



Montana's Policies and Procedures  
Manual for Monitoring Compliance  
with Core Requirements of the  
Formula Grants Program Authorized  
Under Title II, Part B, of the Juvenile  
Justice and Delinquency Prevention  
Act (JJDP)

2023



MBCC

State of Montana

11/2/2023

**Date Initially Issued:**

October 2003

**Review schedule:**

Annually, October - December or when revisions are necessary to remain substantially current

**Last Review:**

November 2023

**Federal Law:**

Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

**Federal Regulation:**

Formula Grants Program regulation, 28 C.F.R. part 31, subpart A.

**Related Montana Code Annotated (MCA):**

Title 41, Chapter 5, Montana Youth Court Act

If you have questions about information in this publication, please call the Public Safety Program Specialist at (406) 444-3605. Service for the hearing impaired: Montana Relay 711 or <https://dphhs.mt.gov/detd/mtap/mtapmtrelay/makeacall>.

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# **I. INTRODUCTION/BACKGROUND**

## **A. Program Introduction**

Title II, Part B, of the [Juvenile Justice and Delinquency Prevention Act](#) (“JJDP Act” or the “Act”) sets out detailed requirements that a state must satisfy in order to be eligible to receive funding under the Act’s Formula Grants Program, including the submission of a state plan that satisfies the requirements set forth at 34 U.S.C. § 11133(a)(1)-(33). Under the Act, “[i]n accordance with regulations which the Administrator shall prescribe, such plan shall,” among other things—

...provide for an effective system of monitoring jails, lock-ups, detention facilities, and correctional facilities to ensure that the core requirements are met, and for annual reporting of the results of such monitoring to the Administrator[.] [34 U.S.C. § 11133(a)(14)]

## **B. Purpose of the Annotated Manual**

Montana Code Annotated (MCA) 41-5-1903 mandates that counties, as a condition of receiving funds under MCA 41-5-1902, shall comply or substantially comply with state law and policies contained in the Montana Youth Court Act concerning the detention and placement of youth. The term “youth(s)” is used interchangeably with the term “juvenile(s)” in the Montana Youth Court Act and this manual. The term “juvenile” refers to any individual under the age of full criminal responsibility (18) in the State of Montana. Individuals ages 18 and older are considered adults for the purpose of this manual. The Montana Board of Crime Control (MBCC) shall periodically review and monitor counties receiving grants under 41-5-1902 to assure compliance or substantial compliance with the Montana Youth Court Act. If, after notice and fair hearing, MBCC determines that a county is not in compliance or substantial compliance with the Montana Youth Court Act, the MBCC shall terminate the grant to the county. MCA 41-5-1907 directs MBCC to administer federal funds available under section 222 of the federal Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended (34 U.S.C. 11132), in compliance with the requirements the JJDP Act as amended in 2002 and the Juvenile Justice Reform Act of 2018. As part of these requirements, MBCC also monitors and reports data for all adult jails, adult lockups, secure detention facilities, and secure correctional facilities within the state, regardless of whether or not they receive funding through MBCC. All secure facilities will be held to the same standards of compliance with the JJDP Act.

The JJDP Act, through the Juvenile Justice Reform Act of 2018, establishes four core requirements with which participating states and territories must comply to receive Title II Formula grants under the JJDP Act:

- Deinstitutionalization of status offenders (DSO);
- Separation of juveniles from adult inmates in institutions (separation);
- Removal of juveniles from adult jails and lockups (jail removal); and
- Racial and Ethnic Disparities (RED).

In order to be eligible for a Formula Grants Program award in a given year, the state must provide for an effective system of monitoring adult jails, adult lock-ups, secure detention facilities, and secure correctional facilities for compliance with the core requirements, and for annual reporting of the results of such monitoring to the Administrator. As a participating state, Montana must develop a plan to implement and maintain compliance with the core requirements of the JJDP Act. At minimum, the plan must contain the following elements:

1. **Compliance Monitoring Policies and Procedures:** Pursuant to 28 C.F.R. § 31.303(f)(1)(i), the state must provide a written plan and procedure for annually monitoring jails, lockups, detention facilities, and correctional facilities. This plan must detail the state's implementation of key monitoring system elements (Within all Sections).
2. **Monitoring Authority:** Pursuant to 34 U.S.C. § 11133(a)(2), the designated state agency must document that it maintains requisite authority to carry out responsibilities imposed by the Formula Grants Program. This includes authority to inspect and collect data from facilities in the monitoring universe (Section 200).
3. **Violation Procedures:** Pursuant to 28 C.F.R. § 31.303(f)(1)(iii), the state's monitoring system must describe any procedures established for receiving, investigating, and reporting alleged violations of the DSO, Separation, Jail Removal, and Section 223(a)(11)(B) requirements. This description should include any legislative and administrative procedures and sanctions that exist (Section 406).
4. **Adherence to Federal Definitions:** States might have different definitions for juvenile and criminal justice terms than those in the JJDP Act and provided at 28 C.F.R. § 31.304. It is critical that any such differences are identified and fully documented. The state must indicate that where its definitions differ from federal definitions in the monitoring process, the latter will be used (Section 400).
5. **Identification of the Monitoring Universe:** All public and private adult jails, adult lockups (including court holding facilities), secure detention facilities, and secure correctional facilities (including adult prisons) must be fully identified and included in the monitoring universe, pursuant to 28C.F.R. § 31.303(f)(1)(i)(A); (Section 401).
6. **Classification of the Monitoring Universe:** Pursuant to 28 C.F.R. § 31.303(f)(1)(i)(B), the state must classify facilities in the monitoring universe to determine facility type (e.g., adult jails, adult lockups, secure detention facilities, and secure correctional facilities). This information is critical to determining the applicability of the DSO, Separation, Jail Removal, and Section 223(a)(11)(B) requirements in each facility. In addition, classification determines whether each facility is residential or nonresidential; and whether the population is juveniles only, adults only, or juveniles and adults (Section 402).
7. **Inspection of Facilities:** Pursuant to 28 C.F.R. § 31.303(f)(1)(i)(C), the state must inspect facilities to confirm classification and to verify that they are maintaining adequate sight and sound separation between detained juveniles and adult inmates. Such inspections must also assess the facility's recordkeeping and verify that facilities maintain adequate data to demonstrate compliance with the DSO, Separation, Jail Removal, and Section 223(a)(11)(B) requirements.

8. Compliance **Data Collection and Verification:** Pursuant to 28 C.F.R. § 31.303(f)(1)(i)(D), this is the actual collection and reporting of data to determine whether the facility is in compliance with the applicable core requirements. If the data are self-reported by the facility or are collected and reported by an agency other than the state agency designated pursuant to 34 U.S.C. §11133(a)(1), the plan must provide a statistically-valid procedure used to verify the reported data (Section 404).

## **II. COMPLIANCE WITH THE CORE REQUIREMENTS**

This section describes the core requirements at 34 U.S.C. § 11133(a)(11), (12), and (13).

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

#### Summary of Requirement

Pursuant to [34 U.S.C. § 11133\(a\)\(11\)\(A\)](#), juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult (status offenders), or juveniles who are not charged with any offense and are unauthorized immigrants or are alleged to be dependent, neglected or abused (non-offenders), shall not be placed in secure detention facilities or secure correctional facilities.

Compliance with the DSO requirement has been achieved when a state can demonstrate that no such juveniles were placed in secure detention and correctional facilities, or when the state's DSO rate falls below the established threshold.

#### Montana's Plan to Address Requirement

Section 41-5-341 of the Montana Code Annotated (2021) defines the criteria for placement of youth in secure detention facilities. The MCA states that a youth may be placed in a secure detention facility only if the youth:

- (1) Has allegedly committed an act that if committed by an adult would constitute a criminal offense *and* the alleged offense is one specified in MCA 41-5-206;
- (2) Is alleged to be a delinquent youth, *and*:
  - (a) Has escaped from a correctional facility or secure detention facility;
  - (b) Has violated a valid court order or the terms and conditions of the youth's conditional release agreement
  - (c) The youth's detention is required to protect persons or property;
  - (d) The youth has a pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;
  - (e) There are not adequate assurances that the youth will appear for court when required; or,
  - (f) The youth meets additional criteria for secure detention established by the youth court in the judicial district that has current jurisdiction over the youth, **or**
- (3) Has been adjudicated delinquent and is awaiting final disposition of the youth's case.

Montana refers to status offenders as "youth in need of intervention" and non-offenders as "youth in need of care" (see section III.E). MCA 41-5-341 prohibits youth who are categorized in these groups to be placed in a secure detention or correctional facility. If the facts indicate that a youth is a youth in need of care, and they have not committed a status or criminal offense, the case is immediately referred to the Department of Public Health and Human Services.

The Montana Youth Court Act does not consider unauthorized minors to be a youth in need of care, a youth in need of intervention, or a delinquent youth solely based on immigration status. Therefore, they

would be categorized as nonoffenders and may not be placed in secure adult jails and lockups, detention facilities, or correctional facilities.

Montana uses the web-based Juvenile Detention Data and Reporting System (JDDRS) to input data regarding all youth who are detained or confined. Facility administrators are required to enter the youth's name, court ID number, date of birth, gender, race/ethnicity, jurisdiction, and the most serious offense charged. Please see Section III.I (Compliance Data Collection and Verification) for a detailed description of Montana's data collection and verification process.

### Youth Handgun Safety Exception

**Definition:** Under 34 U.S.C. § 11133(a)(11)(A)(i)(I), the DSO requirement does not apply to juveniles charged with or found to have committed a violation of the Youth Handgun Safety Act (18 U.S.C. § 922(x)), or a similar state law, which prohibits a person younger than 18 from possessing a handgun. Such juveniles may be placed in secure detention or secure correctional facilities without resulting in an instance of noncompliance with the DSO requirement.

### Montana's Plan Regarding the Youth Handgun Safety Exception

Montana statute does not explicitly provide a youth handgun safety exception in its criteria for secure detention (MCA 41-5-341). For this reason, MBCC does not plan to use this exception for monitoring purposes. The placement of any status offender in a secure detention or correctional facility will be considered a violation of DSO.

### Valid Court Order Exception

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

To demonstrate compliance with the statutory requirements governing the VCO exception, states must have a process in place to verify whether court orders used to place status offenders in juvenile detention



centers (including juveniles who violate valid court orders related to their status as a juvenile), meet the following requirements (as set forth at [34 U.S.C. § 11133\(a\)\(23\)](#)):

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

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

### Montana's Plan Regarding the VCO Exception

Montana does not use the Valid Court Order exception. State statute prohibits the secure detention of status offenders, including youth who have violated a valid court order related to a prior status offense. MBCC considers the secure detention of any status offender or nonoffender to be a violation of DSO and

state law. Please refer to [MCA 41-5-341](#) for Montana's criteria for placement of a youth in secure detention.

### [Interstate Compact on Juveniles Exception](#)

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

### **Montana's Plan to Use Exception:**

Montana participates in the Interstate Compact on Juveniles through the Interstate Commission for Juveniles. According to Article 1 of the 2021 Montana Code Annotated 41-6-101: "The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in doing so have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that congress...has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime." For a full list of Montana's responsibilities in relation to the Interstate Compact, please see MCA 41-6-101 ([41-6-101. Enactment -- provisions, MCA \(mt.gov\)](#)).

The Parole & Probation Office within the Montana Department of Corrections (DOC) has appointed four state representatives from Montana's Interstate Compact Office to the Interstate Commission for Juveniles. The Interstate Compact Office works with the appropriate state or tribe to ensure the proper care and return of youth detained in Montana. While the agency supports local jurisdictions, it does not monitor them. To ensure that youth are detained or confined in accordance with laws and regulations set by the Interstate Compact, MBCC will request verification from secure detention facilities and youth courts that detain out-of-state status offenders. If the appropriate facility or agency is unable to provide sufficient assurances with backup documentation (if applicable) that status offenders are detained or confined in accordance with the Compact, MBCC will report any status offender detained as a DSO violation.

Data regarding the state and county that has jurisdiction over each juvenile is collected by the local Youth Court District (JCATS system) and juvenile detention facilities (Juvenile Detention Data Reporting System (JDDRS)). If JDDRS detects a DSO violation (based on the offense code entered), MBCC automatically receives a notice of the violation. The Compliance Monitoring Supervisor will then contact the facility to discuss the circumstances of the violation. If the status offender was detained in accordance with the Interstate Compact on Juveniles, MBCC will not report the incident as a violation.

## B. Removal of Juveniles Charged as Adults from Adult Facilities<sup>1</sup>

### Summary of Requirement

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

### [Section 223\(a\)\(11\)\(B\) Exception](#)

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

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

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

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

### Montana’s Plan to Address Requirement

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<sup>1</sup> This section of the manual references a provision of the Act that was codified at 34 U.S.C. § 11133(a)(11)(B). OJJDP refers to the requirement described in that provision as the “Section 223(a)(11)(B)” requirement.

## **Montana Board of Crime Control (MBCC) Section 223(a)(11)(B) Plan**

MBCC acknowledges that under the Juvenile Justice and Delinquency Prevention Act (JJDP Act) as amended by the Juvenile Justice Reform Act of 2018; *Section 223. 34 U.S.C. § 11133 (a)(11)(B)* requires that not later than three years (December 21, 2021) after the date of enactment of the Juvenile Justice Reform Act of 2018, unless a court finds after a hearing and in writing, that it is in the interest of justice, juveniles awaiting trial or other legal process who are treated as adults for purposes of prosecution in criminal court and housed in a secure facility:

- A. shall not have sight or sound contact with adult inmates;
- B. except as provided within **Section 223. 34 U.S.C. § 11133(a)(13)\***, may not be detained or confined in any jail or lockup for adults;

In determining whether it is in the interest of justice to permit a juvenile to be detained or confined in any jail or lockup for adults, or have sight or sound contact with adult inmates, a court shall consider:

- A. the age of the juvenile;
- B. the physical and mental maturity of the juvenile;
- C. the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;
- D. the nature and circumstances of the alleged offense;
- E. the juvenile's history of prior delinquent acts;
- F. the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and
- G. any other relevant factor(s)

Under this new requirement, if a court determines that it is in the interest of justice to permit a juvenile to be detained or confined in any jail or lockup for adults:

- A. the court shall hold a hearing not less frequently than once every 30 days, or in the case of a rural jurisdiction, not less frequently than once every 45 days, to review whether it is still in the interest of justice to permit the juvenile to be so held or have such sight or sound contact; and
- B. the juvenile shall not be detained or confined in any jail or lockup for adults or permitted to have sight or sound contact with adult inmates for more than 180 days unless the court, in writing, determines there is good cause for an extension, or the juvenile expressly waives this limitation.

### **Compliance Monitor Responsibilities:**

MBCC recognizes that new data collection requirements under section 223(a)(11)(B) of the JJDP Act came into effect on December 21, 2021; resulting in additional juvenile detention compliance monitoring responsibilities that must be adhered to:

- A. Request/Collect the written court order(s) determining that it is in the interest of justice to detain the juvenile in an adult jail or lockup or such that he has contact with adult inmates, to include the following:
  - i. Ensure there is a written court order for every 30 or (in the case of a rural jurisdiction) 45 days that the individual has been detained in the adult jail or lockup; and
  - ii. If the individual has been detained in a secure adult facility for more than 180 days, ensure there is a written court order that articulates the court's good cause finding (or indicates a waiver by the juvenile).
- B. Report this as a section 223(a)(11)(B) violation when:
  - i. A juvenile who is charged as an adult is detained in a secure adult facility-
    - a. Is not sight and sound separated from adult inmates; *and/or*
    - b. None of the exceptions provided under *section 223(a)(13) of the JJDPA (34 U.S.C. 11133(a)(13))* \* apply; **and**
  - ii. No written court order has been issued determining that the placement is in the interest of justice when the juvenile is first detained in a secure adult facility and at each subsequent 30- (or in the case of a rural jurisdiction) 45-day period, and for longer than 180 days.

**\* Section 223(a)(13) of the JJDPA (34 U.S.C. 11133(a)(13)):**

(13) provide that no juvenile will be detained or confined in any jail or lockups for adults except—

(A) juveniles who are accused of non-status offenses and who are detained in such jail or lockup 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 sight or sound 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 adult inmates in collocated facilities have been trained and certified to work with juveniles;

(B) juveniles who are accused of non-status offenses, who are awaiting an initial court appearance that will occur within 48 hours after being taken into custody (excluding Saturdays, Sundays, and legal holidays), and who are detained in a jail or lockup—

- (i) in which—
  - (I) such juveniles do not have sight or sound 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 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) 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 within 48 hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed an additional 48 hours) delay is excusable; or

(III) is located where conditions of safety exist (such as severe 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 reasonable safe travel.

**Monitoring:**

To monitor compliance with section 223(a)(11)(B) of the JJDP (34 U.S.C. § 11133 (a)(11)(B)), the facility in which the youth is held will be responsible for providing MBCC with notification that a youth has been charged as an adult and that he/she is being held in an adult jail or lockup or with sight or sound contact with adult inmates. If the youth is being detained in an adult jail or lockup and none of the exceptions in section 223(a)(13) of the JJDP (34 U.S.C. § 11133 (a)(13)) apply, the compliance monitor will request the written court order authorizing placement. Additionally, the compliance monitor will follow up with the facility to track the frequency of hearings, not less frequently than once every 30 days, or in the case of a rural jurisdiction, not less frequently than once every 45 days, to review whether it is still in the interest of justice to permit the juvenile to be so detained. The compliance monitor will request access to all subsequent written court orders authorizing the continued placement of the juvenile in an adult jail or lockup. Finally, if the youth is still detained in an adult jail or lockup or has sight or sound contact with adult inmates after 180 days, the compliance monitor will request a written court order that articulates the court's finding of good cause for an extension or documentation of a waiver by the juvenile.

The compliance monitor will continue to ensure that all juvenile detention centers and adult jails or lockups are following the core requirements of the JJDP. Data regarding compliance with section 223(a)(11)(B) of the JJDP (34 U.S.C. § 11133 (a)(11)(B)) will be recorded in the Compliance Monitoring Tool and submitted with the Montana Board of Crime Control's annual Title II application.

## C. Separation of Juveniles From Adult Inmates

### Summary of Requirement

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

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

### Montana's Plan to Address Requirement

[MCA 41-5-341](#) specifies criteria for the placement of youth in secure facilities. Nonoffenders and youth whose most serious offense is a status offense may not be placed in a secure detention facility or an adult jail or lockup. The main exception to this rule is status offenders who are detained or confined according to the Interstate Compact on Juveniles ([MCA 41-6-101](#)). Montana statute does not provide an exception to this rule for nonoffenders and status offenders who are unauthorized immigrants.

Montana requires all detention, corrections, and law enforcement officers to complete a basic training course as required in MCA 44-4-403. This training includes important legal requirements that pertain to handling juveniles, all of which reflect the most recent federal laws and regulations. Officers must pass every module in their basic training course to receive a certificate of completion. Training is conducted by the Montana Law Enforcement Academy and is regulated and approved by the Public Safety Officer Standards and Training (POST). In addition to the basic training and certification program, staff in detention and correctional facilities (whether colocated or operated independently) must complete additional training specific to their facility. Montana has two colocated facilities – Missoula County Detention Center and Pine Hills Correctional Facility. Missoula County has separate staff for the juvenile and adult sides of the facility, so only the juvenile staff receive additional training. Pine Hills holds juveniles and young adults ages 18 and older (up to age 25) who remain under extended juvenile jurisdiction. All staff receive in-depth training on youth needs, including adolescent development and trauma-informed practices.

### Juveniles Who are Transferred, Certified, or Waived to Criminal Court

**Definition:** Juveniles who have been transferred, certified, or waived to criminal court, and are therefore charged as adults, may not be detained in an adult jail or lockup or have sight or sound contact with adult inmates in a secure facility, unless it is pursuant to one of the exceptions at 34 U.S.C. § 11133(a)(13)(B).

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

## Montana's Plan to Address Requirement

State statute provides an exception to the separation and jail removal requirements for youth who are waived to criminal court. However, the courts must comply with Montana's section 223(a)(11)(B) plan, which requires facilities to inform MBCC of any juveniles who are charged as adults *and* are detained or confined in an adult jail or lockup or have sight or sound contact with adult inmates. If this occurs, MBCC's compliance monitor will remain in contact with the facility and local courts to ensure that hearings and court orders finding that it is in the interest of justice to hold the youth in an adult jail/lockup or without sight/sound separation from adult inmates will be produced every 30 days (or 45 days in rural jurisdictions).

MBCC understands that youth who have been convicted and sentenced for a criminal offense may be placed in an adult facility without sight or sound separation. However, Montana has a relatively small number of juveniles who are incarcerated every year, so it is not necessary or common to send youth charged as adults to an adult jail or prison. Male youth who are sentenced to incarceration due to a serious offense are typically housed in Pine Hills Youth Correctional. The facility has separate areas for juveniles and young adults who are under extended jurisdiction. The Montana Department of Corrections also contracts with the Five County Treatment and Youth Rehabilitation Center in Saint Anthony, Idaho to house female juveniles who are sentenced to incarceration.

## Juveniles Who Reach the Age OF Full Criminal Responsibility After Arrest or Adjudication

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

## Montana's Plan to Address Requirement

MBCC understands that juveniles who committed an offense as a juvenile and who have reached the age of full criminal responsibility after arrest and adjudication are still considered juvenile inmates and do not need to be separated. Montana's age of full criminal responsibility is 18. As stated above, Pine Hills can accommodate young adults between the ages of 18 and 25. Incarcerated youth are not moved to an adult prison until they surpass the state's maximum age of extended juvenile jurisdiction *unless* they commit a subsequent criminal offense at the age of 18 or older.

## Programs in Which Juveniles Have Sight or Sound Contact with Adult Inmates

**Definition:** Programs in which juveniles have sight or sound contact with adult inmates in an attempt to educate juveniles about life in prison and/or deter them from delinquent or criminal behavior (such as Scared Straight or shock incarceration programs) may result in instances of noncompliance with the separation (and possibly DSO and jail removal) requirements. Whether these programs result in instances of noncompliance will depend on the specific manner in which the program operates and the circumstances of the juveniles' participation in such a program.



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

### Montana's Plan to Address Requirement

Montana currently does not operate any scared straight or shock incarceration programs. Based on a lack of supporting evidence for the efficacy of these programs, it is unlikely that Montana will use shock incarceration practices in the future. If this changes, MBCC will ensure that youth and parents/guardians are notified that youth are free to leave or withdraw from the program at any time.

## D. Removal of Juveniles From Adult Jails and Lockups

### Summary of Requirement

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

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

### Montana's Plan to Address Requirement

Montana allows the use of all jail removal exceptions listed below *for youth who are alleged to be delinquent*. Status offenders, nonoffenders, and juveniles who have been adjudicated as delinquent may not be detained for any amount of time in an adult jail/lockup or with sight or sound contact with adult inmates. This would be marked as a violation by MBCC. Montana uses the most recent federal definitions of status offenders, nonoffenders, jail or lockup for adults, detain or confine, and sight or sound contact from the JJDP A Reauthorization of 2018.

MBCC also understands that to use these exceptions, the state must have in effect a policy that requires individuals who work with both juvenile and adult inmates in collocated facilities to have been trained and certified to work with juveniles. MCA 41-5-1808 requires all juvenile detention or corrections officers, including those working with both juveniles and adult inmates in collocated facilities, to complete a basic training course within the first year of employment. The Montana Law Enforcement Academy provides training specific to juveniles within their basic training course and requires officers to pass all modules before being certified to work in the field. This is a standard requirement for all law enforcement officers, detention officers, and correctional officers regardless of what population they will work with. The basic training course and other continuing education courses are POST certified. MBCC will maintain communication with the Montana Law Enforcement Academy, the POST Bureau, and the Attorney General's office to ensure that all training provided by the academy is up to date with legal requirements found in the JJDP A.

### Six-Hour Exception

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

- a. A juvenile accused of a delinquent offense may be detained for no more than 6 hours for the purposes of processing or release, while awaiting transfer to a juvenile facility, or during a period in which the juvenile makes a court appearance.

- b. A juvenile who has been adjudicated as delinquent may not be detained in an adult jail or lockup, for any length of time, without resulting in an instance of noncompliance with the jail removal requirement.

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

### Montana's Plan to Use Exception

Montana continues to use the six-hour exception, with the understanding that this exception does not apply to status offenders, nonoffenders, or a youth adjudicated as delinquent. Additionally, Montana recognizes that exceptions to the jail removal requirement are not applicable if youth have sight or sound contact with adult inmates. Section III.I describes MBCC's compliance monitoring process to ensure that youth alleged to be delinquent are not detained or confined in an adult jail or lockup for more than a combined total of 6 hours for the purposes of processing or release, during a period in which the juvenile makes a court appearance, or pending transfer to a juvenile detention facility.

### Rural Exception

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

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

### Montana's Plan to Use Exception

Most areas in Montana can be classified as rural or frontier. Information regarding rural jurisdictions and a rural exception certification are provided with Montana's annual Title II application. MBCC will continue to review guidance from the Office of Management and Budget (OMB) to determine if a jail or lockup is located outside of a metropolitan statistical area. Provided that the youth is a non-status offender, the jail or lockup is located in a rural area, and no existing acceptable alternative placement is available, MBCC will allow youth to be detained or confined in an adult jail or lockup for up to 48 hours while awaiting an initial court appearance. If any condition is not met, the adult jail or lockup cannot claim a rural exception to the jail removal requirement.

If an acceptable alternative placement, as defined by the local jurisdiction, is available, MBCC will continue to monitor adult jails and lockups for compliance with the core requirements and report violations as necessary.

### Travel Conditions Exception

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

### Montana's Plan to Use Exception

While it is rarely used, Montana does allow facilities to claim a travel conditions exception to the jail removal requirement, provided that alleged delinquent youth have no sight or sound contact with adult inmates. Typically, if a juvenile is detained or confined for more than 6 cumulative hours in an adult jail or lockup, MBCC receives a notification through JDDRS that a removal violation occurred. The contracted compliance monitor then contacts the agency to determine if the circumstances warrant an exception. In this case, adult jails and lockups need to confirm that the juvenile has no sight or sound contact with adult inmates and that the facility is located where the distance to be traveled, lack of accessible roads, or a lack of transportation will not allow for a court appearance within 48 hours. If all these conditions are met, and youth cannot be reasonably transferred to a juvenile detention facility or other placement while awaiting an initial court appearance, the incident will not be considered a violation. However, if the juvenile is detained or confined for longer than an additional 48 hours, the compliance monitor will mark the incident as a jail removal violation and follow MBCC's violation procedures.

### Conditions of Safety Exception

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

### Montana's Plan to Use Exception

Montana does use this exception where conditions of safety, including severe weather conditions, makes travel unsafe. If conditions threatening safety arise, Montana recognizes that an adult jail or lockup may continue to detain a juvenile *alleged to be delinquent* until no later than 24 hours after the time that conditions allow for reasonably safe travel. Once the juvenile has been detained for more than six hours, MBCC receives a violation notice through JDDRS. The contracted compliance monitor then contacts the adult jail or lockup. Facilities that cannot successfully verify that unsafe conditions exist and are not eligible for another exception will be notified that they are in violation of the jail removal requirement.

### **III. ELEMENTS OF AN EFFECTIVE SYSTEM OF MONITORING**

#### **A. Summary of Elements**

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

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

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## B. Compliance Monitoring Policies and Procedures

### Summary of Element

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

### Montana's Plan to Address Element

#### General policies and procedures

The MBCC Compliance Monitoring Supervisor ensures that the compliance monitoring manual is updated annually based on changes to the JJDP Act, state statute (if it is stricter than federal law), and improvements in MBCC's monitoring procedures. Compliance data and revisions to the compliance monitoring manual are submitted to OJJDP with MBCC's annual Title II application. These monitoring standards are made available to law enforcement departments and each facility type within the monitoring universe. MBCC bases its standards upon the Montana Youth Court Act, MBCC rules, the JJDP Act, and federal regulations/guidance, whichever is more restrictive.

MBCC will budget \$25,000 of Title II funds in each grant cycle to monitor compliance with the core requirements of the JJDP Act. These funds are used to secure a contracted compliance monitor who is trained and authorized to monitor all secure facilities where youth are or may be detained, including adult jails, adult lockups (including adult court holding facilities), secure detention facilities (adult and juvenile), and secure correctional facilities (adult and juvenile, including prisons). While only secure facilities (as defined in the Formula Grants Program regulation, 28 C.F.R. part 31, subpart A) will be entered in the monitoring universe, the contracted compliance monitor will continue to visit nonsecure facilities. All staff-secured facilities defined in [52-2-602. Definitions, MCA \(mt.gov\)](#) that are subject to regulation and monitoring by the Montana Department of Health and Human Services (DPHHS) are excluded from the monitoring universe. Excluded facilities include: nonsecure facilities, youth care facilities as defined in MCA 52-2-602 (foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers), and all secure residential treatment centers regulated and monitored by DPHHS with Joint Accreditation of Hospitals (JAH).

MBCC provides the contracted compliance monitor with a photo identification card that identifies the monitor as a representative of MBCC and as such has the following expectations:

- 1) Should be permitted to review records containing detention information
- 2) Will respect the confidential nature of any information obtained during the monitoring visit, including the physical plant, facility policies, and procedures;
- 3) Will not knowingly record or divulge information, which might identify a specific child except as may be required to protect the child.

The contracted compliance monitor conducts on-site visits in accordance with MBCC procedures, documents the results of the review process and compliance with the published standards for the type of facility monitored, and sends monitoring reports to MBCC and the facility that was monitored. MBCC's goal is to follow OJJDP's recommendation of inspecting all facilities in the monitoring universe once every three years. MBCC requires juvenile correctional facilities and licensed juvenile detention and collocated facilities to be monitored at least once each year. The compliance monitor will:

1. Notify the facility administrator and the sheriff, if the facility is county owned, of the date and time of the inspection at least 10 days prior to a regular onsite inspection. The contracted compliance monitor will not give prior notice when visiting a facility to investigate an allegation of a compliance violation or to follow up on a documented violation. Please see Section II.D for MBCC's violation procedures.
2. Confirm or update the classification of facilities based on the most recent federal definitions. (Section III.G). During onsite visits, the contracted monitor will query in the facility's monitoring report to determine if other facilities exist in their county used by peace officers to detain juveniles. If the county does not operate a secure facility, the monitor will request information regarding the handling and placement of youth in their custody. Additionally, the contracted compliance monitor will determine whether each facility is:
  - a. Public or Private
  - b. Juvenile facility, adult facility, or used for both
  - c. Secure or Non-Secure
  - d. In a Metropolitan Statistical Area (MSA) or a non-MSA
3. Review the facility's log of youth detained for the last 12 months in secure detention facilities, secure correctional facilities and adult jails and lockups (including secure court holding facilities), and report data to the Juvenile Detention Data Reporting System (JDDRS) to ensure that detention records are accurate and all violations were reported correctly. Facilities that are collocated have their own logs and will be monitored individually.
  - a. Ensure that adequate data and supporting documentation are maintained to determine compliance with the statutory requirements and to verify self-reported data.
  - b. Report 10% of randomly selected facility records for youth detained in the last 12 months to the JDDRS database. The contracted compliance monitor will compare these records to data entered by facility staff in JDDRS to confirm that the data is accurately reported in a manner consistent with the JDDPA and the Formula Grants Program regulation, 28 C.F.R. part 31, subpart A.
  - c. Verify that the facility maintains logs in accordance with reporting requirements (See "Record Keeping" below).
4. Inspect physical areas and conduct staff interviews to determine if youth in custody are being handled in compliance with the JDDPA, Montana Youth Court Act, and MBCC statutory and regulatory requirements. As part of the inspection, the contracted compliance monitor will note the presence of cuffing rails and benches, describe functional security features to keep juveniles securely detained, and identify physical barriers separating juveniles from adult inmates. If the facility uses time phasing as a tool to separate juveniles and adult inmates, the contracted

compliance monitor will review the facility's schedule and layout to confirm that juveniles do not have sight or sound contact with adult inmates. See section III.H for inspection procedures.

5. Conduct investigations of alleged violations and any inconsistencies in reporting that were revealed during the monitoring visit (See Section III.D, "Violation Procedures"). If violations are confirmed, the contracted monitor will complete a violation form to be stored in JDDRS.
  - a. The MBCC contracted monitor will provide technical assistance and training to those facilities not in compliance with record keeping requirements or the core requirements of the JJDP Act.
  - b. The MBCC contracted monitor will bring all cases where there is non-cooperation in aligning a facility's systems to the JJDP Act and Formula Grants Program requirements to the prompt attention of the MBCC Compliance Monitoring Supervisor in a *written* request for further action.
  - c. The contracted monitor will enter all facility monitoring information into JDDRS for the Compliance Monitoring Supervisor's review no later than 20 days after the end of the month in which the onsite visit occurred.
6. Complete a monitoring report in JDDRS and provide an electronic copy of the form and applicable attachments to the facility administrator. The original will be maintained by the contracted monitor for his/her records. Finally, a copy (with attachments) will be emailed to the Compliance Monitoring Supervisor to review and place in the appropriate file at MBCC.
7. The Compliance Monitoring Supervisor will update the master facility table, retained in the MBCC designated juvenile detention reporting database, based on the information provided in the monitoring forms and annual facility surveys with the following information:
  - a. Name of the facility subject to inspection
  - b. County in which the facility is physically located
  - c. Classification of the facility at the last onsite inspection
  - d. Reporting status (reporting or non-reporting) during the last reported calendar year
  - e. Date of the last onsite inspection
  - f. Facility's address, phone number, and reporting contact's email address
  - g. Whether the facility is in a metropolitan statistical area (MSA) or non-MSA
  - h. Sight and sound separation status of the facility at the last onsite; and inspection (sight separate, sound separate, or uses a process to maintain sight and sound separation through policy and procedure).

#### Record Keeping

All facilities in the monitoring universe are responsible for entering (as close to real time as possible, but no later than 24 hours) and maintaining data on all youth in custody. Law enforcement and facility administrators must maintain the following minimum information on all juveniles who are detained or confined in the Juvenile Detention Data Reporting System (JDDRS):

- 1) Name
- 2) Court ID number<sup>2</sup>

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<sup>2</sup> For Montana youth under the jurisdiction of Montana Youth Courts or the Department of Corrections, use the JCATS ID number. For youth under the jurisdiction of the Out of State Court, Federal Court, or Tribal Court, use an ID number that can link the information reported to MBCC with the appropriate youth's documents on file in your facility.



- Ask the court of jurisdiction for a unique identifier for the youth. For youth under the jurisdiction of Montana’s Youth Court, it is the Juvenile Court Assessment and Tracking System (JCATS) number.
- 3) Month, day, and year of birth
  - 4) Sex
    - Male
    - Female
  - 5) Race/ethnicity
    - White race – non-Hispanic
    - Black or African American– non-Hispanic
    - Hispanic or Latino of any race
    - Asian– non-Hispanic
    - Native Hawaiian or other Pacific Islander– non-Hispanic
    - American Indian or Alaskan Native– non-Hispanic
    - Other race or Mixed– non-Hispanic
  - 6) Jurisdiction
    - Adult court
    - Department of Corrections
    - Federal
      - Immigration and Customs Enforcement (ICE) (formerly INS)
      - Bureau of Indian Affairs (BIA)
      - Other
    - Out of state (interstate compact)
    - Tribal court (MBCC does not monitor tribal facilities, but a juvenile under tribal court jurisdiction may, in some circumstances, be detained in a state or local facility)
      - Blackfeet
      - Chippewa Cree (Rocky Boys)
      - Confederated Salish & Kootenai Tribes
      - Crow
      - Ft. Belknap
      - Ft. Peck
      - Northern Cheyenne
    - Youth court
  - 7) County
    - Referring County:
      - If youth is picked up on a warrant, the Montana county where the warrant was issued; otherwise “Out of State”
      - If law enforcement action, the Montana county where offense was committed
    - Where the client resides

- 8) MCA codes for the most serious offense charged; if that is criminal contempt (MCA 45-7-309) or probation violation (MCA 46-23-1012), include the original offense.<sup>3</sup>
- 9) Date and time the youth was detained within a secure facility
- 10) Date and time the youth was no longer detained within the secure facility
- 11) Date and time the youth received a probable cause hearing (aka detention hearing)
- 12) To whom the child was released
  - Correctional facility
    - In state
    - Out of state
  - Family (other than parents)
  - Foster care
  - Group Home
  - Guide Home
  - Home or parents (Use this category for emancipated youth released on his/her recognizance.)
  - Home Arrest
  - Local Law Enforcement
  - Other Detention Facility
  - Parole Officer
  - Probation Officer
  - Shelter care
  - Social Worker
  - Transport
    - In state
    - Interstate compact
  - Treatment:
    - In state
    - Out of state
  - US Marshall
  - Border Patrol (ICE)
- 13) If adjudicated delinquent youth - date and time of adjudication hearing
- 14) If accused criminal offender - date and time of transfer hearing to adult court
- 15) If adjudicated criminal offender - date and time committed to DOC as an adult.

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<sup>3</sup> For youth not under the jurisdiction of Montana District Youth Courts or the Montana Department of Corrections, use the MCA equivalents.

## C. Monitoring Authority

### Summary of Element

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

### Montana's Plan to Address Element

#### Statutory Authority

The Montana Board of Crime Control is given authority by the Montana Youth Court Act to monitor secure detention facilities, secure correctional facilities, and adult jails or lockups (including court holding facilities) for compliance with federal requirements ([41-5-1907. Compliance with federal requirements, MCA \(mt.gov\)](#)). MBCC manages state-funded grants to assist counties in establishing and operating juvenile detention services. These include juvenile detention facilities, holdovers (a nonsecure room, office, building, or other place approved for the temporary supervision of youth awaiting a probable cause hearing, release, or transfer), attendant care, home detention, and programs for the transportation of youth to regional detention facilities with the cost of detention ([41-5-1902. State grants to counties, MCA \(mt.gov\)](#)). *While the state definition of "detention" in this case includes nonsecure facilities, the contracted compliance monitor need only monitor secure detention facilities, correctional facilities, and adult jails or lockups (including court holding facilities). Non-secure facilities are not included in the Monitoring Universe.* As a condition of receiving these funds, each county shall, within a reasonable period of time, comply or substantially comply with state law and policies contained in the Montana Youth Court Act (MCA 41-5-1903(4)), which follow federal guidelines outlined in the JJDP. The Youth Court Act requires MBCC to periodically review and monitor counties receiving youth detention grants ([41-5-1903. Application for grants -- county plans -- obligation of counties receiving grants -- review and monitoring, MCA \(mt.gov\)](#)). If, after a notice and fair hearing, the board determines that a county is not in compliance or substantial compliance with the Montana Youth Court Act, the board will terminate the grant ([41-5-1903. Application for grants -- county plans -- obligation of counties receiving grants -- review and monitoring, MCA \(mt.gov\)](#)).

In addition to the three juvenile detention facilities, Montana Code Annotated [41-5-1907. Compliance with federal requirements, MCA \(mt.gov\)](#) gives the Montana Board of Crime Control the authority to administer Title II funds in compliance with the requirements of [34 U.S.C. § 11133](#). This includes monitoring all secure detention facilities, correctional facilities, and adult jails or lockups (including court holding facilities).

*Describe in detail what the monitoring authority permits the DSA to do.*

[MCA 41-5-1907](#) requires MBCC to administer federal funds in accordance with the JJDP Act. Therefore, state statute requires the board to monitor secure facilities for compliance with the core requirements. Under this authority, MBCC conducts on-site monitoring visits and desk reviews with secure detention facilities, adult jails and lockups, and secure correctional facilities. MBCC understands that it need not monitor nonsecure facilities to comply with the JJDP. However, Montana will continue to monitor these facilities for internal purposes.

The designated state agency (MBCC) is solely responsible for monitoring compliance with juvenile detention requirements, as outlined in the JJDP, in all secure detention facilities, correctional facilities, and adult jails and lockups.

**Date of Last Update or Initial Plan Implementation:** 11/2/2023

## D. Violation Procedures

### Summary of Element

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

### Montana's Plan to Address Element

MBCC receives reports of noncompliance in three ways. The first is through the Juvenile Detention Data Reporting System (JDDRS), which notifies the MBCC Compliance Monitoring Supervisor, Juvenile Justice Specialist, IT system administrator, youth detention facility director, and the individual responsible for on-site monitoring (contracted compliance monitor). This notification includes the name of the facility/juvenile, the core requirement that was violated, the site ID, and the user who inputted the data.

Second, individuals or other agencies can make a complaint to the Montana Board of Crime Control, the Youth Justice Council, the MBCC Compliance Monitoring Supervisor, and/or the contracted compliance monitor regarding an alleged violation. Most requests come to MBCC through email, but individuals can also contact MBCC by mail or phone. Contact information for the Montana Board of Crime Control and individual staff members is posted on the MBCC website at [MBCC - Board Staff \(mt.gov\)](#). Upon receiving a report of potential noncompliance, the contracted compliance monitor will contact the reported facility and determine whether the allegation can be confirmed. If so, MBCC will follow its standard violation procedures.

Finally, MBCC can discover a previously unreported violation during a compliance monitoring visit. If facility logs do not match the data reported into JDDRS, the contracted compliance monitor will investigate any inconsistency to determine if the violation was not reported or reported incorrectly. Depending on the reason for the inconsistency, MBCC will record the incident as a violation and/or provide training and technical assistance as needed.

#### What person/entity investigates reports of violations

Upon receiving a notice of violation from the JDDRS database (via email), the MBCC contracted compliance monitor will email the facility and request to review the system generated report to ensure that the violation is valid and not the result of a typographical error or missing data element. If the alleged violation is found to be a data reporting error, the facility will correct the data with support from the MBCC Compliance Monitoring Supervisor and MBCC IT if needed. The facility will not be marked for a violation, but the contracted compliance monitor will document the situation in the monitoring report. If

the facility responds that the data is correct, a record of the violation will remain in the JDDRS database and be reported to OJJDP in the annual Compliance Report. The MBCC Compliance Monitoring Supervisor will obtain and document a report of the circumstances surrounding the violation and provide technical assistance and training as needed. Data and reports will be verified by the contracted compliance monitor during the facility's onsite monitoring visit.

If MBCC receives an independent allegation of a compliance violation, the MBCC Compliance Monitoring Supervisor will:

- Document the circumstances surrounding the alleged violation and the nature of the violation;
- Review the JDDRS database for the facility named in the allegation to determine if the facility already self-reported the alleged violation, and include in the facility's file if it did not self-report the violation; and
- Forward information regarding the alleged violation to the contracted compliance monitor for investigation.

If a violation is confirmed, to whom it is reported:

The contracted monitor will visit the facility without notice to investigate the allegation. If the alleged violation is confirmed, or a new violation is revealed, the contracted compliance monitor will provide the following to the MBCC Compliance Monitoring Supervisor:

- The facility in which the violation occurred and the nature of the violation;
- Immediate on-site instruction on the measures necessary for the facility to come into compliance;
- Copies of documentation; and
- A copy of the completed monitoring report, including follow-up recommendations.

The contracted monitor will provide the MBCC Compliance Monitoring Supervisor with the final monitoring report no later than 20 days after the end of the month in which the onsite visit occurred.

Any facility found to have incurred a violation of one (or more) of the core requirements may appeal the finding to Montana's state advisory group, the Youth Justice Advisory Council (YJC) by sending a letter of intent to appeal no later than 10 days prior to the next scheduled meeting of the YJC. Currently, meetings are held the second Wednesday of March, June, September, and December. All YJC and subcommittee meetings are posted in advance to the MBCC events calendar ([MBCC - Calendar \(mt.gov\)](https://www.mt.gov/mbcc/calendar)). Letters of intent to appeal must be addressed to:

Chair, Montana Youth Justice Advisory Council  
Montana Board of Crime Control  
5 South Last Chance Gulch  
Helena, MT 59620-1408

Upon receipt of this letter, the Juvenile Justice Specialist will provide a copy of the letter to the MBCC Compliance Monitoring Supervisor to file. The Juvenile Justice Specialist and MBCC Compliance Monitoring Supervisor will work with the Chair of the YJC to schedule a hearing of the appeal on the next

meeting agenda. If the appeal is denied, MBCC will move forward based on its violation procedures described above. Facilities that do not respond to suggestions made by MBCC to come into compliance with the JJDP Act will be referred to the YJC Chair, MBCC Chair, and MBCC Director for further action. MBCC is authorized to withhold or deny state detention grant funding to counties that do not assure compliance or substantial compliance with state law and policies contained in the Montana Youth Court Act concerning the detention and placement of youth ([41-5-1903. Application for grants -- county plans -- obligation of counties receiving grants -- review and monitoring, MCA \(mt.gov\)](#)). MBCC frequently reviews state law to ensure that it remains in line with federal requirements. Title II funds given to these jurisdictions may also be impacted.

What information is collected about the type of violation:

Violations are entered into JDDRS under one of the following categories:

- 1) Jail Removal Violation
- 2) Jail Removal Adjudicated Youth Violation
- 3) Jail Removal Rural Exception Violation
- 4) Federal and State DSO Violation
- 5) Separation Violation
- 6) Alleged Parole Hearing Violation (state use only)
- 7) Probable Cause Hearing Violation (Primarily for state use, but this alerts MBCC to a violation of the section 223(a)(11)(B) requirement. Delayed probable cause hearings for juveniles charged as adults also indicate that the juvenile has not received a hearing regarding their detention in an adult jail or lockup.
- 8) Youth Placed Without Disposition Hearing (state use only)

The information entered into a violation report includes: facility name, court ID number, date of birth, jurisdiction, sex, race, primary offense code, secondary offense code, date/time in, date/time out, hours detained, detention hearing date/time, total hours detained prior to a hearing, the person or agency to whom the youth is released, the client county, referring county, violation code and description, and the placement type code (pre- or post-adjudication).

What records are kept and for how long:

MBCC has violation records as far back as 2007 in digital files. Additionally, MBCC has facility monitoring forms saved digitally from 2015 through 2021. These are backed up in JDDRS. Montana statute does not specify how long these records must be kept, so MBCC will follow the most recent federal guidance. Unless stated otherwise by OJJDP, MBCC will retain records for at least 3 years following notification by the awarding agency that the grant has been programmatically and fiscally closed, or at least 3 years following the closure of its audit report covering the entire award period, whichever is later ([Archived | Office of Justice Programs: Financial Guide - Part III - Chapter 12: Retention and Access Requirements for Records \(ojp.gov\)](#)).

**Date of Last Update or Initial Plan Implementation:** 11/2/2023

## E. Adherence to Federal Definitions

### Summary of Element

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

### Montana’s Plan to Address Element

When monitoring for compliance with the core requirements, the Montana Board of Crime Control applies the federal definition of any term related to compliance monitoring where the state definitions of the term differ from the federal definition. Where there is a difference in the definitions, the Montana Board of Crime Control acknowledges that the federal definition must be used.

SUMMARY OF ELEMENT	STATE’S PLAN TO ADDRESS ELEMENT
<p><i>Federally Defined Terms Relating to Compliance With the Formula Grants Program</i></p>	<p><i>Similar State Definitions, and How They Differ From the Federal Definition<sup>4</sup></i></p>
<p><b>ADULT INMATE</b>   <a href="#">34 U.S.C. § 11103 (26)</a> – means an individual who has reached the age of full criminal responsibility under applicable state law and has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense, and does not include an individual who (1) at the time of the offense, was younger than the maximum age at which a youth can be held in a juvenile facility under applicable state law; and (2) was committed to the care and custody or supervision, including post-placement or parole supervision, of a juvenile correctional agency by a court of competent jurisdiction or by operation of applicable state law.</p>	<p>In Montana, an “adult” means an individual who is 18 years of age or older. This is the state’s age of full criminal responsibility. Emancipated individuals under age 18 are still considered youth. MBCC uses the federal definition of an adult inmate for monitoring purposes.</p>
<p><b>ASSESSMENT</b>   <a href="#">34 U.S.C. 11103(38)</a> – includes, at a minimum, an interview and review of available records and other pertinent information – (A) by an appropriately trained professional who is licensed</p>	<p>Montana defines a “youth assessment” as a multidisciplinary assessment of youth (<a href="#">41-5-103(46)</a>). MCA 41-5-1203 (<a href="#">41-5-1203. Preliminary inquiry -- youth assessment, MCA (mt.gov)</a>) states</p>

<sup>4</sup> Although it is not necessary that a state provide citations to local law, it is good practice particularly when during the course of monitoring, designated state agencies identify competing statutes that not only do not align but may even differ from definitions provided by the JJDPA.

SUMMARY OF ELEMENT	STATE'S PLAN TO ADDRESS ELEMENT
<p>or certified by the applicable state in the mental health, behavioral health, or substance abuse fields; and (B) which is designed to identify significant mental health, behavioral health, or substance abuse treatment needs to be addressed during a youth's confinement.</p>	<p>that a youth assessment may include a chemical dependency evaluation, educational assessment, mental health assessment, and/or an assessment of the family's need for services. Assessments that are ordered while a youth is under home arrest, supervised in the community, or held in a youth assessment center must be conducted by a professional licensed by the Montana Department of Health and Human Services.</p> <p>However, an "assessment officer" defined in MCA <a href="#">41-5-103(3)</a> must be authorized by the court but is not required to be licensed in the mental health, behavioral health, or substance use fields. Assessment officers are only authorized to provide initial intake and evaluation for a youth who appears to be in need of intervention (due to an alleged status offense) or an alleged delinquent youth. MBCC will use the definition of assessment provided by the JJDPA, to include only those done by licensed providers, for the purposes of compliance monitoring.</p>
<p><b>COLLOCATED FACILITIES</b>   <a href="#">34 U.S.C. § 11103 (28)</a> – means facilities that are located in the same building or are part of a related complex of buildings located on the same grounds.</p>	<p>Montana shares the same definition of a collocated facility.</p>
<p><b>CORE REQUIREMENTS</b>   <a href="#">34 U.S.C. § 11103 (30)</a> – means the requirements described at <a href="#">34 U.S.C. § 11133(11), (12), (13), and (15)</a>.</p>	<p>Montana does not have a definition of the core requirements in former compliance manuals but does reference them in compliance monitoring procedures. MBCC will continue to use the federal definition of each requirement.</p>
<p><b>CRIMINAL-TYPE OFFENDER</b>   <a href="#">28 C.F.R. § 31.304(a)</a> – means a juvenile offender who has been charged with or adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime, if committed by an adult.</p>	<p>MBCC shares the same definition of a criminal-type offender. This manual uses the terms "delinquent youth" and "criminal-type offender" interchangeably.</p>



SUMMARY OF ELEMENT	STATE'S PLAN TO ADDRESS ELEMENT
<p><b>DETAIN OR CONFINE</b>   <a href="#">28 C.F.R. § 31.304 (b)</a> – means to hold, keep, or restrain a person such that he or she is not free to leave or that a reasonable person would believe that he is not free to leave. The exception is a juvenile that law enforcement holds solely to return him to his parent or guardian or pending his transfer to the custody of a child welfare or social service agency. In this case, the youth is not detained or confined within the meaning of this definition.</p>	<p>The Montana Youth Court Act does not have a specific definition for “detain or confine.” MBCC will default to the broader federal definition for the purposes of compliance monitoring.</p>
<p><b>INSTITUTION</b>   <a href="#">Compliance Monitoring TA Tool</a> means “a secure facility that law enforcement or a juvenile or criminal court authority uses to detain or confine juveniles or adults (1) accused of having committed a delinquent or criminal offense, (2) awaiting adjudication or trial for the delinquent or criminal offense, or (3) found to have committed the delinquent or criminal offense.”</p>	<p>Montana does not have a definition for an institution. MBCC will use the federal definition to refer to secure facilities that cannot be defined as an adult jail/lockup, a secure detention facility, or a secure correctional facility.</p>
<p><b>JAIL OR LOCKUP FOR ADULTS</b>   <a href="#">34 U.S.C. § 11103 (22)</a> – means a secure facility that a state, unit of local government, or any law enforcement authority uses to detain or confine adult inmates.</p>	<p>MCA <a href="#">41-5-103(26)</a> defines a “jail” as a facility used for the confinement of adults accused or convicted of criminal offenses. This definition includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility.</p> <p>Previous compliance manuals used the terms “adult jail” and “adult lockup” to define a jail or lockup for adults based the classification of such facilities as short-term or long-term. Montana will now use the term “jail or lockup for adults” to describe any secure facility that is used to detain or confine adult inmates. In this manual, the term “jail or lockup for adults” is often shorted to “adult jails and lockups.”</p>
<p><b>JUVENILE OFFENDER</b>   <a href="#">28 C.F.R. § 31.304 (d)</a> – means an individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by state law (i.e., a criminal-type offender or a status offender).</p>	<p>Montana uses the federal definition.</p>

SUMMARY OF ELEMENT	STATE'S PLAN TO ADDRESS ELEMENT
<p><b>MAXIMUM AGE OF EXTENDED JUVENILE COURT JURISDICTION</b>   <a href="#">Compliance Monitoring TA Tool</a> by OJJDP – means the age above which a juvenile court may no longer exercise jurisdiction under state law.</p>	<p>Courts in Montana may transfer supervisory responsibility from juvenile probation services to adult probation services for any juveniles between the ages of 18 and 20 if a hearing and written notice of transfer have been provided. Jurisdiction must be transferred to adult probation services before the youth reaches 21 years of age (<a href="#">41-5-208. Transfer of supervisory responsibility to district court after juvenile disposition -- nonextended jurisdiction and nontransferred cases, MCA (mt.gov)</a>). For serious offenses, the maximum age of extended juvenile court jurisdiction can be as high as age 25 (see description below). Montana's only secure juvenile correctional facility, Pine Hills, has a separate holding area for youth older than 18 who are under extended juvenile court jurisdiction. The Extended Jurisdiction Prosecution Act (<a href="#">41-5-1602. Extended jurisdiction juvenile prosecution -- designation, MCA (mt.gov)</a>) states that:</p> <p>Youth court cases involving youth alleged to have committed an offense that would be a felony if committed by an adult (except an offense punishable by death, life imprisonment, or 100 years) may be considered an extended jurisdiction juvenile prosecution if:</p> <ul style="list-style-type: none"> <li>a) The youth was at least 14 years old at the time of the alleged offense, the county attorney requests that the case be designated an extended jurisdiction juvenile prosecution, a hearing is held, and the court designates the case as an extended jurisdiction juvenile prosecution;</li> <li>b) The county attorney designates in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution and the youth is alleged to have committed; <ul style="list-style-type: none"> <li>i) an offense that is listed under MCA 41-5-206 (<a href="#">41-5-206. Filing in district court prior to formal proceedings in youth</a>)</li> </ul> </li> </ul>

SUMMARY OF ELEMENT	STATE'S PLAN TO ADDRESS ELEMENT
	<p><a href="#">court, MCA (mt.gov)</a>), except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed; or</p> <p>ii) any offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, in which the youth allegedly used a firearm, if the youth was at least 12 years of age at the time of the alleged offense; or</p> <p>c) After a hearing upon a motion for transfer of the matter of prosecution to the district court under <a href="#">MCA 41-5-206</a>, the court designates the case as an extended jurisdiction juvenile prosecution.</p>
<p><b>MONITORING UNIVERSE</b>   <a href="#">Compliance Monitoring TA Tool</a> – means all public and private facilities in which law enforcement or criminal or juvenile court authority detain juveniles and/or adult inmates.</p>	<p>Montana uses the federal definition.</p>
<p><b>NONOFFENDER</b>   <a href="#">28 C.F.R. § 31.304 (i)</a> – means a juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.</p>	<p><a href="#">MCA 41-3-102(35)</a> defines a “youth in need of care” as a youth who has been adjudicated or determined, after a hearing, to be or have been abused, neglected, or abandoned. MBCC currently uses these terms “nonoffender” and “youth in need of care” interchangeably. If the federal definition changes, MBCC will monitor compliance based on the most recent definition of a nonoffender.</p>
<p><b>RESIDENTIAL</b>   <a href="#">Compliance Monitoring TA Tool</a> – means equipped with beds, cots, or other sleeping quarters and has the capacity to provide for overnight accommodations for juveniles or adults who are accused of committing or who have committed an offense.</p>	<p>Montana does not have a specific definition for the term “residential,” although this term is used to describe many types of facilities. MBCC will use the federal definition for compliance monitoring purposes.</p>
<p><b>SECURE</b> as defined under <a href="#">28 C.F.R. § 31.304 (m)</a> and used to define a detention or correctional facility – includes residential facilities that include construction features designed to physically</p>	<p>Montana uses the federal definition to designate facilities as secure or nonsecure.</p>

SUMMARY OF ELEMENT	STATE'S PLAN TO ADDRESS ELEMENT
<p>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.</p>	
<p><b>SECURE CORRECTIONAL FACILITY</b>   <a href="#">34 U.S.C. § 11103 (13)</a> – means any public or private residential facility which—(1) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and (2) is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense or any other individual convicted of a criminal offense.</p>	<p><a href="#">MCA 41-5-103(6)</a> defines a “correctional facility” as a public secure residential facility or a private secure residential facility under contract with the department (of corrections) and operated to provide for the custody, treatment, training, and rehabilitation of:</p> <ol style="list-style-type: none"> <li>1) Formally adjudicated delinquent youth;</li> <li>2) Convicted adult offenders or criminally convicted youth; or</li> <li>3) A combination of the populations described above under conditions set by the department in rule.</li> </ol> <p>Montana excludes state prisons from this definition. This contradicts the JJDPa definition of a “secure correctional facility,” which includes prisons. <i>MBCC will default to the federal definition of a secure correctional facility (which includes prisons) to monitor compliance with the JJDPa.</i></p>
<p><b>SECURE DETENTION FACILITY</b>   <a href="#">34 U.S.C. § 11103 (12)</a> – means any public or private residential facility which— (1) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and (2) is used for the temporary placement of any juvenile who is accused of having committed an offense or of any other individual accused of having committed a criminal offense.</p>	<p>Montana uses the same basic definition, but also specifies in <a href="#">MCA 41-5-103(38)(a)</a> that youth may be placed in a secure detention facility as a sanction for contempt of court, violation of the terms and conditions of the youth’s conditional release agreement, or a violation of a valid court order (provided that the original offense was criminal). For facility classification and monitoring purposes, MBCC will continue to use the federal definition.</p>
<p><b>SIGHT OR SOUND CONTACT</b>   <a href="#">34 U.S.C. § 11103 (25)</a> – means any physical, clear visual, or verbal contact that is not brief and inadvertent.</p>	<p>MBCC uses the federal definition.</p>
<p><b>STATE</b>   <a href="#">34 U.S.C. § 11103(7)</a>– means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin</p>	<p>MBCC uses the federal definition.</p>

SUMMARY OF ELEMENT	STATE'S PLAN TO ADDRESS ELEMENT
Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.	
<p><b>STATUS OFFENDER</b>   <a href="#">34 U.S.C. § 11103(42)</a> – means a juvenile who is charged with or has committed an offense that would not be criminal if committed by an adult.</p>	<p>Montana uses the term “youth in need of intervention” interchangeably with the term “status offender.” <a href="#">MCA 41-5-103(51)</a> defines a “youth in need of intervention” as a youth who is adjudicated as a youth and who:</p> <ul style="list-style-type: none"> <li>(a) Commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense; or</li> <li>(b) Has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention.</li> </ul> <p>To monitor compliance with the federal DSO requirement, MBCC will use the federal definition of a status offender.</p>
<p><b>TWENTY-FOUR HOURS</b> <a href="#">Compliance Monitoring TA Tool</a> – means a consecutive 24-hour period, exclusive of any hours on Saturdays, Sundays, public holidays, or days on which the courts in a jurisdiction otherwise are closed.</p>	<p>MBCC uses the federal definition.</p>
<p><b>VALID COURT ORDER</b>   <a href="#">34 U.S.C. § 11103(16)</a> – means a court order that a juvenile court judge gives to a juvenile who was brought before the court and made subject to the order and who received, before the issuance of the order, the full due process rights that the U.S. Constitution guarantees to the juvenile.</p>	<p>Montana uses the federal definition in state statute. MBCC will continue to use the federal definition to monitor compliance with both state and federal law.</p>

Date of Last Update or Initial Plan Implementation: 11/2/2023

## F. Identification of the Monitoring Universe

### Summary of Element

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

### Montana’s Plan to Address Element

1. **At least annually**, the contracted compliance monitor will report updated facility classifications to the Compliance Monitoring Supervisor and inform him/her of what, if any, classification changes must be made in the monitoring universe. Typically, the contracted monitor contacts known facilities and requests verification that the facility is either secure or non-secure. Facilities that have construction features designed to physically restrict the movements and activities of persons in custody (such as locked rooms or buildings, fences, cuffing rails or benches, etc.) are considered secure. Secure facilities will be asked to report all youth detained or confined during the calendar year to JDDRS or provide assurances that no youth were detained or confined. The Compliance Monitoring Supervisor will add new secure facilities that have been identified in the monitoring universe and will remove (but continue to track and monitor) secure facilities that are no longer identified as secure.
2. During onsite visits, the contracted monitor will gather information to confirm the classification of each facility (see section III.G). He/she will also ask staff to identify other existing facilities in the county that are used by peace officers to place youth. The Compliance Monitoring Supervisor will review the Montana Department of Corrections website to find new and existing contracts with facilities for identification in the monitoring universe (<https://cor.mt.gov/contracts>).
3. Not less than annually, the Compliance Monitoring Supervisor will update the facility table in the MBCC designated juvenile detention reporting system and the monitoring universe based on verbal and written reports from the contracted compliance monitor.

**Date of Last Update or Initial Plan Implementation:** 11/2/2023

## G. Classification of the Monitoring Universe

### Summary of Element

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

### Montana's Plan to Address Element

After secure facilities are identified by the Title II Compliance Monitoring Supervisor using the process outlined in Section III.F, the contracted compliance monitor will classify and/or reclassify facilities during onsite visits. The contracted compliance monitor will use the most recent federal definitions and regulations for jails, lockups, secure detention facilities, and secure correctional facilities and report any changes in facility status to the Compliance Monitoring Supervisor. He/she will update the Monitoring Universe as needed to ensure that an accurate classification can be made for all secure facilities.

MBCC uses the questions below to categorize and classify each facility in the Monitoring Universe:

1. Is it public or private?
2. Is it a juvenile facility, adult facility, or used for both?
3. Is it in a Metropolitan Statistical Area (MSA) or a non-MSA?
4. Is the secure facility short term or long term? Short-term facilities will be classified as adult lockups and long-term facilities will be classified as adult jails when a distinction needs to be made.

To assist MBCC with compliance monitoring, additional information is requested from each facility and stored in JDDRS, including:

1. Whether or not the facility is licensed.
2. If the facility is located in a Metropolitan Statistical Area as defined by the Office of Management and Budget (and, if so, when the area became an MSA).
3. The distance to the nearest juvenile non-secure facility.
4. The distance to the nearest juvenile detention facility.
5. Whether sight and sound separation is maintained physically or procedurally.

Finally, MBCC understands that facilities in the Monitoring Universe may only be categorized as adult jails, adult lockups (which include court holding facilities), secure detention facilities, and secure correctional facilities. MBCC's previous compliance manuals have mandated that non-secure "holdovers" (defined in MCA 41-5-103(24) as physically unrestricting), staff-secure juvenile programs, and non-secure law enforcement offices that do not administer an adult jail, lockup, or collocated facility must be included in the monitoring universe. Because these types of facilities are classified as non-secure based on federal definitions, they will no longer be included in the monitoring universe for federal reporting purposes. However, MBCC plans to continue monitoring these facilities on a regular basis to ensure that the rights of juveniles are protected.

**Date of Last Update or Initial Plan Implementation:** 11/2/2023



## H. Inspection of Facilities

### Summary of Element

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

### Montana's Plan to Address Element

#### Frequency of Inspections

Unless extenuating circumstances exist, MBCC schedules onsite inspections once per year for secure detention and secure correctional facilities. Inspections for adult jails and adult lockups are scheduled no less than once every three years.

#### Who Conducts Inspections

MBCC contracts with a compliance monitor to verify that facility information is correct, classify or re-classify facilities, conduct onsite inspections, follow up on self-reported or alleged violations, and submit monitoring reports to MBCC. The position is overseen by the Compliance Monitoring Supervisor.

#### What the Inspection Entails

During onsite visits, the contracted compliance monitor will review, update, and classify or reclassify facilities based on their population, physical features, and other relevant factors. The contracted compliance monitor will classify facilities using the most recent federal definitions in the JJDPa and inform the Compliance Monitoring Supervisor if the facility must be reclassified. Other information that impacts compliance monitoring is updated in JDDRS if needed.

He/she will tour the facility to confirm information regarding physical features that was self-reported by the facility. This may include but is not limited to the presence of cuffing rails and benches, functional security features to keep youth securely detained, and physical barriers separating juveniles from adult inmates. If these findings affect compliance with the JJDPa, the contracted compliance monitor will immediately go through MBCC's violation procedures and provide training and technical assistance to resolve the issue as needed. If the facility classification needs to be updated, the contracted compliance monitor will include the appropriate classification in his/her monitoring report and notify the Compliance Monitoring Supervisor.

Finally, the contracted compliance monitor will request to see any of the facility's policies and procedures that are needed to supplement the inspection and records review. He/she will interview staff to ensure that they are aware of and following the facility's policies and procedures related to juveniles. Staff should also be aware of the basic legal requirements regarding the core requirements.

#### Review of Physical Accommodations: Separation

The contracted compliance monitor will inspect the facility to confirm that:

- Juvenile residential areas are separate (by sight and sound) from adult residential areas.
- All nonresidential areas (used for booking, meals, programs, recreation, or other functions) are only used for juvenile inmates or, if shared, that the facility has adequate policies and procedures in place to ensure that youth are separated by sight and sound from adult inmates at all times. This is typically done through time phasing. The contracted compliance monitor will interview staff to confirm that they have been appropriately trained in these procedures.
- In collocated facilities, staff members who work with both juveniles and adult inmates are trained and certified to work with juveniles. Staff should be hired to work either with juvenile or adult inmates, but not both unless extenuating circumstances exist. This does not apply to specialized staff, such as counselors and medical providers.
- In adult jails and lockups that temporarily detain youth for no longer than 6 hours, unless other jail removal exceptions apply, the contracted compliance monitor will ensure that the area in which juveniles are temporarily detained is separated by sight and sound from adult inmates. If certain parts of the facility (such as the booking area), need to be shared, the contracted monitor will request written policies and procedures regarding time phasing. Staff who work with both juveniles and adult inmates must be trained and certified to work with juveniles. The contracted compliance monitor will request access to the basic training certifications for all staff to ensure that this requirement is being followed.

Findings will be recorded in the monitoring report form. If violations are found, the contracted compliance monitor will record the violation in JDDRS and notify the Compliance Monitoring Supervisor. The contracted monitor will provide training and technical assistance at the time of inspection and follow up with facilities as needed.

#### *Collocated Facilities*

The contracted compliance monitor ensures that collocated facilities meet the following criteria regarding separation:

- a) The facility must ensure separation between juveniles and adult inmates such that there could be no sight or sound contact between juveniles and adult inmates in the facility. Separation can be achieved architecturally or through time phasing of common use nonresidential areas;
- b) The facility must have separate juvenile and adult program areas, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility that provides for a full range of separate program services. Juveniles and adult inmates may not share program activities. 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;
- c) The juvenile facility must meet Montana standards and requirements on the same basis as a freestanding juvenile detention center and be licensed as appropriate. MBCC may request to review the facility's physical plant, staffing patterns, and programs to ensure that they align with prevailing national juvenile detention standards.

## Records Review

The contracted compliance monitor will review the records of adult jails and lockups, secure juvenile detention facilities, and secure correctional facilities regarding juveniles detained or confined over the past 12 months. When monitoring secure detention and correctional facilities, the contracted compliance monitor will report 10% of randomly selected records to JDDRS to ensure that the information has been adequately maintained and reported accurately. This information includes but is not limited to the youth's court ID number, date of birth, jurisdiction, sex, race, primary offense code, secondary offense code, date/time in, date/time out, hours detained, detention hearing date/time, total hours detained prior to a hearing, and the person or agency to whom the youth is released (see sections III.B and III.D for a complete list). Backup documentation may be requested as needed to investigate self-reported and alleged violations. The contracted monitor will also include in his/her inspection a review of self-reported information about the facility and its operations that may change the facility's classification or otherwise affect compliance.

### *Deinstitutionalization of Status Offenders*

All secure facilities must report the minimum required data for each youth into JDDRS (see section III.B for a complete list). For internal purposes only, MBCC will also monitor data reported by non-secure facilities). Staff must enter at least one statutory code that the youth allegedly violated. If the code entered indicates that the youth is alleged to have committed a status offense, the JDDRS system immediately sends an email notification to the facility point of contact, the contracted compliance monitor, and appropriate MBCC staff. The contracted compliance monitor will follow MBCC's violation procedures (see section III.D) if needed to correct the issue. If a juvenile is detained for violating a valid court order, the original offense code must be entered into JDDRS upon intake. This ensures that youth with an original status offense cannot be detained for a status-based violation. Because Montana does not use the valid court order exception, any entry without a code indicating that the original offense was criminal will be flagged as a DSO violation.

### *Section 223(a)(11)(B)*

JDDRS requires facility staff to input the time a juvenile charged as an adult enters and exits the facility. If this period is greater than 6 hours (excluding the amount of time a youth is in a non-secure area for court appearances), the incident will first be flagged as a jail removal violation. If the court wishes to use the section 223(a)(11)(B) exception to jail removal for a youth who is charged as an adult, a hearing must be conducted to determine whether it is in the interest of justice to detain the youth pre-trial in an adult jail or lockup, on the adult side of a collocated detention center, and/or without sight or sound separation from adult inmates.

Due to the section 223(a)(11)(B) requirement, adult jails and lockups will now be asked to provide records of court hearings and written court orders if any youth has been detained for greater than 6 hours, unless another jail removal exception applies. This will provide the contracted compliance monitor with the information he/she will need to confirm that courts are following the required procedures to detain youth charged as adults in an adult jail or lockup and/or with sight or sound contact with adult inmates. Please see section II.B for more information about MBCC's section 223(a)(11)(B) plan.

### *Separation*

The contracted compliance monitor will inspect secure facilities to ensure that appropriate physical barriers and/or time phasing procedures are in place to ensure that juveniles have no sight or sound contact with adult inmates. The contracted monitor completes a detailed form following onsite inspections. The information collected related to the separation requirement includes, but is not limited to:

- Description of the facility
- Method of sight and sound separation (physical or procedural)
- Use of facility for juvenile questioning, processing, booking, awaiting pickup by parent/guardian, secure holding, and/or to serve a disposition.
- Policies and procedures for the handling of juveniles, including separation procedures.
- Verification that individuals who work with both juveniles and adult inmates are trained and certified to work with juveniles.
- Verification that no adult inmates have sight or sound contact with youth.

### *Jail Removal*

If the facility is an adult jail or lockup, the contracted compliance monitor will follow the procedures outlined above. Additionally, he/she will tour common areas and request verification that youth are not held in a shared area at the same time as adult inmates. If any nonresidential physical spaces are shared by juvenile and adult inmates (such as for booking, eating, recreation, etc.), the contracted compliance monitor will request to see the facility's policies and procedures for time phasing and/or other means of ensuring that there is no sight or sound contact between juveniles and adult inmates. Facility staff will also be interviewed to ensure they have adequate knowledge of and are following the facility's policies and procedures regarding sight and sound separation. The contracted compliance monitor will provide onsite training and technical assistance if needed.

**Date of Last Update or Initial Plan Implementation:** 11/2/2023

# I. Compliance Data Collection and Verification

## Summary of Element

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

## Montana's Plan to Address Element

### Data Collection and Verification

Facilities in the monitoring universe must report all youth intakes to the web based Juvenile Detention Data and Reporting System (JDDRS) in as close to real time as possible but no later than 24 hours, or before a transferred youth arrives at the new facility. Generally, data entered into JDDRS will alert MBCC to potential violations and is often used to cross-check other documentation provided by facilities during the course of monitoring. Supportive documentation requested by MBCC (such as the facility layout, policies, procedures, court orders, etc.) are compared to JDDRS for consistency in reporting and are used to investigate alleged violations.

As stated previously, Montana has in effect a policy that requires individuals working with both juveniles and adult inmates to be trained and certified to work with juveniles. Montana Code Annotated [44-10-202](#). [Powers and duties of department, MCA \(mt.gov\)](#) describes the responsibilities of the Montana Law Enforcement Academy. These include developing the curriculum and methods of training for students, awarding certificates to officers who successfully complete their training, and keeping permanent records of attendance and graduation. All law enforcement officers, detention officers, and correctional officers, including those working with both juvenile detainees and adult inmates in all secure facilities (including collocated facilities) are required to take and complete this training within the first year of employment. The basic training course includes a session presented by the assistant attorney general that provides an overview of laws and requirements specific to juveniles, including the core requirements found in the JJDP Act. In addition to the minimum training required by state statute, facilities often require in-depth training in topics such as de-escalation, trauma-informed care, and adolescent development.

The following sections describe MBCC's process for collecting and verifying data related to each requirement.

### Deinstitutionalization of Status Offenders (DSO)

Section 223(a)(11)(A) of the JJDP Act states that:

"In accordance with rules issued by the Administrator, (states) provide that a juvenile shall not be placed in a secure detention facility or a secure correctional facility if –

- i. The juvenile is charged with or has committed an offense that would not be criminal if committed by an adult, excluding –
  - 1. A juvenile who is charged with or has committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar State law;
  - 2. A juvenile who is charged with or has committed a violation of a valid court order issued and reviewed in accordance with paragraph (23); and
  - 3. A juvenile who is detained or confined in accordance with the Interstate Compact on Juveniles as enacted by the State; or
- ii. The juvenile –
  - 1. Is not charged with any offense; and
  - 2. (aa) is an alien; or  
(bb) is alleged to be dependent, neglected, or abused

Upon intake, secure detention facilities and secure correctional facilities must input the legal code(s) that each juvenile violated into JDDRS. If none of the codes indicate that the juvenile allegedly committed a delinquent offense (or violated a valid court order related to a delinquent offense), MBCC will automatically be notified of a DSO violation. The contracted compliance monitor and Compliance Monitoring Supervisor will immediately follow the violation procedures in Section III.D of this manual to confirm and correct the violation. During monitoring visits, the contracted compliance monitor will review the records of secure detention and correctional facilities to ensure they match the data that has been reported in JDDRS.

*Valid Court Order and Youth Handgun Safety Exceptions – Data Collection*

Montana does not use the valid court order and youth handgun safety exceptions to DSO. Facilities must input a criminal code for each detained or confined youth upon intake. If a youth is detained for violating a valid court order or conditional release agreement, staff must enter the original criminal code as the secondary offense. If the code represents a status or civil offense, JDDRS will flag the incident as a DSO violation. Montana has a few laws regarding the possession of firearms (and other weapons) by youth, but they do not closely resemble the federal Youth Handgun Safety Act. For this reason, Montana does not use the Youth Handgun Safety exception to the DSO requirement.

*Valid Court Order and Youth Handgun Safety Exceptions – Data Verification*

As stated above, JDDRS will flag intake records without a valid criminal code as a DSO violation. Since Montana does not use the valid court order and youth handgun safety exceptions, the contracted compliance monitor does not need to verify any data that would allow these exceptions to be used. However, the contracted compliance monitor has access to juveniles’ current and prior charges in JDDRS and may request relevant court orders during monitoring visits or while investigating an alleged violation to ensure that no status offenders were detained or confined in a secure detention facility or a secure correctional facility based on these exceptions.

*Interstate Compact Data Collection*

Staff must enter the appropriate jurisdiction under which a youth is being detained. Data specifying the agency, client county, and referring county is entered in JDDRS. Out-of-state youth detained or confined

in accordance with the Interstate Compact will not be flagged as a DSO violation, regardless of the original offense. Data on these youth will be collected and verified according to MBCC policies and procedures.

#### *Interstate Compact Data Verification*

Information collected in JDDRS regarding the jurisdiction under which each juvenile is detained or confined, including the client county and referring county, will be verified by the contracted compliance monitor during onsite visits by comparing the facility's records to data entered into JDDRS. Violations and/or inconsistencies will be addressed by the contracted monitor in accordance with MBCC policies and procedures. Findings are included in the monitoring report for each facility.

#### Jail Removal Requirement

Pursuant to 34 U.S.C. § 11133(a)(13), no juvenile shall be detained or confined in any jail or lockup for adults. The JJDPa provides several exceptions to the jail removal requirement that also apply to the section 223(a)(11)(B) requirement. Section II.D of this manual describes four exceptions, which apply *only* to juveniles who are alleged to be delinquent *and* do not have sight or sound contact with adult inmates: The Six-Hour Exception, Rural Exception, Travel Conditions Exception, and Conditions of Safety Exception. None of these exceptions apply to juveniles who are accused of status offenses, juveniles who are not accused of any offense, and juveniles who have been adjudicated as delinquent. If any of these juveniles are detained in an adult jail or lockup at any time, MBCC will report the incident as a jail removal violation. Violations of the separation requirement in an adult jail or lockup will result in a jail removal violation in addition to a separation violation. MBCC understands that to detain juveniles in an adult jail or lockup for any amount of time, individuals who work with both juveniles and adult inmates must be trained and certified to work with juveniles. If any staff member working with both juveniles and adult inmates is *not* trained and certified to work with juveniles within the first year of employment, the adult jail or lockup will receive a jail removal violation for each juvenile detained or confined in the facility until all individuals working with both juvenile detainees and adult inmates have been trained and certified to work with juveniles.

The general data collected in JDDRS to ensure that facilities are in compliance with the jail removal requirement includes the juvenile's criminal offense code, hours detained (not including time spent in court), primary offense code, placement type code (pre- or post-adjudication), and evidence (based on violation reports, the physical layout of the facility, and/or written policies and procedures) that juveniles do not have sight or sound contact with adult inmates. The contracted compliance monitor will request staff training certifications and note in the facility's file whether all individuals working with both juveniles and adult inmates have been trained and certified to work with juveniles.

To verify this data, a minimum of 10% of records will be selected randomly by the contracted compliance monitor and compared to the facility's records to ensure that the data regarding each youth was entered correctly in JDDRS. A larger sample may be collected in facilities that have fewer records. The contracted compliance monitor may also request court documents from probable cause and detention hearings. These documents contain the charges, date/time of the hearing, and resulting placements (if applicable). Finally, the contracted compliance monitor will tour each facility to document the methods used to ensure

that juvenile detainees have no sight or sound contact with adult inmates. He/she will note physical features that are used to separate youth from adult inmates and may include a copy of the facility's layout, if available, in the facility's file for future reference. The contracted compliance monitor will request policies and procedures related to time phasing or other methods used to ensure compliance with the separation requirement and will interview staff to ensure that they are aware of and implementing these policies.

### Exceptions to the Jail Removal Requirement

#### **Six-Hour Exception**

If all of the conditions above are met, a juvenile accused of (but not adjudicated as having committed) a delinquent offense may be detained for a cumulative period not to exceed 6 hours:

- For processing or release
- While awaiting transfer to a juvenile facility; or
- In which period such juveniles make a court appearance, only if such juveniles do not have sight or sound contact with adult inmates and there is in effect in the State a policy that requires individuals who work with both such juveniles and adult inmates, including in collocated facilities, to be trained and certified to work with juveniles.\*

The data collected for this exception includes the date and time of intake, date and time of release/transfer, and the total amount of time the juvenile was detained. If the juvenile is detained for a court appearance, the time that he/she spends in court does not count toward the six-hour time limit. However, the rest of the time a juvenile is detained is considered cumulative. For example, a juvenile may be detained for four hours prior to a hearing and up to two hours after the hearing so long as the juvenile has not been adjudicated delinquent. Any additional time a juvenile is detained would exceed the cumulative six-hour time limit. Data will be verified by cross-checking data from JDDRS with the facility's records during monitoring visits. Court documents can also be requested to confirm the time of hearings, if needed.

Juveniles who are accused of non-status offenses and who do not have sight or sound contact with adult inmates may be detained or confined for up to 48 hours\* in an adult jail or lockup while awaiting a hearing *if* at least one of the following exceptions applies:

**Rural Exception:** The facility is located outside a metropolitan statistical area as defined by the Office of Management and Budget (OMB) and has no existing alternative placement available.

#### *MSA vs Non-MSA and Alternatives Data Collection*

The Compliance Monitoring Specialist will annually update each facility's classification as an MSA or Non-MSA in the monitoring universe based on the latest OMB data. During onsite visits, the contracted compliance monitor will review the facility's MSA classification and update if needed. He/she will also request information regarding alternative placements available to youth in or near the jurisdiction. Information regarding the rural status of a facility and nearby alternative placement options for youth alleged to be delinquent are included in the onsite monitoring report. The contracted compliance monitor



will include the approximate distance to the nearest alternative placement option available (including regional detention facilities). Finally, the contracted compliance monitor will ensure that there is no sight or sound contact in rural facilities by collecting self-reported violation data in JDDRS and investigating any alleged violations that are received by the Compliance Monitoring Supervisor or the Youth Justice Council. He/she will make note of physical barriers, time-phasing schedules, and any other policies and procedures that prevent juveniles from having sight or sound contact with adult inmates.

#### *MSA vs Non-MSA and Alternatives Data Verification*

The rural status of a facility can be easily verified based on OMB data, and both the contracted compliance monitor and the Compliance Monitoring Supervisor can view and update this data for internal and federal reporting purposes. To verify information regarding alternative placements, the Compliance Monitoring Supervisor will check the Montana DOC website for new contracts made between the Department of Corrections and adult jails, adult lockups, and juvenile detention or correctional facilities. Some adult jails and lockups in rural areas do not regularly work with juveniles. These facilities typically require more time and staff members to clear shared areas (especially booking areas). For this reason, the contracted compliance monitor will carefully review the facility's policies and procedures regarding the separation requirement. He/she will verify in staff interviews that the detention officers have thorough knowledge of their facility's procedures and can explain how separation policies and procedures are applied in practice. The contracted compliance monitor will also request evidence that individuals working with both juveniles and adult inmates have been trained and certified to work with juveniles. Certifications that officers have successfully completed basic training through the Montana Law Enforcement Academy (which includes training specific to the legal requirements of the JJDP) will be provided by the facility being monitored.

**Travel Conditions Exception:** The facility is located where conditions of distance to be traveled or the lack of highway, road, or transportation do not allow for court appearances within 48 hours\* (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed an additional 48 hours) is excusable.

#### *Travel Conditions Data Collection*

If a facility wishes to use the travel conditions exception in a particular case, staff must submit a written statement to the contracted compliance monitor via email describing the travel conditions that led to the youth being detained for greater than 6 hours in an adult jail or lockup while awaiting a hearing. Staff will attach evidence of these claims (if applicable) and estimate the time it will take for travel conditions to clear. This statement must also include a description of what measures were taken to ensure that the juvenile had no sight or sound contact with adult inmates. At minimum, the facility must note where the juvenile was detained, what physical barriers prevented the juvenile from having sight or sound contact with adult inmates, and the time phasing schedule (if applicable) used to separate the juvenile while he/she was utilizing or being transferred to and from a shared space. The contracted compliance monitor will save this communication for his/her records and will forward the email to the Compliance Monitoring Supervisor. He/she will add this to the appropriate facility's file. Additionally, the contracted monitor will check the date and time in JDDRS the youth is released to ensure that he/she has not been securely detained in an adult jail or lockup for longer than 96 hours total.

### *Travel Conditions Data Verification*

JDDRS will automatically notify MBCC staff via email of a jail removal violation after the juvenile is detained or confined in an adult jail/lockup for more than 6 hours. The contracted compliance monitor will follow the violation procedures outlined in section III.D. He/she will review the information submitted by facility staff and determine the most appropriate way to verify the data. The contracted compliance monitor may request additional documentation (if available) from the facility to support the existence of adverse travel conditions. If the contracted monitor agrees that the incident qualifies for the travel conditions exception, he/she will not mark the incident as a violation but will retain notes and documentation in the facility's file. The report will be then be forwarded to the Compliance Monitoring Supervisor and the facility point of contact. To verify that the juvenile had no sight or sound contact with adult inmates, the contracted compliance monitor will review the facility's layout to confirm that the area in which the juvenile was detained plausibly allows for adequate separation. For example, if one wall separates the juvenile from adult inmates, he/she may be separated by sight, but not necessarily sound. Facility staff may need to describe additional barriers and/or note the distance between juveniles and adult inmates to provide sufficient assurances that the separation requirement has been met. During monitoring visits, the contracted compliance monitor will inspect the facility to confirm that any area used to detain juveniles can fulfill the separation requirement (either by physical separation or time phasing).

**Conditions of Safety Exception:** A juvenile accused of a non-status offense may be detained for greater than 6 hours in an adult jail or lockup, with no sight or sound contact, if the facility is located where conditions of safety exist (such as severe, 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 reasonable safe travel.

### *Conditions of Safety Data Collection*

MBCC will receive a notification from JDDRS if a juvenile has been detained in an adult jail or lockup for more than 6 hours. In the case of dangerous weather conditions, facility staff may submit a weather report or advisory to support the use of this exception. The facility will not receive a violation until 24 hours after the conditions have cleared, as shown in an updated weather report or advisory. It is the responsibility of facility staff to notify MBCC that conditions of safety prevent them from meeting the jail removal requirement. However, the contracted monitor will follow up with the facility to request additional information as part of MBCC's violation procedures. To determine whether juveniles had no sight or sound contact with adult inmates, the contracted compliance monitor will collect the same data and assurances that he/she would request for the travel conditions exception (see above).

### *Conditions of Safety Data Verification*

The contracted compliance monitor can easily verify weather reports when he/she receives a request to use this exception or follows up on a jail removal violation. Where other conditions of safety exist, the contracted compliance monitor will use his/her discretion to gather and verify data with supporting documentation. As long as the juvenile is released from the adult jail or lockup within 24 hours after the conditions of safety resolve, the contracted monitor will not mark the incident as a jail removal violation. He/she will document the findings in the facility's JDDRS file and will forward it to the Compliance

Monitoring Supervisor for filing. To verify whether juveniles had no sight or sound contact with adult inmates, the contracted compliance monitor will follow the same data verification process he/she would use for the travel conditions exception (see above). As stated previously, a violation of the separation requirement will result in both a separation and a jail removal violation.

\*Montana Code Annotated 41-5-332 ([41-5-332. Custody -- hearing for probable cause, MCA \(mt.gov\)](#)) allows only 24 hours, rather than the federal maximum of 48 hours, to pass between the time a youth is detained in *any* secure facility (including juvenile detention facilities) and the time of his/her hearing (excluding Saturdays, Sundays, and legal holidays). It is possible that, in addition to a jail removal violation, JDDRS will identify a probable cause hearing violation after 24 hours have passed. Extenuating circumstances that qualify for a jail removal exception may also be considered by the Compliance Monitoring Supervisor during the investigation of a probable cause hearing violation. If MBCC confirms that one of the exceptions to jail removal applies, that the circumstances prevented a hearing from being held in-person or remotely, *and* that the juvenile had no sight or sound contact with adult inmates, the Compliance Monitoring Supervisor may excuse both violations. Please see the data collection and verification processes for each exception to the jail removal requirement for information regarding sight and sound separation. Violations will only be excused if the juvenile receives a hearing and is released or transferred from an adult jail or lockup within the maximum time frame allowed by the JJDPA.

#### [Section 223\(a\)\(11\)\(B\) Requirement](#)

##### *Section 223(a)(11)(B) Data Collection*

Section 223(a)(11)(B) of the JJDPA states that “a juvenile who is charged as an adult cannot be detained in an adult jail or lockup or have sight or sound contact with adult inmates in a secure facility” unless an exception in Section 223(a)(13) applies or a court determines, after a hearing and in writing, that it is in the interest of justice to do so. Based on their age and the seriousness of the offense, the county attorney may file a youth’s case directly in district (adult) court. MCA 41-5-206 lists the types of offense (by age) that a juvenile must commit to be charged as an adult ([41-5-206. Filing in district court prior to formal proceedings in youth court, MCA \(mt.gov\)](#)).

Most youth charged under MCA 41-5-206 are detained or confined in secure juvenile detention facilities. If, after a hearing and in writing, the court finds that it is in the interest of justice to detain a juvenile charged as an adult in an adult jail or lockup (or such that he/she has sight or sound contact with adult inmates) it must follow MBCC’s section 223(a)(11)(B) plan. After being notified by a facility or JDDRS that a juvenile has been detained in an adult jail or lockup and none of the exceptions in Section 223(a)(13) apply, the Compliance Monitoring Supervisor will review the youth’s intake records in JDDRS to ensure that an initial probable cause and placement hearing was conducted within 24 hours. He/she will request a copy of the written court order explaining that the court has considered all factors required by section 223(a)(11)(B) of the JJDPA and has found that it is in the interest of justice to detain the juvenile in an adult jail or lockup and/or with sight or sound contact with adult inmates. These factors include the juvenile’s age, physical and mental maturity, present mental state (including whether the juvenile represents a risk of harm to themselves), prior delinquent acts, the ability of the available juvenile and adult facilities to meet the needs of the juvenile and protect public safety and other detained youth, and

any other relevant factor. MBCC strongly recommends that courts use the sample court order, the juveniles charged as adults decision tree, and other resources provided by OJJDP. The Compliance Monitoring Supervisor will follow up with the facility every 30 days (or every 45 days in rural jurisdictions), to request a copy of each subsequent court order authorizing the continued detention of the juvenile in an adult jail or lockup, or such that he/she has sight or sound contact with adult inmates, based on the factors listed above.

The Compliance Monitoring Supervisor will collect the following data to ensure compliance with the section 223(a)(11)(B) requirement:

2. The date and time that the juvenile was initially detained in the adult jail or lockup – JDDRS database.
3. The date and time of the juvenile’s initial detention hearing and subsequent hearings- JDDRS.
4. A signed court order following each hearing (at least once every 30 days or once every 45 days in rural jurisdictions) stating that it is still in the interest of justice to detain the juvenile in an adult jail or lockup or such that he/she has contact with adult inmates. The Compliance Monitoring Supervisor will request all court orders from the facility.
5. A new hearing and court order once the juvenile has been detained for 180 days (if applicable).
6. The date and time that the juvenile is no longer detained within the secure facility, transferred to a juvenile detention facility, or found guilty in district court (at which time section 223(a)(11)(B) no longer applies).

#### *Section 223(a)(11)(B) Data Verification*

MBCC is automatically notified in JDDRS when a juvenile is detained for more than six hours (or 24 hours<sup>5</sup> for a rural jurisdiction) in an adult jail or lockup. This notification is technically described as a jail removal violation in JDDRS. However, it will trigger an investigation by the contracted compliance monitor and/or the Compliance Monitoring Supervisor into the circumstances surrounding the incident. If JDDRS data indicates that the juvenile in question was charged as an adult, MBCC will carry out its section 223(a)(11)(B) plan.

The Compliance Monitoring Supervisor and the contracted compliance monitor can easily verify data regarding juveniles detained in an adult jail or lockup by searching the juvenile’s name and date of birth (both of which are included in violation notices) in JDDRS. Juvenile detention profiles include a detailed detention intake form, a list of completed court hearings (including the date, time, location, and type of hearing), and a record of all movements (admissions, incoming/outgoing transfers, and release). The Compliance Monitoring Supervisor will also request a copy of the written court order determining that the court finds it is in the interest of justice to detain or confine the juvenile in an adult jail or lockup or with sight or sound contact with adult inmates based on the seven factors required under section 223(a)(11)(B)

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<sup>5</sup> MBCC recognizes that this relates to the rural exception of the jail removal requirement, which was discussed previously, and that 34 § U.S.C. 11133(a)(13)(B)(ii)(I) allows a juvenile to be detained for up to 48 hours in rural jurisdictions. However, it is important to note for the purpose of this section that JDDRS will send a violation notice after the juvenile has been detained longer than 24 hours (the maximum time allowed under state law).

of the JJDPA. MBCC encourages courts to use the sample "Judgment Entry/Magistrate Order on Confinement of Juvenile Charged as an Adult" and "Juveniles Charged as Adults Decision Tree" provided by OJJDP. The Compliance Monitoring Supervisor, with assistance from the contracted compliance monitor, will follow up with the facility every 30 days (or 45 days in a rural jurisdiction) to request information regarding the date/time of the youth's hearing and a *new* written court order authorizing the continued placement of the juvenile in an adult jail or lockup. The Compliance Monitoring Supervisor will import the court orders directly into the juvenile's file in JDDRS for future reference.

Finally, the Compliance Monitoring Supervisor will follow up with the facility prior to 180 days following the date of initial intake. The contracted compliance monitor will confirm that a hearing has taken place (or is scheduled to take place) prior to the 180-day deadline. If the court decides to continue to hold the juvenile in an adult jail or lockup, and/or with sight or sound contact with adult inmates, the Compliance Monitoring Supervisor will request the court order giving good cause for an extension. If the facility reports that the youth has expressly waived the 180-day limit, the contracted compliance monitor will request written documentation and/or assurances for MBCC's records. If the court finds that it is still in the interest of justice to detain the juvenile in accordance with section 223(a)(11)(B) of the JJDPA, the Compliance Monitoring Supervisor will continue to verify that hearings are provided once every 30 days (or once every 45 days in a rural jurisdiction).

### [Separation of Juveniles by Sight and Sound from Adult Inmates](#)

#### *Separation Data Collection*

The Compliance Monitoring Supervisor will send out a query to all facilities in January of each year. Facilities are asked to verify whether they are secure or non-secure and whether they hold juvenile inmates only, adult inmates only, or both. Facilities holding both juvenile and adult inmates are subject to the separation requirement. Adult jails, adult lockups, secure detention facilities, and secure correctional facilities are required to provide annual data regarding their implementation of the separation requirement. Any violations during specific incidents are self-reported by facility staff in JDDRS.

As shown in Section III.H, "Inspection of Facilities," the contracted compliance monitor requests the following data during onsite visits:

- Description of the facility
- Method of ensuring no sight or sound contact occurs between juvenile detainees and adult inmates (physical and/or procedural)
- Policies and procedures for the handling of juveniles, including sight and sound separation procedures.
- Verification that individuals working with both juveniles and adult inmates are trained and certified to work with juveniles.
- Verification that no adult inmates have sight or sound contact with youth.

#### *Separation Data Verification*

During onsite visits, the contracted compliance monitor will compare facility records with data in JDDRS. If facility records indicate that juveniles had sight or sound contact with adult inmates at any time, the monitor will follow MBCC's violation procedures. Additionally, he/she will tour the facility and note any areas that are shared with adult inmates. The contracted monitor will request detailed policies and procedures for ensuring there is no sight or sound contact between juvenile detainees and adult inmates in common areas and may interview staff to confirm that they are aware of and implementing these procedures. All available evidence of physical or procedural methods to maintain separation will be stored in the facility's file in JDDRS and the MBCC shared drive with their monitoring report.

If a separation violation is uncovered, the contracted compliance manual will refer to MBCC's violation procedures outlined in Section III.D. If needed to investigate an alleged violation, the contracted monitor will conduct a more detailed analysis of the facility's records, data entered into JDDRS, and other evidence regarding the implementation of separation requirements at the time of the alleged violation. A violation may also warrant an unannounced visit, during which the contracted monitor may observe the daily implementation of separation procedures.

### Sampling

As stated above, adult jails, adult lockups, secure detention facilities, and secure correctional facilities are required to self-report compliance data in JDDRS. The contracted compliance monitor will conduct annual monitoring site visits with secure detention facilities and secure correctional facilities. He/she will randomly select 10% of the facility's records for review. The contracted compliance monitor will conduct monitoring visits with adult jails and adult lockups once every three years. He/she will use the same random selection and review processes but may choose to increase the percentage of records to be selected based on the number of intakes. This applies mainly to rural jurisdictions, which work infrequently with juveniles and have fewer intake records to review. Each facility's records must match the data staff entered into JDDRS to confirm that it is accurate. Inconsistencies will be addressed through training and technical assistance provided by the compliance monitor. If inconsistencies in data reporting reveal a violation, the contracted monitor will follow MBCC's violation procedures (see section III.D) and provide assistance and follow-up as needed. Any findings by the contracted monitor will be included in the facility's file with relevant documentation.

**Date of Last Update or Initial Plan Implementation:** 11/2/2023

## **IV. COMPLIANCE MONITORING REPORTING REQUIREMENT**

### Summary of Requirement

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

**COMPLIANCE DATA AND SUPPORTING DOCUMENTATION** – Compliance data and supporting documentation is submitted annually through OJJDP's [Compliance Reporting Tool](#).

### Montana's Plan to Address Requirement

The Compliance Monitoring Supervisor is responsible for compiling and submitting annual compliance data in the format required by OJJDP.

1. The reporting period is the federal fiscal year – October 1 to September 30.
  - a. During the first month of the reporting period, the Public Safety Program Specialist will send a verification letter along with a report of all juveniles detained within the adult jail, adult lockup, secure detention facility, and secure correctional facility (if any) reported to date for the reporting period. This letter will request verification or correction of the following information for each facility:
    - i. Whether the status of the facility (secure or non-secure) has changed in the past year;
    - ii. Facility name;
    - iii. Facility address;
    - iv. Facility administrator;
    - v. Facility reporting contact;
    - vi. Facility phone number;
    - vii. Facility status during the reporting period(active/inactive);
    - viii. Facility policy on detaining or confining juveniles. If the facility does not detain or confine juveniles, confirm that circumstances did not occur where youth were detained or confined contrary to policy; and
    - ix. The completeness and accuracy of the reported youth detained or confined during the year.
2. In December, the Public Safety Program Specialist will determine if all the facilities in the monitoring universe have responded to the verification letter, making a list of any non-respondents for follow-up contact.
3. After all facility data has been collected and confirmed, the Public Safety Program Specialist will query the MBCC designated juvenile detention reporting system to extract the data needed to complete OJJDP's Report template.
4. Violation data confirmed by monitors and reported on Violation Reports that were not reported to the MBCC designated juvenile detention reporting system will be added to the data from the database queries and included in filling out the OJJDP Form.

5. A Compliance Report file for the reporting year will be created by the Public Safety Program Specialist that contains the following:
  - a. A copy of the completed OJJDP Compliance Monitoring Report Form.
  - b. Copies of the MBCC designated juvenile reporting database queries and violation reports used to compile the data to complete the OJJDP Compliance Monitoring Report Form.
  - c. Copies of the completed verification letters returned from the monitoring universe for the reporting period, and documentation of follow-up with non-respondents, if any.
6. Copies of the report will be dispensed as follows:
  - a. Filed in the share drive in the Compliance folder.
  - b. Provided to the Juvenile Justice Specialist to be filed in the appropriate Title II Formula Grant file; made available to the YJC members; and provided to other interested parties upon request.

**Date of Last Update or Initial Plan Implementation:** 6/17/2022



## **APPENDIX A – ONLINE RESOURCES**

<b>Title</b>	<b>Description</b>	
<b>Office of Juvenile Justice and Delinquency Prevention (OJJDP) Webpage</b>	A component of the <a href="#">Office of Justice Programs</a> within the <a href="#">U.S. Department of Justice</a> , OJJDP works to prevent and respond to youth delinquency and protect children. Through its divisions, OJJDP sponsors research, program, and training initiatives; develops priorities and goals and sets policies to guide federal juvenile justice issues; disseminates information about juvenile justice issues; and awards funds to states to support local programming.	<a href="#">Link</a>
<b>Authorizing Legislation</b>	This OJJDP webpage reviews the authorizing Legislation that Congress enacted in regards to the Juvenile Justice and Delinquency Prevention (JJDP) Act (Pub. L. No. 93-415, 34 U.S.C. § 11101 et seq.) in 1974. This landmark legislation established OJJDP to support local and state efforts to prevent delinquency and improve the juvenile justice system.	<a href="#">Link</a>
<b>Juvenile Justice and Delinquency Prevention Act</b>	This is the text of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended.	<a href="#">Link</a>
<b>Redline Version Juvenile Justice and Delinquency Prevention Act as Amended by the Juvenile Justice Reform Act of 2018</b>	This version of the Juvenile Justice and Delinquency Prevention Act (JJDP), includes the amendments made by the Juvenile Justice Reform Act of 2018 (in red).	<a href="#">Link</a>
<b>OJJDP Core Requirements Webpage</b>	The information on this page assists states in monitoring and achieving compliance with the core requirements of the Formula Grants Program, including information on the background of the JJDP, supporting regulations, state compliance with JJDP core requirements, reporting requirements, guidance and resources, and staff contact information.	<a href="#">Link</a>
<b>OJJDP Fact Sheet: Key Amendments to the Juvenile Justice and Delinquency Prevention Act Made by the Juvenile Justice Reform Act of 2018</b>	This fact sheet describes several significant amendments to the JJDP made by the JJRA.	<a href="#">Link</a>
<b>National Archives: Code of Federal Regulations for Part 31 – OJJDP Grant Programs</b>	This is the existing regulation implementing the Formula Grants Program authorized under the JJDP.	<a href="#">Link</a>