

# **Guidance on Secure Juvenile Detention and/or Correctional Facilities pertaining to the Juvenile Justice Reform Act 2018**

## **Definitions**

**Secure Facilities** 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.

A **Residential** area is an area used to confine individuals overnight, and may include sleeping, shower and toilet, and day room areas (includes juvenile AND adult areas).

A **Facility** is a place, an institution, a building or part thereof, set of buildings, or an area whether or not enclosing a building or set of buildings, which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.

A **Staff-secure Facility** is where the physical restriction of a person's movement or activity is provided solely through facility staff. The juvenile is not placed in a locked room, cell, or behind any locked doors. Juveniles may be handcuffed but not to a stationary or secure object. Personal supervision, through direct visual monitoring and audio two-way communication, is maintained. These facilities are considered to be non-secure.

## **Identification of Facilities that fall under JJRA**

Every facility that has the potential to detain or confine juveniles pursuant to law enforcement or juvenile court authority falls under the purview of the monitoring requirements - this includes both public and private facilities. (This includes non-secure facilities such as runaway shelters, and may include mental health facilities, detox facilities, and chemical dependency programs depending on the scope of the jurisdiction and authority of your juvenile court.

Pursuant to 28 C.F.R. § 31.303(f)(1)(i)(A), states must ensure that they identify and include as part of the monitoring universe all state and local facilities that might detain or confine individuals pursuant to a law enforcement or juvenile court authority, including adult jails and lockups, secure detention facilities, secure correctional facilities, adult prisons, court holding facilities, institutions, and non-secure facilities.

Non-secure facilities may include law enforcement administrative offices or community-based facilities, such as group homes, shelters, or other residential facilities. Pursuant to 28 C.F.R. § 31.303(f)(1)(i)(C), states must periodically inspect these non-secure facilities to determine whether their physical characteristics have changed (e.g., through the addition of cells, cuffing rails, cuffing benches, or other construction fixtures designed to securely detain individuals), such that those facilities are now secure and required to report compliance data.

## **Classification of Facilities under JJRA**

States are required under 28 C.F.R. § 31.303(f)(1)(i)(B) to classify all facilities in the monitoring universe to determine facility type, as listed below. This information is critical to determining the applicability of the DSO, Separation, and Jail Removal requirements in each facility. In addition, classification determines whether each facility is secure or non-secure, residential or nonresidential and

whether the population is juveniles-only, adults-only, or juveniles and adults (note that some of these categories may overlap: e.g., all or part of a jail or lockup may also meet the definition of a secure detention or correctional facility).

### **Secure Detention Facilities**

The term secure detention facility means any public or private residential facility that includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility and are used for the temporary placement of any juvenile accused of having committed an offense or any other individual accused of having committed a criminal offense. (See 34 U.S.C. § 11103(12).)

### **Secure Correctional Facilities**

The term secure correctional facility means any public or private residential facility that includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody and is used for the placement of any juvenile who has been adjudicated as having committed an offense or any other individual convicted of a criminal offense.

### **Institutions**

Institutions are, by definition, secure facilities. The term institution means a secure facility that law enforcement or a juvenile or criminal court authority uses to detain or confine juveniles or adults who are accused of having committed a delinquent or criminal offense, awaiting adjudication or trial for the delinquent or criminal offense, or found to have committed the delinquent or criminal offense. Pursuant to the JJDP, separation violations may only occur in facilities that meet this definition.

**Jail or Lockup for Adults** means a locked facility that a state, unit of local government, or any law enforcement authority uses to detain or confine adults (1) pending the filing of a charge of violating a criminal law, (2) awaiting trial on a criminal charge, or (3) convicted of violating a criminal law.

A “**Collocated facility**” is defined in the regulation, a collocated facility is a juvenile facility that is located in the same building as an adult jail or lockup or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered related when it shares physical features such as walls and fences or services beyond mechanical services (heating, air conditioning, water and sewer) or beyond specialized services such as medical care, food service, laundry, maintenance and engineering.

### **Other Secure Facilities**

The term “other secure facilities” refers to secure facilities that do not meet the definition of “jail or lockup for adults,” “secure detention facility,” “secure correctional facility,” or an “institution.” In these “other secure facilities,” the JJDP core requirements would not apply. Examples of other secure facilities include secure mental health and secure substance abuse treatment facilities that are used not for detention or correctional purposes, but instead to provide mental health or substance abuse treatment for juveniles, generally, including those not under court jurisdiction. These facilities do not meet the definition of a secure detention or secure correctional facility, and need not be monitored for compliance with the DSO requirement. In other words, JJRA would only be

applicable to secure facilities whose purpose is to detain or confine juveniles and not for those whose primary purpose is for therapy or treatment. If a juvenile is placed at the facility for both reasons, then JJRA would apply.

### **Non-secure Facilities**

For the purpose of the JJDP, non-secure facilities are facilities that do not meet the definition of a “secure” facility because they do not have construction fixtures designed to securely detain individuals (e.g., locked cells or rooms that may be locked from the outside to securely confine a person therein, cuffing benches, rails, or bolts, or other construction fixtures to physically restrict the movements of individuals).

Non-secure facilities in which juveniles may be detained or confined pursuant to law enforcement or juvenile court authority must be included in the monitoring universe and periodically spot checked to verify the facility’s continued non-secure status. In the event that such a facility becomes secure (e.g., through the addition of cells, cuffing rails, cuffing benches, or other construction fixtures designed to securely detain individuals), the facility must be reclassified and monitored as an adult jail or lockup, institution, and/or secure detention or correctional facility, as applicable.

### **Community-Based Facilities**

The term community-based facilities refer to non-secure group homes, shelters, or other residential facilities in which juveniles may be placed pursuant to law enforcement or juvenile court authority. Because non-secure community-based facilities do not meet the definition of a secure detention/correctional facility or institution and are not jails or lockups for adults, the core requirements do not apply. Non-secure community-based facilities are, therefore, exempt for the purpose of reporting data for compliance with the DSO, separation, and jail removal requirements.

### **Inspection of Facilities**

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. The Office of Juvenile Justice Delinquency Prevention requires states to inspect 100 percent of all secure facilities within the monitoring universe once every 3 years. A Collocated facility must be inspected every year.

### **Monitoring Facilities for Compliance with DSO, Separation, and Jail Removal**

States participating in the Formula Grants Program must provide for an adequate system of monitoring jails, lockups, detention facilities, correctional facilities, and non-secure 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 effectively comply with the statutory and regulatory monitoring requirements, must identify all secure and non-secure facilities in which a juvenile might be detained or confined pursuant to law enforcement or juvenile court authority.

Pursuant to 28 C.F.R. § 31.303(f)(1)(i), states must describe their compliance monitoring policies and procedures. OJJDP recommends that the Designated State Agency (DSA) make the procedures available on its website. Two of the required elements are:

1. Specify the legal authority of the agency or agencies that monitor for compliance in all facilities, including adult facilities, in which a juvenile might be detained or confined pursuant to law enforcement or juvenile court authority (34 U.S.C. § 11133(a)(1) and (2)).

**Policy:** The Governor's Executive Order, first issued in 1980, gives the Division of Criminal Justice oversight authority in complying with the JJDP Act. The Division of Criminal Justice is therefore responsible for receiving, investigating, and responding to reports of compliance violations. The Division of Criminal Justice is the State Planning Agency for the JJDP Act of 2002.

In addition, **House Bill 06-1112** gives DCJ statutory authority to collect data. CRS 24-33.5-503 Duties of (Division of Criminal Justice) Division: “(1) the division has the following duties: to inspect secure juvenile facilities and collect data on juveniles that are held in secure juvenile facilities, jails and lockups throughout the state.”

### **JJRA Core Requirements**

**Detain or Confine** means to hold, keep, or restrain a person such that he is not free to leave, except that a juvenile held by law enforcement solely for the purpose of returning him to his parent or guardian or pending his transfer to the custody of a child welfare or social service agency is not detained or confined within the meaning of this definition.

To be eligible to receive a Title II Formula Grants Program award, states must satisfy the 28 state plan requirements described at 34 U.S.C. § 11133(a). Within the 28 state plan requirements are three requirements that are deemed to be “core” because OJJDP will reduce a state’s annual Formula Grants award by 20 percent for each requirement with which the state is determined to be out of compliance. These JJRA core requirements are:

#### **1. Deinstitutionalization of Status Offenders (DSO)**

Pursuant to 34 U.S.C. § 11133(a)(11), juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult shall not be placed in secure detention facilities or secure correctional facilities.

#### **2. Separation of Juveniles from Adult Inmates**

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 aliens or alleged to be dependent, neglected, or abused may not be detained or confined in any institution in which they have sight and/or sound contact with adult inmates (including trustees).

**Adult Inmate** means:

(A) an individual who—

- (i) has reached the age of full criminal responsibility under applicable State law; and
- (ii) has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense; and

(B) does not include an individual who—

- (i) 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
- (ii) 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.

The term “**contact**” is defined to include any physical or sustained sight and sound contact between juvenile offenders and adult offenders, including inmate trustees, **in secure custody**. Sight contact is further defined to include clear visual contact with adult offenders within close proximity. Sound contact is further defined as direct oral communication between adult offenders and juvenile offenders.

Detained or confined delinquents, status or non-offenders who have contact with adult inmates in a non-secure facility OR in the non-secure portion of any other entity, would not violate the separation core requirement. The separation requirement applies only in secure facilities in which juveniles might have contact with adult inmates.

### **Juveniles Turning 18 Years Old**

Individuals who commit an offense while still a juvenile and who have reached the age of full criminal responsibility only after arrest or adjudication, are not adult inmates and need not be separated from juveniles until they have reached the state’s maximum age of extended juvenile jurisdiction, which is 21 in Colorado. If the juvenile is under the jurisdiction of juvenile court, he could stay in youth detention for the full term of the disposition order (even if over the age of 18). Once the juvenile turns 18, they can be removed from the juvenile detention facility if it is determined that it is in the best interest of the public or other juveniles at the juvenile detention facility, for example, for safety from violence or bullying, or for exposure to criminal behaviors. In the Colorado Children's Code, this is addressed at 19-2-910.

If the juvenile (under 18) was tried in criminal court but was detained in a youth correctional facility, once they turn 18, they must be removed from youth corrections and transferred to an adult facility. If the juvenile is going to be direct filed as an adult in criminal court, that is addressed in the Children's Code at 19-2-517.

### **3. Removal of Juveniles from Jails and Lockups for Adults**

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.