



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

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

Revised July 2006

**Colorado Department of Public Safety
Division of Criminal Justice**

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Introduction

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

As a participant in the Juvenile Justice and Delinquency Prevention Act, Colorado maintains and monitors compliance with the core protections of the JJDP Act. The Division of Criminal Justice, Colorado Department of Public Safety, is the state agency designated to administer several JJDP Act grant fund programs, to monitor compliance with the core protections of the JJDP Act, and to staff the state advisory group defined in the JJDP Act. In Colorado, this advisory group is the governor-appointed Juvenile Justice and Delinquency Prevention Council. Working in conjunction with the Council and other juvenile justice system agencies, the Division of Criminal Justice provides the leadership necessary to coordinate the JJDP Act and juvenile justice efforts.

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

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

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

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

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

Participating states enter a partnership with the federal government. The State Relations and Assistance Division (SRAD) of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) provides technical assistance, training and coordination of resources to the states. Governors of participating states designate a State Planning Agency which oversees implementation of the JJDP Act. The State Planning Agency in Colorado is the Colorado Department of Public Safety, Division of Criminal Justice. The division staffs the governor-appointed state advisory group which allocates funds awarded to Colorado through Titles II and V of the JJDP Act. In Colorado this advisory group is the Juvenile Justice and Delinquency Prevention (JJDP) Council.

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

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

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

The Core Protection Requirements of the JJDP Act

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

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

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

Deinstitutionalization of Status Offenders

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

Separation of Juveniles from Incarcerated Adults

“Juveniles alleged to be or found to be delinquent, as well as status offenders and nonoffenders, will not be detained or confined in any institution in which they have contact with adult inmates. There must be in effect in the state a policy that requires individuals who work with both such juveniles and adult inmates, including in colocated facilities, to have been trained and certified to work with juveniles.”

Removal of Juveniles from Adult Jails and Lockups

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

Compliance Monitoring *

“Provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraph (11)(A), paragraph (12) and paragraph (13) are met, and for annual reporting of the results of such monitoring to the Administrator, except that such reporting requirements shall not apply in the case of a State which is in compliance with the other requirements of this paragraph ... and has enacted legislation which conforms to (the) requirements, and contains ... sufficient enforcement mechanisms.”

Disproportionate Minority Contact*

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

C This guide addresses the first three listed core protection requirements regarding the holding of juveniles. Compliance monitoring and working with other aspects of the system to address disproportionate minority contact are the responsibility of the state planning agency, the Division of Criminal Justice.

Reasons for Compliance with the Core Protection Requirements

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

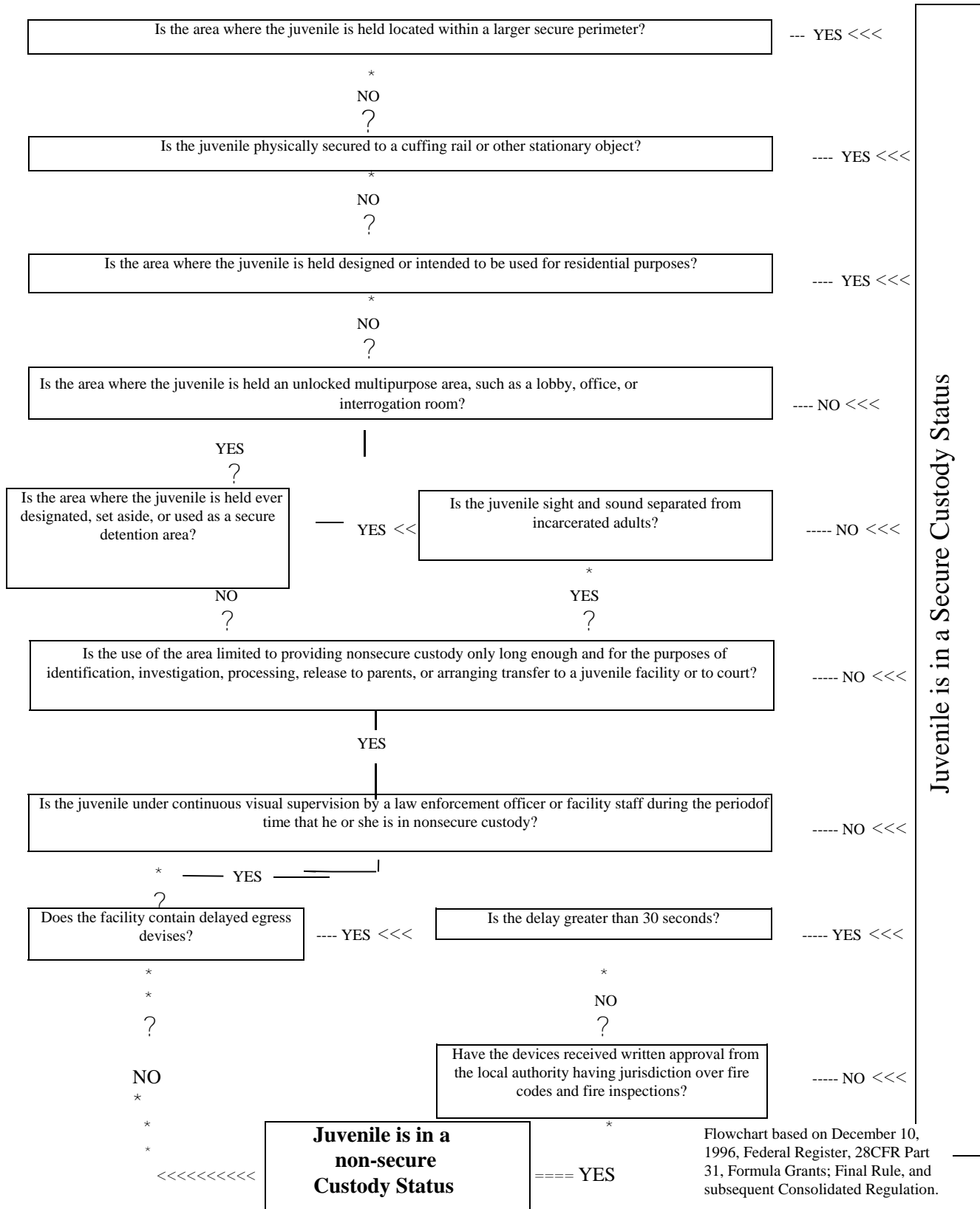
- C Juveniles placed in adult jails or lockups commit suicide at a rate eight times higher than if they were placed in a juvenile detention center. Talk with any law enforcement officer who has been on duty during a juvenile suicide. It is devastating for all involved.
- C Non-compliance with any of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

Determining Secure and Non-Secure Custody Status

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

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

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



Adult Jails and Adult Lockups

Applicable Core Protection Requirements, Rules and Regulations

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

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

What is an Adult Jail and an Adult Lockup?

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

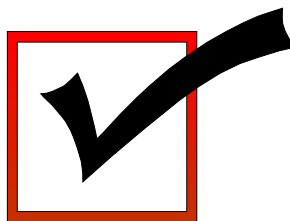
An **adult lockup** is similar to an adult jail except that it is a municipal police temporary holding facility that does not hold persons after they have been formally charged or convicted.

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

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

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

(See sample Secure Juvenile Holding Log - Appendix 5)



Adult Jails and Adult Lockups

DEINSTITUTIONALIZATION OF STATUS OFFENDERS (DSO)

Definitions, Rules and Regulations

Definitions

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

Federal Rules and Regulations - DSO

- No status offender or non-offender may be placed in a secure setting for any period of time in an adult jail or lockup. If they are, complete information about them must be recorded on a *Secure Juvenile Holding Log*, and this action will be counted as a violation of both the DSO and Jail Removal core protection requirements. Therefore, one status offender or non-offender placed in a secured setting counts as two violations.
- **Booking:** Law enforcement may complete the booking process of a status offender or non-offender in a secure booking area **only** if 1) there is no unsecured booking area available, 2) the juvenile is under continuous law enforcement visual supervision, 3) there are no adult offenders present and 4) the juvenile is immediately removed from the secure booking area to a non-secure area for questioning or further processing. If these conditions are not met, the juvenile is considered to be in a "secure setting" and it is a violation of DSO and Jail Removal.
- A status offender or non-offender may be handcuffed to him/herself, but cannot be handcuffed to a stationary object (see flow chart on page 3-2).
- A status offender or non-offender is considered to be in non-secure custody if they are under continuous visual law enforcement supervision and physical restriction of movement or activity is provided solely through facility staff (staff secure).
- Any juvenile in a police car, or other vehicle in law enforcement control, is considered to be in non-secure custody.
- Information on any juvenile who is placed in secure custody (see flow chart on page 3-2) must be recorded on a *Secure Juvenile Holding Log* for the DCJ compliance monitor's review.

Adult Jails and Adult Lockups

REMOVAL OF JUVENILES FROM ADULT JAILS AND LOCKUPS (JAIL REMOVAL)

Definitions, Rules and Regulations

Definitions

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

Federal Rules and Regulations - Jail Removal

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

Exceptions to the Jail Removal Rule

1) 6-Hour Hold Exception

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

- An accused delinquent may be detained for up to six hours for the purposes of identification, processing, and to arrange for release to parents or transfer to juvenile court, juvenile shelter or a juvenile detention center. During this time no sight and sound contact with adult inmates is allowed.
- An accused or adjudicated delinquent may be detained for up to six hours before a court appearance and up to an additional six hours after a court appearance awaiting transport or release. During this time no sight and sound contact with adult inmates is allowed. These times cannot be combined. For example, a delinquent may not be held for four hours before court and eight hours after court for a total of 12 hours.

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

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

2) Exception for Transferred or Direct File Juveniles

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

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

- Status offenders and non-offenders held in a secured setting of a jail or lock-up for any period of time. Holding status or non-offenders securely counts as 2 violations - one under Deinstitutionalization of Status Offenders (DSO) and one under Jail Removal.
- Accused delinquents held in an adult jail or lockup for purposes other than identification, investigation, processing, release to parents, awaiting transfer to court or transfer to a juvenile facility following initial custody. Therefore, if a juvenile is being held as “punishment” or to teach them a lesson it is a violation, no matter what length of time they are securely held.
- A juvenile who is transferred to a jail or lockup from a juvenile detention center for disciplinary reasons unless additional criminal charges are filed relative to the infraction and then only for processing purposes. See the above statement. If a juvenile is brought to an adult jail or lockup after an infraction at another facility and is not being charged with that offense, it is assumed that the holding is for punishment purposes, or for a cooling off period, and is therefore a violation since no other criminal charges were filed.
- Accused delinquents held over the 6-hour grace period. A juvenile may not be removed from the secure setting and placed back again to “stop the 6-hour clock”. Once the clock starts it cannot be turned off until the juvenile is permanently removed from the secure setting.
- Accused or adjudicated delinquents held over the 6-hour grace period prior to or following a court appearance or for any length of time not related to a court appearance. The time periods cannot be combined. For example, a juvenile may not be held for 5 hours before court and 7 hours after court for a total of 12 hours. The time frames are strict: 6 hours before court and 6 hours after court.
- Adjudicated delinquents held for any period of time for any reason other than awaiting a court appearance.
- If a juvenile is not sight and sound separated from incarcerated adults. Your DCJ compliance monitor will have completed a Sight and Sound Separation Checklist (Appendix 7) for your facility and will have informed you as to your separation levels.

Adult Jails and Adult Lockups

SIGHT AND SOUND SEPARATION Definitions, Rules and Regulations

Definitions

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

Federal Rules and Regulations - Sight and Sound Separation

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

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

Adult Jails and Adult Lockups

DISPROPORTIONATE MINORITY CONTACT (DMC) Definitions, Rules and Regulations

Definitions

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

Federal Rules and Regulations - DMC

The Disproportionate Minority Contact core protection requires that states participating in the JJDP Act should: “Address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of the minority groups, who come into contact with the juvenile justice system.”

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

Juveniles Excluded from the JJDP Act Protection Requirements

Exception for Waived, Transferred or Direct Filed Juveniles

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

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

The JJDP Act ONLY applies when juveniles are held SECURELY

Definition of Terms and Record Keeping Requirements:

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

| Type of Juvenile | JJDP Act Regulations and Page Reference in the Guide |
|---|---|
| All Juveniles | All juveniles held securely must be sight and sound separated from incarcerated adults. Under current OJJDP policy and proposed regulation, Colorado must assure that no juvenile offender under public authority shall enter, for any amount of time, into a secure setting or secure section of any jail, lockup or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g. Shock Incarceration, Scared Straight or Shape Up). (See page 4-5). |
| Nonoffender | The juvenile may not be held securely. Secure holding constitutes violations of 2 core protection requirements, Deinstitutionalization of Status Offenders and Jail Removal (See pages 4-2 and 4-3). A nonoffender may be booked in a secure setting, provided that it is the only booking area available, and the juvenile must be under continual law enforcement supervision and then must be removed immediately from the secure booking area following the booking process. |
| Accused or Adjudicated Status Offender | The juvenile may not be held securely. Secure holding constitutes violations of 2 core protection requirements, Deinstitutionalization of Status Offenders and Jail Removal (See pages 4-2 and 4-3). A status offender may be booked in a secure setting, provided that it is the only booking area available, and the juvenile must be under continual law enforcement supervision and then must be removed immediately from the secure booking area following the booking process. Warrants, FTA’s, FTC’s where original offense is a status offense remain status offenders. |
| Accused Delinquent | The juvenile may be held securely in a sight and sound separated area for up to 6 hours but only for processing, investigation, or arranging transportation or release (See pages 4-3 and 4-4). The 6-hour clock starts when the juvenile is placed in secure custody and cannot be stopped until the juvenile is permanently removed from the secure setting. |
| Adjudicated Delinquent (Juvenile returning to court for sentencing or probation revocation) | The juvenile may be held securely for up to 6 hours before a court appearance and for 6 hours following a court appearance. The juvenile may not be held for punitive purposes. These times are not cumulative or exchangeable (See pages 4-3 and 4-4). The 6-hour clock starts when the juvenile is placed in secure custody and cannot be stopped until the juvenile is permanently removed from the secure setting. |
| Sentenced Delinquent or Sentenced Status Offender | No juvenile may be sentenced by a judge to an adult jail or adult lockup. (See pages 4-3 and 4-4.) Sentences of secure incarceration may only be to a Juvenile Detention Facility or commitment to the Division of Youth Corrections. |
| Juvenile who has been direct-filed in or waived/transferred to adult criminal court | The JJDP Act and regulations do not apply after the formal filing, waiver or transfer has been completed. If the juvenile is held prior to a direct filing or the waiver/transfer hearing, treat them as an accused delinquent and follow the 6-hour rule. (See page 4-4). |

Adult Jails and Adult Lockups

Determining Rates of Compliance and Consequences for Non-Compliance

The federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) is responsible for monitoring states' compliance with the core protection requirements. At least once every 4 years, OJJDP conducts a compliance monitoring audit to determine if Colorado's compliance monitoring system is adequate. Colorado's annual report covers the state's fiscal year, July 1 through June 30.

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

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

The state's juvenile population (ages 0 through 17) is divided by 100,000 to establish the juvenile population rate per 100,000. In 2001, Colorado's juvenile population, determined by the U.S. Census Bureau, was 1,100,795. Therefore, Colorado's juvenile population rate per 100,000 is 11.00.

The number of violations is divided by the juvenile population rate. If for example, there were 90 violations of the Jail Removal core requirement, the rate of violations would be 8.18. (90 violations ÷ 11.00 = 8.18)

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

(Juvenile Population rate per 100,000)

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

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

Summary Standards for Demonstrating Compliance

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

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

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

Adult Jails and Adult Lockups

Colorado State Statutes

Deinstitutionalization of Status Offenders

- C.R.S. 19-1-103(103.7)** “Status offense” shall have the same meaning as defined in federal law in 28 CFR 31.304, as amended.”
- With the passage of HB1112, the state definition of status offender conforms to the federal definition of status offender. “A juvenile who commits an offense that would not be criminal if committed by an adult.”*
-
- C.R.S. 19-1-103(106)** “Temporary holding facility” means an area used for the temporary holding of a child from the time that the child is taken into custody until a detention hearing is held, if it has been determined that the child requires a staff-secure setting. Such an area must be sight and sound separated from adult offenders.”
- HB1112 requires that temporary holding facilities be staff secure (non-secure) and sight and sound separated from adult offenders.*
-
- C.R.S. 19-2-508(8)(a)** “A juvenile who allegedly commits a status offense or is convicted of a status offense shall not be held in a secure area of a jail or lockup.”
- A status offender may not be held in a secure area of a jail or lockup. This includes juveniles convicted of status offenses, or juveniles arrested on warrants, FTA’s, or FTC’s where the original offense was a status offense. A status offender is a juvenile who commits an offense that would not be criminal if committed by an adult, e.g., running away, underage drinking, underage possession of alcohol or tobacco, truancy, and curfew violations. If the juvenile is picked up on a warrant for failure to comply with court orders where the original offense was a status offense they may not be detained in a jail or lockup. A warrant does not “upgrade” them to delinquents.*
-
- C.R.S. 19-2-508(8)(b)** “A Sheriff or Police Chief who violates the provisions of paragraph (a) of this subsection (8) may be subject to a civil fine or no more than one thousand dollars. The decision to fine shall be based on prior violations or the provisions of paragraph (a) of this subsection (8) be the Sheriff or Police Chief and the willingness of the Sheriff or Police Chief to address the violations in order to comply with paragraph (a) of this subsection (8).”
- This section is self-explanatory.*
-
- C.R.S. 25-1-310 (1)(a)** “**Emergency Commitment. (1)(a)** When any person is **intoxicated or incapacitated by alcohol** and clearly dangerous to the health and safety of himself, herself, or others, such person shall be taken into protective custody by law enforcement authorities or an emergency service patrol, acting with probable cause, and placed in an approved treatment facility. If no such facilities are available, he or she may be detained in an emergency medical facility or jail, but only for so long as may be necessary to prevent

Adult Jails and Adult Lockups

Colorado State Statutes, Continued

injury to himself, herself, or others or to prevent a breach of peace. **If the person being detained is a juvenile, as defined in Section 19-1-103(68), C.R.S., the juvenile shall be placed in a setting that is nonsecure and physically segregated by sight and sound from the adult offenders.”**

Juveniles who are intoxicated or incapacitated by alcohol may not be detained in a secure area within an adult jail or lockup.

C.R.S. 25-1-310 (b)

“A Sheriff or Police Chief who violates the provisions of paragraph (a) of this subsection (1) related to detaining juveniles may be subject to a civil fine of no more than one thousand dollars. The decision to fine shall be based on prior violations of the provisions of paragraph (a) of this subsection (1) be the Sheriff or Police Chief and the willingness of the Sheriff or Police Chief to address the violations in order to comply with paragraph (a) of this subsection (1).”

Self-explanatory.

C.R.S. 27-10-105(1.1)(a)

“Emergency Procedure. (1.1)(a) When a person is taken into custody pursuant to subsection (1) of this section, such person shall not be detained in a jail, lockup, or other place used for the confinement of persons charged with or convicted of penal offenses, except that such place may be used if no other suitable place of confinement for treatment and evaluation is readily available. In such situation the person shall be detained separately from those persons charged with or convicted of penal offenses and shall be held for a period not to exceed twenty-four hours, excluding Saturdays, Sundays, and holidays, after which time he shall be transferred to a facility designated or approved by the executive director for a seventy-two hour treatment and evaluation. **If the person being detained is a juvenile, as defined in section 19-1-103(68), C.R.S., the juvenile shall be placed in a setting that is nonsecure and physically segregated by sight and sound from the adult offenders.”**

Similar to emergency commitment, this applies to persons in protective custody for mental health issues. Juveniles may not be held in the jail or lockup but may be held in a nonsecure setting that is physically segregated by sight and sound from adult offenders.

C.R.S. 27-10-105(1.1)(b)

“A Sheriff or Police Chief who violates the provisions of paragraph (a) of this subsection (1.1) may be subject to a civil fine of no more than one thousand dollars. The decision to fine shall be based upon prior violations of the provisions of paragraph (a) of this subsection (1.1) by the Sheriff or Police Chief and the willingness of the Sheriff or Police Chief to address the violation in order to comply with paragraph (a) of this subsection (1.1).”

Self-explanatory.

Adult Jails and Lockups

Colorado State Statutes, Continued

C.R.S. 24-33.5-503 “**Duties of division.** The division has the following duties: (r) To inspect secure juvenile facilities and collect data on juveniles that are held in secure juvenile facilities, jails and lockups throughout the state.”

Self-explanatory. The Division of Criminal Justice is charged with inspecting facilities and collecting data on all juveniles held securely in juvenile facilities, jails and lockups.

Sight and Sound Separation

C.R.S. 19-2-508(4)(d)(I) **Detention and Shelter - hearing - time limits - findings - review - confinement with adult offenders - restrictions**

“Any juvenile arrested and detained for an alleged violation of any article of title 42, C.R.S., or for any alleged violation of a municipal or county ordinance, and not released on bond, shall be taken before a judge with jurisdiction of such violation within forty-eight hours for the fixing of bail and conditions of bond pursuant to subparagraph (IV) of paragraph (a) of subsection (3) of this section. A juvenile may be detained in a jail, lockups, or other place used for the confinement of adult offenders only for processing for no longer than six hours and during such time shall be placed in a ***setting that is physically segregated by sight and sound from the adult offenders***, and in no case may the juvenile be detained in such place overnight. After six hours, the juvenile may be further detained only in a juvenile detention facility operated by or under contract with the department of human services. In calculating time under this subsection (4), Saturdays, Sundays, and legal holidays shall be included.”

All juveniles held in jails and lockups must be physically segregated by sight and sound from adult offenders. This includes trustees.

C.R.S. 19-2-508(4)(d)(II) “A Sheriff or Police Chief who violates the provisions of subparagraph (I) of this paragraph (d) may be subject to a civil fine of no more than one thousand dollars. The decision to fine shall be based on prior violations of the provisions of subparagraph (I) of this paragraph (d) by the Sheriff or Police Chief and the willingness of the Sheriff or Police Chief to address the violations in order to comply with subparagraph (I) of this paragraph (d).”

This section is self-explanatory.

C.R.S. 19-2-508(4)(g) “A juvenile court shall not order a juvenile offender who is under eighteen years of age at the time of sentencing to enter a secure setting or secure section of an adult jail or lockup as a disposition for an offense or as a means of modifying the juvenile offender’s behavior.”

This section prohibits a juvenile court from sentencing a juvenile to a jail or lockup. It also prohibits a juvenile court from ordering a juvenile to participate in a Shape Up or Scared Straight type of program where the juvenile must visit the jail or lockup.

Adult Jails and Lockups

Colorado State Statutes (Continued)

C.R.S. 19-2-508 (4)(a) “Whenever a juvenile is held pursuant to a direct filing or transfer in a facility where adults are held, the juvenile shall be physically segregated from the adult offenders.”

If a juvenile is being filed on as an adult they must be physically segregated from the adult offenders. They may see and hear the adult offenders, but should have no physical contact.

C.R.S. 19-2-508 (4)(e) “The official in charge of the jail, lockup, or other facility for the confinement of adult offenders that receives a juvenile for detention should, wherever possible, take such measures as are reasonably necessary to restrict the confinement of any such juvenile with known past or current affiliations or associations with any gang so as to prevent contact with other inmates at such jail, lockup or other facility.”

This section is self-explanatory.

C.R.S. 24-33.5-503 “**Duties of division.** The division has the following duties: (r) To inspect secure juvenile facilities and collect data on juveniles that are held in secure juvenile facilities, jails and lockups throughout the state.”

Self-explanatory. The Division of Criminal Justice is charged with inspecting facilities and collecting data on all juveniles held securely in juvenile facilities, jails and lockups.

Jail Removal

PLEASE NOTE:

All of the D.S.O. state statutes apply to Jail Removal too. If a status or nonoffender is placed in a secure setting within an adult jail or lockup, the D.S.O. and Jail Removal core protections are violated, therefore one status offender counts as two violations.

C.R.S. 19-2-508(4)(d)(I)

Detention and Shelter - hearing - time limits - findings - review - confinement with adult offenders - restrictions

“Any juvenile arrested and detained for an alleged violation of any article of title 42, C.R.S., or for any alleged violation of a municipal or county ordinance, and not released on bond, shall be taken before a judge with jurisdiction of such violation within forty-eight hours for the fixing of bail and conditions of bond pursuant to subparagraph (IV) of paragraph (a) of subsection (3) of this section. A juvenile may be detained in a jail, lockups, or other place used for the confinement of adult offenders only for processing for no longer than six hours and during such time shall be placed in a setting that is physically segregated by sight and sound from the adult offenders, and in no case may the juvenile be detained in such place overnight. After six hours, the juvenile may be further detained only in a juvenile detention facility operated by or under contract with the department of human services. In calculating time under this subsection (4), Saturdays, Sundays, and legal holidays shall be included.”

Adult Jails and Lockups

Colorado State Statutes, Continued

This section allows law enforcement to securely detain a delinquent for 6 hours in an area that is sight and sound separated from adult offenders. After the 6 hour secure detention the juvenile may be transported to juvenile detention or removed to a nonsecure setting. If you are returning the juvenile delinquent for a court appearance from another facility the federal Act status the delinquent juvenile may be held for up to 6 hours before their court appearance and for an additional 6 hours following their court appearance. Juveniles may only be held for processing purposes (booking, investigation, arranging transport). They may not be sentenced to an adult jail or lockup. The purpose for holding the juvenile securely may not be punitive in nature. Once the 6-hour clock starts it cannot be turned off until the juvenile is permanently removed from the secured setting.

C.R.S. 19-2-508(4)(d)(II) “A Sheriff or Police Chief who violates the provisions of subparagraph (I) of this paragraph (d) may be subject to a civil fine of no more than one thousand dollars. The decision to fine shall be based on prior violations of the provisions of subparagraph (I) of this paragraph (d) by the Sheriff or Police Chief and the willingness of the Sheriff or Police Chief to address the violations in order to comply with subparagraph (I) of this paragraph (d).”

This section is self-explanatory.

C.R.S. 19-2-508(4)(g) “A juvenile court shall not order a juvenile offender who is under eighteen years of age at the time of sentencing to enter a secure setting or secure section of an adult jail or lockup as a disposition for an offense or as a means of modifying the juvenile offender’s behavior.”

This section prohibits a juvenile court from sentencing a juvenile to a jail or lockup. It also prohibits a juvenile court from ordering a juvenile to participate in a Shape Up or Scared Straight type of program where the juvenile must visit the jail or lockup.

C.R.S. 24-33.5-503 “**Duties of division.** The division has the following duties: (r) To inspect secure juvenile facilities and collect data on juveniles that are held in secure juvenile facilities, jails and lockups throughout the state.”

Self-explanatory. The Division of Criminal Justice is charged with inspecting facilities and collecting data on all juveniles held securely in juvenile facilities, jails and lockups.

Compliance Strategies

The following represent some of the many compliance strategies that can be used by law enforcement agencies throughout Colorado.

- Advocate for the use of an impartial screening instrument which will determine by an intake screener where a juvenile is placed after arrest. A standard instrument is used by intake screeners in each judicial district. Colorado Revised Statutes §19-2-507(2) requires the use of screening criteria for placement of juveniles in detention. The screening tool and criteria are included as Appendix 10.
- A “Continuum of Care” in each community provides juvenile justice professionals with the programming options needed for juveniles. The state-funded “SB94 - Alternatives to Incarceration Initiative” and its local planning group are resources to develop this continuum. Obtain examples of “Continuum of Care” models from other communities for possible implementation in your community. Federal funds through DCJ can be used to implement jail removal and alternative to incarceration programs for juveniles, as an enhancement to the SB-94 efforts.
- Federal funds through DCJ can be used to purchase separate booking equipment for juveniles in an area that is sight and sound separated from incarcerated/arrested adults.
- Policies and procedures may be all that is required to maintain separation at facilities where juveniles and adults are held securely. Time-phase areas that are used by both juveniles and adults (use the same area for juveniles and adults - just not at the same time).
- When planning or remodeling a secure facility, contact the DCJ compliance monitor to ensure that the new area for juveniles meets federal separation requirements.
- Juvenile Assessment Centers provide a location where law enforcement can bring a juvenile for booking, to wait for parents, and receive a comprehensive assessment.

Juvenile Detention Centers

Applicable Core Protection Requirements and Regulations

DEINSTITUTIONALIZATION OF STATUS OFFENDERS (DSO)

Definitions, Rules and Regulations

Definitions

| | |
|---------------------------|---|
| Status Offender | A juvenile who has been charged with, or adjudicated for, conduct that would not be criminal if committed by an adult. Examples include: running away, underage drinking, underage possession of alcohol or tobacco, curfew violation (if the curfew ordinance applies only to juveniles), and truancy. Possession of a handgun by a juvenile is excluded from the status offense classification by state and federal laws. Juveniles who are illegal immigrants and have not committed a delinquent act are monitored as status offenders. |
| Non-Offender | A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, or mental health issues, but not a delinquent act. |
| Juvenile Detention Center | A secure facility used solely for the lawful custody of accused or adjudicated juvenile offenders or non-offenders and not adjoining an adult jail or lockup. (If it is adjoining, or on the same ground as, an adult jail or lockup, see the collocated facility requirements on page 7-3, Tab 7). |
| Sight & Sound Contact | Any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders. |

Federal Rules and Regulations

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

Sight and Sound Separation

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

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

Applicable Core Protection Requirements and Regulations (Continued)

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

Deinstitutionalization of Status Offenders (DSO)

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

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

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

Youth Handgun Safety Act Possession Exemption

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

- Youth held in juvenile detention or correctional facilities solely for possession of a handgun are exempt from violation, however, the DCJ compliance monitor must capture that information yearly for OJJDP. Therefore, detention staff must enter this information in Trails.

Out of State Runaways Exemption

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

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

Applicable Core Protection Requirements and Regulations (Continued)

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

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

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

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

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

- Adjudicated status or non-offenders cannot be held in juvenile detention centers unless all of the conditions of the Valid Court Order are met.
- In 2002, Congress substantially changed the Valid Court Order statutory exception in federal law. In 1997, Colorado changed their Judicial Rules to reflect the 1996 federal Valid Court Order regulation, therefore, Colorado is obligated to follow and monitor pursuant to the 1997 Judicial Rule and not the revised federal Valid Court Order.

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

- A. The juvenile must be brought before a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.
- B. The court must have entered a judgement and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.
- C. The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to the juvenile's attorney and/or legal guardian in writing and be reflected in the court record and proceedings.
- D. All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. For protective purposes or to assure appearance at the violation hearing, a juvenile accused of violating a valid court order may be held in secure detention no longer than 72 hours, exclusive of nonjudicial days. However, there must be a judicial determination based on a hearing during the initial 24- hour grace period, permitted for a noncriminal juvenile offender under OJJDP monitoring policy, that there is probable cause to believe the juvenile violated the court order. A juvenile alleged or found in a

violation hearing to have violated a valid court order may be held only in a secure juvenile detention or correctional facility, and not in an adult jail or lockup.

- E. Prior to and during the violation hearing, the following due process rights must be provided:
1. The right to have the charges against the juvenile in writing served upon the juvenile in a reasonable time before the hearing;
 2. The right to a hearing before the court;
 3. The right to an explanation of the nature and consequences of the proceeding;
 4. The right to legal counsel, and the right to have such counsel appointed by the court if indigent;
 5. The right to confront witnesses;
 6. The right to present witnesses;
 7. The right to have a transcript of the proceedings; and
 8. The right of appeal to an appropriate court.
- F. In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order and the applicable due process rights were afforded the juvenile and, in the case of a violation hearing, the judge must obtain and review a written report that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted be an appropriate public agency (other than a court or law enforcement agency).
- G. A non-offender such as a dependent and neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

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

Colorado adopted procedures to mirror the elements of the VCO in 1998 when the Chief Justice of the Colorado Supreme Court added Colorado Rules of Juvenile Procedure 3.8. (see Appendix 9). There are three forms Colorado courts are required to use on VCO's: 1) The Valid Court Order for Status Offenders, 2) Secure Placement as Disposition for Violation of a Valid Court Order, and 3) Written Report for Placement of a Status Offender in Secure Detention. The burden of proof in determining whether a status offender has received the due process protections under the VCO rests with the sentencing judge. By using these forms, the Judge verifies that all VCO exception elements were met.

Compliance Chart for Juvenile Detention Centers

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

Determining Rate of Compliance and Consequences of Non-Compliance

The federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) is responsible for monitoring states' compliance with the core protection requirements. At least once every 5 years, OJJDP conducts a compliance monitoring audit to determine if Colorado's compliance monitoring system is adequate. Colorado's annual report covers the state's fiscal year, July 1 through June 30.

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

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

The state's juvenile population (ages 0 through 17) is divided by 100,000 to establish the juvenile population rate per 100,000. In 2001, Colorado's juvenile population, determined by the U.S. Census Bureau, was 1,100,795. Therefore, Colorado's juvenile population rate per 100,000 is 11.00.

The number of violations is divided by the juvenile population rate. If for example, there were 90 violations of the Deinstitutionalization of Status Offender core requirement, the rate of violations would be 8.18. (90 violations ÷ 11.00 = 8.18)

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

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

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

Juvenile Detention Centers

Summary Standards for Demonstrating Compliance

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

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

Juvenile Detention Centers

Colorado State Statutes

Deinstitutionalization of Status Offenders

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

C.R.S. 19-1-103(103.7) “Status offense” shall have the same meaning as defined in federal law in 28 CFR 31.304, as amended.”

With the passage of HB1112, the state definition of status offender conforms to the federal definition of status offender. “A juvenile who commits an offense that would not be criminal if committed by an adult.”

C.R.S. 19-1-103(106) “Temporary holding facility” means an area used for the temporary holding of a child from the time that the child is taken into custody until a detention hearing is held, if it has been determined that the child requires a staff-secure setting. Such an area must be sight and sound separated from adult offenders.”

HB1112 requires that temporary holding facilities be staff secure (non-secure) and sight and sound separated from adult offenders.

C.R.S. 22-22-108 **Judicial Proceedings.** (3) After the petition is filed, the court shall notify the board and shall hold a hearing on the matter. The court shall conduct judicial review of a hearing decision pursuant to rule 106(a)(4) of the Colorado rules of civil procedure and **Rule 3.8 of the Colorado Rules of Juvenile Procedures.**

(7)(a) If the child does not comply with the valid court order issued against the child or against both the parent and the child, the court may order that an investigation be conducted as provided in section 19-2-510(2) C.R.S., and the court may order the child to show cause why he or she should not be held in contempt of court. The court may include as a sanction after a finding of contempt an appropriate treatment plan that may include, but not be limited to, community service to be performed by the child, supervised activities, and other activities having goals that shall ensure that the child has an opportunity to obtain a quality education.

(8) The court may impose on the child as a sanction for contempt of court a sentence to incarceration to any juvenile detention facility operated by or under contract with the department of human services pursuant to section 10-2-402, C.R.S., and any rules promulgated by the Colorado supreme court.

This states that if a judge is sentencing a status offender who has violated a Valid Court Order they must follow Colorado Rules of Juvenile Procedures, Rule 3.8. This rule is contained in the appendix.

Juvenile Detention Centers

Colorado State Statutes, Continued

C.R.S. 24-33.5-503 **“Duties of division.** The division has the following duties: (r) To inspect secure juvenile facilities and collect data on juveniles that are held in secure juvenile facilities, jails and lockups throughout the state.”

Self-explanatory. The Division of Criminal Justice is charged with inspecting facilities and collecting data on all juveniles held securely in juvenile facilities, jails and lockups.

| |
|--|
| Judicial Proceedings Regarding Violations of Valid Court Orders (VCO) |
|--|

Colorado Judicial Rules

| |
|--|
| Rule Change #1997 (17) CRJP 3.8 Status Offenders, Chapter 28. Colorado Rules of Judicial Procedure, Part Three, Delinquency |
|--|

The Colorado Judicial Rule Change mirrors the federal Valid Court Order statutory exception. It incorporates the following statement into the rule: “The committee’s intent in drafting this rule is not to encourage more frequent use of detention for status offenders. The committee recognizes that Congress and the OJJDP assumed that courts would exhibit self-restraint and exercise the Valid Court Order exclusion only in cases of status offenders who chronically fail to follow court orders. The committee recommends that the courts adopt this benevolent approach and use the Valid Court Order exception to ensure that secure placements are used only for recalcitrant status offenders.” See Appendix 9.

Compliance Strategies

Detaining status and non-offenders in juvenile detention centers uses valuable bed space and strains an already limited pool of juvenile justice resources. Detention beds should be used primarily for serious delinquent offenders. In determining what resources should be made available to status and non-offenders, key players in the juvenile justice community need to be part of the discussions. Community collaboration, cooperation and buy-in are key to successful outcomes. Below are strategies that have worked in communities:

- Truancy programs can be implemented to reduce truancy petitions, to increase truants' compliance with court orders, and provide alternatives to sentences to detention for violations of Valid Court Orders.
- Runaway programs. According to statistics, girls are more often than boys brought to juvenile detention centers for running away from home or from placement. Gender-specific programs that provide advocacy, one-on-one case management, mentoring and counseling to girls who chronically run away from home or from placement can help reduce this behavior.
- Judge's Review. In some jurisdictions juveniles who are placed in juvenile detention centers for status and non-offenses are subject to a judge's review of the case and possible placement options within 24 hours of admission and again within 48 hours of admission. These two judicial reviews hold juvenile justice agencies accountable for releasing the status offender within 48 hours of admission.
- Host Homes. This option works especially well in smaller communities with a lack of out of home placement resources. Volunteers are recruited to accept juvenile status and non-offenders on a very temporary basis, usually 24 hours, until more permanent arrangements can be made for the juvenile. The volunteers are certified by the Department of Human Services as temporary foster homes although they may receive no payment for their services. Personal care products for the juveniles are often donated by local businesses.
- Intake screening. Intake screening is designed to place juveniles in the least restrictive setting possible to ensure the juvenile's and the public's safety. With current detention caps in place, screening takes place for all juveniles presented to detention.

Temporary Holding Facilities

General Overview

Classifying Temporary Holding Facilities

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

In 2006, HB 1112 redefined temporary holding facilities. C.R.S. 19-1-103(106) requires that temporary holding facilities be staff-secure, or non-secure, and that they must be separated by sight and sound from any area that houses adult offenders.

| Type of Facility | Definition of Facility | Core Protection Requirements That Apply |
|---|--|---|
| Temporary Holding Facility | A non-secure facility that meets or exceeds the temporary holding guidelines contained in this section. Usually operated by a rural Sheriff's Department, that due to distance or weather, cannot always immediately transport a juvenile to a juvenile detention center. The juvenile may need to spend the night or weekend until either the weather clears or a juvenile detention hearing is held. | This facility is monitored to ensure it is non-secure; must have written Colorado Temporary Holding Guideline policies and procedures in place prior to use. They are explained in this section. |
| Law Enforcement Non-Secure Custody | A non-secure area within a Sheriff or Police Department that is used to temporarily house juveniles, short term, until parents arrive or transportation is arranged. | Core requirements do not apply if the facility is non-secure. However, the facility must meet federal Non-Secure Guidelines (please see page 6-2 in this section). |
| Adult Jail or Lockup OR Collocated Facility | <p>A secure setting within a Sheriff or Police Department that is used to securely detain juvenile delinquents for up to 6 hours, or for 6 hours prior to and 6 hours following, an initial court appearance.</p> <p>If a Collocated Facility, it is monitored as if it were a Juvenile Detention Center, however, the facility must meet the Collocation Requirements, see Tab 7.</p> | <p>If an Adult Jail or Lockup, the facility must comply with DSO, Separation and Jail Removal (See Tab 4 of this Guide),</p> <p>OR</p> <p>If a Collocated Facility (separately holds both adults and juveniles), must meet Collocation Requirements and be inspected annually (Collocation requirements are in the next section of this Guide, Tab 7)</p> |
| Juvenile Detention Center | Stand alone facility only for juveniles. | Monitored as a Juvenile Detention Center (see Tab 5 of this Guide) |

Temporary Holding Facilities

Needs Assessment

Prior to the establishment of a Temporary Holding Facility it is recommended that a needs assessment be conducted. Often, these facilities are seen as a solution to a myriad of programmatic problems within a community when in fact they offer a limited and expensive option. The costs are higher resulting in a program driven continuum of services for juveniles rather than one driven by client need. These are some questions to ask:

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

Non-Secure Temporary Holding Facilities OR Non-Secure Custody

A juvenile can be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility but not be in secure detention or confinement status. OJJDP's Policy Guidance for Non-Secure Custody of Juveniles in Adult Jails or Lockups states that **all** of the following policy criteria, if satisfied, **will constitute non-secure custody of a juvenile in an adult jail or lockup facility (also refer to the chart on page 3-2):**

- The area where the juvenile is held is an unlocked multipurpose area, such as a lobby, office, or interrogation room that is not designated, set aside or used as a secure detention area or is not part of such an area, or if a secure area, is used only, and at all times, for processing purposes;
- The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody within the facility;
- The use of the area is limited to providing non-secure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court;
- The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in non-secure custody.

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

- A juvenile handcuffed to a non-stationary object. If the 4 criteria listed above are adhered to, handcuffing techniques that do not involve stationary objects or cuffing rings are considered non-secure.
- A juvenile being processed through a secure booking area: Where a secure booking area is all that is available and continuous visual supervision is provided throughout the booking process and the juvenile remains in the booking area only long enough to be photographed and fingerprinted, the juvenile is not considered to be in a secure detention status. Continued non-secure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the secure booking area.

Temporary Holding Facilities

Division of Criminal Justice Guidelines for Temporary Holding Facilities

Temporary holding facilities are not licensed by the Department of Human Services. The Division of Criminal Justice (DCJ) compiled the following as Guidelines for facilities wishing to hold juveniles for short periods of time (up to 72 hours) awaiting placement or a court hearing. DCJ is required by state law (24-33.5-503 C.R.S. Duties of Division) “to promulgate rules and regulations which set minimum standards for temporary holding facilities as defined in section 19-1-103(106) C.R.S.” Temporary holding facilities must be non-secure.

DCJ GUIDELINES FOR TEMPORARY HOLDING FACILITIES

PART I - ADMINISTRATION AND MANAGEMENT

100 GENERAL INFORMATION

- 101 There is a written statement that describes the philosophy, goals, or purposes of the facility.
- 102 The facility should have a policy manual which is made available to all staff and volunteers, and upon request, to others.
- 103 The facility should have an organizational chart which accurately reflects the structure of authority, responsibility and accountability within the facility.
- 104 The facility meets all the licensing requirements of the jurisdiction in which it is located.
- 105 The facility meets all the legal requirements of the governmental jurisdiction in which the facility is located.
- 106 If the facility is on the grounds of any other type of corrections facility it is a separate, self-contained unit.
- 107 Records indicate the time and date that the juvenile enters and is released from the facility, and the reason for holding in the facility. The detention screening instrument must indicate a secure, staff-secure or residential/shelter level of placement.
- 108 Records are safeguarded from unauthorized and improper disclosure. All paper files are marked confidential and kept in locked files, and when any part of the information system is computerized, security ensures confidentiality.
- 109 All written policy and procedure will be reviewed at least annually by the governing authority and updated if necessary.

PART II - PHYSICAL PLANT

200 BUILDING CODES

- 201 The facility conforms to all applicable state and local building codes.
- 202 There is documentation by the authority having jurisdiction that the facility complies with the applicable fire safety codes as required by the local code.
- 203 The facility furnishings shall meet the yearly fire code inspection.

210 ENVIRONMENTAL CONDITIONS

- 211 The facility complies with applicable federal, state, and local sanitation, safety and health codes.
- 212 All housing areas provide for, at a minimum: lighting as determined by the tasks to be performed; access to one toilet above floor level which is available for use 24 hours a day; one wash basin and toilet for every five juveniles; hot and cold running water; showers accessible to juveniles; a heating and ventilation and acoustical system to ensure healthful and comfortable living and working conditions for juveniles and staff; access to drinking water; a bed at floor level; mattress; supply of bed linens; chair; locker space; and natural light.
- 213 A minimum of 70 square feet of floor space per juvenile are provided in the sleeping area.
- 214 The sleeping area provides some degree of privacy.
- 215 Written policy and procedures provide for the issue of suitable clean bedding and linens, to include two sheets, pillow, pillowcase, one mattress and sufficient blankets to provide comfort under existing temperature controls.
- 216 Written policy and procedures ensure that personal hygiene articles are provided.

PART III - INSTITUTIONAL OPERATIONS

300 SECURITY AND CONTROL

- 301 Written policy and procedures provide that instruments of restraint are never applied as punishment, and are applied only with the approval of the facility administrator or designee.
- 302 Written policy and procedures limit the use of physical force to instances of self protection, protection of the juvenile or others, prevention of property damage, prevention of escapes or running away and in accordance with appropriate statutory authority. A written incident report is to be prepared following all uses of force and submitted to the facility administrator.
- 303 Written policy and procedures provide that juveniles are not subjected to corporal or unusual punishment, humiliation, mental abuse or punitive interference with the daily functions of living.
- 304 A juvenile may be placed on restriction status for failing to comply with the rules and regulations of the facility.
- 305 During room restriction, the juvenile shall have constant staff supervision.
- 306 Written policy and procedures preclude the use or withholding of food as a disciplinary measure.

310 SAFETY AND EMERGENCY PROCEDURES

- 311 Written policy and procedures specify the means for prompt release of juveniles in case of emergency, including a posted evacuation plan.
- 312 If smoking is permitted, the facility shall be equipped with noncombustible receptacles for smoking materials.
- 313 Written policy and procedures provide that transportation is available for use in emergencies.

PART IV - FACILITY SERVICES

400 HEALTH CARE

- 401 The facility's administration is to ensure the availability of 24-hour emergency medical and dental care.
- 402 At least one staff member present on each shift of the residential facility is to be trained in emergency procedures, including first aid and CPR.
- 403 The facility should have available, at all times, first aid equipment approved by a recognized health authority.
- 404 Written policy and procedures provide for the prompt notification of the juvenile's next of kin in the event of serious illness, injury, need for hospitalization or death.
- 405 Under no circumstances is a stimulant, tranquilizer or psychotropic drug to be administered to any juvenile for purposes of program management or control, or for purposes of experimentation and research.
- 406 Written policy and procedures provide for special diets as prescribed by appropriate medical or dental personnel.

410 SANITATION

- 411 Written policy and procedures provide for vermin control, and trash and garbage removal.
- 412 There is to be a written housekeeping plan for the facility's physical plant to assure that it is clean and safe.
- 413 Written policy and procedures provide for the holding facility to be inspected prior to occupancy to ensure the sanitation and safety of all internal and external areas and equipment.
- 414 Food services shall comply with all sanitation and health codes enacted by state or local authorities.
- 415 All foods brought into the facility are to be properly stored at all times.

PART V - JUVENILE SERVICES

500 RECEPTION AND ORIENTATION

- 501 Written facility policy and procedures prohibits the confinement of any juvenile in the facility unless it is clearly shown that secure or staff secure placement is essential and then only until transport to an appropriate facility can be arranged.
- 502 No youth will be accepted for holding if the youth requires detoxification from alcohol, opiates, barbiturates and similar drugs unless accompanied by a medical release.
- 503 All youth shall be accompanied by a screening form, custody report or court order.
- 504 The youth is entitled to an initial telephone call at the time of admission.
- 505 Upon admission, the youth's personal property, that is held for them, shall be recorded.
- 506 Written policy and procedures provide that manual or instrument inspection of body cavities is conducted only when there is reason to do so and when authorized by the facility administrator. Strip searches may be done without specific authorization only upon entry to the facility and while the arresting authority is present. All other times are based upon articulable suspicion. Strip searches must be conducted by members of the same sex.
- 507 Youth may wear their personal clothing.

510 JUVENILE PROGRAMMING

- 511 There is a visiting area that allows for some degree of privacy during visits.
- 512 Visitation is to be done during visiting hours or by appointment only.
- 513 Juveniles are to be provided activities and services at least 14 hours a day of which no more than four hours will be watching television or playing video games.
- 514 Written policy and procedures grant juveniles daily access to recreational opportunities and equipment, including indoor exercise.
- 515 Written policy and procedures provide for each juvenile to shower daily.
- 516 Written policy and procedures require that at least three meals, of which two are hot meals, are provided at regular times during each 24 hour period, with no more than 14 hours between the evening meal and breakfast.

520 JUVENILE HOUSING

- 521 Written policy and procedures provide that male and female juveniles do not occupy the same sleeping rooms, and will be supervised by a member of the same sex.
- 522 Protection requirements for the separation of adult and juvenile offenders shall be met.
- 523 Under no circumstances will adult offenders or trustees work with the youths or be allowed in the youth facility.

530 JUVENILE RIGHTS

- 531 Juveniles are not required to participate in uncompensated work assignments unless the work is related to housekeeping, maintenance of the facility or grounds, or personal hygiene needs.
- 532 Written policy and procedures ensure the right of juveniles to have access to the courts and legal counsel.
- 533 Written policy and procedures exist to assist juveniles in making confidential contact with attorneys and their authorized representatives; such contact includes telephone communication, uncensored correspondence and visits.
- 534 Written policy and procedures provide that juvenile letters, both incoming and outgoing, are not read, except where there is clear evidence to justify such actions; if correspondence is read, the youth is informed in advance and is present when the letter is opened.

Other Facilities

Court Holding Facilities

A court holding facility is a secure facility, other than an adult jail or lockup, that is used to temporarily detain persons immediately before or after detention hearings or other court proceedings. Court holding facilities, where they do not detain individuals overnight, (i.e., are not residential) and are not used for punitive purposes or other purposes unrelated to a court appearance, are not considered adult jails or lockups.

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

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

Collocated Facilities

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

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

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

1. The facility must ensure separation between juveniles and adults such that there could be no sustained sight and sound contact between juveniles and incarcerated adults in the facility. Separation can be achieved architecturally or through time phasing of common use non-residential areas; and
2. The facility must have separate juvenile and adult program areas, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility that provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. Time phasing of common use non-residential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and
3. The facility must have separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (e.g., medical care, food service, laundry, maintenance, and engineering) who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juveniles and adults can serve both populations (subject to State standards or licensing requirements). The day-to-day management, security, and direct care functions of the juvenile detention center must be vested in

totally separate staff, dedicated solely to the juvenile population within the colocated facilities; (this criteria was modified in 2002, however, Colorado still uses the criteria developed by OJJDP in 1996) and

4. In states that have established standards for licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no state standards or licensing requirements, OJJDP encourages states to establish administrative requirements that authorize the state to review the facility's physical plant, staffing patterns, and programs in order to approve the colocated facility based on prevailing national juvenile detention standards. See Colorado's policy located on the next page.

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

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

In addition to the OJJDP requirements, DCJ issued a policy on Collocated Facilities in 1997 which is contained on the following pages.

Colorado Division of Criminal Justice Collocated Facilities - Policy and Procedure

Date Issued: August 31, 1997

Review Date: January 1, 2006

Next Review Date: January 1, 2007

Related Regulation: OJJDP Consolidated Federal Register, 1996

Statement of Purpose

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

The Division of Criminal Justice (DCJ) is the state agency designated to administer the federal juvenile justice funds under Title II of the JJDP Act, and provide staff support to the Governor's Juvenile Justice and Delinquency Prevention Council (Council), which has grant making and compliance monitoring authority.

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

Federal regulations issued in 1996 delineate four regulatory requirements which must be met in order to establish a collocated facility where such facility is located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup.

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

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

Policy

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

Procedures To Request Approval of a Collocated Facility

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

Mandatory Requirements for a Collocated Facility CHECKLIST

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

Name of Facility _____

Facility Address _____

Contact Name _____

Contact Phone, Fax and E-Mail _____

(Check boxes below that apply)

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

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

_____ Date of on-site review

OR

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

_____ Date of plan review

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

“ Facilities are located in the same building

OR

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

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

Checklist Page 1 of 4

The Four Collocated Criteria

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

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

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

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

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

Other State Requested Information:

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

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

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

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

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

Other State requested information:

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

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

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

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

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

Other State requested information:

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

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

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

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

Other Requirements:

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

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

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

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

Date of Initial On-Site Review: _____

Date of each subsequent annual on-site review: _____

Summary of Findings: _____

Certification

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

Signature/Date

Printed Name

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Appendix A
FEDERAL AND STATE DEFINITION OF TERMS

Appendix B
FLOWCHART TO DETERMINE SECURE STATUS

Appendix C
**COLORADO STATUTES and FEDERAL
REGULATION CHART**

Appendix D
CONSOLIDATED FEDERAL REGISTER

Appendix E
SECURE JUVENILE HOLDING LOG (SAMPLE)

Appendix F
**LAW ENFORCEMENT CUSTODY POLICY &
PROCEDURE (SAMPLE)**

Appendix G
SIGHT AND SOUND SEPARATION CHECKLIST

Appendix H
NON-SECURE CERTIFICATION FORM

Appendix I
**COLORADO'S VALID COURT ORDER -
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Appendix J
**DETENTION SCREENING TOOL and
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Appendix K
COLORADO JUVENILE JUSTICE FLOW CHART

Appendix L
**1-PAGE COMPLIANCE SUMMARY FOR LAW
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Appendix M
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