

# Virginia's Compliance Monitoring Policy and Procedures Manual

July 2022

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## COMPLIANCE MONITORING POLICIES AND PROCEDURES INTRODUCTION

Pursuant to the Juvenile Justice and Delinquency Prevention (JJDP) Act, as amended by the [Juvenile Justice Reform Act of 2018](#), the state agency designated to administer the Formula Grants Program must provide for an effective system of monitoring jails, lockups, juvenile detention facilities, and juvenile correctional centers to ensure that the core requirements of the JJDP Act are being upheld. The Virginia Department of Criminal Justice Services (DCJS) is the state agency designated to administer the Formula Grants Program, and as such, the Juvenile and Child Welfare Section at DCJS is responsible for establishing the [Compliance Monitoring Program](#).

The state, through DCJS, is required to make annual reports to the Administrator of the Office of Juvenile Justice and Delinquency Prevention on the results of our monitoring efforts. The report must demonstrate the extent of Virginia's compliance with the Deinstitutionalization of Status Offenders (DSO), Separation, Jail Removal, and Section 223(a)(11)(B) core requirements of the JJDP Act. If Virginia fails to demonstrate compliance, as defined by federal guidelines, the Federal Formula Grants allotment to the state will be reduced by 20% for each core requirement not being met and we must agree to spend 50% of the remaining funds to come into compliance.

*Virginia's Compliance Monitoring Policy and Procedures Manual* will describe each of the elements in detail. Copies of this policies and procedures manual are provided to OJJDP, Virginia's Juvenile Justice Specialist, and are made available to other interested parties. This manual will be reviewed annually and updated as needed by Virginia's Compliance Monitor. This updated manual contains all recommendations and requirements of OJJDP in their guidance provided on December 15, 2021, in [Policies and Procedures Manual for Monitoring Compliance with Core Requirements of the Formula Grants Program Authorized Under Title II, Part B, of the Juvenile Justice and Delinquency Prevention Act](#).

### Elements for an Effective System of Monitoring, as stated by OJJDP

States participating in the Formula Grants Program must provide for an effective system of monitoring jails, lockups, detention facilities, and correctional facilities to ensure that they meet the core requirements, pursuant to the monitoring and reporting requirement at [34 U.S.C. § 11133\(a\)\(14\)](#). The state's monitoring system, if it is to comply with the statutory and regulatory monitoring requirements, must include all jails, lockups, secure detention facilities, and secure correctional facilities. There are eight elements of an effective system of monitoring. For each of the following elements, the state should include a description of these specific policies and procedures:

1. Compliance Monitoring Policies and Procedures
2. Monitoring Authority
3. Violation Procedures
4. Adherence to Federal Definitions
5. Identification of the Monitoring Universe
6. Classification of the Monitoring Universe
7. Inspection of Facilities

## 8. Compliance Data Collection and Verification

### Summary of Elements, as stated by OJJDP

Pursuant to [28 C.F.R. § 31.303\(f\)\(1\)\(i\)](#), one of the required elements of an effective system of monitoring is that states must describe their policies and procedures for monitoring for compliance with the core requirements. The purpose of this manual is to satisfy the policies and procedures element, as well as describe how Virginia satisfies the following additional elements required for an effective system of compliance monitoring.

## 1.0 COMPLIANCE MONITORING PLAN

### Policy:

Virginia is required by the Juvenile Justice and Delinquency Prevention (JJDP) Act to have a written plan which provides for an effective system of monitoring secure facilities to ensure that the core requirements of the Juvenile Justice and Delinquency Prevention (JJDP) Act and Formula Grant Regulations are being complied with.

Assessing compliance affects eligibility for formula grant funding and participation in various programs offered through OJJDP. Noncompliance with any of the core requirements results in a 20% reduction of the funds awarded to the state and we must agree to spend 50% of the remaining funds to come into compliance.

The monitoring plan must describe:

1. The barriers faced in implementing and maintaining a monitoring system and the strategies and plan to overcome such barriers.
2. The legislative and/or administrative procedures which have been established for the state to receive, investigate, and respond to reports of compliance violations.
3. The details of each monitoring task, including the identification of the agency responsible for each task.
4. The monitoring authority granted to the Designated State Agency in order to perform the compliance monitoring tasks.
5. The definition of terms the Designated State Agency will use when conducting the compliance monitoring.

### Procedures:

The monitoring barriers, the administrative violation procedures, the detailed description of the monitoring tasks, the monitoring authority, and the exclusive use of the federal definitions in compliance monitoring are addressed in the following policies.

The Compliance Monitoring policies and procedures should be reviewed each year by the Compliance Monitor and the Juvenile Justice Specialist and updated as needed.

## 1.1 COMPLIANCE MONITORING BARRIERS AND STRATEGIES

### Policy:

Compliance Monitoring Barriers and Strategies is not required for an effective system of monitoring. A description of the barriers faced by Virginia in implementing a monitoring system and the state and local strategies and plans to overcome those barriers are necessary to maintain integrity within the compliance monitoring plan and system. The following procedures to identify barriers and the plans to overcome those barriers will ensure that the state maintains a system with integrity that is reviewed annually.

### Procedures:

1. DCJS will plan and organize an annual State Advisory Group (SAG) retreat or planning meeting. A portion of the agenda will be set aside to discuss compliance, including compliance status, the barriers to compliance, and state and local strategies to overcome the barriers. Detailed notes of this section of the meeting will be taken and retained in the Compliance folder on the shared drive.
2. The Compliance Monitor will submit for SAG discussion and action at the meeting a written or oral report on:
  - A. Barriers faced in implementing and maintaining an effective monitoring system and barriers faced in maintaining compliance with the JJDP Act.
  - B. Recommendations for state and local strategies to overcome those barriers.
  - C. An annual report on the number of violations by the type of facility. The Compliance Monitor will report the number of Deinstitutionalization of Status Offenders, Sight and Sound, and Jail Removal violations that occurred across Virginia during the monitoring period. The SAG will also be informed of Virginia's compliance status and any other pertinent issues that were included in the Annual Report to OJJDP.
3. From SAG discussion and staff input, a written plan will be developed, if needed, to address the barriers in the coming year. This will be reflected in the SAG minutes.
4. DCJS, primarily through its Compliance Monitor, will implement the written plan and will provide written and oral updates to the SAG, as requested, during regular SAG meetings, which are held approximately four times a year.
5. The written plan may include, but is not limited to, the following activities:
  - A. Training and technical assistance for those agencies involved in monitoring or implementation of the JJDP Act.
  - B. Administrative meetings with those agencies involved in monitoring or implementation of the JJDP Act.

- C. Pursuit of state legislation, if applicable, to overcome barriers to monitoring.
- D. Local coordination, i.e., intensive problem solving and planning for agencies requiring assistance to attain compliance with the JJDP Act core requirements.

## 1.2 VIOLATION PROCEDURES

### Summary of Element, as stated by OJJDP:

Pursuant to [28 C.F.R. § 31.303\(f\)\(1\)\(iii\)](#), the state must specify how it receives, investigates, and reports complaints of instances of noncompliance with the DSO, Section 223(a)(11)(B), separation, and jail removal requirements.

### Policy:

The DCJS Compliance Monitor will monitor all facilities in Virginia's Monitoring Universe for compliance with the JJDP Act. Facility files shall be maintained for all facilities and reports shall be made for all site visits at these facilities.

All compliance violations shall be noted, fully investigated, and documented in the facility files. Violations will be documented and shall be kept on record as part of the facility file. This documentation shall include all pertinent information concerning the violation. All violations will be communicated to the facility.

Technical assistance will be offered to the facility, and any action taken to correct the violation shall be documented in the facility file. Violations shall be brought to the attention of the Juvenile Justice Specialist. While the Compliance Monitor is responsible for the compliance violation investigation and follow-up, the Juvenile Justice Specialist retains primary responsibility and merely delegates this task to the compliance monitor.

### Procedures:

1. The Compliance Monitor will perform statewide monitoring; a detailed description of the process and tasks is contained in these policies.
2. The Compliance Monitor will be the primary agent to discover and report compliance violations throughout the state, and to investigate the violations. Violations are most often found through the detailed review of juvenile detention logs and other data. The review may occur either onsite when the Compliance Monitor reviews the logs or when the facility sends the logs to the Compliance Monitor at DCJS.
3. When DCJS receives an independent compliance violation report they will utilize the Compliance Monitor to investigate it. Independent sources may include: the State Advisory Group, the Department of Juvenile Justice (DJJ), administrators of public and private agencies, interested citizens, parents, and youth.
4. The process used to receive, investigate and respond to compliance violation reports is as follows:
  - A. All reports of violations will be turned over to the Compliance Monitor. The report may be received through an independent source or from review of data, such



as the Balanced Approach Data Gathering Environment (BADGE) reports, Local Inmate Data System (LIDS) reports, or juvenile detention logs. Electronic records are kept on file by Virginia's compliance monitors indefinitely.

- B. If a violation of DSO, Jail Removal or Separation is reported or discovered, the Compliance Monitor will fully investigate the violation. The investigation will typically involve a review of the juvenile's case file at the facility to determine whether a violation occurred. In some instances, incorrect information may be recorded on the BADGE Report, causing the detention to appear to be a violation. Upon further investigation it may be revealed that the times or charges were recorded incorrectly. All actual violations will be discussed with the facility administrator or appropriate contact to explain the violations and what remedial actions must be taken to prevent future violations. A summary of the violation will be made in the facility file.
  - C. The Compliance Monitor will provide intensive follow-up during onsite visits to facilities where compliance is a problem. Intensive follow-up may include additional onsite visits to ensure compliance with the JJDP Act.
- 5. DCJS may take any action that is deemed reasonable and appropriate in response to any compliance violations.
  - 6. For internal tracking purposes, the following steps will be taken on every violation:
    - A. Violation will be recorded and included in the annual reporting to OJJDP.
    - B. Violations and patterns of violations shall be discussed with the Juvenile Justice Specialist to determine if further action is needed, if future grants to localities are placed in jeopardy, or if the SAG should be notified.

### 1.3 DESCRIPTION OF THE REQUIRED OJJDP COMPLIANCE MONITORING TASKS

Policy:

A detailed description of the monitoring tasks as well as the identification of the agency or agencies responsible for those tasks is a necessary element of a monitoring system. The following policy describes in general terms Virginia's compliance monitoring system. The Compliance Monitor working for the Virginia Department of Criminal Justice Services are responsible for monitoring and reporting under the Juvenile Justice and Delinquency Prevention (JJDP) Act.

The Juvenile Justice Specialist will annually review with the Compliance Monitor the monitoring tasks to be accomplished during the year as outlined in this policy.

Procedures:

1. The Compliance Monitor will schedule a meeting with the Juvenile Justice Specialist to discuss compliance plans and strategies.
2. A work plan outlining the tasks, the start and completion date, and other duties will be formalized. The SAG will be kept abreast of compliance tasks being conducted.
3. The monitoring tasks, at a minimum, will include:
  - A. Identification of the Monitoring Universe.
  - B. Classification of the Monitoring Universe.
  - C. Inspection of Facilities.
  - D. Data Collection and Verification.
  - E. Either written or verbal progress reports to the SAG and Juvenile Justice Specialist.
  - F. Completion of the OJJDP Annual Monitoring Report each year, the due date as determined by OJJDP (Current due date for annual reports is identified as February 28 of each year but may be extended by OJJDP). The report determines funding eligibility based on compliance with the core requirements.
  - G. Other tasks as required.
4. The Juvenile Justice Specialist will work with the Compliance Monitor and will ensure that all monitoring tasks are accomplished.

### **1.3.1 COMPLIANCE MONITORING TIMETABLE**

The monitoring timetable is not required for an effective system of monitoring.

#### **1.1 Compliance Monitoring Barriers and Strategies**

OJJDP requires states to use the federal fiscal year, from October through September, for monitoring. This task is performed throughout the monitoring period.

- Identify barriers
- Prepare SAG report
- Prepare materials for retreat or planning meeting
- Discuss barriers at SAG retreat or planning meeting
- Detailed notes from discussion at retreat or planning meeting will be taken and maintained in the Compliance folder of the shared drive

#### **1.2 Compliance Violation Reporting Procedures**

The monitoring period runs from October through September. This task is performed throughout the monitoring period.

- Receive and investigate compliance violation reports
- Document violations in Facility Files
- Discuss patterns of violation with Juvenile Justice Specialist
- Prepare compliance violation report
- Report violations to OJJDP
- Report compliance status to SAG

#### **1.3 Description of the Required CM Tasks**

The monitoring period runs from October through September. This task is performed throughout the monitoring period.

- Begin monitoring planning in March
- Identify monitoring tasks and strategies
- Meet with Juvenile Justice Specialist to discuss monitoring tasks and plan
- Begin annual compliance monitoring cycle in October
- Complete monitoring tasks in September
- Submit annual Compliance Monitoring Report to OJJDP in February

#### **2. Identification of the Monitoring Universe**

The monitoring period runs from October through September. This task is performed throughout the monitoring period.

- Query agency contacts and localities
- Send certification letters and questionnaires to law enforcement agencies
- Obtain Facility Certifications from DJJ, DSS, DBHDS, DOC
- Document and update the Compliance Monitoring Universe Master List
- Question contacts during site visits to identify other local facilities

- 2.2 Classification of the Monitoring Universe  
The monitoring period runs from October through September. This task is performed throughout the monitoring period.
- Conduct initial classification at time of identification
  - Identification is an on-going process
  - Classification confirmed during site visits
- 2.3 Inspection of Facilities  
This task is performed from March through September of the monitoring period.
- Inspections occur throughout the monitoring year upon request
  - Site visits to facilities are typically conducted from March through September
- 2.4 Data Collection and Data Verification  
The monitoring period runs from October through September. This task is performed throughout the monitoring period.
- Collect and verify data during the entire monitoring period
  - Receive BADGE, LIDS, and Juvenile Detention Log data from October through December
  - Review data from October through January
  - Data verification is an on-going process
  - Verification occurs through site visits to facilities
- 2.5 Annual Compliance Monitoring Report  
This task is performed from October through February or as directed by OJJDP
- Report due date: February 28<sup>th</sup> of each year or as mandated by OJJDP
  - Compile, review, and verify compliance data throughout the year
  - Compliance Coordinator completes the compliance monitoring report
  - Juvenile Justice Specialist reviews the Annual Compliance Monitoring Report
  - Compliance Coordinator submits the report to OJJDP

#### Other Significant Tasks

- Review and Update *Virginia's Compliance Monitoring Policy and Procedures Manual* – This task is performed annually or as needed
- Monitor newly proposed General Assembly legislation – This task is performed from January through March.
- Provide technical assistance to localities and facility staff – The monitoring period runs from October through September. This task is performed throughout the monitoring period.

## 1.4 COMPLIANCE MONITORING AUTHORITY

### Summary of Element, as stated by OJJDP

States are required under [34 U.S.C. § 11133\(a\)\(1\) and \(2\)](#) to designate an agency (referred to as the Designated State Agency, or the DSA) and provide satisfactory evidence that the DSA has authority, by legislation, if necessary, to administer the Title II Formula Grants Program, including monitoring for compliance with the deinstitutionalization of status offenders (DSO), Section 223(a)(11)(B), separation, and jail removal requirements

### Policy:

The DSA, the Virginia Department of Criminal Justice Services (DCJS), should have legal authority to monitor all facilities in which juveniles might be placed under public authority. The monitoring authority should be sufficiently broad to permit the monitoring agency to require each facility that could be classified as secure to be inspected for classification purposes, to maintain specific juvenile admission and release records, and to permit the designated Compliance Monitor to review these records at selected intervals during the year.

1. The *Code of Virginia* gives DCJS the necessary authority to monitor and inspect facilities for compliance. The legal authority for DCJS to monitor adult jails, adult lockups, secure detention and secure correctional facilities is provided in *Code of Virginia* Sections [9.1-101 \(Definitions\)](#), [9.1-111 \(Advisory Committee on Juvenile Justice and Prevention; Membership; Terms; Quorum; Compensation and Expenses; Duties\)](#), [9.1-109 \(Administration of Federal Programs\)](#), [9.1-107 \(Powers and Duties of Director\)](#), and [9.1-102 \(Powers and Duties of the Board and Department\)](#).
2. The Compliance Monitor is permitted to review records containing detention information with the verbal agreement that the monitor will respect the confidential nature of the information and will not knowingly record or divulge information which might identify a specific child except as may be required to protect the child.
3. Effective monitoring and enforcement can only be fully implemented when the agency's legal responsibility is defined in clear terms and is known to all parties.

### Procedures:

1. State statutes usually define the responsibility of agencies who may be holding juveniles securely with regard to the development and implementation of licensing requirements or other standards for operations. The Compliance Monitor will utilize existing statutorily defined requirements and standards in determining and reporting compliance violations. The Virginia Department of Juvenile Justice is the state agency which inspects, regulates, licenses and certifies juvenile detention

and correctional facilities. As such, DJJ has the authority to sanction these facilities for violations. The Compliance Monitor will work closely with DJJ staff to address JJDP Act violations. In the case of jails, the Virginia Department of Corrections (DOC) is the state agency which inspects, regulates, licenses and certifies jails and correctional facilities. As such, DOC has the authority to sanction these facilities for violations. The Compliance Monitor will work closely with the local jail staff to see that violations at these facilities are corrected in a timely manner.

2. The Compliance Monitor will make available during all onsite inspections a copy of the Virginia statutes which define the basis of authority for monitoring. The Compliance Monitor will work directly with the Juvenile Justice Specialist, and both will report to the SAG. The Juvenile Justice Specialist retains the accountability for the overall performance of the monitoring tasks.

## 1.5 FEDERAL DEFINITIONS OF TERMS

### Summary of Element, as stated by OJJDP

Definitions that states use for key juvenile and criminal justice terms sometimes differ from the “federal” definitions. The federal definitions, for purposes of compliance monitoring, are only those provided in the JJDP Act at [34 U.S.C. § 11103](#) the Formula Grants Program Regulation at [28 C.F.R. § 31.304](#) and [\*An Overview of Statutory and Regulatory Requirements for Monitoring Facilities for Compliance With the Deinstitutionalization of Status Offenders, Separation, and Jail Removal Provisions of the Juvenile Justice and Delinquency Prevention Act.\*](#)

### Policy:

For the purposes of monitoring facilities for compliance with the JJDP Act, the definitions of terms used must be identical to those found in the Formula Grant Regulations. When monitoring for compliance with the core requirements, Virginia applies the federal definition of any term related to compliance monitoring where the state definitions of the term differ from the federal definition. Where there is a difference in the definitions, Virginia acknowledges that the federal definition must be used.

### Procedures:

The following definitions from the Formula Grant Regulations and the JJDP Act will be used for monitoring purposes.

## I. DEFINITIONS

**ADULT INMATE** ([34 U.S.C. § 11103 \(26\)](#)) means an individual who has reached the age of full criminal responsibility under applicable state law and has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense, and does not include an individual who (1) at the time of the offense, was younger than the maximum age at which a youth can be held in a juvenile facility under applicable state law; and (2) was committed to the care and custody or supervision, including post-placement or parole supervision, of a juvenile correctional agency by a court of competent jurisdiction or by operation of applicable state law.

**ASSESSMENT** ([34 U.S.C. 11103\(38\)](#)) includes, at a minimum, an interview and review of available records and other pertinent information – (A) by an appropriately trained professional who is licensed or certified by the applicable state in the mental health, behavioral health, or substance abuse fields; and (B) which is designed to identify significant mental health, behavioral health, or substance abuse treatment needs to be addressed during a youth’s confinement.

**COLLOCATED FACILITIES** ([34 U.S.C. § 11103 \(28\)](#)) means facilities that are located in the same building or are part of a related complex of buildings located on the same grounds.

**CORE REQUIREMENTS** ([34 U.S.C. § 11103 \(30\)](#)) means the requirements described at [34 U.S.C. § 11133\(11\), \(12\), \(13\), and \(15\)](#).

**CRIMINAL-TYPE OFFENDER** ([28 C.F.R. § 31.304\(a\)](#)) means a juvenile offender who has been charged with or adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime, if committed by an adult.

**DETAIN OR CONFINE** ([28 C.F.R. § 31.304 \(b\)](#)) means to hold, keep, or restrain a person such that he or she is not free to leave or that a reasonable person would believe that he is not free to leave. The exception is a juvenile that law enforcement holds solely to return him to his parent or guardian or pending his transfer to the custody of a child welfare or social service agency. In this case, the youth is not detained or confined within the meaning of this definition.

**INSTITUTION** ([Compliance Monitoring TA Tool](#)) means “a secure facility that law enforcement or a juvenile or criminal court authority uses to detain or confine juveniles or adults (1) accused of having committed a delinquent or criminal offense, (2) awaiting adjudication or trial for the delinquent or criminal offense, or (3) found to have committed the delinquent or criminal offense.”

**JAIL OR LOCKUP FOR ADULTS** ([34 U.S.C. § 11103 \(22\)](#)) means a secure facility that a state, unit of local government, or any law enforcement authority uses to detain or confine adult inmates

**JUVENILE OFFENDER** ([28 C.F.R. § 31.304 \(d\)](#)) means an individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by state law (i.e., a criminal-type offender or a status offender).

**MAXIMUM AGE OF EXTENDED JUVENILE COURT JURISDICTION** ([Compliance Monitoring TA Tool](#)) by OJJDP means the age above which a juvenile court may no longer exercise jurisdiction under state law.

**MONITORING UNIVERSE** ([Compliance Monitoring TA Tool](#)) means all public and private facilities in which law enforcement or criminal or juvenile court authority detain juveniles and/or adult inmates.

**NONOFFENDER** ([28 C.F.R. § 31.304 \(i\)](#)) means a juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

**RESIDENTIAL** ([Compliance Monitoring TA Tool](#)) means equipped with beds, cots, or other sleeping quarters and has the capacity to provide for overnight accommodations for juveniles or adults who are accused of committing or who have committed an offense.



**SECURE** as defined under [28 C.F.R. § 31.304 \(m\)](#) and used to define a detention or correctional facility includes residential facilities that include construction features designed to physically restrict the movements and activities of persons in custody, such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

**SECURE CORRECTIONAL FACILITY** ([34 U.S.C. § 11103 \(13\)](#)) means any public or private residential facility which (1) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and (2) is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense or any other individual convicted of a criminal offense.

**SECURE DETENTION FACILITY** ([34 U.S.C. § 11103 \(12\)](#)) means any public or private residential facility which (1) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and (2) is used for the temporary placement of any juvenile who is accused of having committed an offense or of any other individual accused of having committed a criminal offense.

**SIGHT OR SOUND CONTACT** ([34 U.S.C. § 11103 \(25\)](#)) means any physical, clear visual, or verbal contact that is not brief and inadvertent.

**STATE** ([34 U.S.C. § 11103\(7\)](#)) means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**STATUS OFFENDER** ([34 U.S.C. § 11103\(42\)](#)) means a juvenile who is charged with or has committed an offense that would not be criminal if committed by an adult.

**TWENTY-FOUR HOURS** ([Compliance Monitoring TA Tool](#)) means a consecutive 24-hour period, exclusive of any hours on Saturdays, Sundays, public holidays, or days on which the courts in a jurisdiction otherwise are closed.

**VALID COURT ORDER** ([34 U.S.C. § 11103\(16\)](#)) means a court order that a juvenile court judge gives to a juvenile who was brought before the court and made subject to the order and who received, before the issuance of the order, the full due process rights that the U.S. Constitution guarantees to the juvenile.

## **2.0 OVERVIEW OF THE COMPLIANCE MONITORING TASKS**

### Policy:

The JJDP Act requires that states provide for an effective system of monitoring jails, lockups, detention facilities, and correctional facilities to ensure that the core requirements – DSO, separation, jail removal, and section 223(a)(11)(B) are met. Additionally, states must provide for annual reporting of the results for such monitoring to the OJJDP Administrator.

The four major monitoring tasks are as follows:

1. Identification of the Monitoring Universe.
2. Classification of the Monitoring Universe.
3. Inspection of facilities.
4. Data Collection and Verification.

These monitoring tasks are addressed within these sections in this manual.

The following areas related to reporting and violation issues are also addressed in this manual.

1. The OJJDP annual Compliance Monitoring report period.
2. The method of reporting.
3. Compliance violation issues and the legislative and administrative procedures used to enforce compliance.

### Procedures:

To complete the four monitoring task requirements and the three additional tasks please refer to these policies, which are included in this manual.

## 2.1 IDENTIFICATION OF THE MONITORING UNIVERSE

### Summary of Element, as stated by OJJDP

The reporting of instances of noncompliance with the core requirements is facility-based and therefore the “monitoring universe” includes all facilities within the state (public and private) that are jails and lockups for adults (including court holding facilities), secure detention facilities, and secure correctional facilities (including adult prisons), as listed at [34 U.S.C. § 11133\(a\)\(14\)](#). These are the facilities in which instances of noncompliance with the core requirements may occur. States must ensure that they identify and include all of these facilities as part of the monitoring universe.

### Policy:

OJJDP requires States (Formula Grant recipients) participating in the JJDP Act, as amended, to establish and maintain an effective monitoring plan and system for purposes of compliance with the Act and for OJJDP audits. OJJDP requires that each task be completed annually. This policy addresses the annual identification of the monitoring universe.

The Compliance Monitor will maintain a Compliance Monitoring Universe which will contain listings of all facilities in Virginia which juveniles are detained or confined. The Compliance Monitoring Universe will be maintained electronically in the Compliance Monitoring Folder on the Juvenile Drive. The DCJS Compliance Monitor will annually update Virginia’s Compliance Monitoring Universe.

### Procedures:

1. To identify facilities that should be included in Virginia’s monitoring universe, the DCJS Compliance Monitor will query and seek information that is available from local police and sheriff’s offices, jail and detention facilities, and State agencies which include the Department of Corrections, Department of Juvenile Justice, Department of Social Services, Department of Behavioral Health and Developmental Services, the Supreme Court of Virginia, and the Virginia State Compensation Board.
2. The query will include identification information related to current facilities, planned facilities, and contracts with private facilities. Newly identified facilities will be added to the Compliance Monitoring Universe.
3. The Compliance Monitoring Universe will be available during each OJJDP compliance monitoring audit.
4. The identification of the monitoring universe is an on-going process. During onsite visits to facilities, the Compliance Monitor should ask whether there have been any new facilities constructed or modified to detain juveniles securely during the interview with the administrator. Compliance Monitors should also inquire whether

there has been any local discussion regarding proposed new construction or renovation, or remodeling of current facilities. In addition, when monitoring a law enforcement agency, the Compliance Monitor asks about other current facilities that should be a part of the monitoring universe. If a law enforcement facility, jail, or other facility has recently become operational, it is placed on the list of facilities within the respective section of the Compliance Monitoring Universe, and is subject to the classification, inspection, and data collection/data verification tasks.

## 2.2 CLASSIFICATION OF THE MONITORING UNIVERSE

### Summary of Element, as stated by OJJDP

States are required under [28 C.F.R. § 31.303\(f\)\(1\)\(i\)\(B\)](#) to classify each facility in the monitoring universe to specify whether it is a (1) a jail or lockup for adults ([34 U.S.C. § 11103\(22\)](#)); (2) secure detention facility ([34 U.S.C. § 11103\(12\)](#)); or (3) secure correctional facility ([34 U.S.C. § 11103\(13\)](#)).

### Policy:

OJJDP requires that states (Formula Grant recipients) participating in the JJDP Act establish and maintain an effective monitoring system and plan for purposes of compliance with the Act and for OJJDP compliance audits. There are four elements to a compliance monitoring system: identification of the monitoring universe; classification of facilities in the monitoring universe; inspection of facilities; and data collection/data verification. OJJDP requires that each task be completed annually. This policy relates to the annual classification process of the monitoring universe.

The Compliance Monitor will annually verify classification, and/or reclassify, facilities listed in the Compliance Monitoring Universe. In the case of secure law enforcement facilities, court holding facilities, jails, juvenile detention facilities, and juvenile correctional facilities, the classification will be verified during on-site inspections. During the on-site inspection the Compliance Monitor will question the point of contact in regards to any structural changes to the facility and/or any changes in policies dealing with how juveniles are handled in the facility since the last inspection. Any changes in how the facility is being used in regard to classification will be noted in the Compliance Monitoring Universe. Points of contact will also be asked about any new or planned secure facilities that they are aware of in their area. Any new facilities will be contacted, an on-site visit will be scheduled, and the new facilities will be added to the Monitoring Universe. Any changes in classification will be included in the compliance monitoring site visit report.

For purposes of this Policy, and per federal requirements, there are four categories for classification of each facility:

1. Public or Private.
2. Juvenile facility (used exclusively for juveniles), adult facility (used exclusively for adults), or a facility used for both juveniles and adults.
3. Secure or Non-Secure – Note: pursuant to Section 223(a)(14) of the JJDP Act (codified at [34 U.S.C. § 11133\(a\)\(14\)](#)), as amended by the Juvenile Justice Reform Act of 2018 (JJRA), states no longer are required to monitor non-secure facilities.
4. Residential or non-residential.

Please refer to the 1.5, Federal Definitions of Terms on pages 15-17, for definitions of the additional following terms, which may be needed for classification purposes:

1. Adult jail
2. Adult lockup (to include court holding facilities)
3. Secure detention facility
4. Secure correctional facility

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

Procedures:

1. All facilities listed in the Compliance Monitoring Universe must be classified pursuant to the above definitions (secure or non-secure; residential or non-residential, public or private; adult, juvenile or used for both). The JJDPa no longer requires the monitoring of non-secure facilities.
2. Based upon the classification, the list of facilities requiring an onsite inspection during the monitoring year will be generated.
3. The classification of current facilities may have occurred during the previous monitoring year. For example, while conducting an on-site visit to a Sheriff's Office the Compliance Monitor may learn of a new facility that was recently constructed. The new facility is added to the Compliance Monitoring Universe and is subject to classification and inspection. The Compliance Monitor may learn of a police department that has just become operational during the previous year. Again, the new police department is subject to classification and inspection.
4. The classification of facilities is not a one-time occurrence at a specified time during the course of the year. Rather, it is an on-going process. The classification is verified through on-site inspections as required.
5. When an existing facility is re-classified, it is noted in the Facility File and in the Compliance Monitoring Universe. Using this method, it is an easy task to update the information annually.
6. The Compliance Monitor will verify annually the classification all jails, secure lockups, and juvenile detention facilities as public, secure facilities that may be used for the incarceration of juveniles and/or adults. Jail and lockup facilities, juvenile detention facilities and juvenile correctional facilities will be subject to on-site inspections every three years and data collection/data verification annually.
7. It will be the responsibility of the Compliance Monitor to maintain contact with non-secure law enforcement agencies to ensure they have certified their non-secure status. In addition, DCJS anticipates that a Non-Secure Certification form will be completed at least every three years, and electronically kept on file on the shared drive at DCJS. This will provide written verification that the facility is non-secure and does not require an on-site inspection every three years. Any facility which has not

verified its non-secure status will be subject to an on-site inspection to verify its classification.

8. The classification of facilities is placed in the Compliance Monitoring Universe. The classification describes a facility as being residential or non-residential, public or private, secure, non-secure or both, juvenile, adult or both. Based on the classification, the Compliance Monitor will be ready to compile the list of facilities requiring an annual inspection.

A portion of a facility may be classified as a “secure detention facility,” and another portion may not. A facility may have areas that are non-secure as well as areas that are secure. It is also possible that some facilities may be entirely secure. Facilities will be classified as residential or non-residential. Facilities that have the means to detain juveniles overnight (i.e., they have something such as a bed in the secure area for the juvenile to sleep) will be classified as residential. Facilities, which do not have this capability, or which do not operate 24/7 will be classified as non-residential.

## 2.3 INSPECTION OF FACILITIES

### Summary of Element, as stated by OJJDP

Pursuant to [28 C.F.R. § 31.303\(f\)\(1\)\(i\)\(C\)](#), inspection of facilities is necessary to ensure an accurate assessment of each facility's classification and record keeping.

### Policy:

Inspection of facilities is required to confirm classifications according to federal regulations and to review whether adequate sight or sound separation occurs for juveniles housed in facilities which also confine adult offenders or use adult inmates. Such inspections are necessary to provide the protections required by the JJDP Act and to determine whether adequate data are maintained to determine compliance with the statutory core requirements. The inspection process should include a method of reporting compliance with the separation core requirements for each secure facility which holds both juvenile and adult offenders. Reports on each facility's compliance or non-compliance will be made available to the facility as a record of findings of the inspection.

Each facility will have an individual file, kept electronically on the shared drive, called a Facility File that will contain all pertinent information relating to the on-site visit and the compliance status of the facility. Any compliance related issues or potential problems will be documented in the Facility File. A summary will be made of the technical assistance that was provided and any corrective action that should be taken. Compliance violations will be documented in the Facility File for reporting in the Annual Report to OJJDP. After all facility site visits, the Monitoring Universe will be updated to reflect the year of the visit to that facility.

It is important that all facility administrators or contacts be provided with all applicable information on compliance with the JJDP Act and related regulations. During each on-site inspection, the Compliance Monitor will make available information concerning the Juvenile Justice and Delinquency Prevention Act. This information and other information about the compliance monitoring program in Virginia are available to all facilities and are downloadable from the DCJS web site.

### Procedures:

The Compliance Monitor will inspect facilities to ensure an accurate assessment of each facility's classification and record keeping. The inspection will include:

1. A review of the physical accommodations to determine whether it is a secure or non-secure facility.
2. A "walk-through" of the facility as if the Compliance Monitor was a juvenile to determine the level of sight or sound separation between juveniles and adult inmates.
3. A review of the record keeping system to determine whether sufficient data are maintained to determine compliance with 223 (a) (11), (12), (13), and (23). A sample



time period of admission log data will be reviewed from all jails, lockups, juvenile detention centers, and juvenile correctional centers during the inspection.

4. An exit interview with the facility administrator or contact to share on-site findings and concerns, to discuss methods to attain compliance if issues are present, to provide technical assistance, if appropriate, and to discuss concerns of the facility administrator or contact.

PLEASE NOTE FOR PURPOSES OF THIS SECTION:

Pursuant to OJJDP's policy issued December 15, 2021 in [Policies and Procedures Manual for Monitoring Compliance with Core Requirements of the Formula Grants Program Authorized Under Title II , Part B, of the Juvenile Justice and Delinquency Prevention Act](#) (pg. 23) "there is no required threshold for how often inspections of specific types of facilities must be conducted, but OJJDP policy recommends that 100% of all secure facilities in a state's monitoring universe be inspected within a 3-year-period."

It is the goal of DCJS to conduct site visits to all detention centers annually to review detention files and verify data contained in the Balanced Approach Data Gathering Environment (BADGE) reports. It is a goal of DCJS to conduct site visits at jails, lockups, juvenile correctional centers, at the rate of 100% every three years.

1. The Compliance Monitor, at least 15 days prior to an inspection, will notify the facility administrator or contact of the date and time of inspection. If the date and time is inconvenient, another time will be scheduled. The Compliance Monitor will be responsible for maintaining records of when facilities were visited. They will be included with the data obtained for that monitoring year and included in the Annual OJJDP Monitoring Report.
2. At all inspections a written narrative free-form style report will be completed documenting the visit at the facility, which will be included in the Facility File that is electronically maintained. This report should document the person(s) met with, deficiencies noted, recommendations made, violations discovered, logs reviewed, and whether previous recommendations have been instituted. The report will also include any information obtained during the visit about new or newly discovered facilities that are not in the Monitoring Universe along with any other relevant information. These facilities will be contacted, and a site visit scheduled to verify the classification and status of the facility.
  - A. The Compliance Monitor will determine how records are kept at the facility on juveniles held securely and verify that the records are accurate. OJJDP requires data verification, which is unique to each facility; however, the Compliance Monitor is always able to verify data by reviewing a juvenile's detention file. A thorough record-keeping review will be conducted to ensure all facilities keep records consistent with OJJDP regulations and should, at a minimum, include:
    1. Name or ID number (in order to review a file if needed to verify compliance)
    2. Date of Birth (age), Sex, Race/Ethnicity

3. Most serious offense for which juvenile is being detained
4. Date and time of admission
5. Date and time of release
6. Date and times in/out prior to and after court appearances if applicable

B. How to locate a facility site visit, complaint, or miscellaneous report:

Facility site visits, complaints, or miscellaneous reports are written in a narrative format and are essentially a running record of all contact with that facility. When writing a report for the facility, the Compliance Monitor would pull up the last written report for the facility, update the contact information, and begin the narrative ahead of the information contained in the previous report.

1. Currently, all reports are maintained electronically in files by year and facility type. These files are maintained on the shared drive in the Juvenile Services folder under the Compliance Monitoring sub-folder. It should be noted that access to this folder is restricted to Compliance Monitor, the Juvenile and Child Welfare Manager, and the Juvenile Justice Specialist only due to the sensitive nature of these files.
2. The first step in locating a report would be to look at the Monitoring Universe list to see what year the facility was last visited.
3. The second step in finding site visit reports would be to open the files for that year and look for the facility type of the facility report in question.
4. The third step would be to open the file for the facility type, which coincides with the facility which you wish to view.
5. The final step would be scrolling through the reports for that year to locate the particular report of interest and open that file.

- C. During the inspection of facilities questions will be asked. For example, a juvenile detention center may be located near an adult jail. Inmates may be asked to perform grounds work at the juvenile detention center, raising the possibility of sight or sound separation violations. The Compliance Monitor should obtain and review policies and procedures on how the facility ensures sight or sound separation.
- D. The Compliance Monitor will provide technical assistance to those facilities not in compliance.
- E. Facilities should be told that the Compliance Monitor is available to review proposed facility plans prior to construction to ensure that sight or sound separation will be complied with.
- F. All law enforcement facilities that do not have secure holding capabilities will be classified as non-secure. The Law Enforcement Certification of Non-Secure Classification form will be completed, filed, and retained electronically. The Law

Enforcement Certification of Non-Secure Classification form should be completed at least every three years by these agencies. These facilities will not be included in the monitoring universe.

- G. A certification form or Memorandum of Understanding (MOU) will be completed between DCJS and the Virginia Department of Social Services, the Department of Juvenile Justice, and the Virginia Department of Behavioral Health and Developmental Services, covering all secure residential facilities under each department's control. The MOU will be signed by appropriate department personnel certifying that all secure residential facilities under that department's authority and control will notify DCSJ if juveniles are detained for purposes other than mental health.
- H. A certification form or Memorandum of Understanding (MOU) will be completed between DCJS and the Virginia Department of Corrections covering all state prisons. This will be signed by appropriate department personnel certifying that the prisons will not hold status offenders or any other juveniles whose trial was heard in the Juvenile and Domestic Relations District Courts. They will also certify that they will not operate any "Scared Straight" type programs. If they find that a violation has occurred, they will promptly notify DCJS.
- I. DCJS anticipates that all certification agreements entered into between DCJS and other state agencies will be updated at least every four years.

## 2.4 DATA COLLECTION AND VERIFICATION

### Summary of Element, as stated by OJJDP

Pursuant to 28 C.F.R. § 31.303(f)(1)(i)(D) and (5), the state must collect and verify data from all adult jails, adult lockups, secure detention facilities, and secure correctional facilities for the 12-month federal fiscal year [FFY] reporting period, to determine whether the facilities are in compliance with the applicable requirements of DSO, Section 223(a)(11)(B), separation, and jail removal. The federal fiscal year is October 1 to September 30. States that are unable to report data for 100% of facilities must report data for at least 85% of facilities within the state that are required to report.

### Policy:

The Compliance Monitor will be responsible for collecting and verifying data on every youth held in those facilities subject to inspections following OJJDP regulations on data collection. Data on all juveniles held securely will be obtained. The federal fiscal year, October 1 through September 30, will be used for each annual monitoring cycle. The following data sets will be obtained:

Data collected will include the name, DOB, race, sex, charge, date and time of incarceration, and date and time of release. Data sets to be reviewed during collection/verification on juveniles held in juvenile detention centers will be obtained from the Department of Juvenile Justice through a query of their Balanced Approach Data Gathering Environment (BADGE) system. Data on juveniles securely detained in jails will be obtained from the State Compensation Board through a query of their Local Inmate Data System (LIDS). These reports will be run and obtained annually at the end of the monitoring period from the respective state agencies. The data requested will be from October 1 to September 30 of the following year. Juvenile detention data received in the BADGE data on possible violations are reviewed at juvenile detention centers through on site file reviews at the juvenile detention centers. LIDS data on possible violations are determined through the review of jail detention files.

#### A. Juvenile Detention Centers

1. Accused status offenders held for more than 24 hours (excluding weekends and holidays), prior to an initial court appearance, excluding those held pursuant to a valid court order (VCO), out-of-state runaways held pursuant to the Interstate Compact, and those held pursuant to the Youth Handgun Safety Act or a similar state law, will be reported as violations in the annual report to OJJDP. Because of the requirements added by the Juvenile Justice Reform Act of 2018, Virginia does not use the VCO exception at this time; thus, all accused status offenders held on a violation of a valid court order are reported as violations of the DSO requirement.

2. Adjudicated status and non-offenders held for any length of time will be reported as violations in the annual report to OJJDP.
3. Status offenders held pursuant to a violation of a Valid Court Order. (These are not violations of the DSO core requirement, but states must verify that the federal requirements for using the VCO was followed). Note: as stated above, because of the requirements added by the Juvenile Justice Reform Act of 2018, Virginia does not use the VCO exception; thus, all detentions of status offenders are reported as violations of the DSO requirement.
4. Out-of-State runaways held over the 24-hour reporting exception (If held pursuant to the Interstate Compact rules and regulations they do not count as violations).
5. Federal juvenile detainees held over the 24-hour reporting exception. (Per OJJDP guidance, these are not violations because they are held pursuant to a contract with a federal agency).
6. Non-offenders held for any period of time. (All detentions of non-offenders held securely are violations).
7. Total number of juvenile offenders held pursuant to the Youth Handgun Safety Act or similar state law. (These are not violations due to the Youth Handgun Safety Act exception, but the total number is reported in the Annual Compliance Monitoring Report).
8. Any potential violations found during a review of the data will be cause for the facility being asked to pull the case file for review during the site visit. Any potential violations that cannot be resolved during the site visit will either be carried as a violation, or further follow-up will be conducted through the Court Service Unit or the BADGE system before the determination is made on whether the detention is reported as a violation.

#### B. Adult Jails and Adult Lockups

1. Accused status and non-offenders held for any period of time. (They are violations of the DSO and Jail Removal core requirements; therefore, if a status offender or non-offender is held securely for any period of time in a jail two violations must be reported. Status offenders or non-offenders held in secure confinement for any period of time in a lockup will count as a Jail Removal violation only unless the lockup is classified as residential.)
2. Adjudicated Status and non-offenders held for any length of time (including VCOs). Again, they are violations of the DSO and Jail Removal core requirements and two violations are reported when held securely in jails. When held securely in a lockup, which is classified as being nonresidential, it would count as a Jail Removal violation only.
3. Sight or Sound Separation violations. Instances where a juvenile has sight or sound contact with an adult inmate. They are violations of the Separation core requirement.

4. Accused juvenile criminal-type offenders held in excess of six hours. These are reported as Jail Removal violations.
5. Adjudicated juvenile criminal-type offenders held in a lockup for any reason. Juveniles who have been adjudicated delinquent and are awaiting transfer to a juvenile facility can be held in an adult jail pending a transfer to a juvenile detention facility. Juveniles who are sentenced to an adult jail or lockup will be reported as a violation of the jail removal core requirement.
6. Accused juvenile criminal-type offenders held for less than 6 hours for purposes other than identification, investigation, processing, release to parent(s), transfer to court, or transfer to a juvenile facility following initial custody. These are violations of the Jail Removal core requirement.
7. Juveniles required by law enforcement or the courts to be held in an adult jail or lockup as a disposition or as a means of correcting their behavior and in sight or sound contact with adult inmates. These programs are commonly referred to as Scared Straight. These are reported as violations of Separation.

Procedures:

1. Adult Jails and Adult Lockups

- A. Lockups will be asked to submit copies of their juvenile detention logs to the DCJS Compliance Monitor at the end of the monitoring period for review. Lockups that have reported frequent violations may be required to submit juvenile detention logs on a monthly basis.
- B. During on-site inspections, the Compliance Monitor will collect and verify data on juveniles held securely. Compliance Monitor will review a random sample of admission logs from jails and juvenile detention logs will be reviewed at lockups.
- C. Juvenile detention logs will be reviewed at each lockup inspection and should document each juvenile that is securely held. Juvenile Detention Logs should be filled out by the arresting officer each time a juvenile is placed in secure custody. The Compliance Monitor will review the logs on-site and verify them for compliance with the JJDP Act.
- D. Data obtained from the State Compensation Board on juveniles held in adult facilities will be reviewed and each jail holding juveniles will be contacted to provide information on the reason why the juvenile was held in the adult jail. Any jail detentions not permitted under the JJDP Act will be reported as violations.
- E. Information on juveniles who have transferred, certified, or waived to circuit court and are held as adults should be kept by the facility in the facility's records. The information maintained by the facility should be reviewed for compliance with the JJDP Act.

- F. In cases where additional information is required, the Compliance Monitor will verify the log entries against individual case files at the facility or at the court.
- G. The Compliance Monitor will retain paper or electronic copies of the Juvenile Detention Logs for reporting purposes.
- H. During all on-site inspections of adult jails, the Compliance Monitor will inquire as to whether the facility operates any programs commonly known or referred to as Scared Straight. If the facility does operate such programs the Compliance Monitor will inquire as to how the program operates to ensure it does not violate the Separation and Jail Removal core requirement and provide technical assistance as necessary.

## 2. Juvenile Detention and Correctional Facilities

- A. These types of facilities usually maintain a computer program where they document all juveniles entering and exiting their facilities. A sample of detention log data will be reviewed during site visits to juvenile detention and correctional facilities.
- B. The Compliance Monitor will collect data as outlined under the “data sets” on page 28 of this policy for those facilities that qualify as a juvenile detention or juvenile correctional facility.
- C. Juvenile detention facilities will receive inspections for data verification. Once the data is collected, the Compliance Monitor will schedule on-site visits to verify the data. Individual case files will be reviewed. Any instance of a status offender who has been sentenced to detention will be carried as a DSO violation.

Note: Because of the additional requirements imposed by the JJRA of 2018, Virginia no longer uses the VCO Exception in its monitoring.

- D. Information concerning compliance with the JJDP Act will be shared with Detention Superintendents annually through reports provided by the Compliance Monitor to the Virginia Juvenile Detention Association.

## 3. Non-Reporting Facilities

- A. Facilities that refuse to provide the Compliance Monitor with records on juveniles held securely will be classified as non-reporting. The number of juveniles held and the number of violations will therefore be “projected” using the following procedure.
- B. The Compliance Monitor should determine which county or city is most similar to the non-reporting facility. Criteria used will include: size, location (urban, suburban, rural), number of juveniles residing within the county or city, and number of law enforcement officers employed by the county or city.
- C. The number of violations and number of juveniles held securely from the similar county or city will be used to determine the same numbers for the non-reporting facility and will be documented in all compliance monitoring charts as “projected”.

- D. The projection technique will be documented in the Annual Compliance Monitoring Report along with the plan for obtaining the information from the non-reporting facility in the future.



## 2.4.1 DEINSTITUTIONALIZATION OF STATUS OFFENDERS

### Statement of Purpose:

The JJDP Act prohibits holding status or non-offenders in secure facilities. However, the JJDP Act provides statutory exceptions, and the federal regulations provide a regulatory exception. The exceptions only apply to Juvenile Detention Centers. It is clearly the intent of the JJDP Act that these are the exceptions and not the rule.

### Summary of Requirement, as stated by OJJDP:

Pursuant to [34 U.S.C. § 11133\(a\)\(11\)\(A\)](#), juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult (status offenders), or juveniles who are not charged with any offense and are unauthorized immigrants or are alleged to be dependent, neglected or abused (non-offenders), shall not be placed in secure detention facilities or secure correctional facilities. Compliance with the DSO requirement has been achieved when a state can demonstrate that no such juveniles were placed in secure detention and correctional facilities, or when the state's DSO rate falls below the established threshold.

Data collected will include the name, DOB, race, sex, charge, date and time of incarceration, and date and time of release. Data sets to be reviewed during collection/verification on juveniles held in juvenile detention centers will be obtained from the Department of Juvenile Justice through a query of their Balanced Approach Data Gathering Environment (BADGE) system. Data on juveniles securely detained in jails will be obtained from the State Compensation Board through a query of their Local Inmate Data System (LIDS). These reports will be run and obtained annually at the end of the monitoring period from the respective state agencies. The data requested will be from October 1 to September 30 of the following year. Juvenile detention data received in the BADGE data on possible violations are reviewed at juvenile detention centers through on site file reviews at the juvenile detention centers. LIDS data on possible violations are determined through the review of jail detention files.

YOUTH HANDGUN SAFETY EXCEPTION – Under [34 U.S.C. § 11133\(a\)\(11\)\(A\)\(i\)\(I\)](#), the DSO requirement does not apply to juveniles charged with or found to have committed a violation of the Youth Handgun Safety Act (18 U.S.C. § 922(x)), or a similar state law, which prohibits a person younger than 18 from possessing a handgun. Such juveniles may be placed in secure detention or secure correctional facilities without resulting in an instance of noncompliance with the DSO requirement. Virginia utilizes the Youth Handgun Safety Exception. These violations are tracked and reported to the Compliance Monitor during the compliance monitoring period in the BADGE data report. All exceptions are reported in our annual report to OJJDP when requested.

VALID COURT ORDER EXCEPTION – The Valid Court Order (VCO) exception at [34 U.S.C. § 11133\(a\)\(11\)\(A\)\(i\)\(II\)](#) provides that accused or adjudicated status offenders, and juveniles found to have violated a valid court order based on their status as a juvenile, may be placed in a secure juvenile detention or correctional facility. A juvenile who has committed a violation of a court order that is not related to his status as a juvenile (i.e., an offense with which an adult may be charged, such as failure to appear) is neither a status offender nor nonoffender and the DSO requirement does not apply (see Section III.E. Adherence to Federal Definitions for the definition of “valid court order”).

Because of the additional requirements imposed by the JJRA of 2018, Virginia does not use the VCO Exception in its monitoring. All detentions of status offenders are reported as violations of the DSO core requirement.

To demonstrate compliance with the statutory requirements governing the VCO exception, states must have a process in place to verify whether court orders used to place status offenders in juvenile detention centers (including juveniles who violate valid court orders related to their status as a juvenile), meet the following requirements (as set forth at [34 U.S.C. § 11133\(a\)\(23\)](#)):

- a. An appropriate public agency shall be promptly notified that the status offender is held in custody for violating a valid court order.
- b. An authorized representative of that agency shall interview within 24 hours, in person, the status offender who is being held.
- c. Within 48 hours during which the status offender is held:
  - The agency representative shall submit an assessment to the court that issued the order regarding the immediate needs of the status offender.
  - The court shall conduct a hearing to determine whether (1) there is reasonable cause to believe that the status offender violated the order and (2) the appropriate placement of the status offender pending disposition of the alleged violation.
  - If the court determines that the status offender should be placed in a secure detention facility or correctional facility for violating the court order, (1) the court must issue a written order that:
    - ✓ Identifies the valid court order that has been violated;
    - ✓ Specifies the factual basis for determining that there is reasonable cause to believe that the status offender has violated such order;
    - ✓ Includes findings of fact to support a determination that there is no appropriate less restrictive alternative available to placing the status offender in such a facility, with due consideration to the best interest of the juvenile;
    - ✓ Specifies the length of time, not to exceed 7 days, that the status offender may remain in a secure detention facility or correctional facility,

and includes a plan for the status offender's release from such facility;  
and

✓ May not be renewed or extended; and

(2) The court may not issue a second or subsequent order described [in the first bullet] relating to a status offender unless the status offender violates a valid court order after the date on which the court issued the first court order.

d. There are procedures in place to ensure that any status offender held in a secure detention facility or correctional facility pursuant to a [valid] court order [described in this section] does not remain in custody longer than 7 days or the length of time authorized by the court, whichever is shorter.

INTERSTATE COMPACT ON JUVENILES EXCEPTION – Pursuant to the DSO requirement at [34 U.S.C. § 11133\(a\)\(11\)\(A\)\(i\)\(III\)](#), status offenders may be held in accordance with the Interstate Compact on Juveniles, as the state has enacted it. States must verify that all status offenders subject to an out-of-state placement were held pursuant to the Compact. Where the interstate placement of status offenders was not in accordance with the Compact, the state in which the juvenile is placed must report the placement as an instance of noncompliance.

#### Interstate Compact Unit

The [Interstate Commission for Juveniles \(juvenilecompact.org\)](http://juvenilecompact.org) is established to fulfill the objectives of the Interstate Compact, through means of joint cooperative action among the Compacting states to promote, develop and facilitate a uniform standard that provides for the welfare and protection of juveniles, victims and the public by governing the Compacting states' transfer of supervision of juveniles, temporary travel of defined offenders and return of juveniles who have absconded, escaped, fled to avoid prosecution or run away.

The Interstate Commission for Juveniles is the governing body of the Interstate Compact for Juveniles (ICJ). Commission members include representatives from all 50 states, the District of Columbia, and the US Virgin Islands, who work together to preserve child welfare and promote public safety. The Commission is responsible for promulgating and enforcing rules to implement the ICJ.

The Executive Committee oversees day-to-day activities of the Commission and administers compliance with the compact, its by-laws and rules. Comprised of elected officers and appointed chairpersons, the Executive Committee has statutory power to act on behalf of the Commission when the Commission is not in session.

The Interstate Compact for Juveniles (ICJ) is the law that regulates the interstate movement of juveniles who are under court supervision or have run away to another state. The ICJ is a contract that has been adopted as law throughout the United States. Therefore, all state and local officials are legally bound to honor and enforce the terms of the Compact.

The Compact provides requirements for supervision and return of juveniles who are on probation, parole, or other supervision; have escaped to another state; have run

away from home and left their state of residence; or have been accused of an offense in another state.

Virginia uses the Interstate Compact on Juveniles Exception for out of state runaways. (*Code of Virginia* §§ [16.1-323](#) and [16.1-323.1](#)) The Chief Deputy Director at the Virginia Department of Juvenile Justice assists the Director with implementation of initiatives, reforms and policies that are designed to improve the lives of court-involved youth and move the agency forward. The Chief Deputy directly supervises the Virginia Interstate Compact Unit. (Virginia | Interstate Commission for Juveniles ([juvenilecompact.org](http://juvenilecompact.org)))

It will be verified through the Interstate Compact Unit at the Virginia Department of Juvenile Justice that all appropriate steps were taken as outlined in the Interstate Compact on Juveniles for the detention of all juveniles being detained under the “Compact” in order to use this exception. If the appropriate steps were not taken as outlined in the Interstate Compact on Juveniles, the detention will be reported as a DSO violation to OJJDP.

### Intent of the DSO Core Requirement

The DSO Core Requirement has been part of the JJDP Act since its inception in 1974. The principles are as follows:

- Holding status and non-offenders in secure confinement, although expedient, is an inappropriate strategy for handling juveniles who have not engaged in any criminal behavior.
- Historically, status offenders, when handled as delinquents, have been placed in environments that lead to physical and emotional harm.
- The punishment of status offenders and non-offenders, often abused and neglected children, simply represents a continuation of the cycle of mistreatment.

The JJDP Act does not ignore the problems of status and non-offenders. Instead, the JJDP Act has supplied federal funds to the states that meet the core requirements to develop a comprehensive continuum of care. The JJDP Act encourages the creation and implementation of community-based treatment, diversion and delinquency prevention programs as appropriate, and cost-effective alternatives to secure confinement. The maintenance of this requirement promotes just policies concerning status and non-offenders, and it upholds the necessary distinction in treatment strategies for the status and non-offenders versus the more serious juvenile offender.

OJJDP, which regulates compliance, provides for two primary types of exceptions. These exceptions are statutory exceptions and reporting exceptions.

Reporting exceptions are instances where violations of this core requirement per Federal Regulations are subtracted from the total number of violations. Where the JJDP Act is silent on an issue, reporting exceptions define the limited circumstances under which a state will not be penalized. Statutory exceptions are defined in the JJDP Act and established by Congress. Their interpretation is strictly defined by statute.

There are three statutory exceptions: possession of a handgun, Valid Court Order, and Out-of-State runaways when held pursuant to the Interstate Compact. Statutory exceptions allow states to remove from consideration, for compliance determination purposes, offenses that constitute the violation of a Valid Court Order or a violation of Section 922(X) of Title 18 or similar State laws (handgun possession). Juveniles held pursuant to the Interstate Compact on Juveniles enacted by the state are excluded from the DSO requirements in total.

Pursuant to OJJDP guidance, "If any facilities within your state detain juveniles pursuant to a contract with a federal agency, or with another state, the state must monitor and collect compliance data regarding such juveniles in its monitoring effort."

Virginia is seeking a review of the guidance requiring states to monitor and collect compliance data regarding juveniles placed in facilities pursuant to a contract with a federal agency. While awaiting what we hope will be a more comprehensive, coordinated resolution at the federal level, Virginia will classify any portion of a detention facility that does not meet the definition of a "secure detention facility," i.e., that is not "used for the temporary placement of any juvenile who is accused of having committed an offense or of any other individual accused of having committed a criminal offense," as outside of our monitoring universe.

If any facility does not have a separate unit, section, or pod, and the juvenile placed pursuant to federal contract does not have criminal charges, those federal detainments will be reported as violations.

## **2.4.2 SEPARATION**

### **Statement of Purpose:**

The JJDP Act requires that no juvenile be confined in circumstances where they have contact with adult inmates in a secure custody status. The exact wording in the JJDP Act is: “juveniles alleged to be or found to be delinquent, as well as status offenders and non-offenders, will not be detained or confined in any institution in which they have contact with adult inmates.” The JJDP Act further requires that “there is in effect in the state a policy that requires individuals who work with both such juveniles and such adult inmates, including in colocated facilities, to have been trained and certified to work with juveniles.”

In addition, in accordance with OJJDP policy and regulation, the state must assure that no juvenile offender shall enter under public authority, for any amount of time, into a secure setting or secure section of any jail, lockup or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g. Scared Straight).

### **Summary of Requirements**

Pursuant to [34 U.S.C. § 11133\(a\)\(12\)](#), juveniles alleged to be or found to be delinquent, status offenders, and juveniles who are not charged with an offense and who are unauthorized immigrants or alleged to be dependent, neglected, or abused may not be detained or confined in any institution in which they have sight or sound contact with adult inmates.

In order to comply with the separation requirement, states must also have in effect a policy that requires individuals who work with both juveniles and adult inmates, including in colocated facilities, to have been trained and certified to work with juveniles.

**JUVENILES WHO ARE TRANSFERRED, CERTIFIED, OR WAIVED TO CRIMINAL COURT** – Juveniles who have been transferred, certified, or waived to criminal court, and are therefore charged as adults, may not be detained in an adult jail or lockup or have sight or sound contact with adult inmates in a secure facility, unless it is pursuant to one of the exceptions at [34 U.S.C. § 11133\(a\)\(11\)\(B\)](#).

However, a court may determine that it would be in the interest of justice to do so consistent with [34 U.S.C. § 11133\(a\)\(11\)\(B\)](#). See Section 223(a)(11)(B) above, which applies to juveniles charged as adults. If a juvenile who has been charged as an adult has been convicted and sentenced for the criminal offense, however, Section 223(a)(11)(B) no longer applies.

**JUVENILES WHO REACH THE AGE OF FULL CRIMINAL RESPONSIBILITY AFTER ARREST OR ADJUDICATION** – Individuals who commit an offense while still a juvenile and who have reached the age of full criminal responsibility only after arrest or adjudication, but remain under juvenile court jurisdiction, are not adult inmates and

need not be separated from juveniles until they have reached the state's maximum age of extended juvenile jurisdiction. By contrast, individuals who are under juvenile court jurisdiction and who subsequently commit a separate offense after reaching the age of full criminal responsibility, are adult inmates, who must not have sight or sound contact with juvenile detainees.

**PROGRAMS IN WHICH JUVENILES HAVE SIGHT OR SOUND CONTACT WITH ADULT INMATES** – Programs in which juveniles have sight or sound contact with adult inmates in an attempt to educate juveniles about life in prison and/or deter them from delinquent or criminal behavior (such as Scared Straight or shock incarceration programs) may result in instances of noncompliance with the separation (and possibly DSO and jail removal) requirements. Whether these programs result in instances of noncompliance will depend on the specific manner in which the program operates and the circumstances of the juveniles' participation in such a program. Virginia discourages the use of these programs and we are unaware of any such programs operating in the state.

Instances of noncompliance with the separation requirement may only occur if a juvenile's participation in such a program is pursuant to law enforcement or juvenile criminal court authority. In addition, for violations to occur, the juvenile must not be free to leave or withdraw from participation, even if her/his parent/guardian has not consented to, or wishes to withdraw consent for, the juvenile's participation. [If a juvenile participated with the consent of a parent or guardian, and with the ability to withdraw consent and leave the program, this is not a separation violation.]

#### Intent of the Separation Core Requirement

This requirement has been part of the JJDP Act since its inception in 1974. It was passed by Congress in response to the fact that juveniles placed in adult facilities where they had contact with adult inmates and correctional staff were frequently victims of physical, mental, sexual, and emotional abuse, and the discovery that juveniles in contact with adult prisoners were exposed to the tools and training necessary to engage in criminal behavior.

In addition to protecting juveniles against abuse and corruption, sight or sound separation reinforces acceptable professional guidelines. The separation of juveniles from adult inmates allows for the immediate mobilization of effective, appropriate services for juveniles. The separation requirement maintains the safety of juveniles while focusing attention on their diversion to community resources.

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

Separation does not apply, nor do any of the requirements apply, to juveniles who have been tried in an adult court and found guilty.

A juvenile offender in a secure custody status is one who is physically detained or confined in a locked room or other area set aside or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being placed in such a room or area and/or from being physically secured to a cuffing rail or other stationary object. Sight or sound contact is defined as any physical, clear visual, or verbal contact that is not brief and inadvertent. Separation must be accomplished architecturally or through policies and procedures in all secure areas of the facility, which include, but are not limited to, such areas as admissions, sleeping, and shower and toilet areas. Brief and inadvertent or accidental contact between juvenile offenders in a secure custody status and adult inmates in secure areas of a facility that are not dedicated to use by juvenile offenders, and which are nonresidential, which may include dining, recreational, education, vocational, health care, sally ports or other entry areas, and passageways (hallways), would not require a facility or the State to document or report such contact as a violation. However, any contact in a dedicated juvenile area, including any residential area of a secure facility, between juveniles in a secure custody status and adults inmates would be a reportable violation.” Juveniles are not to have any “contact” with adult inmates while they are in “secure” custody.

Added during the 2018 reauthorization is a prohibition of “Scared Straight or Shape Up” type of programming. In accordance with OJJDP policy, the state must assure that no juvenile offender shall enter under law enforcement or court authority, for any amount of time, into a secure setting or secure section of an adult jail, lockup, or correctional facility as a disposition of an offense or as a means of modifying their behavior.



### 2.4.3 JAIL REMOVAL

#### Statement of Purpose:

The JJDP Act states “that no juvenile shall be detained or confined in any jail or lockup for adults.” There are two reporting exceptions that Virginia follows which are contained in the consolidated federal register. The first states that accused criminal-type offenders may be held in a sight or sound separated area for up to 6 hours for processing purposes only. The second states that alleged or accused juvenile criminal-type offenders may be held for up to 6 hours prior to or after a court appearance. The time during which a juvenile is detained in a courtroom does not count toward the 6-hour limit, because a courtroom is not a jail or lockup for adults.

#### Summary of Requirements, as stated by OJJDP

Pursuant to [34 U.S.C. § 11133\(a\)\(13\)](#), no juvenile shall be detained or confined in any jail or lockup for adults, with exceptions described below. Juveniles who are accused of status offenses, juveniles who are not accused of any offense, and juveniles who have been adjudicated as delinquent may not be detained or confined for any length of time in an adult jail or lockup.

The following four statutory exceptions apply to the jail removal requirement, as long as juveniles accused of non-status offenses do not have sight or sound contact with adult inmates and the state has in effect a policy that requires individuals who work with both juveniles and adult inmates in colocated facilities to have been trained and certified to work with juveniles:

Note: The *Code of Virginia* [§16.1-249E](#) does not mirror the JJDP Act core requirements; however, Virginia seldom holds a juvenile in an adult jail. When this does occur, Virginia reports these instances as Jail Removal violations to OJJDP in our annual report.

SIX-HOUR EXCEPTION – The jail removal requirement at [34 U.S.C. § 11133\(a\)\(13\)\(A\)](#) allows the detention or confinement in an adult jail or lockup of juveniles accused of delinquent offenses (i.e., offenses that would be a criminal offense if committed by an adult), under the following circumstances:

- a. A juvenile accused of a delinquent offense may be detained for no more than 6 hours for the purposes of processing or release or while awaiting transfer to a juvenile facility.
- b. A juvenile who has been adjudicated as delinquent may not be detained in an adult jail or lockup, for any length of time, without resulting in an instance of noncompliance with the jail removal requirement.

The following three exceptions allow states to detain or confine juveniles accused of non-status offenses in adult jails or lockups for more than 6 hours while awaiting an initial court appearance and so long as the juveniles do not have sight or sound contact with adult inmates, and the state has in effect a policy that requires individuals who work with such juveniles and adult inmates to be trained and certified to work with juveniles.

RURAL EXCEPTION – The exception found at [34 U.S.C. § 11133\(a\)\(13\)\(B\)\(ii\)\(I\)](#) provides that juveniles accused of non-status offenses may be detained or confined in jails or lockups for adults for as long as 48 hours (excluding Saturdays, Sundays, and legal holidays) while awaiting an initial court appearance, when the jail or lockup is outside a metropolitan statistical area (as defined by the Office of Management and Budget (OMB)), and the state has no existing acceptable alternative placement available.

OMB maintains a list of metropolitan statistical areas which it periodically updates through the posting of a bulletin on its website. OMB bulletins may be found [here](#). The relevant bulletin will be titled *OMB Bulletin, Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of Delineations of These Areas*, and the most recently issued update should be used. In order to determine whether a jurisdiction is outside a metropolitan statistical area, and is, therefore, rural, the state should use the list of “Metropolitan Statistical Areas” that provides the title of the metropolitan statistical area, the principal city or cities, and the counties included in that area.

Note: Virginia does not use the Rural Exception.

TRAVEL CONDITIONS EXCEPTION – Under [34 U.S.C. § 11133\(a\)\(13\)\(B\)\(ii\)\(II\)](#), states may detain a juvenile accused of a delinquent offense in an adult jail or lockup, if the facility is located where conditions of distance to be traveled or the lack of highway, road, or transportation does not allow for court appearances within 48 hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed an additional 48 hours) delay is excusable.

Note: Virginia does not use the Travel Conditions Exception.

CONDITIONS OF SAFETY EXCEPTION – Under [34 U.S.C. § 11133\(a\)\(13\)\(B\)\(ii\)\(III\)](#), if the adult jail or lockup is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), a juvenile accused of a delinquent offense may be detained therein and his or her court appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

Note: Virginia does not use the Conditions of Safety Exception.

#### Intent of the Jail Removal Core Requirement

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

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

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

The National Council on Crime and Delinquency, the Coalition for Juvenile Justice, the National Sheriffs Association, the Institute for Judicial Administration, the National Advisory Commission on Law Enforcement, and essentially every national organization representing law enforcement and the judicial system, recommends or mandates standards that forbid the jailing of children.

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

#### Statutory Exception

Juveniles who are convicted as an adult in an adult court, are not considered juveniles under the JJDP Act, and are therefore excluded from the regulations. However, juveniles must be provided the full protection of the JJDP Act, until they are convicted as an adult in an adult court.

#### Reporting Exception - Six Hour Rule

Juveniles may be held (if separated from adult inmates) for up to six hours for court appearances, identification, processing, and to arrange for release to parents or transfer to a juvenile facility. This exception only allows for the short-term secure holding of juvenile offenders for the purposes of court appearances, identification, processing, investigation, and to arrange release.

##### A. Six Hour Rule

The six-hour clock starts the moment a juvenile is placed into secure custody status. Once the clock starts, it cannot be turned off, even if the juvenile is removed briefly from the locked setting (bathroom break, interview, etc.). There is no booking area exception.

##### The Six Hour Rule does not apply when:

1. The juvenile is placed into a locked squad car; or

2. The juvenile is handcuffed to him or herself or a non-stationary object; or
  3. The juvenile is in a secure booking area for processing purposes and is under continuous “in-person” supervision and is removed from the secure booking area immediately following the booking process; or
  4. The juvenile is placed into an unlocked room with freedom of movement from the facility.
- B. The six hours includes the time before a court appearance, and any time after the court appearance for a total time period of up to six hours. Based on current guidance of OJJDP, the time that a juvenile is in court does not count against the six-hour limit.

#### 2.4.4

### REMOVAL OF JUVENILES FROM ADULT JAILS AND LOCKUPS

#### Statement of Purpose:

The JJDP Act states “that no juvenile shall be detained or confined in any jail or lockup for adults.” There are two reporting exceptions that Virginia follows which are contained in the consolidated federal register. The first states that accused criminal-type offenders may be held in a sight or sound separated area for up to 6 hours for processing purposes only. The second states that alleged or accused juvenile criminal-type offenders may be held for up to 6 hours prior to or after a court appearance. The time during which a juvenile is detained in a courtroom does not count toward the 6-hour limit, because a courtroom is not a jail or lockup for adults.

#### Summary of Requirements, as stated by OJJDP

Under [Section 223\(a\)\(11\)\(B\)](#), on or after December 21, 2021, a juvenile who is charged as an adult cannot be detained in an adult jail or lockup or have sight or sound contact with adult inmates in a secure adult facility, except as provided below.

A juvenile charged as an adult may be detained in an adult jail or lockup if one of the exceptions at 34 U.S.C. § 11133(a)(13) applies (Six-Hour Exception, Rural Exception, Travel Conditions Exception, and Conditions of Safety Exception). See Section II.D. Removal of Juveniles from Adult Jails and Lockups.

In addition, a court may determine after a hearing, and in writing, that it is in the interest of justice to permit a juvenile to be detained in a jail or lockup for adults or have sight or sound contact with adult inmates in a secure facility. If the court makes an initial determination that it is in the interest of justice to detain a juvenile under those circumstances, the court must hold a hearing at least every 30 days (at least every 45 days in a rural jurisdiction) to review whether it is still in the interest of justice to continue to detain the juvenile in an adult jail or lockup or such that he had contact with adult inmates in a secure facility. In determining whether it is in the interest of justice to detain (or continue to detain) a juvenile, the court must consider:

1. the age of the juvenile;
2. the physical and mental maturity of the juvenile;
3. the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;
4. the nature and circumstances of the alleged offense;
5. the juvenile’s history of prior delinquent acts;
6. the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and

7. any other relevant factor(s).

The maximum amount of time that a juvenile charged as an adult may be detained in an adult jail or lockup or have sight or sound contact with adult inmates in a secure facility is 180 days, unless the court determines, in writing, that there is good cause for such an extension, or the juvenile expressly waives this 180-day limit.

Procedures:

Data on juveniles securely detained in jails will be obtained from the State Compensation Board through a query of their Local Inmate Data System (LIDS). Data collected will include the name, DOB, race, sex, charge, date and time of incarceration, date and time of release, as well as the codes indicating the reason for the detection and whether it was prior to conviction. These reports will be run and obtained annually at the end of the monitoring period. The data requested will be from October 1 to September 30 of the following year. LIDS data on possible violations are determined through the review of jail detention files. Detentions prior to conviction will also be reviewed through court files to determine if all elements of this requirement have been fulfilled. If it is found that all requirements of the JJDPA have not been fulfilled or if court records are not available for review, the detention will be reported as a violation in our annual report.

## 2.5 ANNUAL COMPLIANCE MONITORING REPORT PERIOD

### Compliance Monitoring Period

Under 28 C.F.R. § 31.303(f)(5), annual compliance monitoring reports must cover the previous federal fiscal year, except that the OJJDP Administrator may grant an extension of the reporting deadline, for good cause, upon a state's request.

### Statement of Purpose:

A designated monitoring period is essential in providing accurate year-to-year monitoring reports. A 12-month report period based on the federal fiscal year is the soundest method and leaves no room for statistical errors. In the event a facility will not provide data, a statistically sound method of projecting the data must be used.

### Policy:

OJJDP has directed states to use the monitoring period of October 1 through September 30 of each year. Therefore, data from October 1, 2020-September 30, 2021 will be used for the 2022 Monitoring Report and so on.

### Procedures:

1. All data collected for the OJJDP Annual Compliance Monitoring report will reflect that it has been collected from October 1 through September 30 of the respective year of the report.
2. In the event a facility does not report data the following method will be used to statistically project the data: a similar type of facility (if police, a police department will be used) with similar demographics (urban, rural or suburban), similar juvenile population and similar number of officers (or staff) will be located. The data from that facility will be used in the OJJDP report, and the Compliance Monitor will note that the data has been projected.
3. The OJJDP Compliance Monitoring Annual Report is submitted electronically through the reporting tool on OJJDP's web site.

## 2.6 ANNUAL METHOD OF REPORTING ON THE STATUS OF COMPLIANCE WITH THE JJDP ACT

### Statement of Purpose:

The data and information collected throughout the year must be analyzed, reviewed, and written up in the form of the Annual Compliance Monitoring Report, which must be received by OJJDP no later than February 28 of each year, or another later date specified by OJJDP. Compliance data and supporting documentation is submitted annually through OJJDP's Compliance Reporting Tool located on the Office of Justice Programs web site.

### Policy:

It is the Compliance Monitor's responsibility to collect, verify, and compile the data each year. The Compliance Monitor will complete the narrative for the report; however, the Juvenile Justice Specialist retains the primary responsibility for the report.

### Procedures:

1. On or before February 1 of each year the Compliance Monitor will have collected and verified the data as listed under data sets.
2. After all data has been collected and verified the Compliance Monitor will extract the data that relates to the Annual Compliance Monitoring Report and will complete the report.
3. The Compliance Monitor will provide the statistical tables and/or charts needed for the report.
4. The Compliance Monitor will submit a draft of the report to the Juvenile and Child Welfare Section manager for review and revisions. On or before February 28 of each year, or another later date specified by OJJDP, the OJJDP Annual Compliance Monitoring Report will be submitted to OJJDP through their on-line reporting tool.
5. The OJJDP Annual Compliance Monitoring Report is also available to the Juvenile Justice Specialist, SAG, and other interested parties.



### 3.0 CORE REQUIREMENTS AND OJJDP REGULATIONS BY TYPE OF FACILITY

#### Policy:

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

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

#### Procedures:

The Compliance Monitor will refer to the policies in *Virginia's Compliance Monitoring Policies and Procedures Manual* when assessing compliance at facilities.

### 3.1 SECURE AND NON-SECURE CUSTODY

#### Policy:

This policy is intended to provide the Compliance Monitor with direction for monitoring secure and non-secure facilities.

During Classification of Facilities, the Compliance Monitor will make an initial determination based on regulations, licensing requirements, and previous on-site inspections whether the facility is secure or non-secure. The only method to confirm the classification is through an on-site inspection. This policy provides guidance on what constitutes a secure facility and what constitutes a non-secure facility. Data and compliance are linked to secure facilities only. The non-secure classification form is found on the DCJS Compliance Monitoring webpage under "[Law Enforcement Certification of Non-Secure Classification](#)" form that a facility has changed classification status from non-secure to secure. The Compliance Monitor should reclassify the facility as secure and immediately ensure that data is being collected.

#### Procedures:

##### Secure Custody

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

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

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

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

4. A juvenile being processed in a secure booking area where a non-secure booking area is available within a facility.
5. A juvenile handcuffed to a rail in an unlocked lobby area of an adult jail or lockup.
6. A juvenile handcuffed to a stationary object in any area of the facility.
7. A juvenile placed in a room that contains egress doors with unapproved delayed egress devices or approved delayed egress devices with a delay of more than 30 seconds.

#### Non-Secure Custody

A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility but not be in a secure detention or confinement status. OJJDP's Policy Guidance states that all of the following policy criteria, if satisfied, will constitute non-secure custody of a juvenile in an adult jail or lockup facility:

1. The area where the juvenile is held is an unlocked multi-purpose area, such as a lobby, office, or interrogation room that is not designated, set aside or used as a secure detention area or is not part of such an area, or if a secure area, is used for processing purposes;
2. The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;
3. The use of the area is limited to providing non-secure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court;
4. In no event can the area be designated or intended to be used for residential purposes; and
5. The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in non-secure custody. In addition, a juvenile placed in the following situations would be considered in a non-secure status:
  - a. A juvenile handcuffed to a non-stationary object, if the five criteria listed above are adhered to; handcuffing techniques that do not involve cuffing rails or other stationary objects are considered non-secure.
  - b. A juvenile being processed through a secure booking area. Where a secure booking area is all that is available and continuous visual supervision is provided throughout the booking process, and the juvenile remains in the booking area only long enough to be photographed and fingerprinted, the juvenile is not considered to be in a secure detention status. Continued non-secure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.

- c. A juvenile placed in a secure police car for transportation. The JJDP Act applies only to secure detention facilities and secure correctional facilities; therefore, a juvenile placed in a police car for transportation would be in a non-secure status.
- d. A juvenile placed in a non-secure runaway shelter but prevented from leaving because of staff restricting access to exits. A facility may be non-secure (i.e., staff secure) if physical restriction of movement or activity is provided solely through facility staff.
- e. A juvenile placed in a room that contains doors with delayed egress devices which have received written approval (including a specification of the maximum time delay allowed) by the authority having jurisdiction over fire codes and fire inspections in the area in which the facility is located and which comply with the egress delay established by the authority having jurisdiction over fire codes and fire inspections. In no case shall this delay exceed 30 seconds.

## 3.2 TRANSFERRED, CERTIFIED, AND WAIVED JUVENILES

### Policy:

The Compliance Monitor should exclude juveniles under the age of 18 who have been tried and convicted in an adult court. It is the responsibility of the Compliance Monitor to determine if a juvenile's case is in juvenile or in adult court.

### Procedures:

Per the JJDP Act, if criminal felony charges have been filed against a juvenile in a court exercising criminal jurisdiction, the juvenile can be detained in an adult jail or lockup in limited circumstances. The jail and lockup removal requirement still applies to those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed. However, Virginia Code [§16.1-249\(D\)](#), when a case is transferred to the circuit court and an order is entered by the circuit court where the juvenile has waived the jurisdiction of the district court, or when the district court has certified a charge to the grand jury, requires the juvenile, if in confinement, to be placed in a juvenile secure facility, unless the court determines that the juvenile is a threat to the security or safety of the other juveniles detained or the staff of the facility, in which case the court may transfer the juvenile to a jail or other facility for the detention of adults, provided that the facility is approved by the State Board of Local and Regional Jails for the detention of juveniles. Note that waiver or transfer and the filing of criminal felony charges does not transform a juvenile into an adult. Therefore, per JJDP Act regulations, such a juvenile can be detained (or confined after conviction) in a juvenile facility and commingled with juvenile offenders. However, under Virginia Code [§16.1-271](#), once a juvenile has been tried and convicted as an adult they cannot be housed in a juvenile detention facility with juveniles for any subsequent offenses. After conviction as an adult, they can be placed in a juvenile correctional center or in a jail certified to hold juveniles

As of December 21, 2021, a juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court must be sight or sound separated from adult criminal inmates as per the Juvenile Justice Reform Act of 2018. A juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court, following conviction, may be placed in an adult facility and need not be separated from adult criminal inmates.

Data on juveniles securely detained in jails will be obtained from the State Compensation Board through a query of their Local Inmate Data System (LIDS). Data collected will include the name, DOB, race, sex, charge, date and time of incarceration, date and time of release, as well as the codes indicating the reason for the detection and whether it was prior to conviction. These reports will be run and obtained annually at the end of the monitoring period. The data requested will be from October 1 to September 30 of the following year. LIDS data on possible violations are determined through the review of jail detention files. Detentions prior to conviction will also be reviewed through court files to determine if all elements of this requirement have been fulfilled. If it is found that all requirements of the JJDP Act have not been fulfilled or if court records are not available for review, the detention will be reported as a violation in our annual report.

### **3.3 COLLOCATED FACILITIES**

#### **Policy:**

The Compliance Monitor needs to understand what constitutes a Collocated Facility in order to monitor this type of facility for compliance with the JJDP Act core requirements.

This policy will serve as guidance when monitoring Collocated Facilities.

#### **Procedures:**

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. An approved Collocated Facility is a facility that has been approved by DCJS after meeting the following four criteria:

- a. The facility must ensure separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and adult inmates the facility. Separation can be achieved architecturally or through time-phasing of common use nonresidential areas; and
- b. 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 adult inmates. Time phasing of common use non-residential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and
- c. If the state uses the same staff to serve both the adult and juvenile populations, there must be in effect in the state a policy that requires individuals who work with both juveniles and adult inmates to be trained and certified to work with juveniles; and
- d. 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 must 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 plan, staffing patterns, and programs in order to approve the collocated facility based upon prevailing national juvenile detention standards.

The State must determine that the four criteria are fully met via an on-site visit, and through the exercise of its oversight responsibility, must ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria set forth. Annual inspections and certifications are required. After a facility has been certified as Collocated, the same rules and regulations that apply to a Juvenile Detention Center apply to a Collocated facility.

### 3.4 COURT HOLDING LOCKUPS

#### Policy:

The Compliance Monitor needs to understand what constitutes a lockup in order to monitor this type of facility for compliance with the JJDP Act core requirements. All courthouses are classified as lockups in Virginia's Compliance Monitoring Universe. Facilities that have holding cells that are used specifically for juveniles, and adults are never placed in these holding cells, or facilities that time-phase the use of their cells and adults are never placed in these cells at times when they are designated for juvenile use only, are not considered to be an adult lockup and are not subject to the requirements of the JJDP Act. If a court holding facility detains juveniles only, or time phases for juveniles only and do not meet the definition of being a secure juvenile detention facility by holding detainees overnight, these holding cells are not included in Virginia's Monitoring Universe.

This policy will serve as guidance when monitoring lockups that are Court Holding Facilities.

#### Procedures:

1. A lockup (adult court holding facility) is a secure facility, which is used to temporarily detain adults immediately before or after detention hearings or other court proceedings. Court holding facilities, where they do not detain individuals overnight (i.e., are not residential) and are not used for punitive purposes or other purposes unrelated to court appearances, and do not hold adult inmates are considered to be a lockup. All lockups (adult court holding facilities) remain subject to the Separation, DSO, and Jail Removal core requirements of the Act.
2. The Compliance Monitor must monitor lockups (adult court holding facilities) to ensure that they continue to meet the definition and purpose listed above. Court holding facilities that detain juveniles only or only hold juveniles on specific days and times through time-phasing are not considered adult lockups and therefore are not required to maintain logs of juveniles held securely in the facility.
3. The detention of a status offender or delinquent in a juvenile only or time-phased juvenile only holding cell in a courthouse does not violate the core requirements of the JJDP Act.
4. It is important to note that lockups (adult court holding facilities) impose an inherent or practical time limitation in that juveniles must be brought to and removed from the facility during the same judicial day. Lockups (adult court holding facilities) are required to abide by the Jail Removal six-hour time limit. The time limit is calculated by the amount of time the juvenile is detained both prior and after the court appearance.
5. Lockups (adult court holding facilities) must maintain juvenile detention logs documenting the name of the juvenile, age, sex, race/ethnicity, the most serious charge, the time-in secure detention, time-out for court, time-in from court, and time-out of secure detention at the facility. The juvenile detention logs must be



provided to the Compliance Monitor at DCJS when requested for review and reporting purposes to OJJDP.

6. Holding cells in courthouses that do not detain adults or are time-phased in such a manner that only juveniles are detained during specific days and times do not meet the definition of a jail or lockup for adults under the JJDP Act. These cells are not regulated by the JJDP Act and juvenile detention logs are not required to be kept and submitted to the compliance monitor at DCJS.

#### 4.0

### PROCESS FOR A FACILITY TO REQUEST AN OJJDP OPINION

#### Policy:

On occasion, there will be situations or issues that arise when an opinion from OJJDP is required. This might be to reinforce the Compliance Monitor's opinion and ruling or might be a request for assistance in interpreting the regulations. For this reason, the following policy is provided.

A request for an OJJDP opinion should be directed in writing to the OJJDP State Representative from the Compliance Monitor through the Juvenile Justice Specialist. In the case where a facility is requesting an opinion, they may submit that request to the Compliance Monitor who will forward the request to the Juvenile Justice Specialist for submission to OJJDP.

#### Procedures:

1. Prior to writing a letter to OJJDP for an official opinion, the Compliance Monitor should discuss the situation with the Juvenile and Child Welfare Section Manager and the Juvenile Justice Specialist.
2. If the Juvenile and Child Welfare Section Manager concurs that a letter requesting an opinion is needed, the Compliance Monitor will write the letter and copy it to the Juvenile and Child Welfare Section Manager and the Juvenile Justice Specialist.
3. When a response is received from OJJDP, the Compliance Monitor will copy the response for the Juvenile Justice Specialist. A copy of the letter will be included in the Facility File.
4. If the response results in changes in the way compliance monitoring is performed in Virginia, the changes will be reflected in *Virginia's Compliance Monitoring Policy and Procedures Manual* when it is updated.

## **5.0 Appendix**

### **Office of Juvenile Justice and Delinquency Prevention (OJJDP) Webpage**

A component of the [Office of Justice Programs](#) within the [U.S. Department of Justice](#), OJJDP works to prevent and respond to youth delinquency and protect children. Through its divisions, OJJDP sponsors research, program, and training initiatives; develops priorities and goals and sets policies to guide federal juvenile justice issues; disseminates information about juvenile justice issues; and awards funds to states to support local programming.

[Working for Youth Justice and Safety | Office of Juvenile Justice and Delinquency Prevention \(ojp.gov\)](#)

### **Authorizing Legislation**

This OJJDP webpage reviews the authorizing Legislation that Congress enacted in regards to the Juvenile Justice and Delinquency Prevention (JJDP) Act (Pub. L. No. 93-415, 34 U.S.C. § 11101 et seq.) in 1974. This landmark legislation established OJJDP to support local and state efforts to prevent delinquency and improve the juvenile justice system.

[Legislation | Office of Juvenile Justice and Delinquency Prevention \(ojp.gov\)](#)

### **Juvenile Justice and Delinquency Prevention Act**

This is the text of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended.

[Juvenile Justice and Delinquency Prevention Act of 1974 \(as Amended Through P.L. 115-385, enacted December 21, 2018\) \(ojp.gov\)](#)

### **Redline Version Juvenile Justice and Delinquency Prevention Act as Amended by the Juvenile Justice Reform Act of 2018**

This version of the Juvenile Justice and Delinquency Prevention Act (JJDP), includes the amendments made by the Juvenile Justice Reform Act of 2018 (in red).

[Redline Version: Juvenile Justice and Delinquency Prevention Act as Amended by the Juvenile Justice Reform Act of 2018 \(ojp.gov\)](#)

## **OJJDP Core Requirements Webpage**

The information on this page assists states in monitoring and achieving compliance with the core requirements of the Formula Grants Program, including information on the background of the JJDPA, supporting regulations, state compliance with JJDPA core requirements, reporting requirements, guidance and resources, and staff contact information.

[Core Requirements | Office of Juvenile Justice and Delinquency Prevention \(ojp.gov\)](#)

## **OJJDP Fact Sheet: Key Amendments to the Juvenile Justice and Delinquency Prevention Act Made by the Juvenile Justice Reform Act of 2018**

This fact sheet describes several significant amendments to the JJDPA made by the JJRA. National Archives: Code of Federal Regulations for Part 31 – OJJDP Grant Programs

[Key Amendments to the Juvenile Justice and Delinquency Prevention Act Made by the Juvenile Justice Reform Act of 2018 \(ojp.gov\)](#)

## **National Archives: Code of Federal Regulations for Part 31 – OJJDP Grant Programs**

This is the existing regulation implementing the Formula Grants Program authorized under the JJDPA.

[CFR-2020-title28-vol1-part31.pdf \(govinfo.gov\)](#)

## **Virginia Compliance Monitoring Forms**

This website contains information about Virginia's Compliance Monitoring Program and contains links to current forms that may be useful to localities in maintaining compliance with the JJDPA.

<https://www.dcjs.virginia.gov/juvenile-services/programs/compliance-monitoring-program>