stopped or contacted for suspicion of having committed an offense are not included in the data made available through NIBRIS

Referral Definition:

Referral is when a potentially delinquent youth is sent forward for legal processing and received by a juvenile or family court, or juvenile intake agency, either because of law enforcement action or upon a complaint by a citizen or school.

Vermont reports referrals to juvenile court as those petitioned to family court for Criminal or delinquent offenses plus those youth accused to be CHINS C or D:

(C) is without or beyond the control of his or her parent, guardian, or custodian;

(D) is habitually and without justification truant from compulsory school attendance

Diversion Definition:

The diversion population includes all youth referred for legal processing but handled without the filing of formal charges.

Vermont reports Cases eligible for Court Diversion are those where a case is filed but the State's Attorney diverts prior to preliminary hearing. Diversion data on those youth referred to Court Diversion by the State's Attorney. Juvenile Court reports all diversions offered and reports when Diversion is successful or failed; both are included as Diversion offered.

Detention Definition:

Detention refers to youth held in secure detention facilities at some point during court processing of delinquency cases- i.e., prior to disposition. In some jurisdictions, the detention population may also include youth held in secure detention to await placement following a court disposition. For the purposes of DMC, detention may also include youth held in jails and lockups. Detention does not include youth held in shelters, group homes, or other non-secure facilities.

Vermont uses this definition

Petitioned/ Charge filing Definition:

Formally charged (petitioned) delinquency cases are those that appear on a court calendar in response to the filing of a petition, complaint, or other legal instrument requesting the court to adjudicate a youth as a delinquent or status offender, or to waive jurisdiction and transfer a youth to criminal court. Petitioning occurs when a juvenile court intake officer, prosecutor, or other official determines that a case should be handled formally. In contrast, informal handling is voluntary and does not include the filing of charges.

Vermont reports this as cases filed in juvenile court for criminal or delinquent acts only. This includes those youth under 18 to be in the category of Youthful Offender which is a hybrid of both juvenile and criminal court. Vermont does not include those petitioned as CHINS C or D as defined above.

### Delinquent Definition:

Youth are judged or found to be delinquent during adjudicatory hearings in juvenile court. Being found (or adjudicated) delinquent is roughly equivalent to being convicted in criminal court. It is a formal legal finding of responsibility. If found to be delinquent, youth normally proceed to disposition hearings where they may be placed on probation, committed to residential facilities, be ordered to perform community service, or otherwise sanctioned.

Vermont uses this definition.

### Probation Definition:

Probation cases are those in which a youth is placed on formal or court-ordered supervision following a juvenile court disposition.

Vermont uses this definition

### Confinement in Secure Juvenile Correctional Facilities

#### Definition:

Confined cases are those in which youth are placed in secure residential or correctional facilities for delinquent offenders following a court disposition. The confinement population should NOT include all youth placed in any form of out-of-home placement. Group homes, shelter homes, and mental health treatment facilities, for example, would usually not be considered confinement.

Vermont reports those placed at Woodside and considered in the category LTP (Long Term Program)

### Transferred to Adult Court

#### Definition:

Data reported for criminal court transfer should at least include judicially waived cases. Waived cases are those in which a youth is transferred to criminal court as a result of a judicial finding in juvenile court. A petition is usually filed in juvenile court asking the juvenile judge to waive jurisdiction over the matter. The juvenile judge decides whether a case merits criminal prosecution. When a waiver request is denied, the matter is usually scheduled for an adjudicatory hearing in the juvenile court. If a request is granted, the juvenile is then sent to criminal court for further action. Juveniles may be transferred to criminal court using a variety of other methods, but most of these methods are difficult or impossible to track from within the juvenile justice system, including prosecutor discretion or concurrent jurisdiction, legislative exclusion, and the variety of blended sentencing laws.

Vermont reports “transfer” as those cases direct-filed in adult court via prosecutor discretion. Changes in the state statutes regarding delinquency now means that all cases except for listed crimes, will be direct-filed in juvenile court. New transfer mechanisms are in place requiring a judicial hearing before a juvenile case can be transferred to adult criminal court.

**Attachment F**

**JUVENILES MUST BE SEPARATED FROM ADULT OFFENDERS**

**FACILITY** \_\_\_\_\_ **Dates Covered** \_\_\_\_\_

**JUVENILE HOLDING LOG**

Revised March 2019

|  |   |   |
|--|---|---|
| <p><b><u>Instructions:</u></b><br/> <u>Status Offenders shall not be confined</u> securely. (Includes locked rooms, cuffing rails and stationary objects.)</p> <p>Alleged delinquents may not be held securely for longer than <u>6 hours</u> before and after a court appearance.</p> <p>Record the <u>most serious</u> charge</p> <p>Note any barriers your facility may have that hinder compliance with Federal standards.</p> | <p><b><u>Definitions:</u></b><br/> <b>Status Offender:</b> Youth charged with an offense that if committed by an adult, <u>would not</u> be a crime. i.e. runaways, Truants</p> <p><b>Delinquent:</b> Youth charged with or adjudicated for conduct which if committed by an adult <u>would</u> be a crime, or individuals under age 18 charged with misdemeanor offenses</p> <p>Juvenile held securely while at facility :S<br/>                 Juvenile held in non-secure setting while at facility NS</p> <p><b>Delinquent:</b> Y = Yes N = No DK = Don't Know</p> | <p><b>W</b> White<br/> <b>A.I.</b> American Indian<br/> <b>B</b> African American<br/> <b>A</b> Asian<br/> <b>P</b> Pacific Islander<br/> <b>O</b> Other<br/>                 Hispanic Y or N</p> |
|--|---|---|

For assistance call Theresa Lay-Sleeper 802 498-8890

| Name/Initials       | Gender | DOB | Race | Charge | Case# | Date & Time In | Officer  | Date & Time Out | S/N S |
|---------------------|--------|-----|------|--------|-------|----------------|--|-----------------|-------|
| 1.                  |        |     |      |        |       |                |  |                 |       |
| <b>Released to:</b> |        |     |      |        |       |                | <b>Delinquent:</b> Y <input type="checkbox"/> N <input type="checkbox"/> DK <input type="checkbox"/> |                 |       |
| 2.                  |        |     |      |        |       |                |  |                 |       |
| <b>Released to:</b> |        |     |      |        |       |                | <b>Delinquent:</b> Y <input type="checkbox"/> N <input type="checkbox"/> DK <input type="checkbox"/> |                 |       |
| 3.                  |        |     |      |        |       |                |  |                 |       |
| <b>Released to:</b> |        |     |      |        |       |                | <b>Delinquent:</b> Y <input type="checkbox"/> N <input type="checkbox"/> DK <input type="checkbox"/> |                 |       |
|                     |        |     |      |        |       |                |  |                 |       |

**Attachment F-1**

**Is your facility secure?**

Secure Law Enforcement Facility

The facility has a **secure perimeter** to prevent individuals from leaving or has construction features designed to physically restrict the movements and activities of individuals held in lawful custody. *For Example Cell(s) or cuffing rails*

Non-Secure Law Enforcement Facilities

The term “non-secure law enforcement facilities” refers to facilities such as police administrative offices that are administered by a law enforcement entity but do not have construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody

**Secure Facility**      **YES or NO**

Facility name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Attachment G**  
**COMPLIANCE SITE VISIT INFORMATION**

**Facility Identification and Classification**

**Site Visit**

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Day: \_\_\_\_\_

Time: \_\_\_\_\_

C.M.: \_\_\_\_\_

Type of facility: \_\_\_\_\_ Secure or Non-secure: \_\_\_\_\_

Year built \_\_\_\_\_ Plans for new station \_\_\_\_\_ If so, when? \_\_\_\_\_

Floor plan/facility layout obtained/year (keep in file) \_\_\_\_\_

Contact person and title: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail \_\_\_\_\_

Capacity: Adult \_\_\_\_\_ Juvenile \_\_\_\_\_

Non-secure holding area for Status Offenders: \_\_\_\_\_ If yes, where? \_\_\_\_\_

Cells: \_\_\_\_\_ If yes how many and type? \_\_\_\_\_

Cuffing Ring/Bench/Rail \_\_\_\_\_ [If yes circle type(s)]

By Staff \_\_\_\_\_

Sight and Sound \_\_\_\_\_

By Audio \_\_\_\_\_

Sight Only \_\_\_\_\_

By Video \_\_\_\_\_

Sound Only \_\_\_\_\_

By Audio/Video \_\_\_\_\_

Separation achieved by: \_\_\_\_\_

None: \_\_\_\_\_

Policy (written/verbal) \_\_\_\_\_

Juvenile Records Storage \_\_\_\_\_

Computer System used \_\_\_\_\_

**Barriers to compliance** – e.g. is there something keeping your facility or workforce from using best practice or guidance in holding youth?

## Attachment H

During the period October 1 2016 and September 30, 2017 there were **no juveniles securely detained** at my department or station.

Signed

---

Name

---

Title

---

Facility Name

## Consolidated federal regulations for JJDP

28 CFR Part 31

<https://www.gpo.gov/fdsys/pkg/FR-2017-01-17/pdf/2017-00740.pdf>

### Attachment J

#### Detailed timeline of Compliance Tasks



2019 monitoring  
timetable.xlsx