



STATE OF VERMONT
COMPLIANCE MONITORING
POLICY AND PROCEDURE MANUAL

January 2018

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POLICIES AND PROCEDURES INTRODUCTION

To monitor by definition (OJJDP) means to watch, observe, check, keep track of, regulate or control the operation of for a special purpose. In this regard, the special purpose is to ensure that the Core Protections of the Juvenile Justice and Delinquency Prevention Act of 2002 are met. The Core Protections 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 will describe each of these elements in detail and will serve 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. 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.

**FORMAT FOR COMPLIANCE MONITORING POLICIES
AND PROCEDURES TITLE AND NUMBER**

Date Issued: **March 2013**

Review Date: **Annually in January**

Last Review: **January 2018**

Statement of Purpose:

To establish clear policies and procedures for the purpose of conducting federally mandated compliance monitoring in the State of Vermont under the purview of the Department of Justice, Office of Juvenile Justice and Delinquency Prevention and compliance with the Core Protections of the Juvenile Justice and Delinquency Prevention Act (JJDP). Policies are developed to provide the compliance monitor and the compliance monitoring system with guidance and to establish protocols for providing an adequate system of monitoring for all the facilities that may hold juveniles per public authority in the State of Vermont.

Policy:

Each policy will be assigned a number in numerical order beginning with the number 1 (one) and continuing as high as is necessary. If a policy needs to be added to at any time, once approved, it will be assigned the next available number, such as 1.1, 1.2, 1.4, etc.

Procedures:

The compliance monitor will be responsible for developing policies and procedures in draft form as needed. Once the draft form of the policy is completed, it will be forwarded to the Juvenile Justice Specialist for approval.

Attachments

Any forms or related materials will be inserted immediately after the applicable policy in this manual.

Appendix any other related materials that are too lengthy to include within the policy.
Links to applicable sources

1.0

COMPLIANCE MONITORING PLAN

Date Issued:	March 2013
Review Date:	Annually in January
Last Review:	January 2018
Related OJJDP Regulation:	OJJDP Compliance Monitoring Guidance Manual

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 effects 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

Date Issue	March 2013
Review Date:	January of each Year
Last Review:	January 2018

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.
2. The compliance monitor and 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. An annual report is presented on the number of juveniles held and the number of violations by the type of facility. At a minimum, reports will be compiled for sheriff

and police departments, state police, corrections, and the juvenile detention facility (Woodside).

4. A written plan(s) of action to achieve or maintain JJDP A 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.

See Attachment B: (PG 68) Annual Report in the Number of Violations by Facility (Sample)

1.2

VIOLATION PROCEDURES

Date Issued: March 2013

Review Date: January of each Year

Last Review: January 2018

Related OJJDP Regulations: OJJDP Compliance Monitoring Guidance Manual

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:

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.

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. Very rarely are violations found and reported through any source other than the

compliance monitor and the facility/agency itself. 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

The Juvenile Justice Unit

Youth

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 fully investigate the alleged violation. This will always involve a review of the juvenile's arrest record or incident. This can either 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 fully explain why there were violations and what corrective action needs to be taken in order to prevent any 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 in compliance with 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. By reviewing both the juvenile records and providing technical assistance more frequently it decreases the likelihood of the same violations occurring over and over again during a report period and it makes the facility more familiar with the core protections.

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 B: Violation Form (pg. 68)

See Attachment C: Violation Letter (on DCF Letterhead) – Sample (pg. 69)

1.3

**DESCRIPTION OF THE REQUIRED
OJJDP COMPLIANCE MONITORING TASKS**

Date Issued:	March 2013
Review Date:	January of each Year
Last Review:	January 2018
Related OJJDP Regulations:	OJJDP Compliance Monitoring Guidance Manual

Statement of Purpose:

An in depth description of the compliance monitoring tasks as well as the identification of the agency responsible for completing these tasks is a necessary component to the compliance monitoring system. The policy contained herein describes in general terms 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, at a minimum, will 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 following is a monitoring timetable for the Compliance Monitor listing all facilities required to be monitored. It is a detailed breakdown of the monitor's duties to accomplish this task. This document must be reviewed and updated annually with the JJ Specialist. Changes reflect the FFY reporting period as required by OJJDP

October: Identification and modification of the monitoring universe, send out request for logs, collection, site visits conducted. Verify and change facility classifications as needed.

October through January: collection of holding logs, investigation of potential violations, site visitation, draft report and annual plan to OJJDP, review of policy and procedures, and DMC data collection and matrix reporting.

April - November: complete most site visits scheduled, address violations

January- March: finalize data, draft annual compliance plan citing barriers and trends, and complete Compliance Report

Attachment J (PG 79)

Identification of the Monitoring Universe

The total Monitoring Universe is defined as all facilities within the State of Vermont, which might hold juveniles pursuant to public authority. There are 108 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. When it becomes necessary for towns that do not have police departments to employ a police department they enter the monitoring universe.

The monitoring universe also contains **residential group homes and shelter care facilities** for youth under the jurisdiction of the juvenile court system. These facilities are inspected per JJDP A 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 certification of non-secure classification survey 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. The Vermont Agency of Human Services has been designated by the Governor as the single state agency for administering the Juvenile Justice and Delinquency Prevention Act. The Secretary of the Agency of Human Services, Commissioner of the State Department of Corrections and Commissioner of the Department for Children and Families have designated and granted authority to the State's Compliance Monitor to visit and inspect any facilities and records associated with juveniles who are detained. All facilities who have the capacity to securely detain youth pursuant to public authority shall be inspected at least once every three years.

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 of the log for the period of October 1st through September 30th. 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.

It is best practice that site visits be conducted during the months of March to November. There is a risk during the winter months visits would be postponed due to weather. So as to avoid unsafe driving conditions and to make the best use of time, it is best to schedule site visits during the spring, summer and autumn months.

The three main reasons to inspect facilities are to 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 finally, to 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. In respect for facility staff's time, the appointment will be kept as scheduled.

Once at the facility, request a tour of the entire facility, and ask about any changes since the last inspection. There may be some physical changes that have been made since the last visit that are relative to jail compliance. 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 and 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 some sort of 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. Also at the completion of the site visit, explain how they are classified and their separation levels. 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 on site technical assistance. Also advise them that you will be sending them a memo stating that they are in compliance or not in compliance.

After a site visit is completed, it needs to be documented in the Vermont 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 1st through September 30th. 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 to the compliance monitor as soon as possible. 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 great detail to make sure all information on the log is correct. This is usually very time consuming, because sometimes they will have to locate the arresting officer to verify the information. However, it is worth the effort as it may avoid a violation. After the information is

verified, it is entered into the Jail Compliance Database, as is all data that is obtained via the Juvenile Holding logs. If there is a violation, it is common courtesy to advise the facility by telephone that they have committed a violation, explain the situation and then advise them formally in writing with a violation/noncompliance 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 usually 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 first name and last initial 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 JJDPA. 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.

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. A copy of the violation memo is placed in the agency's file.

COMPLIANCE MONITORING AUTHORITY**Date Issued: March 2013****Review Date: January of each Year****Last Review: January 2018****Related OJJDP Regulations: OJJDP Compliance Monitoring Guidance Manual****Statement of Purpose:**

The agency responsible for compliance monitoring, the Vermont Agency of Human Service, should have 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 should be sufficiently broad to allow 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.

Policy: **pending change 2019**

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 JJDPA and 28 C.F.R. § 31.302. A state's advisory group may also serve as the state's supervisory board at the discretion of a state's Governor.

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. This action is what has been used to show authority to the OJJDP annually. It has also been reported to the OJJDP each year that the state's compliance monitoring actions have never been challenged, but met only with cooperation by statewide law enforcement and youth justice authorities.

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.

The DCF Commissioner's Office attempted to move new legislation in 2018 but notice and request were too late to make progress. The Commissioner has informed the OJJDP that it will seek legislative action early in the 2019 session.

Procedures:

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

Attachment D (pg 71)

1.5 DEFINITIONS OF TERMS

Date Issued:	March 2013
Review Date:	January of each Year
Last Review:	January 2018
Related OJJDP Regulations:	JJDP Act; applicable CFR OJJDP Compliance Monitoring Guidance Manual

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 JJDP 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)

- F. Juvenile who has been adjudicated as having committed an offense
31.304(e)
 - G. Status offender 31.304(h)
 - H. Non-offender 31.304(i)
 - I. Private 31.304(a)
 - J. Sight and Sound Separation 31.303(d) (l) (l)
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 Act and the OJJDP Compliance Monitoring Guidance Manual will take precedence and will be used for compliance monitoring purposes.

See Attachment E Definitions (pg. 73) 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:	January 2018
Related OJJDP Regulations:	JJDP Act 82 FR 4783 OJJDP Compliance Monitoring Guidance Manual

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 this policy.

2.1

**IDENTIFICATION OF THE MONITORING
UNIVERSE**

Date Issued:	March 2013
Review Date:	Annually in January
Last Review:	January 2018
Related OJJDP Regulations:	JJDP Act 82 FR 4783 OJJDP Compliance Monitoring Guidance Manual

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 at and will be updated annually at <http://dcf.vermont.gov/sites/DCF/files/FSD/Policies/Compliance-Policy-Procedure.pdf>

As is defined in the Federal Register, May 31, 1995, page 28445, the identification of the monitoring universe refers to the identification of all residential 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.

As defined in the formerly sanctioned 2010 OJJDP Compliance Monitoring Guidance Manual, page 35, "This refers to the identification of all facilities which might hold juveniles pursuant to public authority." This list should include adult jails and lockups, correctional facilities, juvenile detention centers, halfway houses, group homes, mental health facilities, chemical dependency programs and detoxification centers, including facilities owned or 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, addresses and telephone numbers. This list also contains sheriffs, state police and state prison contact information.
2. The Compliance Monitoring Universe Spreadsheet is updated 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. This should be documented and the compliance monitor should contact the town directly to obtain any additional information. 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. A facility file folder will be set up for the agency.

Attachment : A Monitoring Universe (pg68)

Link to Master Agencies List (police departments, sheriffs, state police, Group homes Woodside, department of corrections, prisons) (pg68)

2.2

**CLASSIFICATION OF THE MONITORING
UNIVERSE**

Date Issued:	March 2013
Review Date:	Annually in January
Last Review:	January 2018
Related OJJDP Regulations:	JJDP Act 82 FR 4783 OJJDP Compliance Monitoring Guidance Manual

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.

As defined in the Federal Register, June 20, 1985 page 25558, “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 or Nnon- 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. Is it secure or non-secure
3. Is it residential or nonresidential (setup with a separate living area for overnight accommodations)

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 upon 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. For example, while conducting a site visit to a sheriff's department, the compliance monitor may have learned of a new court holding facility that was recently constructed. This is added to the compliance monitoring universe and a scheduled for a site visit as soon as possible. Also the compliance monitor may become aware of a new police department that has just become operational, or an existing facility that has undergone construction or renovation. This 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: JJDPA 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. Once obtained the surveys will be placed in the individual facility file folder.
8. State statutes regulating admissions to adult correctional facilities and juvenile correctional facilities should also be placed in the compliance monitoring universe files.

2.3

INSPECTION OF FACILITIES

Date Issued:	March 2013
Review Date:	Annually in January
Last Review:	January 2018
Related OJJDP Regulations:	JJDP Act 82 FR 4783 OJJDP Compliance Monitoring Guidance Manual

Statement of Purpose:

Inspection of facilities is required to classify 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. Each facility/agency will have an individual file folder, kept in the compliance monitoring electronic data folders shared with the JJ Specialist. Each individual facility file will contain:

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

Facility files will be kept in secure state data files so as to assure protection of confidential juvenile identification information.

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 basic requirement per OJJDP regulations is that states should have a statistically sound way of inspecting at least 10% of the facilities annually. However, data on all juveniles securely detained must be collected from 100% of the 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.. 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 sentenced or incarcerated to secure facilities. 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 entities. Inspected annually for DSO and separation.
Juvenile Detention Centers	Classified as secure. In Vermont it (there is only one) 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	Classified as non-secure, Site visits occur 10% annually and 100%

group homes	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.

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. If the date and time are not convenient, another date and time will be scheduled. The compliance monitor will be responsible for maintaining records of when facilities were 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 individual facility file folder. (See attachment) 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 individual facility file folder. 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 adults 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 (pg 76) Site Visit Information Sheet

See Attachment F-1 (pg 75) Law Enforcement Certification of Non-secure Classification Form

2.4

DATA COLLECTION AND VERIFICATION

Date Issued:	March 2013
Review Date:	Annually in January
Last Review:	January 2018
Related OJJDP Regulations:	JJDP Act 82 FR 4783 OJJDP Compliance Monitoring Guidance Manual

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. On site data collection and verification increases the accuracy and validity of the information. The compliance monitor with document on the Site Visit Information Sheet how the data is collected at the facility, i.e. lockup logs, Valcour, Spillman or other computer system)

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, January 1 through December 31 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).

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 18 that have not been charged or convicted of a felony from entering adult corrections facilities. Each facility has signage warning of this prohibition.

Procedures:

1. Adult Jails and Adult Lockups

- During site visits/inspections, the compliance monitor will collect and verify data on juveniles held securely. Any juveniles that were securely detained are entered into the DCF Jail Compliance Database, which is used to generate the information required to complete 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 or delinquent) 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: (pg 74) Juvenile Holding Log (sample)

2.4.1

DEINSTITUTIONALIZATION OF STATUS OFFENDERS / DSO

Date Issued:	March 2013
Review Date:	Annually in January
Last Review:	January 2018
Related OJJDP Regulations:	JJDP Act 82 FR 4783 OJJDP Compliance Monitoring Guidance Manual

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. The clear intent of the Act is that these are exceptions and not the rule.

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.
4. The JJDP Act does not ignore the issues with status offenders and nonoffenders. Instead, the Act supplies federal funds to states that meet the core requirements to develop an in depth continuum of care. The JJDP Act encourages creating and implementing community based treatment, diversion and delinquency prevention programs as appropriate, cost effective alternatives to secure confinement. Maintaining this requirement promotes policies concerning status offenders and nonoffenders and it promotes the distinction in treatment strategies for this population as opposed to the more serious juvenile offender.
5. OJJDP, which regulates compliance, provides for two primary types of exceptions, statutory and reporting exceptions. Reporting exceptions are violations which

federal regulations allow states to subtract from the total number of violations by regulatory definitions.

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. For purposes of compliance, statutory exceptions allow states to remove from consideration offenses that constitute the violation of a Valid Court Order or a violation of Section 922(X) of Title 18 or similar state law (handgun possession).

2.4.2

SIGHT AND SOUND SEPARATION

Date Issued:	March 2013
Review Date:	January of each Year
Last Review:	January 2018
Related OJJDP Regulations:	JJDP Act 82 FR 4783 OJJDP Compliance Monitoring Guidance Manual

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. It was passed by Congress in response to the fact that juveniles placed in adult facilities where they had contact with adult inmates and correctional staff were frequently victims of physical, mental, sexual and emotional abuse. It was also discovered that juveniles in contact with adult prisoners were exposed to the tools and training necessary to engage in criminal behavior.

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. The separation requirement maintains the safety of juveniles while focusing attention on their diversion to community resources.

The American Correctional Association, the American Bar Association, and the Bureau of Indian Affairs support standards requiring separation, therefore, the sight and sound separation requirement represents the minimum standard for safe jail policy.

Separation does not apply, nor do any of the requirements apply, to juveniles direct filed, certified or waived to adult court as felons. In VT, juveniles direct filed to adult court as misdemeanants are treated as delinquent youth and protected by the JJDPa.

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. **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. Separation must be accomplished architecturally or through policies and procedures in all secure areas of the facility, which include, but are not limited to, such areas as admissions, sleeping, and shower and toilet areas. Brief and inadvertent or accidental contact between juvenile offenders in a secure custody status and incarcerated adults in secure areas of a facility that are not dedicated to use by juvenile offenders and which are nonresidential, which may include dining, recreational, education, vocational, health care, sally ports or other entry areas, and passageways (hallways), would not require a facility or the State to document or report such contact as a violation. However, any contact in a dedicated juvenile’s area, including any residential area of a secure facility, between juveniles in a secure custody status and incarcerated adults would be a reportable violation.” 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.

2.4.3

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

Date Issued:	March 2013
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Last Review:	January 2018
Related OJJDP Regulations:	JJDP Act 82 FR 4783 OJJDP Compliance Monitoring Guidance Manual
Vermont Statute	33 V.S.A. § 5292. Detention in adult facilities of minors charged or adjudicated as delinquents

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; they are contained in the consolidated federal register.

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.

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 National Council on Crime and Delinquency, the Coalition for Juvenile Justice, the National Sheriffs Association, the Institute for Judicial Administration, the National Advisory Commission on Law Enforcement, and essentially every national organization

representing law enforcement and the judicial system, recommends or mandates standards that forbid the jailing of children.

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

Vermont statute cited above prohibits youth under the age of 16 charged or convicted of felony from placement in an adult correctional facility. Youth over the age of 16 may be placed at an adult facility and that facility must abide by PREA protections.

**ANNUAL COMPLIANCE MONITORING
REPORTING PERIOD**

Date Issued:	March 2013
Review Date:	Annually in January
Last Review:	January 2018
Related OJJDP	Regulations: <u>28 CFR 31</u>

Statement of Purpose:

28 CFR 31 requires that compliance monitoring reports be submitted by February 28th of each year. The OJJDP may also delay that date as needed.

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 1st through September 30th 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.

Attachment J (pg. 79)

2.6

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

Date Issued:	March 2013
Review Date:	Annually in January, annually thereafter
Last Review:	January 2018
Related OJJDP Regulations:	None

Statement of Purpose:

The data and information collected throughout the year must be analyzed, reviewed, and written up in the form of the annual Compliance Monitoring Report, which must be received by OJJDP by February 28th of each year or another date designated by that Office.

Process:

It is the compliance monitor's responsibility to collect, verify, and compile the data each year. The compliance monitor will also complete all other facets of the report.

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:	January 2018
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. Each type of facility complies with the regulations in different ways. 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.

<u>Facility</u>	<u>DSO</u>	<u>Jail Removal</u>	<u>Separation</u>
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**

Date Issued:	March 2013
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Review Date:	Annually in January, annually thereafter
Last Review:	January 2018
Related OJJDP Regulations:	JJDP Act 28 CFR 31 OJJDP Compliance Monitoring Guidance Manual

Statement of Purpose:

This policy is intended to provide the compliance monitor with 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. The only valid method to confirm classification is through a site visit. 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. 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 is used to define 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 the 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 would be 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.

3.2

TRANSFERRED AND WAIVED JUVENILES

Date Issued: March 2013

Review Date: Annually in January, annually thereafter

Last Review: January 2018

Related OJJDP Regulations: JJDP Act

OJJDP Compliance Monitoring Guidance Manual

Attachment: Vermont Statute 33 V.S.A. § 5204 Transfer from juvenile court

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 JJDP Act 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). 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 JJDP. 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.

Chapter 52: DELINQUENCY PROCEEDINGS
33 V.S.A. § 5204. Transfer from juvenile court

§ 5204. Transfer from juvenile court

(a) After a petition has been filed alleging delinquency, upon motion of the state's attorney and after hearing, the juvenile court may transfer jurisdiction of the proceeding to district court, if the child had attained the age of 10 but not the age of 14 at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2); or
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253.
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

(b) The state's attorney of the county where the juvenile petition is pending may move in the juvenile court for an order transferring jurisdiction under subsection (a) of this section within 10 days of the filing of the petition alleging delinquency. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the juvenile court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the juvenile court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed an act listed in subsection (a) of this section; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to juvenile courts and delinquent children.

(d) In making its determination as required under subsection (c) of this section, the court may consider, among other matters:

(1) The maturity of the child as determined by consideration of his or her age, home, environment; emotional, psychological and physical maturity; and relationship with and adjustment to school and the community.

(2) The extent and nature of the child's prior record of delinquency.

(3) The nature of past treatment efforts and the nature of the child's response to them.

(4) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

(5) The nature of any personal injuries resulting from or intended to be caused by the alleged act.

(6) The prospects for rehabilitation of the child by use of procedures, services, and facilities available through juvenile proceedings.

(7) Whether the protection of the community would be better served by transferring jurisdiction from the juvenile court to the district court.

(e) A transfer under this section shall terminate the jurisdiction of the juvenile court over the child only with respect to those delinquent acts alleged in the petition with respect to which transfer was sought.

(f) The juvenile court, following completion of the transfer hearing, shall make written findings and, if the court orders transfer of jurisdiction from the juvenile court, shall state the reasons for that order. If the juvenile court orders transfer of jurisdiction, the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.

(g) The order granting or denying transfer of jurisdiction shall not constitute a final judgment or order within the meaning of Rules 3 and 4 of the Vermont Rules of Appellate Procedure.

(h) If a person who has not attained the age of 16 at the time of the alleged offense has been prosecuted as an adult and is not convicted of one of the acts listed in subsection (a) of this section but is convicted only of one or more lesser offenses, jurisdiction shall be transferred to the juvenile court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of crime, and the entire

matter shall be treated as if it had remained in juvenile court throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to juvenile court under this subsection, the court shall order the sealing of all applicable files and records of the court, and such order shall be carried out as provided in subsection 5119(e) of this title.

(i) The record of a hearing conducted under subsection (c) of this section and any related files shall be open to inspection only by persons specified in subsections 5117(b) and (c) of this title in accordance with section 5119 of this title and by the attorney for the child. (Added 2007, No. 185 (Adj. Sess.), § 2, eff. Jan. 1, 2009.)

3.3

COURT HOLDING FACILITIES

Date Issued:	March 2013
Review Date:	Annually in January
Last Review:	January 2018
Related OJJDP Regulations:	JJDP Act 82 FR 4783 OJJDP Compliance Monitoring Guidance Manual

Statement of Purpose:

The compliance monitor needs to understand what constitutes a court holding facility in order to monitor this type of facility for compliance with the JJDP Act core protections

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 and that chart should be used to determine compliance.
3. The compliance monitor must monitor court holding facilities to ensure that they continue to meet the definition and purpose listed above.
4. A status offender or delinquent placed in a court holding facility is exempt from the DSO requirement if the facility meets the criteria listed above.
5. 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.

Attachments: Court Holding Facilities Regulations by Core Protections

Court Holding Facilities Regulations by Core Protections

<u>Type of Juvenile</u>	<u>Rules</u>	<u>If not followed, these Core Requirements are violated</u>
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

3.4

OTHER TYPES OF FACILITIES

Date Issued:	March 2013
Review Date:	Annually in January
Last Review:	January 2018
Related OJJDP Regulations:	JJDP Act 82 FR 4783 OJJDP Compliance Monitoring Guidance Manual
Vermont Statute	33 V.S.A. § 5292. Detention in adult facilities of minors charged or adjudicated as delinquents

Statement of Purpose:

The compliance monitor needs to understand what constitutes other types of facilities in order to monitor this type of facility for compliance with the JJDP Act core protections

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 prohibits the placement of status offenders and non-offenders in secure detention facilities or secure correctional facilities. Holding status offenders or non-offenders in an adult prison would be a violation of the JJDP Act.

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 DOC.

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.

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.

Scared Straight programs, where juveniles are brought inside adult prisons to discuss a life of crime with adult inmates as an intervention program are violations of the separation core protection when the juvenile is required to participate in this program as part of a court order, including probation or diversion requirements. The VT Department of Corrections has policy prohibiting Scared Straight-type 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. Often, these facilities are seen as a solution to a host of programmatic problems within a community when it is in fact, a limited and expensive option. The costs are higher resulting in a program driven continuum of services for juveniles rather than one driven by the client's needs. Some questions to ask are:

- What purpose would this facility serve our community and juveniles?*
- Which juveniles would be placed there, for how long? What placement process would we use?*
- What does our data indicate the needs are?*
- Can this service be provided elsewhere?*
- Does providing temporary holding limit our ability to provide other services for juveniles?*
- What are the on-going operating costs and who will cover them?*

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 Page (72)

Compliance Standard beginning FYY 2018

DISPROPORTIONATE MINORITY CONTACT	
Full compliance	Records which include race and ethnicity are maintained on all juveniles held.
A facility should be maintaining records, which include race and ethnicity.	

Requirement	Compliance Standard	Vermont Youth under 18	Maximum Violations Allowed
DSO	< 9.89/100,00 Youth	118,528	11
Separation	<.28 / 100,000 Youth	118,528	0
Jail removal	< 8.94 / 100,000	118,528	10

6.0

**COMMONLY ASKED COMPLIANCE
MONITORING QUESTIONS**

Date Issued: March 2013
Review Date: Annually in January

Last Review: January 2018

Related OJJDP Regulations: JJDP Act
82 FR 4783
OJJDP Compliance Monitoring Guidance Manual

Policy:

This policy serves to provide additional guidance.

Procedures:

The following is offered as a guide to commonly asked compliance monitoring questions.

FREQUENTLY ASKED QUESTIONS (FAQs)Deinstitutionalization of Status Offenders

Section 223 (a) (11) (A) of the JJDP Act

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

Congress noted that status and non-offenders were being held in adult jails and lockups for long periods of time simply because there were no other placement options. Since these juveniles had not committed a crime they were the first priority to remove from adult jails and lockups.

Q. Does a status offender, after violating a Valid Court Order, become a delinquent?
Examples include, contempt of court, failure to appear and nonpayment of fines.

A. *No, they are not reclassified as a delinquent nor can they be “upgraded” to a delinquent.*

Q. What is the difference between a non-offender and a status offender?

A. *A non-offender is typically a dependent/neglected or abused juvenile, whereas a status offender has committed a crime that would not be a crime if committed by an adult (runaway,, truancy, curfew violation). A non-offender may not be held in a juvenile detention center under circumstances, for any period of time.*

Q. Is possession of a firearm by a juvenile a status offense?

A. *Section 922(x) of U.S.C. Title 18 (the Federal Criminal Code), prohibits the possession of a handgun by a juvenile. A juvenile who violates this statute, or a*

similar State law, is exempted from the DSO requirement and are not reported as DSO violations.

- Q. May a status or non-offender ever be taken to an adult jail or lockup?
- A. *Yes. They may be taken to an adult jail or lockup for processing (fingerprints and photo) and placed in a non-secure area awaiting parent or other responsible adult. They may be booked in a secure booking area if they are under the officers continuous visual supervision and are removed from the booking area immediately following booking, and there may be no other non-secure booking area available.*
- Q. If a status offender (or non-offender) is securely detained in an adult jail or lockup, how is this counted as a violation?
- A. *When a status offender or non-offender is securely detained in an adult jail or lockup, it is counted as two violations, once under the DSO requirement and again under the Jail Removal requirement.*
- Q. If a status offender or non-offender is placed in a cell, but the door is not locked, is that a violation?
- A. *OJJDP's opinion is a cell is a cell is a cell. Therefore, even if the holding cell door is not locked, it is still a violation.*
- Q. Can a status offender be transported to a law enforcement facility?
- A. *Yes, status offenders may be transported and processed in an adult jail where continuous visual supervision is provided throughout the booking process. Continued non-secure custody for the purpose of interrogation, contacting parents or arranging another placement must occur outside the secure booking area.*
- Q. Can a juvenile before the court because of a petition for mental health commitment, who is ordered committed for treatment of a mental disorder, be placed in a secure mental health facility for treatment purposes?
- A. *It is OJJDP's position that all juvenile non-offenders in any category should not be placed in any secure facility. However, for the purposes of monitoring DSO may be interpreted to include within its scope only juveniles who are before a juvenile, family, or other civil court for reasons which are unique to the Individual's status as a juvenile. In other words, for the purposes of monitoring, a juvenile committed to a mental health facility under State law governing civil commitment of individuals for mental health treatment would be considered as outside the class of juvenile non-offenders defined by DSO. It should be perfectly clear that these distinctions for monitoring purposes would not permit placement of status offenders and non-offenders in a secure mental health facility following an adjudication for a status offense or a court finding that the juvenile is a non-offender. The placement of status offenders or non-offenders in such facility for diagnostic purposes is not allowable. A separate civil mental health commitment proceeding would be required before a status offender or non-offender could be placed in a secure facility and, for monitoring purposes, be outside the scope of DSO. Any placement of such status offender or non-offender must occur only*

after a full due process hearing is undertaken to protect the rights of the child. The State must assure that juveniles alleged to be or found to be status offenders or non-offenders are not committed under state mental health laws to circumvent the intent of DSO.

Sight and Sound Separation

Section 223 (a)(12) of the JJDP Act

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

Congress noted that juveniles were being held in adult jails and lockups with adults and were subject to abuse.

Q. Can juveniles waived to adult court be held with other juveniles?

A. *Yes. Juveniles waived to adult court are considered to be a swing group by OJJDP and may be held with either adults or with juveniles providing they have not yet turned 18. They may be held securely at juvenile facilities (WOODSIDE) The State's maximum age of extended juvenile jurisdiction, which in Vermont is age 21. While the OJJDP regulations would allow for Vermont to hold youth at Woodside to the age of 21, State law require youth be removed from Woodside on their 18th birthday..*

Q. Can juvenile offenders and adult offenders be placed together in non-secure community-based facilities?

A. *Yes. Non-secure community-based facilities do not fall under the JJDP Act.*

Q. How does OJJDP define sight and sound contact?

A. *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.*

Q. What is a collocated facility?

A. *A collocated facility is a juvenile facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered related when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer). See the Consolidated Formula Grants regulation for more information on the requirements of a collocated facility. (Vermont does not have any collocated facilities.)*

Q. What is time-phasing?

A. *Time phasing is using the same space in an adult jail or lockup for both juveniles and incarcerated adults but not at time same time. Time phasing rules should be included in policies and procedures. Time phasing is used to maintain compliance with separation in facilities that do not have separate areas for juveniles and incarcerated adults.*

- Q. If a juvenile and adult commit a crime together, do they need to be separated?
- A. *The regulations do not address separation in a patrol car, therefore they can be transported together. Once the juvenile is placed in a secure environment at the adult jail or lockup, separation is required, regardless of whether they committed the crime together.*
- Q. Does sight and sound apply when juveniles are being transported with adults?
- A. *No, separation does not apply outside of facilities.*
- Q. How does the use of trustees apply in determining compliance?
- A. *When monitoring for separation supervision or contact with adult trustees constitutes a violation.*
- Q. Is separation required in non-secure facilities?
- A. *No. None of the core requirements apply in non-secure facilities, only secure facilities.*
- Q. What about Shape Up or Scared Straight type programs?
- A. *These types of programs are violations of separation. See OJJDP Guidance Manual or the adult jail and lockup section in this manual.*

Jail Removal

Section 223 (a)(13) of the JJDP Act

This requirement was added to the JJDP Act during reauthorization in 1980.

Congress noted that States were attempting to comply with the separation requirement and consequently, holding juveniles in total isolation for long periods of time. This requirement was added to remove juveniles from adult facilities and if needed, detain them in a more appropriate setting.

- Q. Can a juvenile whose behavior is beyond the control of the juvenile detention center staff be transferred to an adult jail or lockup until they are under control?
- A. *No. The juvenile may not be transferred to an adult jail or lockup unless the juvenile, while at the juvenile detention center, is charged with a criminal offense and the juvenile is then held at the adult jail or lockup under one of the three exceptions to the jail removal requirement. This juvenile may not be placed in an adult jail or lockup to teach them a lesson or for a cooling off period.*
- Q. Can the 6-hour time period for accused delinquents before and after court be combined?
- A. *No. A juvenile may be detained for up to 6 hours before and/or for up to 6 hours after a court appearance. The hours may not be combined or exchanged or traded.*
- Q. When does the 6-hour time clock start and when is it turned off?
- A. *The 6-hour clock starts the moment a juvenile is placed in a secure environment. The clock can not be stopped until the juvenile is permanently removed from the*

secure environment. The clock does not stop for bathroom breaks, for interviews, for phone calls, etc.

Q. What is a secure facility?

A. *A secure facility is one where construction fixtures are designed to physically restrict the movements and activities of persons in custody.*

Q. What does staff secure mean?

A. *Physical restriction of movement or activity is provided solely through facility staff. It does not include construction fixtures designed to physically restrict the movements and activities of persons who are in custody within; it may establish reasonable rules restricting entrance to and egress from the facility and access to the community which govern the conduct of all facility residents and may use intensive staff supervision or other programmatic intervention strategies.*

Q. Is a room with a lock on it considered secure?

A. *If a juvenile is placed in a room with a lock on it, even though it is unlocked it is considered secure. An exception is if a department is in only one room and they need to lock it based on the purposes of the room (to keep people away from valuable equipment). If it has the potential to be secure but is never used as a secure room but maybe locked to house equipment and there are policies which state juveniles will never be held there, then it is ok.*

Q. If the building perimeter is secure, is a juvenile in the building considered to be in secure custody?

A. *Yes, if the perimeter is secure then a juvenile placed in that building is in secure custody. All the core requirements apply.*

Q. Is the booking area considered secure if it is secure?

A. *No. You can book status offenders in a secure booking area and not log them or count them as violations of DSO provided you move them out once the booking process is completed. The juvenile must be in the presence of a law enforcement officer during the entire booking process, there must be no other non-secure booking area available, and the juvenile must be moved out of the secure booking area once the booking process is completed.*

Q. What is the exact time frame on the 6-hour rule?

A. *A delinquent becomes a violation after 6 hours and 1 minute.*

Q. What about time-released locks?

A. *It is considered non-secure if there is a delay of up to 30 seconds*

Q. Define what the monitoring universe should consist of, especially what types of public and private facilities, other than detention centers and secure law enforcement facilities, that should be monitored and under what circumstances

could they be excluded?

A. *The Identification of the Monitoring Universe refers to identifying all residential Facilities which might hold juveniles pursuant to public authority and therefore should be classified to determine if each should be included in the other monitoring tasks. This includes those facilities owned or operated by public or private agencies. A full list should be developed and should include all jails, lockups, detention centers, correctional facilities, group homes, foster homes, and any other secure or non-secure public or private mental health facilities and hospitals, chemical dependency programs, detoxification centers, airports, malls, sporting complexes, court holding facilities, federal facilities (military bases, Native American tribes, INS), temporary holding facilities, collocated facilities, and emergency shelters. Once all facilities are identified, they are classified. In some cases state law may prohibit placement of juveniles in certain facilities, in some cases another state agency regulates the facilities conduct and/or security level. In these cases the facility may need to be classified annually. The facilities remaining that detain juveniles securely, or may by the nature of the facility detain juveniles securely, pursuant to public authority are included in the inspection list.*

Q. What is public authority?

A. *Any officer, or judge, even if they are paid off-time wages. If the officer has the power to arrest and they are working a second job they are still considered public authority.*

Q. Is electronic monitoring secure or non-secure?

A. *Non-secure.*

Q. How are Native American facilities monitored?

A. *Native American reservations are included in the Monitoring Universe. If they are receiving Native American pass-through funds, the tribes must agree to attempt to comply with the core requirements. If they are not receiving funds they are treated as any other federal agency and are not required to comply. One of the most effective methods for compliance is building relationships, offering technical assistance, providing information on liability issues and assisting people in developing a comprehensive juvenile justice strategy.*

Q. If a city does not have a lockup and contracts with the county to detain juveniles, should the department be part of the universe?

A. *Yes, the department should be part of the universe and must be classified annually. The classification process should include an on-site visit periodically to determine if they are still non-secure. If they are non-secure, records do not need to be maintained.*

Q. Are court holding facilities subject to DSO and Jail Removal?

A. *No. They are only subject to separation, provided they meet the criteria for court holding. See Non-Secure regulation, 1988.*

- Q. How do you verify information on logs?
- A. *Verification may require that the compliance monitor verify records in several locations. At detention centers you may need to go to the court. At police departments you may need to check in the file or on the radio log.*
- Q. How can I get facilities to fill out logs completely and what is the best way to deal with a site that is not very cooperative?
- A. *Facilities report inaccurate information for several reasons. If completing the logs only adds to their workload but serves no purpose for them, seek methods to re-frame the reporting so it provides you with the information you need while enhancing their internal operation. Provide them with reasons to collect the information, for example, it can reduce liability and/or provide accurate admission records. If they are not cooperative, gain understanding of their concerns during your exit interview. They may just be venting their frustration with the requirements. Bring materials to the next on-site that are helpful. Become a resource. Understand their concerns.*
- Q. Which agencies should be included in compliance site visits?
- A. *All facilities that detain juveniles securely pursuant to public authority should be included in compliance onsite visits. Facilities that do not have secure facilities, but whose status may change due to the nature of their work, should be monitored periodically to ensure they are still non-secure.*
- Q. If a Judge orders a juvenile to jail is that still a violation?
- A. *Yes, court orders do not exempt facilities from compliance with the requirements. A juvenile may be held for up to 6 hours before court and 6 hours after court if they are a delinquent. If they are a status offender they may not be held for any period of time. If a Judge sentences a status offender or delinquent to an adult jail or lockup it is a violation. In the case of the status offender, it is both a DSO and Jail Removal violation. In the case of the delinquent, it is a Jail Removal violation.*
- Q. Is it a violation if a juvenile lies about their age and is detained with the adult population until it is later discovered they are really a juvenile?
- A. *If a juvenile lies about their age and local law enforcement acts in good faith and corrects the situation immediately upon receipt of accurate information although a violation has occurred it does not need to be recorded as such. If law enforcement does not correct the situation immediately then a violation should be recorded.*
- Q. Is the passage of state legislation sufficient in exempting states from monitoring?
- A. *No. Simply because a State has legislation it does not exempt them.*

Attachment A

Monitoring Universe



Compliance
Monitoring Universe

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							
Facility	Date	DSO	Type of Violation		Source of Discovery		
			Separation	Jail Removal	Holding Log	Site Visit	Other Source

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-1

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>

This attachment will be replaced when the legislature establishes a new authorization for monitoring authority

Attachment D-2 authority to monitor

PETER SHUMLIN
Governor



State of Vermont
OFFICE OF THE GOVERNOR

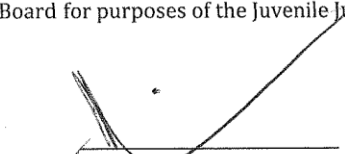
DESIGNATION

The Juvenile Justice and Delinquency Prevention Act (JJDP), Pub. L. No. 93-415, 42 U.S.C. § 5601 et seq., and accompanying federal regulations require that the Chief Executive Officer of each state designate a state agency, along with a supervisory board, to carry out the requirements of the JJDP and each state's JJDP plan.

Vermont's 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 JJDP and 28 C.F.R. § 31.302. A state's advisory group may also serve as the state's supervisory board at the discretion of a state's Governor pursuant to section 223 of the JJDP.

In light of the above, I hereby designate Vermont's Children and Family Council for Prevention Programs as Vermont's Supervisory Board for purposes of the Juvenile Justice and Delinquency Prevention Act.

Date July 1, 2015


Peter Shumlin
Governor, State of Vermont

Attachment E Definitions

Attachment E Definitions

I. Federal Definitions

Secure Custody 31-304 (b)

A 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.

If the adjudicated offense was solely a status offense it would not be considered as an offense in (Secure Detention Facility 103(12) (A) (B))

Status offender 31.304 (h)**Federal Definiti**

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 DefinitionNonoffender 31-304 (l)

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 DefinitionPrivate 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(1) (1)

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 DefinitionAccused

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

Vermont uses this definitionAdjudicated

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 definitionDelinquent

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 definitionNonresidential 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 definitionResidential areas

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

Vermont uses this definitionTime 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:

Youth referred to juvenile court for delinquent acts are often screened by an intake department (either within or outside the court). The intake department may decide to dismiss the case for lack of legal sufficiency, to resolve the matter informally (without the filing of charges), or formally (with the filing of charges). The diversion population includes all youth referred for legal processing but handled without the filing of formal charges.

Vermont reports 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 5: 8/20/2017

Instructions:

Status Offenders shall not be confined securely. (Includes locked rooms, cuffing rails and stationary objects.

Alleged delinquents may not be held securely for longer than 6 hours before and after a court appearance.

Write down the most serious charge

Note any barriers your facility may have that hinder compliance with Federal standards.

Definitions:

Status Offender: Juvenile charged with an offense that if committed by an adult, would not be a crime. I.e. runaways, Truants

Delinquent: Juvenile charged with or adjudicated for conduct which if committed by an adult would be a crime or individuals under age 18 charged with misdemeanor offenses

Juvenile held securely while at facility
Juvenile held in non-secure setting while at facility

Delinquent: Y = Yes N = No DK = Don't Know

W White
A.I. American Indian
B African American
A Asian
P Pacific Islander
O Other
Hispanic Y or N

For assistance call Tom Krug 802-238-9239 or Theresa Lay-Sleeper 802 498-8890

Name/Initials	Sex	DOB	Race	Charge	Case#	Date & Time In	Officer	Date & Time Out	S/N S	
1.										
Remarks							Delinquent: Y <input type="checkbox"/> N <input type="checkbox"/> DK <input type="checkbox"/>			
2.										
Remarks							Delinquent: Y <input type="checkbox"/> N <input type="checkbox"/> DK <input type="checkbox"/>			
3.										
Remarks							Delinquent: 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
SITE VISIT INFORMATION SHEET

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 _____

Juvenile SOP's on file _____

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

Link to 82 FR 4783

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

Attachment J

Detailed timeline of Compliance Tasks



Timeline FFY2018
Detailed.xlsx