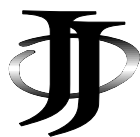




**Arkansas' Guide
For Implementing the
Core Protections of the
Juvenile Justice and
Delinquency
Prevention Act of 2002**

**Safe and Appropriate
Holding of Juveniles
In Secure Settings and
Facilities**

Revised September 2009



TAB 1 DETAILED TABLE OF CONTENTS

TAB 2 INTRODUCTION and PURPOSE

TAB 3 DETERMINING SECURE and NON-SECURE CUSTODY STATUS

TAB 4 ADULT JAILS and ADULT LOCKUPS

TAB 5 JUVENILE DETENTION CENTERS

TAB 6 TEMPORARY HOLDING FACILITIES

**TAB 7 OTHER FACILITIES
Court Holding & Collocated Facilities**

TAB 8 APPENDICES

Table of Contents

Tab 1	Detailed Table of Contents	
Tab 2	Introduction and Purpose	
	Introduction	2-1
	Purpose and Intent of the JJDP Act	2-2
	The Core Protection Requirements of the JJDP Act.....	2-3
	Reasons for Compliance with the JJDP Act	2-4
Tab 3	Determining Secure and Non-Secure Custody Status	
	Secure and Non-Secure Custody Chart and Flow Chart.....	3-1& 3-2
Tab 4	Adult Jails and Adult Lockups	
	Applicable Core Protection Requirements, Definitions, Rules and Regulations	4-1
	Deinstitutionalization of Status Offenders	4-2
	Removal of Juveniles from Adult Jails and Lockups (Jail Removal).....	4-3 to 4-5
	Sight and Sound Separation	4-6
	Disproportionate Minority Contact	4-7
	Juveniles Excluded from JJDP Act and Regulations (Direct File, Waiver and Transfer).....	4-7
	Compliance Chart for Adult Jails and Adult Lockups	4-8
	Determining Rates of Compliance/Consequences for Non-Compliance	4-9
	Summary Standards for Demonstrating Compliance	4-10
	Related Arkansas State Statutes	4-11 & 4-12
Tab 5	Juvenile Detention Centers	
	Applicable Core Protection Requirements, Definitions, Rules and Regulations	5-1
	Sight and Sound Separation	5-1 & 5-2
	Deinstitutionalization of Status Offenders and Exceptions.....	5-2 to 5-4
	Compliance Chart for Juvenile Detention Centers	5-5
	Determining Rates of Compliance/Consequences for Non-Compliance	5-6
	Summary Standards for Demonstrating Compliance	5-7
	Related Arkansas State Statutes	5-8
Tab 6	Temporary Holding Facilities	
	Overview: Classifying Temporary Holding Facilities as Secure or Non-Secure.....	6-1 & 6-2
Tab 7	Other Facilities	
	Court Holding Facilities	7-1
	Collocated Facilities	7-1 to 7-2
	DYS Policy, Guidelines and Checklist for Collocated (Adult/Juvenile) Facilities .	7-3 to 7-10
Tab 8	Appendices	
	A Federal and State Definition of Terms	
	B Flowchart to Determine Secure Status	
	C Arkansas Statutes and Federal Regulation Chart	
	D Consolidated Federal Register	
	E Secure Juvenile Holding Log (Sample)	
	F Law Enforcement Custody Policy and Procedures (Sample)	
	G Sight and Sound Separation Checklist	
	H Non-Secure Certification Form	
	I Arkansas' Valid Court Order - Judicial Process	
	J Arkansas Detention Intake Screening Tool and Detention Criteria	
	K Arkansas Juvenile Justice Flow Chart	
	L One Page Compliance Summary for Law Enforcement Agencies	

Introduction

This guide has been developed by the Division of Youth Services to acquaint Arkansas' key players in the juvenile justice system with both the core protection requirements required by the federal Juvenile Justice and Delinquency Prevention Act (JJDP Act) and corresponding state statutes regarding the safe and appropriate processing and holding of juveniles.

As a participant in the Juvenile Justice and Delinquency Prevention Act, Arkansas maintains and monitors compliance with the core protections of the JJDP Act. The Department of Human Services, Division of Youth Services, is the state agency in Arkansas designated to administer several JJDP Act Grant Fund programs to monitor compliance with the core protections of the JJDP Act, and to staff the state advisory group defined in the JJDP Act. In Arkansas, the advisory group is the governor-appointed Coalition for Juvenile Justice. Working in conjunction with the Coalition and other juvenile justice system agencies, DYS provides the leadership necessary to coordinate the JJDP Act and juvenile justice efforts.

Arkansas receives JJDP Act Formula Grant funds annually, dependent on compliance with the core protections of the JJDP Act. The core protection requirements, explained further in this guide, have become tenants for basic professional practice throughout the country. It is incumbent upon all agencies and departments to assist the state in maintaining compliance, to assure safe and appropriate holding of juveniles, and to retain these funds for juvenile justice programming.

For more information on Arkansas' involvement with the Juvenile Justice and Delinquency Prevention Act please contact:

Arkansas Department of Human Services
Division of Youth Services
700 Main Street
P.O. Box 1437, Slot 450
Little Rock, AR 72203-1437
Phone: 501-682-8654

(Please ask for either the Compliance Monitor or the Juvenile Justice Specialist)

or

The Arkansas Coalition for Juvenile Justice web site
<http://arjuvjust.net/index.html>

or

Office of Juvenile Justice and Delinquency Prevention web site
<http://ojjdp.ncjrs.org/compliance/index.html>

This manual was prepared by:
Candice L. Hooks
University of Arkansas at Little Rock
Department of Criminal Justice

Purpose and Intent of the *Juvenile Justice and Delinquency Prevention Act*

To address the dire conditions of confinement for juveniles at the time, Congress enacted a piece of reform legislation in 1974, the Juvenile Justice and Delinquency Prevention Act (JJDP Act) of 1974. To continue needed improvements in the juvenile justice system, the JJDP Act was amended during most of its reauthorization efforts, scheduled every four years. In 2002, the Act was revised and is now known as the JJDP Act of 2002. Based on these years of discussion and research, the JJDP Act is designed to improve juvenile justice systems through federal direction, coordination and resources. The JJDP Act represents widespread consensus on what is considered “best practice” with juveniles.

Participating states enter a partnership with the federal government. The State Relations and Assistance Division (SRAD) of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) provides technical assistance, training and coordination of resources to the states. Governors of participating states designate a State Planning Agency which oversees implementation of the JJDP Act. The State Planning Agency in Arkansas is the Arkansas Department of Health and Human Services, Division of Youth Services. The division staffs the governor-appointed State Advisory Group which allocates funds awarded to Arkansas through Titles II and V of the JJDP Act. In Arkansas this Advisory Group is the Arkansas Coalition for Juvenile Justice (ACJJ).

Arkansas receives an annual formula grant allocation through the JJDP Act which is used to provide funding for innovative state and local juvenile justice programming. The annual allocation is based on compliance with the core protections. If Arkansas is not in compliance with any one of the four protections, 20% of the annual allocation is withdrawn. If there is non-compliance with two core protections, 40% of the allocation is withdrawn, and so on. Of the remaining funds, 50% must then be used to bring Arkansas back into compliance with the non-compliant core protection(s). It is critical that all agencies and facilities that affect compliance diligently work toward maintaining compliance so that Arkansas continues to receive the annual formula grant allocation for juvenile justice programming.

Communities interested in applying for delinquency prevention funds under Title V of the JJDP Act must first be certified as being in compliance with the protections.

The JJDP Act represents the highest standards for the safe and appropriate holding of juveniles. The protections are endorsed by the National Council on Crime and Delinquency, the Coalition for Juvenile Justice, the National Sheriff’s Association and the National Advisory Commission on Law Enforcement.

The Core Protection Requirements of the JJDP Act

The Juvenile Justice and Delinquency Prevention Act of 2002
Public Law 93-415, 42 U.S.C. 5601

The protections apply to all juveniles except those under criminal (adult) court jurisdiction.

Section 223(a)(11)(A) Deinstitutionalization of Status Offenders (DSO)	Section 223(a)(12) Sight and Sound Separation of Juveniles from Adult Offenders	Section 223(a)(13) Removal of Juveniles from Adult Jails and Lockups	Section 223(a)(14) Compliance Monitoring	Section 223(a)(22) Disproportionate Minority Contact
---	---	---	--	---

Deinstitutionalization of Status Offenders

“Juveniles who have been charged with or have committed an offense that would not be criminal if committed by an adult [excluding juveniles who are charged with or who have committed a violation of section 922(x) (2) of title 18 (juvenile possession of a handgun), United States Code, or of a similar state law; juveniles who are charged with or who have committed a violation of a valid court order; and juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State] shall not be placed in secure detention facilities or secure correctional facilities. Juveniles who are not charged with any offense and who are aliens or alleged to be dependent, neglected, or abused shall not be placed in secure detention facilities or secure correctional facilities.”

Separation of Juveniles from Incarcerated Adults

“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. There must be in effect in the state a policy that requires individuals who work with both such juveniles and adult inmates, including in collocated facilities, to have been trained and certified to work with juveniles.”

Removal of Juveniles from Adult Jails and Lockups

“Juveniles who are accused of nonstatus offenses who are detained in such jail and lockup for a period not to exceed 6 hours for processing and release, while awaiting transfer to a juvenile facility, or in which period such juveniles make a court appearance, and only if such juveniles do not have contact with adult inmates.”

Compliance Monitoring *

“Provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraph (11) (A), paragraph (12) and paragraph (13) are met, and for annual reporting of the results of such monitoring to the Administrator, except that such reporting requirements shall not apply in the case of a State which is in compliance with the other requirements of this paragraph ... and has enacted legislation which conforms to (the) requirements, and contains ... sufficient enforcement mechanisms.” Those states participating in the JJDP Act, in order to demonstrate and adequate system of compliance monitoring, must have identification of the monitoring universe. The monitoring universe “refers to the identification of all facilities in the state that might hold juveniles pursuant to public authority.”

Disproportionate Minority Contact*

“Address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of the minority groups, who come into contact with the juvenile justice system.”

**This guide addresses three of the four core protection requirements regarding the holding of juveniles: Deinstitutionalization of Status Offenders (DSO), Sight and Sound Separation, and Removal of Juveniles*

• **Reasons for Compliance with the Core Protection Requirements¹**

Below are the main reasons to comply with the JJDP Act core protections:

- Non-compliance with any of the 4 core protections results in a 20% reduction of the federal Formula Grant funds awarded annually to Arkansas. In addition, 50% of the remaining funds must be used to achieve compliance with the violated core protection(s). Reduced funding to Arkansas means reduced juvenile justice and delinquency prevention funds to local programs¹
- A community's non-compliance with any of the 4 core protections means that it is ineligible to apply for JJDP Act Title V prevention grant funds and other juvenile justice funds through the Division of Youth Services. Jailing juveniles inappropriately places the community at risk of loss of federal funding, at risk of paying for a civil suit and at risk of being labeled as a community which places Arkansas in funding jeopardy.
- The JJDP Act creates an enforceable private right of action. States assume duties when they accept these federal funds and when those duties are breached a juvenile may seek remedy pursuant to 42 U.S.C. Section 1983. See Hendrickson v. Griggs, 672 F. Supp. 1126, N.D. Iowa 1987 and Horn by Parks v. Madison County Fiscal Court, 22 F. 3d. 653, 6th Circuit 1994.
- Non-compliance also opens the door to civil suits on conditions of confinement litigation. Jailing juveniles has resulted in damage claims under the 8th Amendment Cruel and Unusual Punishment Clause and under the 14th Amendment Due Process Clause. In D.B. v. Tewksbury, 545 F. Supp. 896 (D. Oregon 1982) the court found the practice of jailing juveniles to be a per se constitutional violation of the 14th Amendment. Other claims that may be raised when jailing a juvenile are: Classification and Safety; Inadequate Programming for Juveniles; Inadequate Educational Programming (especially special education claims) and Inadequate Health Care for Juveniles.
- The majority of professional organizations have embraced the JJDP Act and core protections as standards for the processing and detention of juveniles (American Bar Association, National Sheriffs Association, National Chiefs of Police, National Public Defenders).

¹ OJJDP Standards for Demonstrating Compliance < <http://ojjdp.ncjrs.gov/compliance/section7.pdf> >

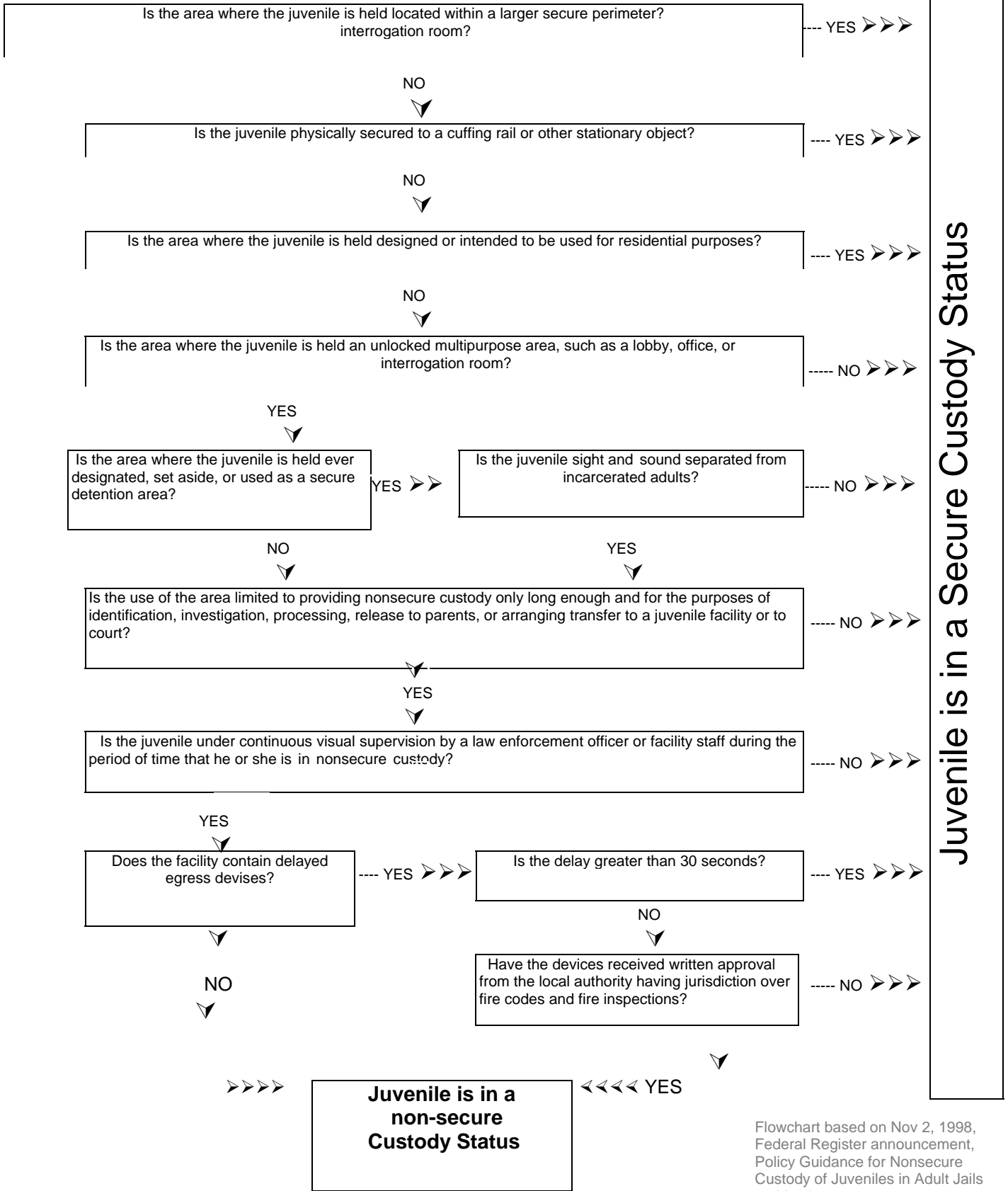
Determining Secure and Non-Secure Custody Status

The JJDP Act and core protections only apply when a juvenile is in secure custody. The following chart and the flow chart on the next page show what constitutes secure and non-secure custody in an adult jail or lockup.²

Secure Custody: JJDP Act Applies	Non-Secure Custody: JJDP Act Does Not Apply
If the room where the juvenile is being held is within a larger, secure perimeter; OR	If the room where the juvenile is being held is not within a larger, secure perimeter; AND
If the juvenile is cuffed to a cuffing rail or other stationary object; OR	If the juvenile is not cuffed to a stationary object but may be handcuffed to him/herself; AND
The room where the juvenile is being held is designated, set aside, or used as a secure detention area or is part of such an area; OR	If the juvenile is in a room that is not designated, set aside, or used as a secure detention area and it is an unlocked multipurpose area such as a lobby, office or interrogation room; AND
If the room contains construction features designed to physically restrict the movement and activities of persons in custody such as a lock on the door (whether or not the door is actually locked), a cuffing ring or rail, steel bars, etc.; OR	If the room contains no construction fixtures designed to physically restrict the movement and activities of persons in custody such as a lock on the door, a cuffing ring or rail, steel bars, etc.; AND
If the room is designated or intended to be used for residential purposes; OR	If the room is not designated or intended to be used for residential purposes; AND
If the room contains delayed egress devices where the delay is greater than 30 seconds and the facility has not received written approval from the fire inspector to use the room; OR	If the room contains delayed egress devices that do not exceed 30 seconds and the facility has received written approval from the fire inspector to use the room; AND
If the area is being used for purposes other than identification, investigation, processing and release to parents; OR	If the area is used only for the purpose of identification, investigation, processing and release to parents, the juvenile is under constant supervision AND is sight and sound separated from adult inmates.
If the juvenile is left in a secure booking area after being photographed and fingerprinted; OR	If the juvenile is booked in a secure booking area and is under continuous law enforcement visual supervision and is removed from the secure booking area (if there is no un-secure booking area available within the facility) to a non-secure area <u>immediately following the booking process</u> for interrogation, contacting parents, or arranging placement or transportation; AND
If the juvenile is being processed through a secure booking area when an un-secure booking area is available within the facility.	If the juvenile is under continuous visual law enforcement supervision and physical restriction of movement or activity is provided solely through facility staff (staff secure). A juvenile in a police car is considered to be in non-secure custody.

² OJJDP Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups, Federal Register 53, no. 212 (November 2, 1988):44367

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



Flowchart based on Nov 2, 1998, Federal Register announcement, Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockup. Chart revised 12-30-2002.

Adult Jails and Adult Lockups

Applicable Core Protection Requirements, Rules and Regulations

Adult jails and adult lockups must comply with the following core protections:

Deinstitutionalization of Status Offenders;
Removal of Juveniles from Adult Jails and Adult Lockups (Jail Removal);
Separation of Juveniles from Incarcerated Adults; and
Disproportionate Minority Confinement.

What is an Adult Jail and an Adult Lockup?

An **adult jail** is a locked facility administered by county or local law enforcement and correctional agencies. Adult jails are used to detain adults charged with violating criminal law pending trial, convicted adult criminal offenders sentenced generally for no more than one year and convicted adult criminal offenders waiting transfer to a state prison or community corrections facility.

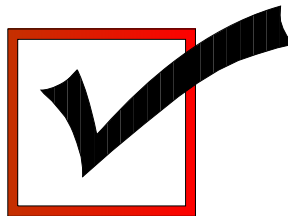
An **adult lockup** is similar to an adult jail except that it is a municipal police temporary holding facility that does not hold persons after they have been formally charged or convicted.

Each applicable core protection, its rules and regulations are discussed in the following pages.

**Remember - if a juvenile is in Non-Secure Custody,
none of the core protection requirements apply.**
(See flow chart on page 3-2)

**In order for the monitor to determine if a facility is in compliance,
FACILITY STAFF MUST RECORD
THE NECESSARY INFORMATION ABOUT
ALL JUVENILES THAT ARE HELD SECURELY ON A
Secure Juvenile Holding Log**

(See sample Secure Juvenile Holding Log - Appendix E)



Adult Jails and Adult Lockups

DEINSTITUTIONALIZATION OF STATUS OFFENDERS (DSO) Definitions, Rules and Regulations³

Definitions

Status Offender	A juvenile who has been charged with, or adjudicated for, conduct that would not be criminal if committed by an adult. Examples include: running away, underage drinking, underage possession of alcohol or tobacco, curfew violation (if the curfew ordinance applies only to juveniles) and truancy. Possession of a handgun by a juvenile is excluded from the status offense classification by state and federal laws.
Non-Offender	A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, or mental health issues, but not a delinquent act. Alien juveniles who have not committed a delinquent act are also classified as non-offenders.
Delinquent	A juvenile who has been charged with, or adjudicated for, any conduct that would be criminal if committed by an adult. Examples include: D.U.I., open container in a vehicle, trespass, assault, burglary, etc.

Federal Rules and Regulations - DSO

- No status offender or non-offender may be placed in secure custody for any period of time. If they are, complete information about them must be recorded on a *Secure Juvenile Holding Log*, and this action will be counted as a violation of both the DSO and Jail Removal core protection requirements. Therefore, one status offender or non-offender placed in a secured setting counts as two violations.
- **Booking:** Law enforcement may complete the booking process of a status offender or non-offender in a secure booking area **only** if there is no unsecured booking area available, the juvenile is under continuous law enforcement visual supervision, there are no adult offenders present; and the juvenile is immediately removed from the secure booking area to a non-secure area for questioning or further processing. If these conditions are not met, the juvenile is considered to be in “secure custody” and it is a violation.
- A status offender or non-offender may be handcuffed to him/herself, but cannot be handcuffed to a stationary object (see flow chart on page 3-2).
- A status offender or non-offender is considered to be in non-secure custody if they are under continuous visual law enforcement supervision and physical restriction of movement or activity is provided solely through facility staff (staff secure).
- Any juvenile in a police car, or other vehicle in law enforcement control, is considered to be in non-secure custody.
- Information on any juvenile who is placed in secure custody (see flow chart on page 3-2) must be recorded on a *Secure Juvenile Holding Log* for the DYS compliance monitor’s review.

³ The Juvenile Justice and Delinquency Prevention Act of 2002, Public Law 93-415, 42 U.S.C. 5601, Section 223(a)(11)(A), Deinstitutionalization of Status Offenders

Adult Jails and Adult Lockups

REMOVAL OF JUVENILES FROM ADULT JAILS AND LOCKUPS (JAIL REMOVAL) Definitions, Rules and Regulations⁴

Definitions

- Accused** A juvenile accused of, or charged with, committing an offense, or alleged to have committed an offense (not yet adjudicated).
- Adjudicated** The court has determined that is has been proven beyond a reasonable doubt that the juvenile has committed a delinquent act or status offense, or that the juvenile has pled guilty to committing a delinquent act or status offense.
- Status Offender** A juvenile who has been charged with, or adjudicated for, conduct that would not be criminal if committed by an adult. Examples include: running away, underage drinking, underage possession of alcohol or tobacco, curfew violation (if the curfew ordinance applies only to juveniles) and truancy. Possession of a handgun by a juvenile is excluded from the status offense classification by state and federal laws.
- Non-Offender** A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, or mental health issues, but not a delinquent act. Alien juveniles who have not committed a delinquent act are also classified as non-offenders.
- Delinquent** A juvenile who has been charged with, or adjudicated for, any conduct that would be criminal if committed by an adult. Examples include: D.U.I., open container in a vehicle, trespass, assault, burglary, etc.

Federal Rules and Regulations - Jail Removal

The Jail Removal core requirement states that no juvenile shall be held securely in an adult jail or adult lockup. However, there are two exceptions to this rule: 1) a 6-hour hold exception for alleged and certain adjudicated delinquent offenders and 2) an exception for juveniles judicially transferred to adult criminal court, or filed directly to criminal court by the prosecuting district attorney. These exceptions are explained below. Any secure holding or detention of a juvenile in these facilities for purposes (i.e., punishment or time-out) other than those excepted below is a violation of the jail removal core requirement.

Exceptions to the Jail Removal Rule

1) 6-Hour Hold Exception

The Office of Juvenile Justice and Delinquency Prevention regulations allow for a “6-hour grace period” that permits the secure detention of juveniles in adult jails and lockups under the following circumstances:

- An accused delinquent may be detained for up to 6 hours for the purposes of identification, processing, and to arrange for release to parents or transfer to juvenile court, juvenile shelter or a juvenile detention center. During this time no sight and sound contact with adult inmates is allowed.

⁴The Juvenile Justice and Delinquency Prevention Act of 2002, Public Law 93-415, 42 U.S.C. 5601, Section 223(a)(13) Removal of Juveniles from Adult Jails and Lockups

- An accused or adjudicated delinquent may be detained for up to 6 hours before a court appearance and up to an additional 6 hours after a court appearance awaiting transport or release. During this time no sight and sound contact with adult inmates is allowed. These times cannot be combined. For example, a delinquent may not be held for 4 hours before court and 8 hours after court for a total of 12 hours.

These 6-hour grace periods start the moment the juvenile is placed in the secured setting and the “clock” cannot be stopped until the juvenile is permanently removed from the secured setting. For example, if a juvenile were placed in a secured setting at 1000 hours, then temporarily removed at 1100 hours for questioning and returned to the secured setting at 1300 hours, the juvenile would be considered in continuous secure custody from the beginning time of 1000 hours or a total of 3 hours. Therefore, in this case, the juvenile must be released no later than 1600 hours or a violation of the Jail Removal core requirement 6-hour grace period occurs.

If a juvenile is arrested for a very serious offense such as murder and it is anticipated that activities such as lab work and investigation will take longer than 6 hours, the juvenile should be processed and transported to a juvenile detention facility pending completion of these activities or the direct filing of charges in criminal court.

2) Exception for Transferred or Direct File Juveniles

Juveniles who have been judicially waived to, direct filed by the district attorney, or are otherwise under the jurisdiction of the adult criminal court do not fall under the purview of the JJDP Act. However, state law requires that if they are held securely they must be held separately from adults. The transfer or direct filing of charges must have been completed before they are excluded from the JJDP Act and core protections.

The following scenarios constitute violations of the Jail Removal core requirement:

- Status offenders and non-offenders held in a secured setting of a jail or lock-up for any period of time. Holding status or non-offenders securely counts as 2 violations - one under Deinstitutionalization of Status Offenders (DSO) and one under Jail Removal.
- Accused delinquents held in an adult jail or lockup for purposes other than identification, investigation, processing, release to parents, awaiting transfer to court or transfer to a juvenile facility following initial custody. Therefore, if a juvenile is being held as “punishment” or to teach them a lesson it is a violation.
- A juvenile who is transferred to a jail or lockup from a juvenile detention center for disciplinary reasons unless additional criminal charges are filed relative to the infraction and then only for processing purposes. See the above statement. If a juvenile is brought to an adult jail or lockup after an infraction at another facility and is not being charged with that offense, it is assumed that the holding is for punishment purposes, or for a cooling off period, and is therefore a violation since no other criminal charges were filed.
- Accused delinquents held over the 6-hour grace period. A juvenile may not be removed from the secure setting and placed back again to “stop the 6-hour clock”. Once the clock starts it can not be turned off until the juvenile is permanently removed from the secure setting.
- Accused or adjudicated delinquents held over the 6-hour grace period prior to or following a court appearance or for any length of time not related to a court appearance. The time periods

cannot be combined. For example, a juvenile may not be held for 5 hours before court and 7 hours after court for a total of 12 hours. The time frames are strict: 6 hours before court and 6 hours after court.

- Adjudicated delinquents held for any period of time for any reason other than awaiting a court appearance.
- If a juvenile is not sight and sound separated from incarcerated adults. Your DYS compliance monitor will have completed a Sight and Sound Separation Checklist (Appendix G) for your facility and will have informed you as to your separation levels.

Adult Jails and Adult Lockups

SIGHT AND SOUND SEPARATION Definitions, Rules and Regulations⁵

Definitions

- Sight & Sound Contact** Any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. **Sight contact** is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. **Sound contact** is defined as direct oral communication between incarcerated adults and juvenile offenders. (See the chart on page 3-2 to determine whether the juvenile is in secure custody status.)
- Non-residential 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, passage of inmates, etc.
- Residential areas** Areas within a secure facility used for sleeping and hygiene purposes.
- Time-phasing** Use of the same non-residential area for adults and juveniles, but not at the same time. Written policies must be in place to ensure proper use and timing for each area.

Federal Rules and Regulations - Sight and Sound Separation

No physical or sustained sight and sound contact is allowed between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees.

- Separation must be maintained in all secure areas, residential and non-residential, of adult jails and adult lockups. This may be accomplished architecturally or through time-phasing. If time-phasing is used, policies and procedures need to be in place to support this.
- Brief and inadvertent or accidental contact between juvenile offenders in secure custody status and incarcerated adults in secure non-residential areas or areas that are not dedicated for use only by juvenile offenders, does not constitute a reportable violation and does not have to be documented.
- Any contact between juveniles in a secure custody status and incarcerated adults in a dedicated juvenile area or any residential area of a secure facility is a reportable violation.
- **Booking** A juvenile is not considered to be in secure custody status during booking when a secured booking area is all that is available, continuous visual supervision (supported by policies and procedures) is provided throughout the booking process, and the juvenile remains in the booking area only long enough to be photographed and fingerprinted. Therefore, separation protections would not apply during this immediate time. However, if the juvenile is not immediately removed and separated following the booking process, the juvenile is considered to be in a secured status and the event must be recorded on the *Secure Juvenile Holding Log*.
- A juvenile who has been transferred, waived, or direct-filed in adult court on criminal felony charges is exempt from the federal separation requirement, however, under Arkansas statutes, if they are held securely, they must be physically separated from adult inmates.
- In accordance with current OJJDP policy and proposed regulation, Arkansas must assure that no juvenile offender under public authority shall enter, for any amount of time, into a secure setting or secure section of any jail, lockup or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g. Shock Incarceration, Scared Straight or Shape Up). However, youth visiting voluntarily as part of a school project are not violations.

⁵The Juvenile Justice and Delinquency Prevention Act of 2002, Public Law 93-415, 42 U.S.C. 5601, Section 223(a)(12)
Sight and Sound Separation of Juveniles from Adult Offenders

Adult Jails and Adult Lockups

DISPROPORTIONATE MINORITY CONTACT (DMC) Definitions, Rules and Regulations⁶

Definitions

Disproportionate Minority Contact When the proportion of juveniles who are members of minority groups come into contact with the juvenile justice system at any point in greater proportion than they represent in the general population.

Federal Rules and Regulations - DMC

The Disproportionate Minority Contact core protection requires that states participating in the JJDP Act should:

“Address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of the minority groups, who come into contact with the juvenile justice system.”

- All adult jails and lockups must record the race and ethnicity of juveniles held securely on the *Secure Juvenile Holding Log*. This information is used by the Division of Youth Services in its annual report to the Office of Juvenile Justice and Delinquency Prevention on Arkansas’ progress in achieving compliance with this core protection.
- When applying for JJDP Act Title V delinquency prevention funding through DYS, the community will need to address its efforts to reduce the proportion of minority youth at any point of the juvenile justice system if this proportion exceeds the proportion such groups represent in the community’s general population.

Juveniles Excluded from the JJDP Act Protection Requirements

Exception for Waived, Transferred or Direct Filed Juveniles

Juveniles who have been direct filed by the district attorney in criminal court, or judicially transferred or waived to, or are otherwise under the jurisdiction of the adult criminal court do not fall under the purview of the JJDP Act. However, state law requires that if they are held securely, they must be held separately from adults. The waiver, transfer or direct filing of charges must have been completed before they are excluded from the JJDP Act’s core protections.

⁶The Juvenile Justice and Delinquency Prevention Act of 2002, Public Law 93-415, 42 U.S.C. 5601, Section 223(a)(22) Disproportionate Minority Contact

**Juvenile Justice and Delinquency Prevention Act of 2002
Compliance Chart for Adult Jails and Adult Lockups⁷**

The JJDP Act ONLY applies when juveniles are held SECURELY

Definition of Terms and Record Keeping Requirements:

SECURE	When a juvenile is physically detained or confined in a locked room or cell, or is handcuffed to a stationary object. The juvenile is not free to leave the building. Record this holding on the juvenile holding log.
NON-SECURE	The juvenile may be in custody but is “free” to leave the building. The juvenile may be handcuffed to him/herself but not to a stationary object, and may be placed in a room with no lock on the door. Do not record this non-secure holding of the juvenile on the holding log.
STATUS OFF	The juvenile has committed an offense that would not be criminal if committed by an adult: e.g., running away, underage drinking, underage possession of alcohol or tobacco, curfew violation, truancy.
DELINQUENT	The juvenile has committed an offense that would be criminal if committed by an adult.
NONOFFENDER	The juvenile is dependent, neglected, an alien or is mentally ill and not involved in delinquency.
ACCUSED	The juvenile is “accused” of committing an offense (either status or delinquent).
ADJUDICATED	The juvenile is found by the court to have committed the offense (either status or delinquent).

Type of Juvenile	JJDP Act Regulations and Page Reference in the Guide
All Juveniles	All juveniles held securely must be sight and sound separated from incarcerated adults. Under current OJJDP policy and proposed regulation, Arkansas must assure that no juvenile offender under public authority shall enter, for any amount of time, into a secure setting or secure section of any jail, lockup or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g. Shock Incarceration, Scared Straight or Shape Up). (See page 4-6). A.C.A. § 9-27-336 (2)(C)(i), A.C.A. § 9-27-336 (2)(C)(ii)
Nonoffender	The juvenile may not be held securely. Secure holding constitutes violations of 2 core protection requirements, Deinstitutionalization of Status Offenders and Jail Removal (See pages 4-2 and 4-3). A nonoffender may be booked in a secure setting, provided that it is the only booking area available, and the juvenile must be under continual law enforcement supervision and then must be removed immediately from the secure booking area following the booking process. A.C.A. § 9-27-336 (a), A.C.A. § 9-27-336 (B)(i)
Accused or Adjudicated Status Offender	The juvenile may not be held securely. Secure holding constitutes violations of 2 core protection requirements, Deinstitutionalization of Status Offenders and Jail Removal (See pages 4-2 and 4-3). A status offender may be booked in a secure setting, provided that it is the only booking area available, and the juvenile must be under continual law enforcement supervision and then must be removed immediately from the secure booking area following the booking process. A.C.A. § 9-27-336 (a), A.C.A. § 9-27-336 (B)(i)
Accused Delinquent	The juvenile may be held securely in a sight and sound separated area for up to 6 hours but only for processing, investigation, or arranging transportation or release (See pages 4-3 and 4-4). The 6-hour clock starts when the juvenile is placed in secure custody and cannot be stopped until the juvenile is permanently removed from the secure setting. A.C.A. § 9-27-336 (2)(C)(2)(A)
Adjudicated Delinquent (Juvenile returning to court for sentencing or probation revocation)	The juvenile may be held securely for up to 6 hours before a court appearance and for 6 hours following a court appearance. The juvenile may not be held for punitive purposes. These times are not cumulative or exchangeable (See pages 4-3 and 4-4). The 6-hour clock starts when the juvenile is placed in secure custody and cannot be stopped until the juvenile is permanently removed from the secure setting. A.C.A. § 9-27-336
Sentenced Delinquent or Sentenced Status Offender	No juvenile may be sentenced by a judge to an adult jail or adult lockup. (See pages 4-3 and 4-4.) Sentences of secure incarceration may only be to a Juvenile Detention Facility or commitment to the Division of Youth Corrections. A.C.A. § 9-27-336
Juvenile who has been direct-filed in or waived/transferred to adult criminal court	The JJDP Act and regulations do not apply after the formal filing, waiver or transfer has been completed. If the juvenile is held prior to a direct filing or the waiver/transfer hearing, treat them as an accused delinquent and follow the 6-hour rule. (See page 4-4). A.C.A. § 9-27-318

⁷ The Juvenile Justice and Delinquency Prevention Act of 2002, Public Law 93-415, 42 U.S.C. 5601, Section 223(a)(14) Compliance Monitoring

Determining Rates of Compliance and Consequences for Non-Compliance

The federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) is responsible for monitoring states' compliance with the core protection requirements. At least once every 4 years, OJJDP conducts a compliance monitoring audit to determine if Arkansas' compliance monitoring system is adequate. Arkansas' annual report covers the state's fiscal year, July 1 through June 30.⁸

Arkansas, by December 31 of each year, is required to submit an annual compliance monitoring report to OJJDP on the number of violations of each core requirement.⁹ DYS' compliance monitor must verify that all information is accurate and that all juveniles who were held in violation are reflected in the report.

A formula¹⁰, described below, is provided by OJJDP to determine rates of violation.

The state's juvenile population (ages 0 through 17) is divided by 100,000 to establish the juvenile population rate per 100,000. In 2007, Arkansas' juvenile population, determined by the U.S. Census Bureau, was 700,537.¹¹ Therefore, Arkansas' juvenile population rate per 100,000 is 7.00.

The number of violations is divided by the juvenile population rate. If for example, there were 90 violations of the Jail Removal core requirement, the rate of violations would be 12.85. (90 violations ÷ 7.00 = 12.85)

$$\frac{\text{Number of Violations}}{\text{Juvenile Population} \div 100,000} = \text{Rate of Violation}$$

(Juvenile Population rate per 100,000)

For adult jails and adult lockups, the juvenile population is determined by the number of juveniles, ages 0 through 17, living within the county (adult jails) or municipality (adult lockups).

OJJDP has set standards for demonstrating compliance based on the rate of violation for each core requirement as shown on the chart on the following page.

⁸ OJJDP Compliance Monitoring Report Due Dates < <http://www.ojjdp.ncjrs.org/compliance/2002compmonrep.html>>

⁹ OJJDP Compliance Monitoring Report Due Dates < <http://www.ojjdp.ncjrs.org/compliance/2002compmonrep.html>>

¹⁰ Federal Register, Part VII, Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Policy and Criteria for de Minimis Exceptions to Full Compliance with Deinstitutionalization Requirement of the Juvenile Justice and Delinquency Prevention Act < <http://ojjdp.ncjrs.gov/compliance/appendixc.pdf>>

¹¹ Table 1: Estimates of the Population by Selected Age Groups for the United States, States, and Puerto Rico: July 2007, Population Division, U.S. Census Bureau, Release Date: May 1, 2008

Summary Standards for Demonstrating Compliance¹²

DEINSTITUTIONALIZATION OF STATUS OFFENDERS (DSO)	
Rate of Violation per 100,000 juveniles	Criteria for Compliance
0.0 (or less than 0.1)	The State has demonstrated full compliance.
0.1 – 5.7	The State has demonstrated full compliance with de minimis exceptions.
5.8 – 17.6	The State is eligible for a finding of compliance with de minimis exceptions if it <i>adequately</i> meets two criteria: a) non-compliant incidences violated State law, and b) an acceptable plan has been developed that is designed to eliminate the non-compliant incidents.
17.7 - 29.4	The State is eligible for a finding of compliance with de minimis exceptions if it <i>fully satisfies</i> two criteria: a) non-compliant incidences violated State law and b) an acceptable plan has been developed that is designed to eliminate the non-compliant incidents.
29.5 and greater	The State is presumptively ineligible for a finding of compliance because any rate above this level is considered to represent an excessive and significant level of status offenders and non-offenders held in juvenile detention or correctional facilities.

JAIL REMOVAL	
Rate of Violation per 100,000 juveniles	Criteria for Compliance
0.0 (or less than 0.1)	The State has demonstrated full compliance.
0.1 – 9.0	The State is eligible for the numerical de minimis exception if the State has developed an acceptable plan to eliminate the non-compliant incidents through the enactment or enforcement of State law, rule, or statewide executive or judicial policy, education, the provision of alternatives or other effective means.
9.1 and greater	The State is eligible for the substantive de minimis exception if the State meets five criteria: 1) there are recently enacted changes in State law that are expected to have significant impact on the State's achieving compliance; 2) all instances of non-compliance were in violation of State law; 3) the instances of non-compliance do not indicate a pattern or practice but rather constitute isolated instances; 4) there are existing mechanisms to effectively enforce State law and 5) an acceptable plan has been developed to eliminate the non-compliant incidents. If one or more of these criteria are not met, the state is ineligible for a finding of compliance.

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

¹² Federal Register, Part VII, Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Policy and Criteria for de Minimis Exceptions to Full Compliance with Deinstitutionalization Requirement of the Juvenile Justice and Delinquency Prevention Act < <http://ojjdp.ncjrs.gov/compliance/appendixc.pdf>>

Adult Jails and Adult Lockups

Arkansas State Statutes ¹³

Deinstitutionalization of Status Offenders

A.C.A. § 9-27-336 (a)

A juvenile who is alleged to be or who has been adjudicated either dependent-neglected or a member of a family in need of services shall not be placed or detained in a secure detention facility, in a facility utilized for the detention of alleged or adjudicated delinquent juveniles, or in a facility utilized for the detention of adults held for, charged with, or convicted of a crime except:

(1)(A)A juvenile may be held in a juvenile detention facility when he or she has been away from home for more than twenty-four (24) hours and when the parent, guardian, or other person contacted lives beyond a fifty-mile driving distance or out of state.

A.C.A. § 9-27-336 (B)(i)

The juvenile may be held in custody in a juvenile detention facility for purposes of identification, processing, or arranging for release or transfer to an alternative facility.

(ii)The holding shall be limited to the minimum time necessary to complete these actions and shall not occur in any facility utilized for incarceration of adults.

This statute is located in the limitations on detention section of the Juvenile Code and refers to status and non-offenders. While it is permissible to detain certain types of status offenders in juvenile detention centers, it is never permissible to detain them in adult jails or lockups.

Sight and Sound Separation

A.C.A. § 9-27-336 (2)(C)(i)

A juvenile held under this subdivision (a)(2) shall be separated from detained juveniles charged or held for delinquency.

A.C.A. § 9-27-336 (2)(C)(ii)

The holding shall not occur in any facility utilized for incarceration of adults.

The federal regulations are stricter and require sight and sound separation, not just physical separation, from adult offenders. Juveniles are to be physically segregated from the adult offenders and juveniles with known gang affiliations or associations should be restricted to prevent contact with other gang members (juveniles and adults).

¹³ Arkansas General Assembly, Title 9: Family Law, Subtitle 3: Minors, Chapter 7: Arkansas Juvenile Code
< <http://www.arkleg.state.ar.us/SearchCenter/Pages/ArkansasCodeSearchResultPage.aspx>>

Adult Jails and Adult Lockups

Arkansas State Statutes (Continued)

Jail Removal

A.C.A. § 9-27-336 (2)(C)(b) A juvenile shall not be placed or confined in a jail or lock-up used for the detention of adults except under the following circumstances:

(1) A juvenile who has been formally transferred from the juvenile division of circuit court to the criminal division of circuit court and against whom felony charges have been filed or a juvenile whom the prosecuting attorney has the discretion to charge in circuit court and to prosecute as an adult and against whom the circuit court's jurisdiction has been invoked by the filing of felony charges may be held in an adult jail or lock-up;

A.C.A. § 9-27-336 (2)(C)(2)(A) A juvenile alleged to have committed a delinquent act may be held in an adult jail or lock-up for up to six (6) hours for purposes of identification, processing, or arranging for release or transfer to an alternative facility, provided that he or she is separated by sight and sound from adults who are pretrial detainees or convicted persons.

State law is clear that delinquents may only be held for up to 6 hours in an adult jail or lockup and the purpose of the detention is processing, not punishment.

This page intentionally left blank

Juvenile Detention Centers

Applicable Core Protection Requirements and Regulations

DEINSTITUTIONALIZATION OF STATUS OFFENDERS (DSO) Definitions, Rules and Regulations¹⁴

Definitions

Status Offender	A juvenile who has been charged with, or adjudicated for, conduct that would not be criminal if committed by an adult. Examples include: running away, underage drinking, underage possession of alcohol or tobacco, curfew violation (if the curfew ordinance applies only to juveniles), and truancy. Possession of a handgun by a juvenile is excluded from the status offense classification by state and federal laws.
Non-Offender	A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, or mental health issues, but not a delinquent act. Alien juveniles who have not committed a delinquent act are also classified as non-offenders.
Juvenile Detention Center	A secure facility used solely for the lawful custody of accused or adjudicated juvenile offenders or non-offenders and not adjoining an adult jail or lockup. (If it is adjoining, or on the same ground as, an adult jail or lockup, see the collocated facility requirements on page 7-5, Tab 7).
Sight & Sound Contact	Any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders.

Federal Rules and Regulations

Deinstitutionalization of Status Offenders (DSO) and Sight and Sound Separation are the only core protection requirements that apply to juvenile detention centers. The Jail Removal requirement is not applicable as juvenile delinquents may be held in or sentenced to juvenile detention or correctional facilities for longer periods of time.

Sight and Sound Separation

Accused or adjudicated delinquent offenders, status offenders and non-offenders cannot have sight or sound contact with adult inmates, including inmate trustees. Inmate trustees who perform maintenance or other duties at juvenile detention centers must be sight and sound separated from the juvenile detainees at all times.

- A juvenile who is direct-filed, transferred or waived or is otherwise under the jurisdiction of a criminal court may be detained or confined in a juvenile correctional facility or juvenile detention facility with other juveniles under the jurisdiction of the juvenile court. However, within 6 months after the youth reaches the age of 18, he or she must be separated from the juvenile population.
- An adult held for a delinquency proceeding can be held in a juvenile detention center or a juvenile training school. For example, if a 17-year-old committed a burglary and was charged with this delinquent offense at age 18, he or she could be held in a juvenile detention center. This does not violate the separation requirement because the 18-year-old “has not been convicted of a crime or is awaiting trial on criminal charges.”

¹⁴OJJDP Monitoring for Compliance: Juvenile Facilities <<http://ojjdp.ncjrs.gov/compliance/section3.pdf>>

Juvenile Detention Centers

Applicable Core Protection Requirements and Regulations (Continued)

- Under current OJJDP policy and proposed regulation, Arkansas must assure that no juvenile offender under public authority shall enter, for any amount of time, into a secure setting or secure section of any jail, lockup or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g. Shock Incarceration, Scared Straight or Shape Up). Therefore, even incarcerated juveniles cannot be transported to a secure adult facility, or adult prisoners brought to a secure juvenile facility for such programs.

Deinstitutionalization of Status Offenders (DSO)

The JJDP Act states that status offenders and non-offenders may not be housed in secure facilities for any period of time, absent the exceptions listed below.

- Accused status offenders who fail to appear for court hearings remain status offenders; they can not be upgraded to delinquent offenders for their failure to appear.

Federal Exceptions to DSO While the JJDP Act states that status offenders and non-offenders may not be housed in secure facilities for any period of time there are exceptions. The exceptions discussed below apply only to juvenile detention centers and never to jails or lockups.

Youth Handgun Safety Act Possession Exemption

The Youth Handgun Safety Act (18 U.S.C. 922(x)) prohibits possession of a handgun by a minor under the age of 18. There are exceptions to this Act such as using a handgun in a gun safety course or hunting under the supervision of an adult. Because the Youth Handgun Safety Act applies only to juveniles and handgun possession, it fits the definition of a status offense since, in most cases, it would not be a crime if committed by an adult. However, the Violent Crime Control and Law Enforcement Act of 1994, Subtitle B, Youth Handgun Safety, amended the JJDP Act to provide that juveniles who violate U.S.C. Title 18, Section 922(x), or a similar state law can be placed in secure detention or correctional facilities without violating the DSO requirement.

- Youth held in juvenile detention or correctional facilities solely for possession of a handgun are exempt from violation, however, the DYS compliance monitor must capture that information yearly for OJJDP. Therefore, detention staff must enter this information in “Jail lockup/Detention Monitoring Data” log.

Out of State Runaways Exemption

Out-of-state runaways held pursuant to the Interstate Compact on Juveniles enacted by the state are excluded from the DSO requirements and may be held until they can be safely returned to the home state. Other out-of-state runaways securely held beyond 24 hours solely for the purpose of being returned to proper custody in another state in response to a want, warrant, or request from a jurisdiction in the other state or pursuant to a court order must be reported as violations of the DSO requirement.

- The DYS compliance monitor must verify that out of state runaways being held in juvenile detention centers are being held pursuant to the Interstate Compact on Youth.
- The Interstate Compact defines a “juvenile” as any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor. Therefore, runaways from states like New York where juveniles are those under 16 cannot be detained as runaways in Arkansas if they are 16 or 17.

Juvenile Detention Centers

Applicable Core Protection Requirements and Regulations (Continued)

Regulatory Exception - Applies to Accused Status Offenders and Alien Juveniles ONLY

OJJDP regulations allow a juvenile detention center to hold an accused status offender and illegal aliens with no delinquent charges for up to 24 hours, exclusive of weekends and legal holidays, prior to an initial court appearance and for an additional 24 hours, exclusive of weekends and legal holidays, immediately following an initial court appearance.

- Note that the OJJDP regulations allow for secure holding prior to and immediately following an INITIAL court appearance. This exception does not apply to subsequent court appearances.
- Prior to the 2002 reauthorization of the JJDP Act, nonoffenders could be held under the 24-hour reporting exception. That is no longer the case. Nonoffenders (excluding alien juveniles) may not be held in a juvenile detention or correctional facility for any period of time.

Valid Court Order - Statutory Exception - Applies to Adjudicated Status Offenders Only

In 1980, Congress enacted a provision intended to address concerns that the DSO core requirement deprived juvenile court judges of a significant option in handling chronic status offenders who were not willing to comply with court orders. This provision was meant to be applied sparingly to the small number of status offenders that continually flout the will of the court and have exhausted all non-secure civil sanctions available. The provision provides that adjudicated status offenders found to have violated a Valid Court Order (VCO) may be sentenced to a juvenile detention or correctional facility as a civil penalty for contempt of court.

- Adjudicated status or non-offenders cannot be held in juvenile detention centers unless all of the conditions of the Valid Court Order are met.
- In 2002, Congress substantially changed the Valid Court Order statutory exception in federal law.

For the purpose of determining whether a VCO exists and a juvenile has been found in violation of that order, all of the following conditions must be present prior to secure incarceration:¹⁵

- A. The juvenile must be brought before a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.
- B. The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.
- C. The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to the juvenile's attorney and/or legal guardian in writing and be reflected in the court record and proceedings.

¹⁵ Federal Register, Part VI, Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Formula Grants for Juvenile Justice; Final Rule, August 16, 1982, Vol. 47, No. 158, Rules and Regulations
< <http://ojjdp.ncjrs.gov/compliance/appendixd.pdf> >

C. All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. For protective purposes or to assure appearance at the violation hearing, a juvenile accused of violating a valid court order may be held in secure detention no longer than 72 hours, exclusive of nonjudicial days. However, there must be a judicial determination based on a hearing during the initial 24- hour grace period, permitted for a noncriminal juvenile offender under OJJDP monitoring policy, that there is probable cause to believe the juvenile violated the court order. A juvenile alleged or found in a violation hearing to have violated a valid court order may be held only in a secure juvenile detention or correctional facility, and not in an adult jail or lockup.

E. Prior to and during the violation hearing, the following due process rights must be provided:

The right to have the charges against the juvenile in writing served upon the juvenile in a reasonable time before the hearing;

2. The right to a hearing before the court;
3. The right to an explanation of the nature and consequences of the proceeding;
4. The right to legal counsel, and the right to have such counsel appointed by the court if indigent;
5. The right to confront witnesses;
6. The right to present witnesses;
7. The right to have a transcript of the proceedings; and
8. The right of appeal to an appropriate court.

F. In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order and the applicable due process rights were afforded the juvenile and, in the case of a violation hearing, the judge must obtain and review a written report that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted to an appropriate public agency (other than a court or law enforcement agency).

G. A non-offender such as a dependent and neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

The presence of all of the above elements must be verified by the Compliance Monitor before the event qualifies as a Valid Court Order exception. If all are not present, the detention constitutes a violation.

Compliance Chart for Juvenile Detention Centers¹⁶

Type of Juvenile	Regulations	Core requirement violated if held beyond stated limits
All Juveniles	Under current OJJDP policy and proposed regulation, Arkansas must assure that no juvenile offender under public authority shall enter, for any amount of time , into a secure setting or secure section of any jail, lockup or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g. Shock Incarceration, Scared Straight or Shape Up).	Sight and Sound Separation
Non-Offender (abused, neglected, civil mental health hold)	May not be held securely for any period of time.	Deinstitutionalization of Status Offenders
Out of State Runaway	If held pursuant to the Interstate Compact for Youth is not a violation for any period of time. Must be verified that holding is pursuant to the Compact.	Deinstitutionalization of Status Offenders
Accused Status Offender (runaway, underage drinker, truant, minor in possession of alcohol or tobacco)	May be held for up to 24 hours, excluding weekends and legal holidays PRIOR to an initial court appearance and for 24 hours, excluding weekends and legal holidays, IMMEDIATELY following an initial court appearance. Detention center must be able to verify court dates and times.	Deinstitutionalization of Status Offenders
Federal Ward (juvenile under the jurisdiction of the federal court or an illegal alien)	May be held for up to 24 hours, excluding weekends and legal holidays PRIOR to an initial court appearance and for 24 hours, excluding weekends and legal holidays, IMMEDIATELY following an initial court appearance. Detention center must be able to verify court dates and times.	Deinstitutionalization of Status Offenders
Adjudicated status offender accused of violating a Valid Court Order and juveniles sentenced for Contempt of Court based on a status offense	Juvenile must have a probable cause hearing within 24 hours of being placed in detention, excluding weekends and legal holidays. Juvenile must have a violation hearing within 72 hours of being placed in detention and the VCO process must be followed. If written report states that the juvenile should be sentenced to juvenile detention there is no time limit, beyond statute statutes, on holding after the violation hearing. The detention center must be able to verify court dates and times.	Deinstitutionalization of Status Offenders
Juvenile in Possession of a Handgun (treated as a delinquent)	No federal restrictions on holding. State limits of sentenced detention time must be adhered to.	None
Accused Delinquent (accused and/or arrested for committing a crime that would be criminal if committed by an adult)	No federal restrictions on holding. State time lines for detention hearings and other court actions must be adhered to.	None
Adjudicated Delinquent (found by the court to have committed a crime)	No federal restrictions on holding. State time lines for sentencing must be adhered to.	None
Juvenile waived, transferred or direct filed in adult criminal court	No federal restrictions on holding. The judge, district attorney and defense attorney must agree to the holding of the juvenile in a juvenile detention center rather than an adult jail.	None

¹⁶OJJDP Monitoring for Compliance, Juvenile Facilities < <http://ojjdp.ncjrs.gov/compliance/section3.pdf>>

Determining Rate of Compliance and Consequences of Non-Compliance

The federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) is responsible for monitoring states' compliance with the core protection requirements. At least once every 5 years, OJJDP conducts a compliance monitoring audit to determine if Arkansas' compliance monitoring system is adequate.

Arkansas, by December 31 of each year, is required to submit an annual compliance monitoring report to OJJDP on the number of violations of each core requirement.¹⁷ DYS' compliance monitor must verify that all information is accurate and that all juveniles who were held in violation are reflected in the report.

A formula¹⁸, described below, is provided by OJJDP to determine rates of violation.

The state's juvenile population (ages 0 through 17) is divided by 100,000 to establish the juvenile population rate per 100,000. In 2007, Arkansas' juvenile population, determined by the U.S. Census Bureau, was 700,537.¹⁹ Therefore, Arkansas' juvenile population rate per 100,000 is 7.00.

The number of violations is divided by the juvenile population rate. If for example, there were 90 violations of the Deinstitutionalization of Status Offender core requirement, the rate of violations would be 12.85. (90 violations ÷ 7.00 = 12.85)

$$\frac{\text{Number of Violations}}{\text{Juvenile Population} \div 100,000 \text{ (Juvenile Population Rate)}} = \text{Rate of Violation}$$

The chart on the following page shows what rates are allowable for the DSO requirement.

For Juvenile Detention Centers, the juvenile population would be the total number of juveniles, ages 0 through 17, living in the Juvenile Detention Center catchment area as defined by the Division of Youth Corrections.

¹⁷ OJJDP Compliance Monitoring Report Due Dates < <http://www.ojjdp.ncjrs.org/compliance/2002componrep.html>>

¹⁸ Federal Register, Part VII, Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Policy and Criteria for de Minimis Exceptions to Full Compliance with Deinstitutionalization Requirement of the Juvenile Justice and Delinquency Prevention Act < <http://ojjdp.ncjrs.gov/compliance/appendixc.pdf>>

¹⁹ Table 1: Estimates of the Population by Selected Age Groups for the United States, States, and Puerto Rico: July 2007, Population Division, U.S. Census Bureau, Release Date: May 1, 2008

Juvenile Detention Centers

Summary Standards for Demonstrating Compliance²⁰

DEINSTITUTIONALIZATION OF STATUS OFFENDERS	
Rate of Violation per 100,000 juveniles	Criteria for Compliance
0.0 (or less than 0.1)	The State has demonstrated full compliance.
0.1 - 5.7	The State has demonstrated full compliance with de minimis exceptions.
5.8 - 17.6	The State is eligible for a finding of compliance with de minimis exceptions if it <i>adequately</i> meets two criteria: a) non-compliant incidences violated State law, and b) an acceptable plan has been developed that is designed to eliminate the non-compliant incidents.
17.7 - 29.4	The State is eligible for a finding of compliance with de minimis exceptions if it <i>fully satisfies</i> two criteria: a) non-compliant incidences violated State law and b) an acceptable plan has been developed that is designed to eliminate the non-compliant incidents.
29.5 and greater	The State is presumptively ineligible for a finding of compliance because any rate above this level is considered to represent an excessive and significant level of status offenders and non-offenders held in juvenile detention or correctional facilities.

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

²⁰ Federal Register, Part VII, Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Policy and Criteria for de Minimis Exceptions to Full Compliance with Deinstitutionalization Requirement of the Juvenile Justice and Delinquency Prevention Act < <http://ojjdp.ncjrs.gov/compliance/appendixc.pdf>>

Deinstitutionalization of Status Offenders

A.C.A. § 9-27-336 (a)

A juvenile who is alleged to be or who has been adjudicated either dependent-neglected or a member of a family in need of services shall not be placed or detained in a secure detention facility, in a facility utilized for the detention of alleged or adjudicated delinquent juveniles, or in a facility utilized for the detention of adults held for, charged with, or convicted of a crime except:

(1)(A) A juvenile may be held in a juvenile detention facility when he or she has been away from home for more than twenty-four (24) hours and when the parent, guardian, or other person contacted lives beyond a fifty-mile driving distance or out of state.

A.C.A. § 9-27-336 (B)(i)

The juvenile may be held in custody in a juvenile detention facility for purposes of identification, processing, or arranging for release or transfer to an alternative facility.

(ii) The holding shall be limited to the minimum time necessary to complete these actions and shall not occur in any facility utilized for incarceration of adults.

Pursuant to the 2002 JJDP Act, nonoffenders (except alien juveniles) may no longer be held in a secure detention or correctional facility for any period of time.

Judicial Proceedings Regarding Violations of Valid Court Orders (VCO)

A.C.A. § 9-27-336 (2)(A)

An adjudicated family in need of services juvenile may be held in a juvenile detention facility when the court finds that the juvenile violated a valid court order.

(B)(i) For the purposes of this subdivision (a)(2), a valid court order shall include any order of a circuit court regarding a juvenile who has been brought before the court and made subject to a court order.

(ii) The juvenile who is the subject of the order shall receive full due process rights.

A.C.A. § 9-27-326

(a) If a juvenile is taken into custody on an allegation of delinquency, violation of probation, or violation of a court order and not released by the law enforcement officer or intake officer, a detention hearing shall be held as soon as possible but no later than seventy-two (72) hours after the juvenile was taken into custody or, if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day. Otherwise, the juvenile shall be released.

²¹ Arkansas General Assembly, Title 9: Family Law, Subtitle 3: Minors, Chapter 7: Arkansas Juvenile Code < <http://www.arkleg.state.ar.us/SearchCenter/Pages/ArkansasCodeSearchResultPage.aspx> >

This page intentionally left blank

Temporary Holding Facilities

General Overview Classifying Temporary Holding Facilities

As with other facilities discussed in this Guide, classification of the facility is key to understanding how the core protection 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 are the level of security and the location of the facility. The following chart provides guidance on the classification of temporary holding facilities.

Location and Security Level of the Temporary Holding Facility	Classified As:	Core Protection requirements That Apply
Staff Secure or Non-Secure facility <u>not</u> located on the same grounds as an Adult Jail or Lockup (<i>May be a stand-alone facility or one that is attached to or on the same grounds with a Judicial Complex, Detox Unit, Hospital, Assessment Center or Juvenile Correctional Facility</i>)	Temporary Holding Facility	Monitored to ensure it is Non-Secure; must have written Arkansas Temporary Holding Guideline policies and procedures which are explained in this section.
Staff Secure or Non-Secure facility located on the same grounds as an Adult Jail or Lockup	Law Enforcement Non-Secure Custody	None - Must meet Non-Secure Guidelines (contained in this section of the Guide)
Secure facility located on the same grounds as an Adult Jail or Lockup	Adult Jail or Lockup OR Collocated Facility	If an Adult Jail or Lockup, the facility must comply with DSO, Separation and Jail Removal (See Tab 4 of this Guide), OR If a Collocated Facility (separately holds both adults and juveniles), must meet Collocation Requirements and be inspected annually (Collocation requirements are in the next section of this Guide, Tab 7)
Secure facility <u>not</u> located on the same grounds as an Adult Jail or Lockup	Juvenile Detention Center	Monitored as a Juvenile Detention Center (see Tab 5 of this Guide)

Temporary Holding Facilities

Needs Assessment

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 myriad of programmatic problems within a community when in fact they offer a limited and expensive option. The costs are higher resulting in a program driven continuum of services for juveniles rather than one driven by client need. These are some questions to ask:

- 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?

Non-Secure Temporary Holding Facilities OR Non-Secure Custody

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 (also refer to the chart on page 3-2):**

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

Additionally, the following are considered to be juveniles in non-secure status:

- A juvenile handcuffed to a non-stationary object. If the 4 criteria listed above are adhered to, handcuffing techniques that do not involve 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.

Other Facilities

Court Holding Facilities²²

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.

Court holding facilities that meet the above definition are only subject to the Sight and Sound Separation core requirement. All juveniles placed in court holding facilities must be sight and sound separated from adult offenders. Accused and adjudicated status offenders, non-offenders and accused and adjudicated delinquents may be held in court holding facilities.

It is important to note that court holding facilities by their very nature are for use only during normal court hours and that juveniles must be brought in and removed on the same judicial day. Court holding facilities must be monitored to ensure that they are not being used for purposes other than court appearances. If they are being used for other purposes they no longer qualify as court holding and must be reclassified, usually as an adult jail or lockup.

Collocated Facilities²³

A collocated facility is a juvenile facility that is 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) or beyond specialized services such as medical care, food service, laundry, maintenance and engineering.

The collocated requirements reflect the commitment of OJJDP to promote the best practice principles with juveniles. OJJDP maintains that states should not rely on the development of collocated facilities as the primary strategy for achieving and maintaining compliance. The emphasis on facility, program design and separate staff support the principles that the needs of juveniles are fundamentally different from the needs of adults.

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

1. The facility must ensure separation between juveniles and adults such that there could be no sustained sight and sound contact between juveniles and incarcerated adults in the facility. Separation can be achieved architecturally or through time phasing of common use non-residential areas; and
2. The facility must have separate juvenile and adult program areas, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility that provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. Time phasing of common use non-residential areas is permissible to

²² OJJDP Monitoring for Compliance: Other Facilities, Section 4.2 < <http://ojjdp.ncjrs.gov/compliance/section4.pdf>>

²³ OJJDP Monitoring for Compliance: Other Facilities, Section 4.1 < <http://ojjdp.ncjrs.gov/compliance/section4.pdf>>

conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and

3. The facility must have separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (e.g., medical care, food service, laundry, maintenance, and engineering) who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juveniles and adults can serve both populations (subject to State standards or licensing requirements). The day-to-day management, security, and direct care functions of the juvenile detention center must be vested in totally separate staff, dedicated solely to the juvenile population within the collocated facilities; (this criteria was modified in 2002) and
4. In states that have established standards for licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no state standards or licensing requirements, OJJDP encourages states to establish administrative requirements that authorize the state to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards. See Arkansas' policy located on the next page.

The compliance monitor must determine that the four criteria are fully met. It is incumbent upon the State to make the determination through an on-site facility review (for full construction and operations plan), and through the exercise of Arkansas' oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria above. Collocated facilities must be reviewed on-site annually. If at any time any one of the four criteria are not being adhered to, the facility reverts to an adult jail or lockup and is monitored as such.

Collocated facilities comply with the core protections regulations in the same way a juvenile detention center complies. See Tab 5 - Juvenile Detention Centers and more specifically, the Juvenile Detention Center Compliance Chart on page 5-5.

Arkansas Division of Youth Services Collocated Facilities - Policy and Procedure

Related Regulation: OJJDP Consolidated Federal Register, 1996

Statement of Purpose

In 1974, Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDP Act) as a piece of reform legislation designed to provide federal direction, coordination and resources to increase the effectiveness of state juvenile justice systems. The JJDP Act has been amended several times, and revised in 2002, to keep abreast of the changes in the juvenile justice environment.

The Division of Youth Services (DYS) is the state agency designated to administer the federal juvenile justice funds under Title II of the JJDP Act, and provide staff support to the Arkansas Juvenile Justice Coalition (Coalition), which has grant making and compliance monitoring authority.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has responsibility for the development and promulgation of regulations, guidelines, requirements, criteria and procedures in accordance with the policies, priorities and objectives of the JJDP Act.

Federal regulations issued in 1996 delineate four regulatory requirements which must be met in order to establish a collocated facility where such facility is 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.

As defined in the regulation, a collocated facility is a juvenile facility that is 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) or beyond specialized services such as medical care, food service, laundry, maintenance and engineering.

Procedurally, DYS must determine that the four requirements for the development of a collocated facility are fully met. The following policy addresses the procedure local law enforcement must use for the submission of a request to DYS for approval of a collocated facility.

Policy

The Coalition and DYS, in their efforts to maintain compliance with the JJDP Act, will review all collocated facility plans prior to the collocated facility's actual implementation. Only those collocated facilities that fully meet the federal regulatory requirements will be approved. Of primary concern to the Coalition and DYS is the collocated facility creating and maintaining an atmosphere that is appropriate and conducive to the care of alleged juvenile offenders who require a secure detention environment. Applicants who are denied collocated status on the basis of this policy will be afforded the right to an appeal which will be directed to the Director of DYS.

Procedures To Request Approval of a Collocated Facility

1. A needs-based analysis should be completed to determine if a collocated facility is needed in the community. Consideration should be given to the need for an increase in the number of secure juvenile detention beds based on what is currently available to the jurisdiction. The needs based analysis should take into consideration and be coordinated with the state's plan toward a continuum of detention services for juveniles, including non-secure, staff secure and secure options.
2. Communities may request technical assistance from DYS to assist with a needs based analysis, to review physical structures or proposed plans, and to determine if the four mandatory requirements listed in the regulation are met.
3. Communities shall submit to DYS a collocated facility application containing the following information: a copy of the needs based analysis and a description of the process used in determining the need for a collocated facility; documentation that the four regulatory requirements have been fully met (the checklist on the next page may be used) and copies of the policies and procedures manual addressing the criteria for placement and the operations and management of the facility.
4. Within 3 weeks of receipt of the complete application and accompanying documentation, DYS will provide the applicant with a letter concurring with or declining approval of the collocated facility.
5. If approved, DYS will forward a copy of the application and documentation to OJJDP with a finding that a separate and distinct juvenile detention facility exists meeting all federal requirements.
6. If the request is denied, DYS will document the reasons for denial to the applicant agency within 3 weeks. DYS will offer assistance, if requested, to meet any needed requirement.
7. An applicant may appeal the denial to the DYS Director stating the reasons for reconsideration of the application.
8. The DYS Director will have the final right of approval or denial.

Mandatory Requirements for a Collocated Facility

CHECKLIST ²⁴

Section 31.303(e)(3) of OJJDP Formula Grant Regulations establishes criteria that must be met in order for a state to approve whether a separate juvenile detention or correctional facility exists within the same building or on the same grounds as an adult jail or lockup.

Name of Facility _____

Facility Address _____

Contact Name _____

Contact Phone, Fax and E-Mail _____

(Check boxes below that apply)

Initial Facility Review (31.303(e)(3)(ii))

DYS conducted an on-site review to determine compliance with the 4 criteria of the collocated facility regulation

_____ Date of on-site review

OR

DYS reviewed the full construction and operations plans during the planning or construction phase.

_____ Date of plan review

Collocation Definition (31.303(e)(3)(I)(A))

Facilities are located in the same building

OR

Facilities are part of a related complex of buildings located on the same grounds.

Describe what physical features the two buildings share or what services the two programs share in common:

²⁴ OJJDP Monitoring for Compliance: Other Facilities, Collocated Facilities Checklist
< <http://ojjdp.ncjrs.gov/compliance/appendixj.pdf> >

The Four Collocated Criteria

In formulating these four criteria and policy clarifications, recognition is given to a system in which a state can use collocated facilities that meet the regulatory requirements for a separate facility by creating and maintaining an atmosphere that is appropriate and conducive to the care of alleged juvenile offenders who require a secure detention environment.

1. Separate Physical Plant 31.303(e)(3)(I)(A)

Separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and incarcerated adults. Total separation must be achieved in residential areas, e.g., sleeping and bathroom, through architectural design such that no contact is possible. In program areas, e.g., educational, vocational, and recreational, separation must be achieved either through architectural design or through time-phased use of areas as directed by written policies and procedures.

Background: This is a higher standard than the separation requirement contained in Section 223 (a)(12) of the JJDP Act. The justification of the higher standard is that the regulatory provision for juvenile detention centers within the same related complex of buildings as an adult jail or lockup is located within the jail removal requirement, Section 223 (a)(13) of the JJDP Act.

- A legible floor plan of the facility is provided.
- All relevant areas of the physical plant are clearly labeled.
- The floor plan clearly indicates total spatial separation in the residential areas of the respective facilities.
- The floor plan or policies and procedures clearly indicate either total spatial separation or time-phased use of the following areas:
 - Entrance
 - Counseling
 - Intake/Processing/Admissions
 - Medical
 - Dining
 - Religious Services
 - Indoor Recreation
 - Visitation
 - Outdoor Recreation
 - Other Programs
 - Education/Vocation
- Documentation clearly describes resident movement, both scheduled and emergency

Other State Requested Information:

- Note activities of adult trustees working on the grounds or in the facility where contact with juveniles is possible.
- Note any emergency situations that would warrant suspending the sight and sound separation requirement.

2. Separate Programming (31.303 (e)(3)(I)(B))

Total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities.

Background: The key feature of this criteria is the express requirement that the juvenile population receive a full range of separate program activities, therefore, if the collocated facility does not plan on offering separate juvenile programming, it does not qualify.

- Complete narrative description of all programs that will be available for juveniles, and where the programs will be conducted.
- There is an independent and comprehensive operational plan for the collocated facility which provides a full range of separate program services.

Other State requested information:

- Address health care and the procedures for providing necessary services.
- Note specialized training for program staff in serving juveniles.

3. Separate Staff (31.303 (e)(3)(I)(B))

Separate juvenile and adult staff, including management, security staff and direct care staff are required. Staff providing services such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both.

Background: This requirement is designed to ensure that a facility's management, security and direct care staff are both qualified to serve and appropriately focused on the needs of the juvenile population while providing support to the juvenile facility purposes.

- The collocated juvenile facility organizational chart, and/or other documentation, clearly indicate a permanent, full-time manager or superintendent for the juvenile facility.
- The collocated juvenile facility organizational chart and/or other documentation clearly indicating that the juvenile staff are permanently assigned to the juvenile facility.
- The collocated juvenile facility organizational chart and/or other documentation clearly indicate that staff from the adult jail or lockup will not serve as relief workers for the juvenile facility on their regularly scheduled workdays in the jail or lockup.
- The collocated juvenile facility's policies, organizational chart, and/or other documentation clearly indicate that adult residents (trustees) will never be permitted to supervise or provide direct services for juvenile residents, e.g., serving meals, dispensing reading materials, janitorial services in the juvenile area.

Other State requested information:

- Document the recruitment and training required for direct care staff to work with the juvenile population.
- Describe the use of specialized services staff that may serve both populations.

Licensing (31.303 (e)(3)(I)(D))

In states that have established standards or licensing requirements for secure juvenile detention facilities, the collocated juvenile facility must meet the standards and be licensed as appropriate.

- Documentation that the collocated juvenile facility complies with established state standards for operation, through the use of, or accredited by, the American Correctional Association standards for a small juvenile detention or correctional facility as adopted by the Arkansas Department of Human Services, Division of Youth Services.
- Documentation of licensing by the state to operate as a juvenile detention center. (Optional)

Other Requirements:

Criteria addressing the placement of juveniles in the collocated secure facility are essential. The JJDP Act limits the secure holding of status offenders (those juveniles who have committed an offense that would not be criminal if committed by an adult). Non-offenders (those juveniles who are dependent, neglected or who are under a mental health hold) may not be held for any period of time in any type of secure facility. In order for Arkansas to continue to comply with the JJDP Act, the collocated facility must have policies in place which mirror the JJDP Act and regulations.

The use of an unapproved collocated facility for the secure detention of juveniles, other than delinquents held under 6 hours for processing purposes only, and delinquents held for 6 hours before court and 6 hours after court, will be considered violations of the JJDP Act and recorded as such.

Annual On-Site Review (31.303 (e)(3)(iv))

The designated State Agency (DYS) must annually review the collocated facility on-site and determine the facility to be in compliance with the 4 criteria.

Date of Initial On-Site Review: _____

Date of each subsequent annual on-site review: _____

Summary of Findings:

Certification

I, _____, certify the

(Compliance Monitor's Name) *(Name of Collocated Facility)*
meets the 4 regulatory criteria set forth in the 1996 Consolidated Regulation.

Signature/Date

Printed Name