

# **MONTANA MONITORING STANDARDS FOR JUVENILES IN CUSTODY FOR:**



## **LAW ENFORCEMENT DEPARTMENTS**

A GUIDE TO COMPLIANCE WITH:  
THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION  
ACT OF 2002  
AND THE MONTANA YOUTH COURT ACT

Updated December 2005

## INTRODUCTION

This handbook has been developed to acquaint law enforcement departments with both the Juvenile Justice and Delinquency Prevention Act of 2002 as Amended (JJDP Act) and the corresponding Youth Court Act, Montana Code Annotated (MCA) Title 41, Chapter 5. This information will enable those involved in the juvenile justice arena with maintaining compliance with both the state's Youth Court Act and the federal JJDP Act regarding the processing and holding of juveniles.

As a participant in the Juvenile Justice and Delinquency Prevention Act, Montana must maintain and monitor compliance with the core requirements of the JJDP Act. The Montana Board of Crime Control Juvenile Justice Program is the state agency designated to administer federal JJDP ACT funds and provide staff support to the Youth Justice Council (YJC). Working in conjunction with the YJC and other juvenile justice system members, the state Juvenile Justice Specialist provides the leadership necessary to coordinate the JJDP ACT and juvenile justice efforts. The Juvenile Justice Planner coordinates the compliance efforts. The Data Technician collects the data.

Montana receives JJDP ACT funds annually, dependent upon compliance with the core requirements of the JJDP ACT. The core requirements, explained further in this manual, have become tenants for basic professional practice throughout the country. These funds and additional grants from the State General Fund as described in Part 19 of the Youth Court Act administered by the Peace Officer's Standards and Training (POST) Director, are available to every community in Montana that reports crime data to the Board of Crime Control and maintain compliance with both the JJDP Act and the Youth Court Act. It is incumbent upon all communities to assist the state in maintaining compliance to retain these funds for juvenile justice programming.

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

Montana Board of Crime Control  
PO Box 201408  
3075 North Montana Street  
Helena, MT 59620-1408

FAX: 406-444-4722  
Email: [mbcc@mt.gov](mailto:mbcc@mt.gov)  
Web Page: [www.mbcc.mt.gov](http://www.mbcc.mt.gov)

Phone Contacts:

Funding:

Federal OJJDP Funds – Juvenile Justice Specialist ..... (406) 444-3651  
General Funds - POST Director ..... (406) 444-3605  
Compliance: Juvenile Justice Planner: ..... (406) 444-2632  
Data Reporting: Data Technician: ..... (406) 444-2084

# TABLE OF CONTENTS

<b>Title</b>	<b>Page</b>
Introduction .....	ii
Table of Contents .....	iii
Definitions: .....	1
Juvenile justice & Delinquency Prevention Act.....	8
Intent of the JJDP Act.....	11
Deinstitutionalization of Status Offenders (DSO) .....	11
Statutory Exceptions to the DSO Requirement .....	11
Exception for Violation of a Valid Court Order (VCO) .....	12
Exception for Title 18, Handgun Possession on School Grounds.....	12
Exception for Youth Subject to the Interstate Compact .....	12
No Contact with Incarcerated Adults .....	14
Juvenile Jail Removal Initiative .....	14
Rural Exception to the Jail Removal Requirement.....	15
Compliance Monitoring .....	16
Disproportionate Minority Contact, formerly Confinement (DMC) .....	17
Juveniles and the Adult Court .....	18
Facility Requirements.....	1
Record Keeping Requirements: .....	3
Reporting Requirements: .....	4
On-site Monitoring: .....	4
Standards Applicable to All Adult Jails and Lockups: .....	4
Status offenders, non-offenders, and civil-type offenders: .....	4
Adjudicated criminal-type (delinquent) youth offender: .....	5
Youth accused as a criminal offender: .....	5
Youth adjudicated as a criminal offender .....	5
Standards Applicable to Adult Jails or Lockups and Unlicensed Collocated Detention Facilities Located in Metropolitan Statistical Areas (MSA's):.....	5
Accused criminal-type (delinquent) youth offender .....	5
Violations: .....	6

Standards Applicable to Adult Jails and Lockups in Non-MSA's: ..... 6  
    Accused criminal-type (delinquent) youth offenders:..... 6  
    Violations: ..... 7  
Law Enforcement Departments That Do Not Operate Secure Facilities:..... 7  
Juvenile Incarceration Assessment Form..... 9

## DEFINITIONS:

The definitions from the Federal Formula Grant Regulations, the Juvenile Justice and Delinquency Prevention Act, and the OJJDP Guidance Manual will take precedence over state definitions and will be used for monitoring purposes. Citations follow with corresponding definitions in the Montana Code Annotated (MCA) if any, referenced in blue.

**Adjudicated youth**<sup>1</sup>. A youth that has been found under formal proceedings by a judge to have committed an offense. [MCA 41-5-103\(11\) Delinquent youth](#)

**Adult inmate**. (42 U. S. C. 5603 Sec 103(26)) An individual who has reached the age of full criminal responsibility under applicable state law and has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense. ([MCA 41-5-103\(1\) Adult](#))

**Adult jail**. A locked facility, administered by State, county or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year (*28 CFR 31.304(m)*). [MCA 41-5-103\(25\) Jail](#)

**Adult Lockup**. Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature that does not hold persons after they have been formally charged (*28CFR 31.304(n)*). [MCA 41-5-103\(25\) Jail](#)

**Civil-type offender**. A juvenile offender who has been charged with or adjudicated for an offense that is civil in nature. Examples include non-criminal traffic<sup>2</sup> violations and non-criminal fish and game violations (*page 53, OJJDP Guidance Manual*). [MCA 41-5-103\(51\) Youth in need of intervention](#)

**Collocated facility**. 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). 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 or sound contact between juveniles and incarcerated adults in the facility. Separation can be achieved architecturally or through time phasing of common use nonresidential areas; and

---

<sup>1</sup> A youth committed to the Department of Corrections, released on parole and subsequently picked up and held for violation of a parole (aftercare) agreement or escape under MCA 52-5-128 is considered an adjudicated youth and may not be securely held in an adult jail, lockup, or unapproved collocated facility for any length of time.

<sup>2</sup> In Montana, all youth taken into custody are under the jurisdiction of the Youth District Court, however, District Court does not have concurrent jurisdiction for traffic offenses, even if they are criminal. Therefore, secure detention of youth for a traffic offense of any kind is a violation of the Youth Court Act.

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 a totally separate staff, dedicated solely to the juvenile population within the collocated facilities; and
4. In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards on the same basis as a freestanding juvenile detention center, and be licensed as appropriate. If there are no State standards or licensing requirements, OJJDP encourages States to establish administrative requirements that authorize the State to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards.

The State must determine that the four criteria are fully met. It is incumbent upon the State to make the determination through an onsite facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria set forth above. (28 CFR 31.303(e)(3)(i)(A)) [MCA 41-5-103\(50\)\(a\)\(ii\) Collocated facility](#)

**Contact (DMC)**. See Disproportionate Minority Contact below.

**Contact (sight and sound)** (28 CFR 31.303(d)). 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, 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. [MCA 41-5-349\(3\)\(c\) Youth not to be detained in jail – exceptions – time limitations](#) [MCA 41-5-206\(7\) Filing in District Court](#)

**Court holding facility** (Page 53, *Guidance Manual for Monitoring Facilities Under the JJDP Act*). A court holding facility is a secure, non-residential facility, that is not an adult jail or lockup, that is used to temporarily detain persons immediately before or after court proceedings. (**CAUTION: Do not confuse this with the non-secure holdover described in MCA 41-5-103(23)**)

**Criminal type juvenile offender** (28 CFR 31-304(g)). A juvenile offender who has been charged with or adjudicated for conduct that would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. **Caution:** The JJDP Act does not allow a status offender to be upgraded to a delinquent offender on the basis of criminal contempt. (Reference page 20 of OJJDP's *Guidance Manual "Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974, as Amended"*). ([MCA 41-5-103 \(11\) Delinquent youth](#))

**Delayed egress device.** A device that precludes the use of exits for a predetermined period of time.

**Disproportionate Minority Contact (DMC).** (42 U. S. C. 5633 Sec. 223(a)(22)). As amended by the JJDP Act of 2002, the concept of disproportionate minority confinement has been broadened to address the disproportionate numbers of minority youth who come into contact with the juvenile justice system at any point. The 2002 Act requires states to "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."

**Facility** (28 CFR 31.304.(c)). A place, an institution, a building or part thereof, set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.

**Juvenile offender** (28 CFR 31.304(f)). An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law, i.e., a criminal-type offender or a status offender. ([MCA 41-5-103 \(11\) Delinquent youth](#) or [MCA 41-5-103 \(51\) Youth in need of intervention](#))

**Juvenile who is accused of having committed an offense** (28 CFR 31.304(d)). A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

**Juvenile who has been adjudicated as having committed an offense** (28 CFR 31.304(e)). A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender. ([MCA 41-5-103 \(11\) Delinquent youth](#) or [MCA 41-5-103 \(51\) Youth in need of intervention](#))

**Lawful custody.** The exercise of care, supervision, and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree (28 CFR 31.304(j)). [MCA 41-5-321 & 322 Taking into and release from custody](#)

**Non-offender** (28 CFR 31.304(i)). A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct of the juvenile. ([MCA 41-3-102 \(29\) Youth in need of care](#))

**Non-secure custody.** A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility, but not be in a secure detention or confinement status. The November 2, 1988, *Federal Register* announcement, *Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of Final Policy*, states that the following policy criteria, if satisfied, will constitute non-secure custody of a juvenile in an adult jail or lockup facility:

- The area(s) where the juvenile is held is an unlocked multipurpose area, such as a lobby, office, or interrogation room which is not designated, set aside, or used as a secure detention area or is not part of such an area, or if a secure area, is used only for processing purposes;
- The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;
- The use of the area(s) is limited to providing non-secure custody only long enough for and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court;
- In no event can the area be designed or intended to be used for residential purposes; and
- The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in non-secure custody.

In addition, a juvenile placed in the following situations would be considered in a non-secure status:

- If certain criteria are met, a juvenile handcuffed to a non-stationary object: Handcuffing techniques that do not involve cuffing rails or other stationary objects area considered non-secure if the five criteria listed above are adhered to.
- If certain criteria are met, 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 (consistent with State law and/or judicial rules), the juvenile is not considered to be in a secure detention status. Continued non-secure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.

- A juvenile placed in a secure police car for transportation: The JJDP Act applies to secure detention facilities and secure correctional facilities, so a juvenile placed in a secure police car for transportation would be in a non-secure status.
- A juvenile placed in a non-secure runaway shelter, but prevented from leaving due to staff restricting access to exits: A facility may be non-secure if physical restriction of movement or activity is provided solely through facility staff.

**Other individual accused of having committed a criminal offense** (28 U. S. C. 31.304(k)). An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction. ([MCA 41-5-206\(7\) Filing in district court prior to formal proceedings in youth court](#))

**Other individual convicted of a criminal offense** (28 CFR 31.304(l)). An individual, adult or juvenile, who has been convicted of a criminal offense by a court exercising criminal jurisdiction. ([MCA 41-5-103 \(9\) criminally convicted youth](#))

**Private agency.** A private non-profit agency, organization or institution is:

- (A) Any corporation, foundation, trust, association, cooperative, or accredited institution of higher education not under public supervision or control; or
- (B) Any other agency, organization or institution which operates primarily for scientific, education, charitable service or similar public purposes, but which is not under public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax exempt under the provisions of section 501 (c) (3) of the 1954 Internal Revenue Code (28 CFR 31.304(a)).

**Public agency.** Any State, unit of local government, combination of such States or units, or any department, agency or instrumentality of any of the foregoing (42 USC 5603 Sec. 103(11)).

**Reasonable cause hearing** (42 U. S. C. 5633 Sec. 223(a)(23)(C)(ii)). In the context of the VCO Exception, the reasonable cause hearing (also referred to as a “probable cause hearing” or “preliminary hearing”) is a court proceeding held by a judge to determine whether there is sufficient cause to believe that a juvenile status offender accused of violating a valid court order has violated such an order and to determine the appropriate placement of such juvenile pending disposition of the violation alleged. ([MCA 41-4-332 Custody—hearing for probable cause.](#))

**Related complex of buildings** (42 U. S. C. 5603 Sec. 103(28)) 2 or more buildings that share physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer); or the specialized services such as medical care, food service, laundry, maintenance, engineering services, etc.

**Secure Custody** (28 CFR 31.304(b)). As used to define a detention or correctional facility, this term includes residential features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings,

fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

**Secure juvenile detention center or correctional facility** (28 CFR 31.303(n)(f)(2)). A secure juvenile detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders. (MCA 41-5-103 (15) Detention facility, 41-5-103(34) Regional detention facility, 41-5-103(37) Secure detention facility, 41-5-103(41) Short term detention center, 41-5-103(42) State youth correctional facility, and 41-5-103(50) Youth detention facility).

**Staff secure facility.** A staff secure facility may be defined as a residential facility (1) which does not include construction features designed to physically restrict the movements and activities of juveniles who are in custody therein; (2) which may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. (MCA 41-5-103 (23) Holdover, and 41-5-103 (39) Shelter care facility)

**Stationary.** Not capable of being moved by a juvenile.

- ***Status offender.*** A juvenile offender who has been charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult (28 CFR 31.304(h)). A juvenile held for criminal contempt remains a status offender unless: 1) the offense done by the offender that resulted in the criminal contempt charge would have been a crime other than contempt if done by an adult; or 2) the court order violated by the youth was issued by a process that meets the federal definition of a valid court order (VCO). As status offenders, juveniles who violate a VCO cannot be held in an adult jail or lockup for any length of time (Pages 19-23, OJJDP Guidance Manual). The following are examples of status offenses:
  - Truancy
  - Violations of curfew
  - Unruly or ungovernable
  - Runaway
  - Underage possession and/or consumption of tobacco products
  - Underage possession and/or consumption of alcohol. This offense is always considered a status offense, even though State or local law may consider it a criminal-type offense. [MCA 41-5-103\(51\) Youth in need of intervention](#)

**Status offender** (28 CFR 31.304(h)). A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. The following are examples of status offenses:

- Truancy
- Violations of Curfew
- Unruly

- Runaway
- Underage possession and/or consumption of tobacco products
- Underage possession and/or consumption of alcohol. This offense is always considered a status offense, even though State or local law may consider it a criminal-type offense for a small portion of the adult population. Where it is a criminal-type offense for all adults as on some reservations, then it is a delinquent offense. ([MCA 41-5-103 \(51\) Youth in need of intervention](#))

*Valid Court Order (VCO).* The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word “valid” permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States (28 CFR 31.304(o)). (Reference “Summary of the Valid Court Order (VCO) Process” attached and second paragraph page 23 federal guidelines manual re: state common laws and use of traditional contempt). ***(Note: Montana’s court order process does not meet the federal standard for a valid court order process. Since 2003, Montana law does not allow for incarceration of youth in need of intervention who violate a court order.)*** [MCA 41-5-103\(11\) Delinquent youth](#); [41-5-341\(2\) Criteria for placement of youth in secure detention facilities](#); [41-5-345 Limitation on placement of youth in need of intervention](#); [41-5-349\(2\) Exceptions of youth not to be detained in jail](#), [41-5-1431\(3\) Probation revocation disposition](#); and [41-5-1512\(o\)\(i\) Disposition of youth in need of intervention or youth who violate consent adjustments](#).

## JUVENILE JUSTICE & DELINQUENCY PREVENTION ACT

In 1974, Congress enacted the Juvenile Justice and Delinquency Prevention Act<sup>3</sup> (JJDP ACT) in order to reform the juvenile justice system. This legislation was designed to provide federal direction, coordination, and resources to increase the effectiveness of state juvenile justice systems. In keeping with changes in the juvenile justice environment, the JJDP ACT has been amended every four years since its inception through 1992. Reauthorization was postponed in 1994 and the entire act was revised in November 2002.

Consistent with its comprehensive focus, other objectives of the JJDP ACT include:

- ◆ enhancement of state and local juvenile justice planning,
- ◆ strengthening and maintenance of the family unit,
- ◆ provision of assistance and pass through funds for Native American Tribes,
- ◆ development of programs for disadvantaged youth,
- ◆ development of educational advocacy, and community based programs, and
- ◆ prevention of alcohol and drug use and domestic violence.

The Juvenile Justice and Delinquency Prevention Act, evolving from decades of debate concerning juvenile justice, represents widespread consensus on what constitutes "best practices" with juveniles. The requirements of the JJDP ACT provide a standard against which states, tribes and communities can assess the comprehensiveness and effectiveness of their own policies and procedures regarding juveniles. The JJDP ACT allows states and tribes to enter into a voluntary partnership with the federal government in the effort to create innovative, responsive strategies to address juvenile justice issues. The JJDP ACT funds often provide the initial revenue for both the development and implementation of pilot programs for juveniles, consequently, the effectiveness of the programs can be assessed before instituting them on a statewide level.

The JJDP ACT contains the following core requirements, the first four are tied to funding:

1. Deinstitutionalization of Status Offenders and Non-offenders (DSO):

“Provide that juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult<sup>4</sup>, excluding juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18, United States Code<sup>5</sup>, or of a similar State law;<sup>6</sup> juveniles who are charged with or who have committed a violation of a valid court order<sup>7</sup>; and juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the

---

<sup>3</sup> Public Law 93-415, 42 U.S.C 5601

<sup>4</sup> Corresponds to Youth Court Act definition of youth in need of intervention (MCA 41-4-103(50))

<sup>5</sup> Youth handgun law

<sup>6</sup> Corresponds to MCA 45-8-361(1) possession of a weapon at school

<sup>7</sup> Montana is not eligible for the violation of valid court order exception because none of Montana's court order processes meet the minimum federal requirements for a valid court order process. Reference Appendix A for requirements for a valid court order process.

State<sup>8</sup>; shall not be placed in secure detention facilities or secure correctional facilities; and juveniles who are not charged with any offense; and who are aliens; or alleged to be dependent, neglected, or abused<sup>9</sup>; shall not be placed in secure detention facilities or secure correctional facilities." [Section 223(a)11]

2. No Youth Contact with Incarcerated Adults

"Provide that juveniles alleged to be or found to be delinquent or juveniles<sup>10</sup> within the purview of paragraph (11)<sup>11</sup> will not be detained or confined in any institution in which they have contact with adult inmates; and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including<sup>12</sup> in collocated facilities, have been trained and certified to work with juveniles;" [Section 223(a)12]

3. Jail Removal

"Provide that no juvenile shall be detained or confined in any jail or lockup for adults except (A) juveniles who are accused of nonstatus<sup>13</sup> offenses who are detained in such jail or lock-up for a period not to exceed 6 hours (i) for processing or release; (ii) while awaiting transfer to a juvenile facility; or (iii) in which period such juveniles make a court appearance; and only if such juveniles do not have contact with adult inmates and only if there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates in collocated facilities have been trained and certified to work with juveniles; (B) juveniles who are accused of nonstatus offenses, who are awaiting an initial court appearance that will occur within 48<sup>14</sup> hours after being taken into custody (excluding Saturdays, Sundays, and legal holidays<sup>15</sup>), and who are detained in a jail or lockup (I) in which (i) such juveniles do not have contact with adult inmates; and (ii) there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates in collocated facilities have been trained and certified to work with juveniles; and (II) that (i) is located outside a metropolitan statistical area (as defined by the Office of Management and Budget)<sup>16</sup> and has no existing acceptable alternative placement available; (ii) is located where conditions of distance to be traveled or the lack of highway, road, or transportation do not allow for court appearances

---

<sup>8</sup> This represents a change from the JJDP Act of 1974 as amended. The flowchart in Appendix B sets forth handling of youth in accordance with the Interstate Compact as implemented by Montana.

<sup>9</sup> Corresponds to MCA 41-3-102 definition of "Youth in need of care."

<sup>10</sup> Corresponds to delinquent youth as defined in MCA 41-5-103(11)

<sup>11</sup> Status offenders or non-offenders

<sup>12</sup> Guidance from OJJDP, based on Congressional Committee notes, indicates that the word "including" was an error and that this requirement only applies to staff working with both juveniles and adults in a licensed collocated facility.

<sup>13</sup> Corresponds to delinquent youth as defined in MCA 41-5-103(11)

<sup>14</sup> This represents an increase over the previous version of the Act that provided for a probable cause hearing within 24 hours. Montana laws MCA 41-5-349(2)(b) and 41-5-332 are more restrictive. They still provide for a probable cause hearing within 24 hours exclusive of weekends and holidays.

<sup>15</sup> Prior language was "exclusive of weekends and holidays". Some jurisdictions considered after 5 on Friday and before 8 AM on Mondays to be the weekend. The new language prevents that interpretation.

<sup>16</sup> In Montana, only 3 cities have been designated as Metropolitan Statistical Areas (MSA's). They are Billings, Missoula, and Great Falls.

within 48<sup>17</sup> hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed 48 hours) delay is excusable; or (iii) is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel." [Section 223(a)13]

4. Disproportionate Minority Contact (DMC)

From 1992 until 2002, States were to determine if minority juveniles were disproportionately confined in secure detention and correctional facilities and if so address "any features of its system that may account for the disproportionate confinement of minority juveniles." In 2002 it was amended to read " 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 minority groups, who come into contact with the juvenile justice system;." [Section 223 (a) 22]

5. 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), 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, which is in compliance with the requirements in paragraph (11) and paragraph (13), and which has enacted legislation which conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively;." [Section 223(a)14]

---

<sup>17</sup> Youth Court Act 41-5-133 is more restrictive, providing for initial court appearances within 24 hours.

## **INTENT OF THE JJDP ACT**

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

The DSO requirement has been a part of the JJDP ACT since its inception in 1974. The DSO reflects the following principles:

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

The JJDP ACT does not ignore the problems of status and non-offenders. Instead, the JJDP ACT has supplied federal funds to the states, who meet the core requirements, to develop a comprehensive continuum of care. The JJDP ACT encourages the creation and implementation of community-based treatment, diversion and delinquency prevention programs.<sup>18</sup> The JJDP ACT emphasizes the importance of these programs as appropriate, and cost effective, alternatives to secure confinement. The maintenance of this requirement promotes just policies concerning status and non-offenders, and it upholds the necessary distinction in treatment strategies for the status and non-offenders versus the more serious juvenile offender.

### **Statutory Exceptions to the DSO Requirement**

In the 1980 amendments to the JJDP Act, Congress enacted a provision intended to address concerns that the DSO mandate deprived juvenile court judges of a significant option in handling certain chronic status offenders. This modification of the JJDP Act was meant to be applied sparingly to the small number of status offenders that “continually flout the will of the court.”

Statutory exceptions are defined in the JJDP ACT and established by Congress. Their interpretation is strictly defined by the statute. These exceptions allow states to remove from consideration, for compliance purposes, offenses that constitute:

- violation of a valid court order;
- violation of Section 922(X) of the Title 18 (handgun possession on school grounds) or similar state law;

---

<sup>18</sup> FOR MORE INFORMATION ABOUT AVAILABLE GRANTS TO DEVELOP COMMUNITY-BASED PROGRAMS VISIT THE MONTANA BOARD OF CRIME CONTROL WEBSITE AT [HTTP://MBCC.STATE.MT.US](http://mbcc.state.mt.us) “APPLYING FOR GRANTS” OR CALL THE JUVENILE JUSTICE SPECIALIST AT (406) 444-3651.

- or handling of youth in accordance with the Interstate Compact as implemented by the State (reference Appendix A).

### **Exception for Violation of a Valid Court Order (VCO)**

The exception provides that status offenders found to have violated a Valid Court Order (VCO) may be securely detained in a juvenile detention or correctional facility.

A non-offender, such as an alien, alleged dependent, abused or neglected child, and civil offenders, cannot be placed in a secure juvenile detention facility for violating a valid court order.

Prior to 2003, Montana's definition of a delinquent youth meant, "a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth: (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or (b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation. Because Montana's formal court proceedings did not provide for all of the new conditions placed in the 2002 amendment to the JJDP Act for determining if a valid court order existed, the MT Legislature amended the definition of delinquent youth by removing the clause "or a youth in need of intervention". This action eliminated the use of the Valid Court Order exception in MT.

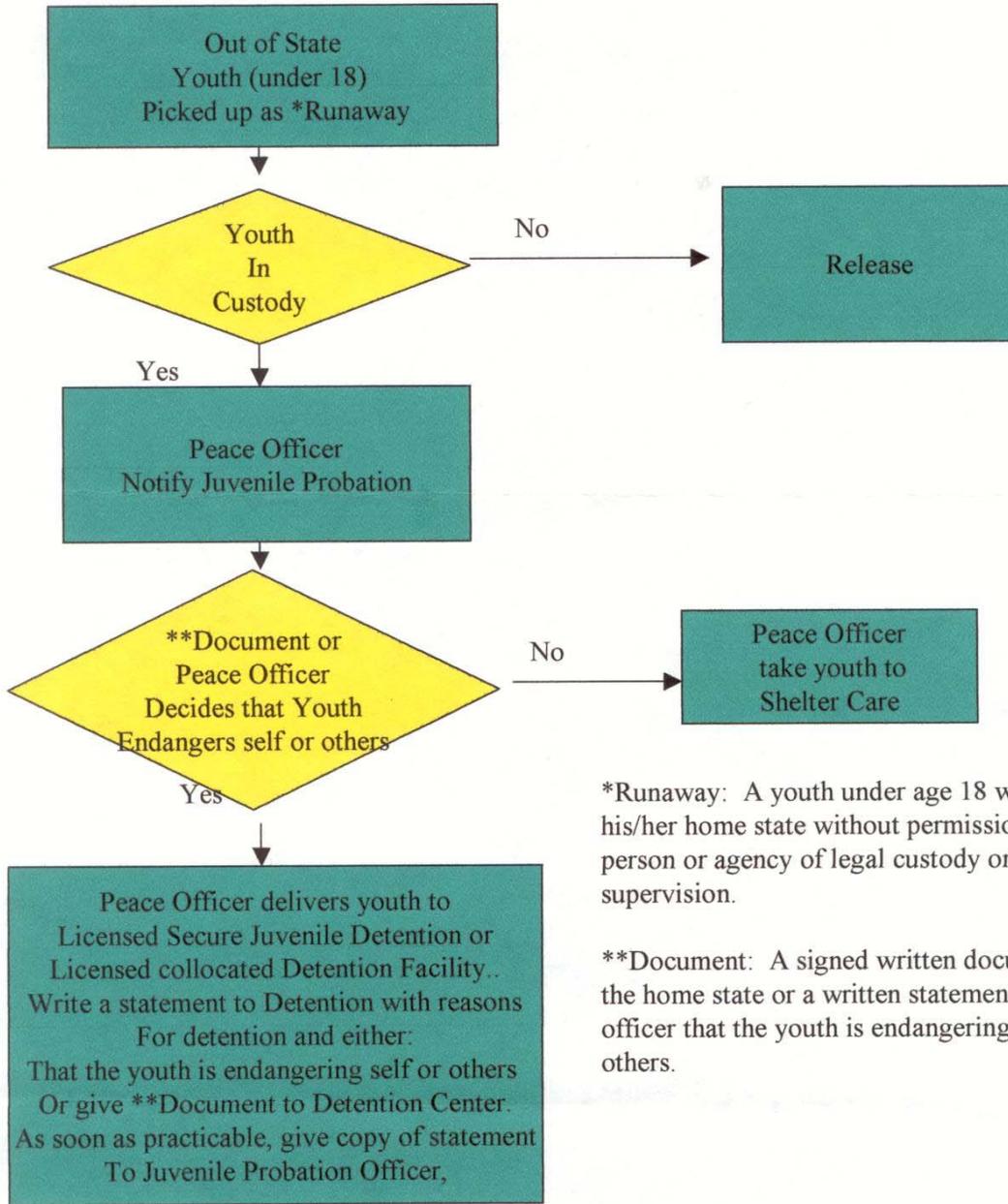
### **Exception for Title 18, Handgun Possession on School Grounds**

Montana's law that prohibits weapons on school grounds applies to both adults and juveniles, therefore this offense is a criminal and not a status offense in Montana.

### **Exception for Youth Subject to the Interstate Compact**

Montana participates in the Interstate Compact for youth. The State Department of Corrections (DOC) is responsible for the administration of the Interstate Compact in Montana. MBCC and DOC jointly developed the following diagram to help juvenile justice professionals determine how to handle youth subject to the Rules of the Interstate Compact.

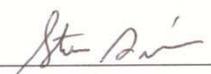
Decision Tree for Runaway youth from outside Montana



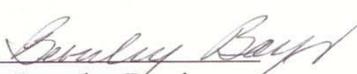
\*Runaway: A youth under age 18 who has left his/her home state without permission of the person or agency of legal custody or supervision.

\*\*Document: A signed written document from the home state or a written statement by a peace officer that the youth is endangering self or others.

The Montana Department of Corrections, Board of Crime Control and Office of Court Administration agree to this Decision Tree as of January 31, 2003.

  
Steve Gibson  
Administrator  
Juvenile Corrections Division

  
Jim Oppedahl  
Executive Director  
Montana Board of Crime Control

  
Beverley Boyd  
Court Services Director  
Court Administration

## **No Contact with Incarcerated Adults**

The No Contact requirement, formerly known as the Sight and Sound Separation requirement, has been part of the JJDP ACT since its beginning in 1974. It was passed by Congress in response to the fact, supported by research, that juveniles placed in adult facilities where they had contact with adult inmates and correctional staff were frequently the victims of physical, mental, sexual, and emotional abuse, and the discovery that juveniles in contact with adult prisoners are exposed to the tools and training necessary to engage in criminal behavior.

In addition to protecting juveniles against abuse and corruption, sight and sound separation reinforces acceptable professional guidelines.

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

The separation of juveniles from adults allows for the immediate mobilization of effective, appropriate services for juveniles. The separation requirement maintains the safety of juveniles while focusing attention on their diversion to the necessary community resources.

## **Juvenile Jail Removal Initiative**

The Jail Removal requirement added to the JJDP ACT in 1980, was in part, a method for addressing the unintended consequences of the sight and sound separation requirement.

To meet the separation requirement, juveniles were frequently held in jail environments that resembled solitary confinement. As a result of this isolation, the suicide rate of juveniles was found, according to a 1980s study by Community Research Associates, to be seven to eight times greater than that of juveniles held in juvenile detention centers.

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

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

The National Council on Crime and Delinquency, the Coalition for Juvenile Justice, the National Sheriff's Association, the Institute for Judicial Administration, the National Advisory Commission on Law Enforcement, and essentially every national

organization representing law enforcement and the judicial system, recommends or mandates standards that forbid the jailing of children. The intent of Jail Removal is not to release juveniles who, because of the offenses and their history, need to be securely detained, but to promote the appropriate secure confinement of these juveniles in juvenile facilities. Juvenile facilities can provide both for the public safety and the specific evaluation and treatment needs of the juvenile.

## **Rural Exception to the Jail Removal Requirement**

This exception was added to the JJDP Act to prevent penalizing those communities with limited access to court personnel for probable cause hearings, and to provide for the safety of juveniles and justice personnel where adverse weather or travel conditions prevented safe transport of youth to juvenile facilities.

The JJDP Act allows for a delay of 48 hours in the probable cause hearing. However MCA 41-5-349 is more restrictive, limiting placement of youth in jails or other adult detention facilities to 24 hours, excluding weekends and legal holidays, awaiting a probable cause hearing pursuant to 41-5-332. Therefore in MT the rural exception applies where:

1. The facility is located outside a metropolitan statistical area, as defined by the federal Office of Management and Budget<sup>19</sup>; **and**
2. Alternative facilities are not available or do not provide adequate security; **and**
3. The youth is kept in an area that provides physical as well as sight and sound separation from adults accused or convicted of criminal offenses; **and**
4. The youth is awaiting a probable cause hearing pursuant to 41-5-332; or
5. is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hour after the time that such conditions allow for reasonably safe travel.

Facilities in non-MSA's will be found in violation if they:

1. Hold a youth beyond 6 hours and release the youth without a probable cause hearing; or
2. Hold a youth in excess of 24 hours, excluding weekends and holidays, before or after a probable cause hearing, without also providing

---

<sup>19</sup> As of October 2005, this is everywhere except Billings, Missoula, and Great Falls. Micropolitan areas such as Bozeman and Kalispell need to check often as their growing populations may change their status in the near future.

independent documentation of severely adverse conditions of safety that prevented transport to a juvenile detention facility;

3. Hold a youth without sight and sound separation from an adult.

The clock starts the moment a juvenile is placed into a locked setting. This includes any lockable room that cannot be unlocked from the inside, or when a juvenile is cuffed to a stationary object.

Once started, the clock cannot be turned off, even if the juvenile is removed briefly from the locked setting.

The following circumstances **do not** start the clock:

- 1) the juvenile is placed into a locked squad car,
- 2) the juvenile is handcuffed to him or herself,
- 3) the juvenile is in a secure booking area while being processed (*not pending processing nor after processing*) and is under continuous "in-person" supervision, or
- 4) the juvenile is placed into an unlocked room with freedom of movement from the facility.

## Compliance Monitoring

Assessing compliance affects the state's eligibility for formula grant funding and participation in various programs offered through the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Non-compliance with any of the four core requirements of the JJDP Act (De-institutionalization of Status and Non-offenders, No Contact with Incarcerated Adults, Jail Removal and DMC) results in a reduction of not less than 20% of the funds awarded to the state for each paragraph violated. In addition, the State shall be ineligible to receive any allocation under the Act unless the State agrees to use 50% of the amount allocated to achieve compliance with the violated requirement(s). An effective compliance monitoring system clarifies gaps in the continuum of care and highlights challenge areas in a state's juvenile justice system. As a result, compliance monitoring can represent a component in the process of state policy and program development.

The Delinquency Prevention Program, under Title V of the JJDP Act, requires localities to provide certification of compliance with the JJDP Act in order to be eligible for these funds.

Compliance monitoring contains four primary components:

- 1) **Identification of the Monitoring Universe.** Compiling a comprehensive list of the facilities and programs that could hold juveniles pursuant to public authority.
- 2) **Classification of the Monitoring Universe.** Determining which agencies and facilities must be monitored for compliance with the JJDP Act.

- 3) **Facility Inspections.** Secure adult jails and lockups are inspected to review the physical structure to ensure sight and sound separation of juveniles from incarcerated adults and to determine that policies and procedures remain consistent with the Youth Court Act and JJDP Act guidelines. All secure juvenile facilities are inspected in order to review record keeping systems and reporting procedures. An additional sampling of non-secure facilities is required to assure consistency in classification.
- 4) **Collection and Verification of Data.** Data regarding the secure detention of juveniles shall be collected and verified for accuracy and consistency. The data collection provides the information necessary for assessing violations and determining compliance levels with the JJDP Act.

Montana's plan for monitoring compliance with the JJDP and Youth Court Acts is available for download from our web site at:

<http://www.bccdoj.doj.state.mt.us/juvjust/index.shtml>

### **Disproportionate Minority Contact, formerly Confinement (DMC)**

DMC was added during the 1988 reauthorization of the JJDP Act to address Disproportionate Minority Confinement. In 2002 the language was changed to address Disproportionate Minority *Contact* with the juvenile justice system. The DMC requirement, by examining the entire system, now takes a comprehensive approach to the issue of minority over-representation. The addition of DMC represents a commitment to the equitable treatment of all juveniles, regardless of race, ethnicity, and culture, and it strives to enhance the integrity of the juvenile justice system.

Data collected through the Department of Corrections and the Board of Crime Control consistently showed that Native American youth were confined anywhere from 3 to four times what could be expected given that they only comprised 8% of the general juvenile population of the state. Data analysis indicated that minority youth were over-represented at all decision points of the juvenile justice system, referral through disposition.

In 2002, a position paper developed by Drs. Feyerherm and Butts and paid for by OJJDP determined that the method used by OJJDP to calculate DMC consistently overstated DMC in lightly populated states such as Montana, while understating DMC in heavily populated states. In 2005 Dr. Feyerherm delivered a new tool to MT that will indicate if calculations are statistically valid for MT's small numbers. MBCC is in the process of developing a webpage dedicated to DMC where the results of DMC analysis and other DMC information will be available: [www.mbcc.mt.gov](http://www.mbcc.mt.gov)

In other states it is not uncommon to find that a minority youth who commits the same offense as a non-minority youth often receives a harsher disposition. The maintenance of a system that may practice discrimination undermines the integrity of the juvenile justice system and the principle of equal justice under the law.

The contention that minority juveniles commit more offenses and more serious offenses falters with the disparity of treatment existing between minority and non-minority juveniles sharing similar histories and committing similar offenses. The fact that virtually every state, excluding Vermont, has identified the over-representation of minorities in detention and/or correctional facilities supports the need for the maintenance of the DMC requirement. The leadership provided by the JJDP Act has initiated this widespread, essential effort to attain justice for all juveniles.

## **JUVENILES AND THE ADULT COURT**

According to the December 10, 1996 Federal Register, 31.303(e)(2), "juveniles formally waived or transferred to criminal court and against whom a criminal charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges" are considered adults and do not fall under the purview of the JJDP Act.

However MCA 41-5-206(7) is more restrictive than the JJDP Act and requires that the youth be handled as a youth until after the transfer hearing if the District Court retains jurisdiction in the case. It then further requires that they be maintained sight and sound separate from incarcerated adults until adjudicated by the district court. Once adjudicated, the district adult court retains jurisdiction until the youth attains the age of 21.

Transferring juveniles or direct filing to adult court, although initially appearing to be an effective response to juvenile crime, does not necessarily provide the expected outcomes of greater deterrence, harsher sentences, and prevention of recidivism.

- ◆ In states that possess harsh automatic transfer laws, there has been no evidence that these punitive policies have any deterrent effect.
- ◆ Transfer to adult court may not result in harsher sentencing. The U. S. Department of Justice noted that in 1991, 44% of the cases in which a juvenile was transferred to criminal court involved property offenses, and these less serious offenses are likely to result in plea bargains in the overburdened adult criminal court system, at least do not result in incarceration.
- ◆ A study conducted in 1991 suggests recidivism rates may be lower for juveniles sanctioned in juvenile court than for juveniles sanctioned in adult court.
- ◆ Research on the transfer/waiver of juveniles to adult court documents the presence of disproportionately large numbers of minority youth being transferred in comparison to non-minority youth.

The belief that the adult system contains the resources to distribute more effective, efficient, and appropriate punishment and rehabilitation for juveniles is not widely supported in actual practice. Relying on an adult system, where effectiveness in dealing with adult criminals has been widely questioned, to deal with the problems of juveniles undermines the intention behind the creation of a juvenile justice system.

The juvenile system is an integral part of a society whose future is built upon the integrity, vision, and self-reliance of its youth. The widespread transfer of juveniles, at increasingly younger ages, to the adult system represents the relinquishment of the hope of rehabilitation and the abandonment of core juvenile justice principles.

## FACILITY REQUIREMENTS

Each type of facility is subject to compliance with some or all of the core requirements. The following chart was developed as a reference guide to understand which core requirements apply based on the facility type.

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT				
<i>Facilities Monitored for Compliance with Core Requirements</i>				
Each type of facility is subject to compliance with all or a portion of the core requirements. This chart shows the facilities and the core requirement for which they are monitored.				
Type of Facility	DSO	S/S	JR	DMC
Adult Jail/Lockup	Yes	Yes	Yes	Yes
Juvenile Detention/Correctional Facility	Yes	No	No	Yes
Collocated Facility	Yes	Yes	No	Yes
Non-secure Holdover	No	No	No	Yes
Secure Court Holding	Yes	Yes	No	Yes
KEY TO COLUMN HEADINGS				
DSO Deinstitutionalization of Status and Non-offenders				
S/S Sight Sound Separation (No Contact with Adult Inmates)				
JR Removal of Juveniles from Adult Jails & Lockups				
DMC Minority Detention and Confinement				

Since there are differences between the JJDP Act and the Montana Code Annotated (MCA) the following chart was developed as a reference guide to understand what a compliance monitor will look for based on offender type and facility type. Note that where MCA is more stringent than the requirements of the JJDP Act, the chart lists compliance with the MCA.

**CUSTODY RESTRICTIONS<sup>20</sup> FOR YOUTH IN SECURE FACILITIES**

TYPE OF JUVENILE	TYPE OF FACILITY	ADULT JAIL, LOCKUP OR UNLICENSED COLLOCATED FACILITY IN AN MSA <sup>21</sup>	ADULT JAIL, LOCKUP OR UNLICENSED COLLOCATED FACILITY IN A NON-MSA <sup>22</sup>	LICENSED JUVENILE DETENTION OR COLLOCATED FACILITY
<i>Non-offender/ Offender/Civil Offender</i> <b>Either accused or Adjudicated</b>	<i>Status</i>	Can't be securely held		
<b>Accused Criminal-type offender.</b>		If kept sight & sound separate from adult offenders, can be held up to six hours but in no case overnight for the purpose of identification, processing or transfer of the youth to an appropriate juvenile detention or shelter care facility	If kept sight & sound separate from adult offenders, can be held up to 24 hours, excluding weekends and legal holidays, pending a probable cause hearing or pending safe travel conditions.	May be held up to 24 hrs. pending probable cause hearing. If probable cause found during hearing, may be held any length of time pending disposition of the case. <b>If probable cause not found or hearing not held within 24 hours, youth must be immediately released from custody</b>
<b>Adjudicated Criminal-type offender.</b>		<b>Can't</b> be held for any length of time		<b>Can</b> be held for any length of time
<b>Youth whose petition has been filed in district court prior to formal proceeding in youth court and prior to transfer hearing.</b>		Can be held up to six hours but in no case overnight for the purpose of identification, processing or transfer of the youth to an appropriate juvenile detention or shelter care facility	Can be held up to 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to 41-5-332 and maintained sight & sound separate from adult offenders	May be held until age 18, then must be immediately removed to an adult facility.
<b>Youth whose petition has been filed in district court prior to formal proceeding in youth court and after transfer hearing and district court retains jurisdiction</b>		Youth may be detained pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses		Pending disposition of the case may be held until age 18, then must be immediately removed.
<b>Criminally convicted youth</b>		<b>Under 16 years of age may not be confined in a state prison facility.</b> Over 17, during the period of confinement school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals with Disabilities Education Act (IDEA), 20 USC 1400, et seq.		May be held at the discretion of DOC until age 18, then must be immediately removed.

<sup>20</sup> Per either the JJDP Act of the MT Youth Court Act, whichever is more restrictive.

<sup>21</sup> MSA = Metropolitan Statistical Area per federal Office of Management & Budget. As of October 2005, Billings, Great Falls, and Missoula are MSA's.

<sup>22</sup> Without appropriate alternative placements available.

## RECORD KEEPING REQUIREMENTS:

Asterisks identify minimum information to be recorded on juveniles held in a non-secure environment. **All the following information must be recorded on juveniles held in a secure environment:**

- Name\*
- Juvenile Courts and Tracking System (JCATS) ID number (If Youth Court or DOC youth)
- Sex\*
- Race\*
- If non-secure hold, most serious offense or if non-offender, reason taken into custody\*
- If secure hold, most serious offense<sup>23</sup>
- Jurisdiction (i.e., Youth Court Judicial District, Department of Corrections, District Court Judicial District, Federal Court (INS, BIA, or Other), Tribal Court and Tribe, Interstate Compact, etc.)\*
- County/Tribe of jurisdiction
- Date and time the juvenile was placed in a secure area
- Date and time the juvenile was released from the secure area
- Name of person to whom the youth was released
- Capacity of person to whom the youth was released. (i.e., parent, probation officer, transportation officer, etc.)
- If youth transferred to another facility/agency: name, type and location of facility/agency (i.e., Martin Hall, juvenile detention facility, Medical Lake, WA; Margaret Stuart Home, shelter care facility, Helena, MT; etc.)
- If securely held beyond six hours, date and time of probable cause hearing
- If youth criminal offender, per MCA 41-5-206, date and time of hearing that transferred youth to jurisdiction of adult district court.
- Indicate how youth was maintained sight and sound separate from adult offenders, including trustees.
- Documentation of any extenuating circumstances (i.e., youth are usually not securely held, but regional juvenile detention facility was full or storm and/or time or distance prevented transporting to a regional juvenile detention facility within the six hour limit, no other option available to maintain community safety, etc.)

---

<sup>23</sup> A rule of thumb is that offenses are classified from the least serious to the most serious as: non-offense, status offense, criminal-type offense, and criminally filed offense; within the criminal-type offense and criminally filed offenses a crime against a person is more serious than a crime against property. If a youth committed a criminal offense that resulted in a charge of criminal contempt or violation of a condition of probation, list the criminal offense. If not, then list the most serious offense from the original case.

## **REPORTING REQUIREMENTS:**

To demonstrate compliance with the Juvenile Justice and Delinquency Prevention Act of 1974, as Amended and the Youth Court Act, all adult jails must report **monthly** to Montana Board of Crime Control (MBCC) the following information:

1. Dates covered by the reporting period
2. Whether any juveniles were held in a secure custody status during the reporting period. If no juveniles were held, the remaining reporting items do not apply for this reporting period.
3. All information required to be kept on youth held in secure custody

## **ON-SITE MONITORING:**

The Youth Court Act provides MBCC rulemaking authority to carry out and monitor compliance with the provisions of the Youth Court Act and the Juvenile Justice and Delinquency Prevention Act, as Amended. During on-site visits, monitors expect to view relevant records and court documents for all youth held for any length of time at the facility, tour the facility and interview staff about policies and procedures. Monitors will carry appropriate documentation to identify them as representatives of MBCC.

Failure to comply with the provisions of either Act can result in the loss of federal and state grant funds to the county as well as increased liability to the Law Enforcement Department.

## **STANDARDS APPLICABLE TO ALL ADULT JAILS AND LOCKUPS:**

Officer must contact parents, legal guardians, responsible person or agency for notification and release of any juvenile taken into custody. If a responsible adult cannot be located, the person/agency responsible for juvenile intake/assessment shall be contacted.

### **Status offenders, non-offenders, and civil-type offenders:**

1. Must not be placed in secure custody under any circumstances;
2. Must not be cuffed to a cuffing rail or other stationary object;
3. Must not be placed in any room that has a lock on the door that cannot also be opened from the inside without a key.
4. May be placed in a non-secure area until release or transfer arrangements can be made;
5. May be cuffed to themselves;
6. Status offenders may be processed in a secured booking area provided that:
  - a. There are no incarcerated adults present (If youth must pass areas where adult offenders are incarcerated to access the booking area, doors to the

area where adults are held must be closed and windows covered to maintain sight and sound separation.) and

- b. Status offenders are removed immediately following the booking process.

### **Adjudicated criminal-type (delinquent) youth offender:**

May *not* be securely held in an adult jail or lock-up for any length of time.

### **Youth accused as a criminal offender:**

Per MCA 41-5-206(7), if a youth's case is filed in the district court *and remains in the district court after the transfer hearing*, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses.

### **Youth adjudicated as a criminal offender**

Per MCA 41-5-206(6) and Part 25 of the Youth Court Act, known as the Criminally Convicted Youth Act, the district court retains jurisdiction over the youth until the criminally convicted youth attains the age of 21. A youth who is sentenced to the Department of Corrections (DOC) must be evaluated and placed by DOC in an appropriate juvenile or adult correctional facility. *However, a youth under 16 years of age may not be confined in a state prison facility.* During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

## **STANDARDS APPLICABLE TO ADULT JAILS OR LOCKUPS AND UNLICENSED COLLOCATED DETENTION FACILITIES LOCATED IN METROPOLITAN STATISTICAL AREAS (MSA'S):**

These additional standards are applicable to adult jails or lockups located in metropolitan statistical areas (MSA's) as defined by the federal Office of Budget and Management<sup>24</sup> and to non-MSA's that have alternative placements available.

### **Accused criminal-type (delinquent) youth offender**

May be temporarily placed in secure custody, in quarters with sight and sound separation from incarcerated adults for up to 6 hours from the time they enter a secure custody status, but in no case overnight, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility.

The six-hour holding time limit is for processing and release and never to be used as a punitive measure. The clock will begin when the juvenile enters a secure setting.

---

<sup>24</sup> As of October 5, 2005 MT had three MSA's, Billings, Great Falls, and Missoula.

*Once the clock starts, it cannot be turned off, even if the juvenile is removed from the locked setting.*

## **Violations:**

Violations of either the JJDP Act or the Youth Court Act occur under any of the following circumstances:

- (1) Any non-offender, status, or civil offender placed in a secure or residential room or cell or cuffed to a stationary object.
- (2) Any juvenile occupying the booking area at the same time as an incarcerated adult.
- (3) Any accused criminal-type offender securely held over 6 hours from the time they enter a secure custody status.
- (4) Any adjudicated criminal-type offender held for any period of time.
- (5) Any juvenile in secure custody status that has any physical or sustained sight or sound contact with an incarcerated adult.
- (6) Any juvenile held for six hours or less for punitive reasons.
- (7) Any youth currently held at the facility that self-identifies a different race/ethnicity than the race ethnicity reported to MBCC.

## **STANDARDS APPLICABLE TO ADULT JAILS AND LOCKUPS IN NON-MSA'S:**

These additional standards are applicable to adult jails or lockups located in non-metropolitan statistical areas (non-MSA's) as defined by the federal Office of Budget and Management that have no alternative placements available.

### **Accused criminal-type (delinquent) youth offenders:**

Should be detained non-securely while in custody unless they pose a flight risk, are violent or combative juveniles who cannot be subdued and pose a threat to the officer, themselves, or the public.

Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer shall:

1. Notify the probation officer immediately and
2. As soon as practicable, provide the probation officer with a written report of the peace officer's reasons for holding the youth in detention<sup>25</sup>.

If it is necessary to hold the youth pending an appearance before the youth court, then the youth must be held in one of the following facilities and approved by the youth court:

- A. a short term youth detention center;
- B. a youth detention facility, including a regional youth detention facility;

---

<sup>25</sup>Reference sample "Juvenile Incarceration Assessment" Form

- C. or a secure juvenile detention facility outside the state or operated by an Indian tribe that is under contract to the state or a subdivision of the state and that is in substantial compliance with the licensing requirements contained in rules adopted by the Department of Corrections.

Accused criminal-type youth offenders may be temporarily placed in secure custody in an adult jail or lockup in non-metropolitan areas where no alternative placements exist, in quarters with sight and sound separation from incarcerated adults for up to 24 hours, excluding weekends and holidays, **pending a probable cause hearing** or where conditions of travel pose a substantial threat to safety.

The 24 hour, exclusive of weekends and holidays, holding limit is for processing and release and never to be used as a punitive measure<sup>26</sup>. The clock begins when the juvenile enters a secure setting and once the clock starts it cannot be turned off, even if the juvenile is removed from the locked setting.

- 2. Adjudicated criminal-type youth may not be placed in secure custody in a jail or other adult detention facility.

### **Violations:**

Violations of either the JJDP Act or the Youth Court Act occur under any of the following circumstances:

- (1) Any juvenile status, civil or non-offender is placed in a secure or residential room or cell or is cuffed to a stationary object.
- (2) A juvenile and an incarcerated adult occupy the booking area at the same time.
- (3) An accused criminal-type offender securely held over 6 hours and released to parents/guardian without a probable cause hearing.
- (4) An adjudicated criminal-type offender is securely held for any period of time.
- (5) A juvenile in secure custody status, other than one adjudicated as a criminal offender in Adult District Court, has any physical or sustained sight or sound contact with an incarcerated adult.
- (6) A juvenile is held for punitive reasons.
- (7) Any youth currently held at the facility that self-identifies a different race/ethnicity than the race ethnicity reported to MBCC.

### **LAW ENFORCEMENT DEPARTMENTS THAT DO NOT OPERATE SECURE FACILITIES:**

Recordkeeping requirements apply for youth in non-secure custody, but there is no requirement to report youth held non-securely to MBCC. If, during the onsite visit, it is

---

<sup>26</sup> Federal law requires that a juvenile may only be held beyond 6 hours pending a probable cause hearing, therefore a youth held beyond 6 hours and released without a probable cause hearing, would be a violation of federal statute.

determined that youth have been cuffed to a stationary object or held in a physically secure environment (reference definition of secure custody), monitors will collect and report the data to MBCC subject to the rules applicable to youth held in an Adult Jail or Lockup or Unlicensed Collocated Facility.

# JUVENILE INCARCERATION ASSESSMENT FORM

Intake Information	
Date and Time of Intake	
Name of Juvenile	
Arresting Officer	
Shift Supervisor	

Please answer each of the questions below by placing your initials in the appropriate Yes or No box. **Any No** indicates that secure custody is not an option for resolving this incident.

ASSESSMENT CRITERIA		YES	NO
1	Is there probable cause to believe that the youth has committed a crime?		
2	If the youth is being held for contempt or probation violation, was the offense in the original case or the violation a criminal offense?		
3	Does the nature of the criminal offense require the secure custody of this youth?		
4	Does the youth present public safety or non-appearance concerns?		
5	Does the information of the crime present cause why the youth should not be released to a parent, guardian, or other care giver in lieu of incarceration?		
6	Has a "Notice to Appear and Complaint Form" pertaining to the criminal offense charged against the youth been completed?		
7	Has the parent, guardian or another responsible family member been contacted and informed of the incarceration of this juvenile?		
CONTACT INFORMATION			
A	Name of parent, guardian, or other responsible family member contacted.		
E	Manner in which contact made. (In person, phone, written notice, etc.)		
C	Name of Juvenile Probation Officer (JPO) contacted		
D	Date and Time JPO contacted.		
E	Name of officer or staff who contacted JPO		
SIGNATURES			
Arresting Officer			
Shift Supervisor			
Transporting Officer			

