

O R E G O N

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

COMPLIANCE MONITORING SYSTEM

POLICY & PROCEDURE MANUAL

JANUARY 2009

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COMPLIANCE MONITORING POLICY & PROCEDURE INTRODUCTION

The Juvenile Justice and Delinquency Prevention Act (JJDP), through 2002 reauthorization, establishes four core protections with which participating States and territories must comply to receive grants under the JJDP:

- Deinstitutionalization of status offenders (DSO),
- Removal of juveniles from adult jails and lockups (jail removal),
- Separation of juveniles and adults in institutions (separation), and
- Reduction of disproportionate minority contact (DMC), where it exists.

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

The Oregon Commission on Children and Families, Juvenile Crime Prevention Office is the state agency designated to administer the federal funds and provide staff support to the Governor's Juvenile Justice Advisory Committee, which participates in the development of the Juvenile Justice Plan; reviews and advises on grant applications; and actively consults with local units of government in developing the state plan to address their needs.

Compliance monitoring is required [Section 223(a)(14)] to provide for an adequate system of monitoring jails, lockups, detention facilities, correctional facilities and non-secure facilities to insure the core requirement of the JJDP are met.

A comprehensive monitoring system must assess levels of compliance and address existing and emerging compliance challenges and systemic barriers. This involves the development of a compliance plan and processes designed to improve the state's ability to maintain and enhance compliance, while positively impacting the juvenile justice system.

Monitoring means to watch, observe, or check for a special purpose. In this case, the special purpose is to see that the goals of the Juvenile Justice Delinquency Prevention Act of 2002, are fulfilled. Monitoring also means the evaluation of how well the purposes of the JJDP Act are being met, and the taking of remedial action where necessary.

For these monitoring purposes the following policy and procedure manual will be utilized in carrying out these tasks.

COMPLIANCE MONITORING PLAN

Each state is required by OJJDP to have a written plan which provides for an adequate system of monitoring secure and non-secure facilities to ensure that the core protections of the JJDP Act and Formula Grant Regulations are being complied with. Assessing compliance affects eligibility for formula grant funding and participation in various programs offered through OJJDP. Noncompliance with any of the four core requirements results in a 20% reduction of the funds awarded to the state. An effective compliance monitoring system clarifies gaps in the continuum of care and highlights challenge areas in a states juvenile justice system. As a result, compliance monitoring can represent a component in the process of state policy and program development. In addition, the Delinquency Prevention Program, under Title V of the JJDP Act, requires localities to provide certification of compliance in order to be eligible to apply for these funds.

The JJDP Act is more than a funding statute. It creates an enforceable private right of action. States assume duties when they accept the federal funds and when those duties are breached a juvenile may seek a remedy pursuant to 42 U.S.C.A. Section 1983. *Hendrickson v. Griggs*, 672 F. Supp.1126 (N.D. 1987); *Horn by Parks v Madison County Fiscal Court* 22 F. 3d. 653 (6th Circuit 1994). Noncompliance will open the door to section 1983 conditions of confinement litigation raising damage claims under the 8th Amendment Cruel and Unusual Punishment Clause and the 14th Amendment due process clause. In *D.B. v Tewskbury*, 545 F. Supp. (D. Or. 1982) the court found the practice of jailing juveniles to be a per se constitutional violation of the 14th Amendment.

The monitoring plan describes:

- The barriers faced in implementing and maintaining a monitoring system, and the state and local strategies and plans to overcome such barriers.
- The legislative and/or administrative procedures which have been established for the state to receive, investigate, and respond to reports of compliance violations.
- The monitoring authority the OCCF has been granted in order to perform the compliance monitoring tasks.
- The definition of terms the OCCF will use when conducting the compliance monitoring and a timetable describing when tasks will be accomplished.
- The detailed description of monitoring tasks which includes the identification of the agency responsible for each task.

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

MONITORING AUTHORITY

The agency(s) responsible for compliance monitoring should have the legal authority to monitor all facilities in which juveniles may be placed pursuant to public authority. This authority should be sufficiently broad to permit the monitoring agency to require each facility, classified as secure, to undergo inspection, to maintain specific juvenile records, and to permit designated monitors to review the records. The agency(s) should have the right to develop and enforce standards, inspect for compliance, to site facilities for violations, and to enforce sanctions when violations are not corrected.

The **Oregon Commission on Children and Families (OCCF)** is the Formula Grant Agency and has oversight authority for monitoring compliance with the JJDP.

The **Department of Corrections (DOC)** has the legal authority to inspect jails, lockups and juvenile detention centers for compliance with standards.

ORS 169.070 Coordination of state services by Department of Corrections; inspections to determine compliance with standards.

(1) The Department of Corrections shall provide and coordinate state services to local governments with respect to local correctional facilities and juvenile detention facilities. The Director of the Department of Corrections shall designate staff to provide technical assistance to local governmental agencies in the planning and operation of local correctional facilities, lockups, temporary holds and juvenile detention facilities, and advice on provisions of state law applicable to these facilities. The department shall inspect local correctional facilities, lockups, temporary holds and juvenile detention facilities, to ensure compliance with the standards.

(2) In carrying out its duties under subsection (1) of this section, the department may enter into agreements with public or private entities to conduct inspections of local correctional facilities, lockups, temporary holds and juvenile detention facilities.

ORS 169.080 Effect of failure to comply with standards; enforcement by Attorney General; private action.

(1) If the condition or treatment of prisoners in a local correctional facility, lockup or temporary hold or juvenile detention facility is not in accordance with the standards, the staff of the Department of Corrections may notify in writing the appropriate local governmental agency of the standards which are not being met and specific recommendations for the agency to comply with the standards. Corrective measures shall be taken by the local governmental agency to insure compliance with all standards within a reasonable length of time jointly agreed upon by the agency and the Department of Corrections.

(2) The provisions of ORS 169.076 to 169.078, 169.740, 419A.059, 419B.160, 419B.180 and 419C.130 shall be enforceable by the Attorney General of the State of Oregon. The Attorney General, at the request of the Department of Corrections, may bring suit or action and may seek declaratory judgment as provided in ORS chapter 28 as well as pursue any other form of suit or action provided under Oregon law. Nothing in this section shall preclude a private right of suit or action.

The DOC has agreed to review the physical accommodations of adult jails lockups and juvenile detention centers to determine whether it is a secure or nonsecure facility, to assure that sight and sound separation from incarcerated adults can be maintained, and to review the recordkeeping system to assure that sufficient data is maintained and reported to determine compliance with the JJDPA.

DOC is responsible for the management and administration of all adult correctional institutions and other functions related to state programs for adult corrections. This effort is separate from the DOC inspection described above. All data on persons held in adult correctional facilities is maintained in the Corrections Information System.

The **Department of Human Services** (DHS) is responsible, in part, for providing services for children removed from their homes. The following statute describes their authority and licensing procedures:

ORS 418.215 Private child-caring agency to be licensed; fine assessment.

(1) No private child-caring agency shall provide or engage in any care or service described in ORS 418.205 unless the agency is at the time:

- (a) Duly incorporated under the corporation laws of any state; and
- (b) Licensed to provide or engage in the care or service by the Department of Human Services under the provisions of ORS 418.205 to 418.325.

(2) The fine which may be imposed for violation of the provisions of this section, as provided in ORS 418.990, may be assessed by any court of competent jurisdiction upon presentation of evidence of such action.

ORS 418.240 Licensing criteria; duration.

(1) All private child-caring agencies subject to ORS 418.205 to 418.325 shall obtain from the Department of Human Services a license authorizing their work. The department shall use the criteria designated in this subsection, and such rules pursuant thereto as the department may develop subject to ORS chapter 183, as the basis of judgment in granting, withholding, suspending or revoking such licenses. The criteria are as follows:

- (a) The fitness of the applicant.
- (b) The employment of capable, trained or experienced staff who are not applicants for the approval.
- (c) Sufficient financial backing to insure effective work.
- (d) The probability of permanence in the proposed organization.
- (e) The care and services provided to the children served will be in their best interests and that of society.
- (f) That the agency is in compliance with the standards of care and treatment established in rules by the department.

(2) In addition to the licensing requirements of subsection (1) of this section, a private child-caring agency shall submit written proof of compliance with ORS 336.575 to the department.

(3) The department shall charge no fee for its own inspections leading to its decisions regarding such licensing, nor for issuance of such licenses, but may impose fees to cover costs of related inspections done for the department by other governmental agencies.

(4) A license issued by the department under this section shall be valid for a period of two years, unless suspended or revoked sooner by the department. However, the department at any time may require amendments to an existing license to accommodate changes in the factors upon which an existing license was based.

The DHS Division of Health Services administers and oversees the three secure state hospitals. These programs are managed by DHS and accredited by the national Joint Commission on Accreditation of Health Care Organizations. No juveniles are held in these facilities.

The DHS Foster Care Program certifies all families providing foster care to Child Welfare, primarily for children of abuse and neglect; Developmental Disabilities, primarily children with developmental disabilities not involved with the child welfare system; and the Oregon Youth Authority who serves adjudicated delinquents.

Additionally, DHS manages the *Interstate Compact on Juveniles*:

ORS 417.020 Declaration of public policy.

(1) It hereby is found and declared that:

(a) Juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others; and

(b) The cooperation of this state with other states is necessary to provide for the welfare and protection of juveniles and of the people of this state.

(2) It is therefore the policy of this state, in adopting the Interstate Compact on Juveniles, to cooperate fully with other states in returning juveniles to such other states whenever their return is sought, to accept the return of juveniles whenever a juvenile residing in this state is found or apprehended in another state and to take all measures to initiate proceedings for the return of such juveniles.

The **Oregon Youth Authority** (OYA) administers youth correctional facilities and programs.

ORS 420A.100 Authority to establish and operate.

(1) The Oregon Youth Authority may establish and operate youth correction facilities. If the youth authority establishes youth correction facilities, the youth authority shall site the facilities in accordance with applicable state and local laws.

(2) Youth correction facilities must be used for the confinement of youth offenders and others placed in the custody of the youth authority and for the development of those persons into productive members of society

OYA does not license facilities but is operating and inspecting facilities pursuant to the national Council of Juvenile Correctional Administrators (CJCA) Performance-based Standards.

The Juvenile Justice Information System (JJIS) is a statewide-integrated electronic information system designed, developed, and implemented to support a continuum of services and shared responsibility among all members of the juvenile justice community. In a collaborative partnership between the Oregon Youth Authority (OYA) and Oregon's county juvenile departments, JJIS is administered by the State of Oregon through OYA.

An annual review, by the OCCF, of each of the oversight agencies monitoring authority will ensure the continued accuracy of the monitoring effort.

The compliance monitor will make available during all onsite inspections a copy of the document(s) which define the basis of authority for monitoring. A sample introductory letter regarding monitoring authority is attached.

Attached:

Sample Monitoring Authority Introductory letter

Sample Monitoring Authority Introductory letter

To Whom It May Concern

Subject: Compliance Monitoring

The Oregon Commission on Children and Families, which has oversight authority for compliance with the Juvenile Justice and Delinquency Prevention Act (JJJPA), has delegated the monitoring of all agencies or facilities that may hold juveniles securely to the OCCF Compliance Monitor Holly Russell.

The Governor of the state of Oregon through his designee annually accepts federal funds under the Juvenile Justice and Delinquency Prevention Act. The Oregon Commission on Children and Families is designated by the Governor as the State Planning Agency to administer these funds. A condition for the receipt of these funds is to annually monitor compliance with the requirements of the JJJPA.

The OCCF compliance monitor will be performing the following tasks:

1. Collecting information on all facilities that may hold juveniles pursuant to public authority;
2. Classifying facilities to determine which need to be monitored for compliance purposes;
3. Inspect facilities for compatibility with OJJDP guidelines;
4. Collection and verification of juvenile detention and court data;
5. Train and provide information regarding the JJJPA statewide.

Confidentiality of the names of juveniles detained at the facilities they monitor will be maintained.

If you have questions or require additional information please contact me at

Sincerely,

Barbara Carranza
Juvenile Justice Specialist

MONITORING TIMETABLE

Oregon must have a written plan providing for an adequate system of monitoring secure and nonsecure facilities to ensure compliance with the requirements of the JJDP and Formula Grant Regulations. The following annual timetable delineates all compliance monitoring activities, the responsible agency and the timeframes for their completion across the yearly cycle.

COMPLIANCE MONITORING ANNUAL TIMETABLE

Monitoring Activity	Time Line	Agency	Process
Update Compliance Monitoring Manual	January – March	OCCF	Review and adjust as needed
Update Monitoring Universe State Managed Facilities and Placements	January – March	OCCF DOC DHS OYA	Update and collect: - Most recent list of facilities used in housing youth pursuant to public authority - Standards or licensing requirements and inspection process for these facilities - Related state statutes addressing the authority of the responsible agency
Update Monitoring Universe Other Facilities	January – March	OCCF	Obtain information on other potential facilities. These would include but not be limited to: regional malls, airports, sporting complexes.
Update State Practices	January – March	OCCF	Review state statutes, definitions and judicial practices that may impact the monitoring universe or classification process.
Classification Monitoring Universe	January – March	OCCF	Classify all facilities in the monitoring universe as secure/non-secure, public/private and juvenile/adult.
On-site Classification and Inspection of Secure Adult Facilities	January – December All year	OCCF DOC	Adult jail facilities with the capability of securely holding juveniles are reviewed on-site to determine holding areas and practices, contact with incarcerated adults and to review juvenile records.
On-site Classification and Inspection of Non-Secure Adult Facilities	All year	OCCF DOC	Adult jails and lockups with non-secure capabilities are sampled to assure their classification.
On-site Classification and Inspection of Collocated Facilities	All year	OCCF DOC	Utilize the Collocated Facility Checklist in reviewing and classifying these facilities.
On-site Classification and Inspection of Secure Juvenile Facilities	All year	OCCF DOC	Secure juvenile facilities are reviewed on-site to understand practices, review potential contact with incarcerated adults and to review juvenile records.
Data Collection/Verification Secure Jails and Lockups	All year	OCCF DOC	Juvenile Secure Custody Detention Logs are submitted and reviewed annually for violation concerns and issues. Data is verified on-site.

Data Collection/Verification Juvenile Detention and Correctional Facilities	All year	OYA JDD OCCF	Juvenile detention information is submitted to JJIS and reviewed regularly for violation concerns and issues.
On-site Court File Review	All year	OCCF JDD	Review court files to assure accurate use of the VCO exception including the necessary paperwork and written report.
Compile Year-end Data for OJJDP CM Report	March – May	OCCF	Final data is compiled for the annual OJJDP Compliance Monitoring Report
Compile Year-end Documentation of Compliance Monitoring Efforts and Activities	March – May	OCCF	The final report requires additional quantitative information regarding compliance and related yearly activities.
Document Barriers and Strategies to the Statewide Annual Compliance Monitoring Effort	March – May	OCCF	Compile information for planning purposes on the barriers and strategies to maintaining a comprehensive compliance monitoring system.
Annual Compliance Monitoring Report	June	OCCF	Compile final report and submit to OJJDP.
Determine eligibility for Title V funds	June	OCCF	Calculate compliance numbers and rates per judicial district to determine eligibility
General Training	As needed	OCCF	Specific training related to the JJDPA and compliance monitoring is provided as requested and needed.
Technical Assistance	As needed	OCCF	Assist in overall juvenile justice system improvements, program development for local alternatives to detention, and operating policies and procedures when processing and detaining juveniles.

OCCF = Oregon Commission on Children and Families

DOC = Department of Corrections

DHS = Department of Human Services

OYA = Oregon Youth Authority

JDD = Juvenile Department Directors

COMPATIBILITY OF DEFINITIONS

In classifying and identifying the types of juvenile offense behavior to be reviewed for monitoring purposes, Oregon uses the following OJJDP definitions for monitoring purposes:

- **Adult inmate.** An individual who has reached the age of full criminal responsibility under applicable State law, has been arrested, and is in custody awaiting trial on a criminal charge, or is convicted of a criminal offense.
- **Adult jail.** A locked facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than 1 year.
- **Adult lockup.** Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature that does not hold persons after they have been formally charged.
- **Collocated Facility.** Facilities that are located in the same building or are part of a related complex of buildings located on the same grounds.
- **Contact.** Any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juvenile offenders.
- **Court holding facility.** A court holding facility is a secure facility, other than an adult jail or lockup, that is used to temporarily detain persons immediately before or after detention hearings or other court proceedings.
- **Criminal-type offender.** A juvenile offender who has been charged with or adjudicated for conduct that would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.
- **Facility.** A place, an institution, a building or part thereof, set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.
- **Juvenile offender.** 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.
- **Juvenile who is accused of having committed an offense.** A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.
- **Juvenile who has been adjudicated as having committed an offense.** A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.
- **Lawful custody.** The exercise of care, supervision, and control over a juvenile offender or Non-offender pursuant to the provisions of the law or of a judicial order or decree.

- **Non-offender.** 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. (CHINS)
- **Nonsecure Custody.** A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility, but not be in a secure detention or confinement status.
- **Related complex of buildings.** Two or more buildings that share physical features, such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer).
- **Secure Custody.** As used to define a detention or correctional facility, this term includes residential facilities that include construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.
- **Secure juvenile detention center or correctional facility.** A secure juvenile detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or non-offenders.
- **Staff secure facility.** A staff secure facility may be defined as a residential facility (1) which does not include construction features designed to physically restrict the movements and activities of juveniles who are in custody therein; (2) which may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.
- **Status offender.** A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. The following are examples of status offenses: Truancy, Violations of curfew, Unruly, Runaway, Underage possession and/or consumption of tobacco products, Underage possession and/or consumption of alcohol.
- **Trained and certified to work with juveniles.** At a minimum, this must include training on youth development, adolescent physical and mental health, and non-violent crisis intervention.
- **Waived to Adult Court.** Formal process of transferring or direct filing a juvenile case to the adult court for trial.

Related Oregon Statutory Definitions:

No legal or administrative definition of secure or secure facility is contained within the state statutes or agency regulations.

Sight and sound is addressed within the juvenile code but a definition is not provided. No administrative definition is available either.

Appendix:

Oregon Statutes and JJDPa Exceptions Used

VIOLATION PROCEDURES

Once a compliance monitoring system has been established to monitor secure and non-secure facilities to ensure that the core protections of the JJDP Act and Formula Grant Regulations are being complied with; it is critical to then outline the administrative procedures which will be used to receive, investigate, and respond to reports of compliance violations.

Inspections or other mechanisms which identify incidence of noncompliance, or other deficiencies which may be dangerous to confined juveniles, are only of value when a particular agency can act to correct or eliminate the identified problem. Authority to deal with violations is essential. Written violation policies and procedures should be available so all concerned will know what is expected of them and what action is to be taken to correct the identified problem. The following procedures will be used by Oregon Commission on Children and Families (OCCF) to receive, investigate and respond to reports of compliance violations.

The OCCF compliance monitor will review data submitted annually and on-site by all secure facilities to determine violation concerns. The OCCF compliance monitor will verify the potential violation(s) on-site or by phone to assure accuracy and collect any relevant documentation.

Once the violations have been verified and discussed with the responsible agency by the compliance monitor the report will go to the OCCF. If compliance violations become an issue in any given facility, OCCF will write a letter to the facility, the purpose being to explain the consequences for said violations, to address measures necessary to come into compliance, and to offer education/technical assistance to realize full compliance with the JJDP Act. The Juvenile Justice Advisory Committee (JJAC) will review and suggest appropriate action on all violations concerns as well.

Correspondence addressing any and all violation issues will be maintained in the facility file.

The DOC, DHS and OYA have statutory procedures in place to address violation concerns within the facilities/programs to which they provide oversight. See Monitoring Authority

MONITORING BARRIERS AND STRATEGIES

A description of the barriers facing the implementation of a compliance monitoring system, as well as the state and local strategies for overcoming these barriers, is necessary for the compliance monitoring process.

The procedure for identifying barriers and developing strategies will ensure that Oregon maintains the consistency and integrity of the compliance monitoring system.

The compliance monitor will submit to OCCF for discussion and action a written report on the: barriers to implementing and maintaining a compliance monitoring system, and recommendations for state and local solutions to the issues on or about May 30th.

OCCF will develop a written plan with the Juvenile Justice Advisory Committee (JJAC) which outlines the continued development, improvement, and strategies to address the barriers of the compliance monitoring system. The strategic plan to address the compliance monitoring barriers may include, but is not limited to, the following activities:

- Training
- Administrative meetings
- Pursuit of state legislation
- Intensive problem solving with involved agencies
- Program development

OVERVIEW OF COMPLIANCE MONITORING TASKS

The JJDP Act states in section 223(14) that states must provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to ensure that the core protections of paragraph (A)(11)(a), D.S.O.; paragraph (12), sight and sound separation; and paragraph (13), jail removal; are met, and for annual reporting of the results for such monitoring to the OJJDP Administrator.

The four major monitoring tasks are as follows:

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

Two additional tasks and the related policy follows:

1. Compliance monitoring period and report
2. Certification of compliance for Title V

IDENTIFICATION OF THE MONITORING UNIVERSE

The OJJDP requires participating states to establish and maintain an adequate monitoring plan and system for purposes of compliance with the JJDPA. Identifying the monitoring universe is the first step in this process.

Identification of the monitoring universe refers to the recognition of all residential facilities which might hold juveniles pursuant to public authority. This includes those facilities owned or operated by public and private agencies.

The OCCF will identify all facilities that may hold juveniles pursuant to public authority annually. Public and private facilities will be identified by the state oversight agency responsible for the licensing and/or inspecting of said facilities.

Each of the following oversight agencies will be queried annually and requested to submit a list of all facilities with the potential to house juveniles for any period of time pursuant to public authority:

- Oregon Department of Human Services
- Oregon Department of Corrections
- Oregon Youth Authority

Other facilities that may hold juveniles pursuant to public authority will be identified by OCCF. This list includes airports, sporting complexes and regional malls.

The annual update of the Monitoring Universe will be completed on or about March 30th of each year.

Attachment:

- Monitoring Universe Survey Form

MONITORING UNIVERSE SURVEY FORM

Agency: _____

Contact Person: _____

Phone: _____ Fax: _____ Email: _____

Statutory authority: _____

Please attach:

_____ List of all public and private facilities/programs used in the placement of juveniles/children pursuant to public authority

How are these facilities/programs identified?

How are these programs licensed/certified?

How are these facilities/programs inspected?

What facility/program violation procedures (legislative and administrative) are in place?

How do you enforce sanctions?

_____ Inspection schedule/date of last inspection

_____ Copy of standards used in licensing/certification

_____ Copy of Inspection forms

_____ Organizational chart

CLASSIFICATION OF THE MONITORING UNIVERSE

Classification is a determination of which facilities should be considered secure detention or correctional facilities, adult correctional institutions, jails or lockups or other types of secure facilities and for monitoring based on the OJJDP regulations.

Annually, the monitoring universe is classified to determine which facilities should be monitored for compliance with the JJDP. This classification helps shape the timetable and monitoring plan for the on-site inspection of facilities. There are three categories and the definitions used in the classification of each facility:

1. All facilities with the ability to hold juveniles pursuant to public authority are classified as either public or private depending upon the supervision and control of the facility/program.
2. All facilities are classified as to the population served; the potential to hold juveniles, adults, or both juveniles and adults within the facility/program.
3. All facilities are reviewed to determine security levels; the federal definition of secure and nonsecure are utilized in this classification task.

The following three state agencies responsible for the licensing and inspection of juvenile and child care facilities are contacted to assist in the classification of the facilities utilized per OJJDP regulations:

Department of Human Services_(DHS)

The classification of the facilities begins with a review of the DHS standards and definitions and is finalized through the federal definitions and interviews with DHS inspectors and facility staff. These facilities include foster care, shelter care, and residential placements.

DHS is responsible for the standards and licensing of residential drug and alcohol treatment programs and mental health hospitals. A list of these programs is provided annually to OCCF. The facilities are classified based upon the DHS standards, federal definitions and interviews.

Department of Corrections_(DOC)

The OCCF receives an updated list of all adult correctional facilities from DOC annually. DOC is responsible for annual inspections to assure compliance of each facility with the standards for correctional institutions. The facilities are classified based upon the DOC standards and federal definitions.

The DOC inspector annually identifies and classifies all adult jails and lockups. Annually the lists are updated through the Oregon Sheriff's Association, and the Oregon Association of Chief of Police. The classification of each facility is ascertained through on-site inspections and/or facility surveys.

Collocated facilities are classified as juvenile detention centers and are reviewed by DOC or OCCF for compliance with JJDP requirements.

Court holding facilities are identified and classified through communications with the individual Law Enforcement Departments either by survey or on-site.

Oregon Youth Authority_(OYA)

The secure juvenile correctional facilities are inspected twice a year for compliance with Oregon statutes and standards adopted by OYA. The facilities are classified according to federal definitions and regulations.

OYA utilizes residential and foster care placements as well. A list of all facilities utilized by OYA will be collected, compared to other agency lists and classified as well.

Oregon Commission on Children and Families (OYA)

The OCCF will utilize a *Law Enforcement Facility Certification* form to assess and assure the nonsecure classification of individual law enforcement facilities. These facilities will be sampled annually on-site as well and the survey updated every three years.

OCCF will complete the *Monitoring Classification Master List* form to determine the necessary monitoring activity. Facilities classified as secure, public or private, juvenile and/or adult will be subject to inspections.

Attachments:

Non-secure Classification Certification Form

State of Oregon JJDP Act Law Enforcement Facility Classification Certification

To ensure the proper classification of Oregon law enforcement facilities for the purposes of monitoring compliance with the federal Juvenile Justice and Delinquency Prevention (JJDP) Act of 2002, the Oregon Commission on Children and Families requests completion of this form.

Law Enforcement Agency: _____ County: _____

Agency Address: _____

Contact Person and Title: _____

Phone: _____ Fax: _____ Email: _____

Mark each item below as True (**T**), or False (**F**). Accurate responses are an essential part of both the statewide compliance effort and in determining your facility's classification.

Secure areas:

- The building has a secure perimeter **without** emergency egress options
- There are one or more secure holding cells
- There are one or more locked interview rooms
- There are construction fixtures designed to physically restrict the movements and activities of persons in custody
- Cuffing bench, rail, rings, or bars, etc Restraint chair

Nonsecure areas:

- The building has a secure perimeter **with** emergency egress options
- There is an area where a person is placed which is an unlocked, multi-purpose location not set aside or used as a secure area.
- The area does not allow for persons to be physically secured to a stationary object.
- The use of the area is limited to providing non-secure custody for the purpose of release and/or transfer.
- The area is not designed or intended to be used for residential purposes,
- An officer/deputy or facility staff continually supervises the person while in custody.

CERTIFICATION: This form must be signed by the Sheriff or Chief of Police. In signing this form, you are certifying the accuracy of the information provided.

Signature (Sheriff or Chief of Police)

Date

Please mail or fax completed form to: Holly Russell
Oregon Commission on Children and Families
530 Center Street NE, Suite 405
Salem, OR 97301-3754
Fax #: 503-378-8395

INSPECTION OF FACILITIES

The inspection of facilities is required in order to classify according to OJJDP regulations and to review for adequate sight and sound separation of juveniles housed in facilities, which also detain adult offenders. Inspections are also conducted to determine if adequate data and records are maintained on juveniles to monitor for compliance with the core requirements of the JJDP.

Department of Corrections (DOC) inspects facilities annually for compliance with all JJDP federal requirements and the following state definitions and standards:

“Juvenile detention facility” means a facility as described in ORS 419A.050 and 419A.052

419A.050 Authority to acquire, equip and maintain detention and shelter facilities.

(1) Any county may acquire in any lawful manner, equip and maintain within the county suitable facilities for the shelter or detention of children, wards, youths and youth offenders confined pursuant to a judicial commitment or order pending final adjudication of the case by the juvenile court.

(2) When two or more counties have entered into an agreement under ORS 419A.010, the counties jointly may acquire in any lawful manner, equip and maintain, at a suitable site or sites in the counties, facilities suitable for the shelter or detention of children, wards, youths and youth offenders confined pursuant to judicial commitment or order pending final adjudication of the case by the juvenile court.

(3) Any county may designate, equip and maintain a short-term detention facility for children, youths and youth offenders in transit. The facility may house up to a total of five children, youths and youth offenders in transit for a period not to exceed four continuous days pending further placement. Short-term detention facilities:

(a) May not be located with detention facilities established under subsection (1) or (2) of this section; and

(b) Are subject to the standards and specifications found in ORS 169.740 and 419A.052. Upon written request of the county, the Department of Corrections may approve waivers and variances from the standards and specifications as long as the waivers or variances are consistent with the safety and welfare of detained children, youths and youth offenders.

“Short-term detention facility” means a facility established under ORS 419A.050 (3) for holding children, youths and youth offenders pending further placement.

ORS 419A.050 Authority to acquire, equip and maintain detention and shelter facilities.

(1) Any county may acquire in any lawful manner, equip and maintain within the county suitable facilities for the shelter or detention of children, wards, youths and youth offenders confined pursuant to a judicial commitment or order pending final adjudication of the case by the juvenile court.

(2) When two or more counties have entered into an agreement under ORS 419A.010, the counties jointly may acquire in any lawful manner, equip and maintain, at a suitable site or sites in the counties, facilities suitable for the shelter or detention of children, wards, youths and youth offenders confined pursuant to judicial commitment or order pending final adjudication of the case by the juvenile court.

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(a) May not be located with detention facilities established under subsection (1) or (2) of this section; and

(b) Are subject to the standards and specifications found in ORS 169.740 and 419A.052. Upon written request of the county, the Department of Corrections may approve waivers and variances from the standards and specifications as long as the waivers or variances are consistent with the safety and welfare of detained children, youths and youth offenders.

ORS 419A.052 Specifications of facilities.

(1) Suitable detention facilities must be of Class I construction and comply with the State of Oregon Structural Specialty Code and Fire and Life Safety Code. In addition, the facilities must provide:

- (a) Sanitary drinking water in living units and dayrooms;
- (b) Toilets and washbasins accessible to detainees in all housing and activity areas;
- (c) At least one shower for every 10 detainees;
- (d) A heating system and all equipment required to ensure healthful and comfortable living and working conditions, and that maintains a temperature no lower than 64 degrees;
- (e) Lighting at 20 footcandles density; and
- (f) Verbal or mechanical communications from sleeping rooms to staff.

(2) New or major renovated facilities must conform to the requirements of subsection (1) of this section and must also provide:

- (a) That any single sleeping rooms located therein are at least 70 square feet and that any dormitories located therein are at least 50 square feet per detainee and house no more than five detainees each;
- (b) At least one toilet and washbasin for every five detainees;
- (c) Corridors of at least six feet in width;
- (d) Thirty square feet of dayroom space per detainee;
- (e) Heating units capable of maintaining 68 to 85 degrees temperature;
- (f) Tamper-proof lighting with capability of 20 footcandles;
- (g) Air circulation of 10 cubic feet of fresh air per minute, per detainee;
- (h) Sleeping rooms' water valves accessible for staff control;
- (i) Rooms provided for classes, library, arts and crafts; and
- (j) Indoor and outdoor recreation and exercise areas

419A.061 Inspection of detention facilities. Inspection of juvenile detention facilities, including jails or lockups, and enforcement of the juvenile detention standards contained in ORS 419A.059 or otherwise established by statute, must be conducted in the same manner as provided in ORS 169.070 and 169.080.

“Local correctional facility” means a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds persons for more than 36 hours.

169.076 Standards for local correctional facilities.

Each local correctional facility shall:

(1) Provide sufficient staff to perform all audio and visual functions involving security, control, custody and supervision of all confined detainees and prisoners, with personal inspection at least once each hour. Such supervision may include the use of electronic monitoring equipment when approved by the Department of Corrections and the governing body of the area in which the facility is located.

- (2) Have a comprehensive written policy with respect to:
 - (a) Legal confinement authority.
 - (b) Denial of admission.
 - (c) Telephone calls.
 - (d) Admission and release medical procedures.
 - (e) Medication and prescriptions.
 - (f) Personal property accountability which complies with ORS 133.455.
 - (g) Vermin and communicable disease control.
 - (h) Release process to include authority, identification and return of personal property.
 - (i) Rules of the facility governing correspondence and visitations.
- (3) Formulate and publish plans to meet emergencies involving escape, riots, assaults, fires, rebellions and other types of emergencies; and regulations for the operation of the facility.
- (4) Not administer any physical punishment to any prisoner at any time.
- (5) Provide for emergency medical and dental health, having written policies providing for:
 - (a) Licensed physician review of the facility's medical and dental plans.
 - (b) The security of medication and medical supplies.
 - (c) A medical and dental record system to include request for medical and dental attention, treatment prescribed, prescriptions, special diets and other services provided.
 - (d) First aid supplies and staff first aid training.
- (6) Prohibit firearms from the security area of the facility except in times of emergency as determined by the administrator of the facility.
- (7) Insure that confined detainees and prisoners:
 - (a) Will be fed daily at least three meals served at regular times, with no more than 14 hours between meals except when routinely absent from the facility for work or other such purposes.
 - (b) Will be fed nutritionally adequate meals in accordance with a plan reviewed by a registered dietician or the Department of Human Services.
 - (c) Be provided special diets as prescribed by the designated facility physician.
 - (d) Shall have food procured, stored, prepared, distributed and served under sanitary conditions, as defined by the Department of Human Services rules as authorized by ORS 624.100.
- (8) Insure that the facility be clean, and provide each confined detainee or prisoner:
 - (a) Materials to maintain personal hygiene.
 - (b) Clean clothing twice weekly.
 - (c) Mattresses and blankets that are clean and fire-retardant.
- (9) Require each prisoner to shower at least twice weekly.
- (10) Forward, without examination or censorship, each prisoner's outgoing written communications to the Governor, jail administrator, Attorney General, judge, Department of Corrections or the attorney of the prisoner.
- (11) Keep the facility safe and secure in accordance with the State of Oregon Structural Specialty Code and Fire and Life Safety Code.
- (12) Have and provide each prisoner with written rules for inmate conduct and disciplinary procedures. If a prisoner cannot read or is unable to understand the written rules, the information shall be conveyed to the prisoner orally.
- (13) Not restrict the free exercise of religion unless failure to impose the restriction will cause a threat to facility or order.
- (14) Safeguard and insure that the prisoner's legal rights to access to legal materials are protected

“Lockup” means a facility for the temporary detention of arrested persons held up to 36 hours,

excluding holidays, Saturdays and Sundays, but the period in lockup shall not exceed 96 hours after booking.

169.077 Standards for lockup facilities.

Each lockup facility shall:

- (1) Maintain 24-hour supervision when persons are confined; such supervision may include the use of electronic monitoring equipment when approved by the Department of Corrections and the governing body of the area in which the facility is located.
- (2) Make a personal inspection of each person confined at least once each hour.
- (3) Prohibit firearms from the security area of the facility except in times of emergency as determined by the administrator of the facility.
- (4) Insure that confined detainees and prisoners will be fed daily at least three nutritionally adequate meals served at regular times, with no more than 14 hours between meals except when routinely absent from the facility for work or other such purposes.
- (5) Forward, without examination or censorship, each prisoner's outgoing written communications to the Governor, jail administrator, Attorney General, judge, Department of Corrections or the attorney of the prisoner.
- (6) Provide rules of the facility governing correspondence and visitations.
- (7) Keep the facility safe and secure in accordance with the State of Oregon Structural Specialty Code and Fire and Life Safety Code.
- (8) Formulate and publish plans to meet emergencies involving escape, riots, assaults, fires, rebellions and other types of emergencies; and policies and regulations for the operation of the facility.
- (9) Insure that the facility be clean, provide mattresses and blankets that are clean and fire-retardant, and furnish materials to maintain personal hygiene.
- (10) Provide for emergency medical and dental health, having written policies providing for licensed physician review of the facility's medical and dental plans.

"Temporary hold" means a facility, the principal purpose of which is the temporary detention of a prisoner for four or less hours while awaiting court appearance or transportation to a local correctional facility.

169.078 Standards for temporary hold facilities.

Each temporary hold shall:

- (1) Provide access to sanitation facilities.
- (2) Provide adequate seating.
- (3) Maintain supervision of prisoners or detainees when confined. Such supervision may include the use of electronic monitoring equipment when approved by the Department of Corrections and the governing body of the area in which the facility is located.
- (4) Prohibit firearms from the secure area except in times of emergency.
- (5) Keep the facility safe and secure in accordance with the State of Oregon Structural Specialty Code and Fire and Life Safety Code.

Reports on each facility's compliance or noncompliance are made available to the facility as a record of findings of the inspection.

A minimum of 10% of all secure adult jails and lockups, 10% of all juvenile detention centers and 100% of the collocated facilities will be visited annually by the DOC inspector or the Oregon Commission on Children and Families. Non-secure adult jails and lockups will be sampled on-site to assure their classification.

Records are maintained by the DOC inspector on the adult jails and lockup facilities and the juvenile detention facilities requiring inspection, which includes the sight and sound separation status, the recordkeeping status, and the date and findings of the last inspection. This information is shared with OCCF for compliance purposes.

Through the **Department of Human Services** (DHS) all public and private child and youth care facilities are inspected, at a minimum, every two years for licensing purposes.

All secure juvenile correctional facilities are inspected bi-annually by the **Oregon Youth Authority** for compliance with state administrative rules and federal CJCA Performance-based standards and requirements.

A juvenile detention manual has been developed with all applicable laws, regulations, standards, guidelines and shared with law enforcement agencies and made available to all persons involved in the incarceration of juveniles.

DATA COLLECTION and VERIFICATION

It is necessary to collect and or verify each facility's admission/release records to obtain accurate information to calculate compliance with the core requirements of the JJDP. Data sets reviewed are as follows:

Juvenile Detention Centers

- Any nonoffenders held for any period of time
- Any accused status held over 24 hours prior to an initial court appearance
- Any accused status and nonoffenders held over 24 hours after an initial court appearance
- Any accused status offenders held for purposes other than processing
- Any adjudicated status offenders held for any amount of time without VCO
- Status offenders held for violating a VCO
- Out of state runaways
- Federal wards
- Youth handgun charges
- Any sight and sound separation violations

Juvenile Correctional Institutions

- Any adjudicated status or non-offenders held for any amount of time
- Valid Court Orders
- Any sight and sound separation violations

Adult Jails, Lockups and Holding Facilities

- Any accused status or non-offenders
- Any adjudicated status or non-offenders
- Any accused juvenile offenders held over 6 hours
- Any accused delinquents held for purposes other than processing
- Any adjudicated delinquents held awaiting a court appearance over 6 hours
- Any adjudicated juvenile offenders held over 6 hours following a court appearance
- Any adjudicated delinquents held for any time unrelated to a court appearance
- Any sight and sound separation violations
- Juveniles waived or transferred to adult court.

The **Oregon Commission on Children and Families** (OCCF) will request annual juvenile detention data from the Oregon Juvenile Justice Information System (JJIS) in order to determine compliance with the JJDP. JJIS includes data from all juvenile detention centers, collocated facilities and juvenile correctional facilities.

OCCF will request juvenile detention data from all law enforcement departments (adult jails and lockups) with the capability to detain juveniles. The *Juvenile Secure Custody Log* will be analyzed by OCCF for each facility holding juveniles. If no youth were held in any given year, the facility is requested to sign a *Law Enforcement Facility Certification* stating such.

Attachments:

Law Enforcement Facility Certification

Law Enforcement Facility Certification

Complete this form if no juveniles were held securely during the period of January 1, 2008 through December 31, 2008.

The purpose of this form is to assist the State of Oregon Commission on Children and Families in reporting compliance with the Juvenile Justice and Delinquency Prevention Act of 2002.

The JJDP Act does not apply to juveniles formally waived or transferred to criminal court and against whom criminal felony charges are filed.

Facility Name: _____

Facility Address _____

Reporting Person and Title _____

Phone _____

I certify, by signing below, that NO juveniles were physically detained or confined in a locked room, or cell, or handcuffed to a stationary object, in the above mentioned law enforcement facility between January 1, 2008 and December 31, 2008.

Signature of Reporting Person

Date

Fax or mail the form to:

Holly Russell
Oregon Commission on Children and Families
530 Center Street NE, Suite 405
Salem, OR 97301-3754
Fax #: 503-378-8395

COMPLIANCE MONITORING PERIOD AND REPORT

Designating the compliance monitoring reporting period is essential for providing accurate yearly monitoring reports. An optimum twelve month monitoring period is the soundest method because it leaves no room for statistical errors. The state will assure the collection of a minimum 6 months of data for reporting on the DSO and Jail Removal requirements and 12 months of data for the Separation requirement.

The reporting period selected is from January 1 – December 31
Therefore, the 2008 data collected and verified during this designated period of time will result in the 2008 monitoring report, and so on.

All data will be collected by the Oregon Commission on Children and Families (OCCF) from the various participating agencies on or before March 31st of each year. The data will be analyzed and violations will be calculated and reviewed.

The OCCF compliance monitor will compile, complete, and forward the annual compliance report to the JJAC on or before May 30th of each year.

OCCF will then complete and forward the Annual Monitoring Report to the Office of Juvenile Justice Delinquency Prevention on or before June 30th of each year.

CERTIFICATION OF COMPLIANCE FOR TITLE V

In 1994, Congress stipulated that for a unit of general local government of federally recognized tribe to be eligible to apply to the state for Title V Community Prevention Grant funds, the unit must be certified by the State Advisory Group as in compliance with the four core requirements.

The unit of local government must obtain this certification prior to applying for an award of funds. In certifying, the unit of local government must be within the de minimus parameters provided in the OJJDP regulations, this determination is based on the locality's most current census data.

The compliance certification applies to all facilities operated by or contracted by the unit of local government. This certification is not limited to a specific catchment area, therefore this certification must also include any facility that is owned, operated or contracted with by the unit of local government.

In order to be in compliance with the DMC requirement, the unit of local government must be cooperating with data gathering and must be making an adequate effort toward addressing, or assisting the State to address, this issue. The level of cooperation must be satisfactory to support efforts to achieve the goals of the DMC requirement.

The compliance monitor will complete the certification based on the most recent 12 months of compliance monitoring data using the most current census figures available. Once the certification is complete, it will be forwarded to the Juvenile Justice Specialist for signature then forwarded to the JJAC Chair for signature. A copy of the certification will be sent to the applicant agency.

It is critical that the compliance monitor inform the facility administrator or contact of these funding requirements at all on-site visits so they may make every effort to comply. If an applicant agency falls out of compliance, the compliance monitor will notify the JJS and remedial action will be taken. That action may include technical assistance and training.

Attachments:

Title V Certification of Compliance

STATE OF OREGON
Statutes and JJDP Act Exceptions Used

DEINSTITUTIONALIZATION OF STATUS OFFENDER REQUIREMENT

As amended by the JJDP Act of 2002, the DSO requirement currently reads as follows:
“...juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult – excluding juveniles who are charged with or who have committed a violation of Section 922(x) of Title 18 U.S.C. or of a similar State law; juveniles who are charged with or who have committed a violation of a valid court order; and juvenile who are held in accordance with the Interstate Compact on Juveniles as enacted by the State – shall not be placed in secure detention or correctional facilities.” In addition the 2002 Act states that “juveniles who are not charged with any offense and who are aliens or alleged to be dependent, neglected or abused shall not be placed in secure detention or correctional facilities.”

Related Oregon State Statute:

ORS 419B.004 A “child” means a person who is under 18 years of age and within the jurisdiction of the juvenile court for reasons including, but not limited to, being beyond the control of the person’s parents, guardian or being a runaway.

ORS 419B.100 Jurisdiction; bases

(1) Except as otherwise provided in subsection (6) of this section and ORS 107.726, the juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age and:

- (a) Who is beyond the control of the person’s parents, guardian or other person having custody of the person;
- (b) Whose behavior is such as to endanger the welfare of the person or of others;
- (c) Whose condition or circumstances are such as to endanger the welfare of the person or of others;
- (d) Who is dependent for care and support on a public or private child-caring agency that needs the services of the court in planning for the best interest of the person;
- (e) Whose parents or any other person or persons having custody of the person have:
 - (A) Abandoned the person;
 - (B) Failed to provide the person with the care or education required by law;
 - (C) Subjected the person to cruelty, depravity or unexplained physical injury; or
 - (D) Failed to provide the person with the care, guidance and protection necessary for the physical, mental or emotional well-being of the person;
- (f) Who has run away from the home of the person; or
- (g) Who has filed a petition for emancipation pursuant to ORS 419B.550 to 419B.558.

ORS 419B.160 (Juvenile Code: Dependency) states that no child shall be detained at any time in a police station, jail, prison or other place where adults are detained, except that a child may be detained in a police department for up to five hours when necessary to obtain the child’s name, age, residence and other identifying information.

ORS 419C.145 Preadjudication detention; grounds.

(1) A youth may be held or placed in detention before adjudication on the merits if one or more of the following circumstances exist:

- (a) The youth is a fugitive from another jurisdiction;
- (b) The youth is alleged to be within the jurisdiction of the court under ORS 419C.005, by

having committed or attempted to commit an offense which, if committed by an adult, would be chargeable as:

(A) A crime involving infliction of physical injury to another person; or

(B) Any felony crime;

(c) The youth has willfully failed to appear at one or more juvenile court proceedings by having disobeyed a proper summons, citation or subpoena;

(d) The youth is currently on probation imposed as a consequence of the youth previously having been found to be within the jurisdiction of the court under ORS 419C.005, and there is probable cause to believe the youth has violated one or more of the conditions of that probation;

(e) The youth is subject to conditions of release pending or following adjudication of a petition alleging that the youth is within the jurisdiction of the court pursuant to ORS 419C.005 and there is probable cause to believe the youth has violated a condition of release; or

(f) The youth is alleged to be in possession of a firearm in violation of ORS 166.250.

(2) A youth detained under subsection (1) of this section must be released to the custody of a parent or other responsible person, released upon the youth's own recognizance or placed in shelter care unless the court or its authorized representative makes written findings that there is probable cause to believe that the youth may be detained under subsection (1) of this section, that describe why it is in the best interests of the youth to be placed in detention and that one or more of the following circumstances are present:

(a) No means less restrictive of the youth's liberty gives reasonable assurance that the youth will attend the adjudicative hearing; or

(b) The youth's behavior endangers the physical welfare of the youth or another person, or endangers the community.

(3) When a youth is ordered held or placed in detention, the court or its authorized representative shall state in writing the basis for its detention decision and a finding describing why it is in the best interests of the youth to be placed in detention. The youth shall have the opportunity to rebut evidence received by the court and to present evidence at the hearing.

(4) In determining whether release is appropriate under subsection (2) of this section, the court or its authorized representative shall consider the following:

(a) The nature and extent of the youth's family relationships and the youth's relationships with other responsible adults in the community;

(b) The youth's previous record of referrals to juvenile court and recent demonstrable conduct;

(c) The youth's past and present residence;

(d) The youth's education status and school attendance record;

(e) The youth's past and present employment;

(f) The youth's previous record regarding appearance in court;

(g) The nature of the charges against the youth and any mitigating or aggravating factors;

(h) The youth's mental health; and

(i) Any other facts relevant to the likelihood of the youth's appearance in court or likelihood that the youth will comply with the law and other conditions of release.

ORS 419B.183 Speedy hearing required. A child or ward may not be held in detention or shelter care more than 24 hours, excluding Saturdays, Sundays and judicial holidays, except on order of the court made pursuant to a hearing.

Differences between Oregon Law and the JJDP:

ORS 471.430 Purchase or possession of liquor by person under 21.

(1) No person under the age of 21 years shall attempt to purchase, purchase or acquire

alcoholic liquor. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with such parent's or guardian's consent, no person under the age of 21 years shall have personal possession of alcoholic liquor.

(2) For the purposes of this section, personal possession of alcoholic liquor includes the acceptance or consumption of a bottle of such liquor, or any portion thereof or a drink of such liquor. However, this section does not prohibit the acceptance or consumption by any person of sacramental wine as part of a religious rite or service.

(3) Except as authorized by rule or as necessitated in an emergency, no person under the age of 21 years shall enter or attempt to enter any portion of a licensed premise that is posted or otherwise identified as being prohibited to the use of minors.

(4) Any person who violates subsection (1) or (3) of this section commits a Class B violation.

(5) In addition to and not in lieu of any other penalty established by law, a person under the age of 21 years who violates subsection (1) of this section through misrepresentation of age may be required to perform community service and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order denying driving privileges under this section, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the Department of Transportation under this subsection may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

(6) In addition to and not in lieu of any penalty established by law, the court:

(a) Shall order a person who is at least 18 years of age and not more than 21 years of age, who is convicted of violation of this section and who has been convicted of violation of this section at least once before when the person was at least 18 years of age, to undergo assessment and treatment as provided in ORS 471.432.

(b) May order a person who is at least 18 years of age and not more than 21 years of age and who is convicted of violation of this section to undergo assessment and treatment as provided in ORS 471.432.

(7) The prohibitions of this section do not apply to a person under the age of 21 years who is acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years.

(8) The prohibitions of this section do not apply to a person under the age of 21 years who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years.

DSO 24-HOURS DETENTION EXCEPTION:

OJJDP regulations allow a juvenile detention facility to hold an accused status offender in a secure juvenile detention facility for up to 24 hours exclusive of weekends and legal holidays, prior to an initial court appearance and for an additional 24 hours, exclusive of weekends and legal holidays, immediately following an initial court appearance. Status offenders who fail to appear for court hearings remain status offenders; they cannot be upgraded to delinquent status for their failure to appear.

Related Oregon State Statute:

ORS 419C.156 Detention of runaway from another state. Notwithstanding ORS 419C.145 (1) and (2), the court may order the detention of a youth who resides in another state if the court makes written findings that there is probable cause to believe that the youth has run away from

home or from a placement and that describe why it is in the best interests of the youth to be placed in detention. If a youth is ordered detained under this section, the court shall make such orders as are necessary to cause the youth to be immediately returned to the youth's state of residence.

Oregon does not detain status offenders in juvenile detention centers with the exception of an occasional out-of-state runaway. All youth held in juvenile detention centers are recorded in a statewide Juvenile Justice Information System (JJIS). These records are reviewed annually to assure compliance.

SIGHT AND SOUND SEPARATION REQUIREMENT

The JJDP Act of 2002, provides that juveniles alleged to be or found to be delinquent, as well as status offenders and nonoffenders, "will not be detained or confined in any institution in which they have contact with adult inmates."

Related Oregon State Statute:

419A.063 Requirements for detention facilities.

(1) The juvenile court may not place a youth offender in a detention facility under ORS 419C.453 unless the facility:

- (a) Houses youth offenders in a room or ward screened from the sight and sound of adults who may be detained in the facility; and
- (b) Is staffed by juvenile department employees.

(2) In no case may the court order, pursuant to ORS 419C.453, that a youth offender under 14 years of age be placed in any detention facility in which adults are detained or imprisoned.

ORS 137.124 Commitment of defendant to Department of Corrections or county; place of confinement; transfer of inmates; juveniles.

(1) If the court imposes a sentence upon conviction of a felony that includes a term of incarceration that exceeds 12 months:

- (a) The court shall not designate the correctional facility in which the defendant is to be confined but shall commit the defendant to the legal and physical custody of the Department of Corrections; and
- (b) If the judgment provides that the term of incarceration be served consecutively to a term of incarceration of 12 months or less that was imposed in a previous proceeding by a court of this state upon conviction of a felony, the defendant shall serve any remaining part of the previously imposed term of incarceration in the legal and physical custody of the Department of Corrections.

(2) (a) If the court imposes a sentence upon conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall commit the defendant to the legal and physical custody of the supervisory authority of the county in which the crime of conviction occurred.

(b) Notwithstanding paragraph (a) of this subsection, when the court imposes a sentence upon conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall commit the defendant to the legal and physical custody of the Department of Corrections if the court orders that the term of incarceration be served consecutively to a term of incarceration that exceeds 12 months that was imposed in a previous proceeding or in the same proceeding by a court of this state upon conviction of a felony.

(3) After assuming custody of the convicted person the Department of Corrections may transfer inmates from one correctional facility to another such facility for the purposes of diagnosis and study, rehabilitation and treatment, as best seems to fit the needs of the inmate and for the

protection and welfare of the community and the inmate.

(4) If the court imposes a sentence of imprisonment upon conviction of a misdemeanor, it shall commit the defendant to the custody of the supervisory authority of the county in which the crime of conviction occurred.

(5) (a) When a person under 18 years of age at the time of committing the offense and under 20 years of age at the time of sentencing is committed to the Department of Corrections under ORS 137.707, the Department of Corrections shall transfer the physical custody of the person to the Oregon Youth Authority as provided in ORS 420.011 if:

(A) The person will complete the sentence imposed before the person attains 25 years of age; or

(B) The Department of Corrections and the Oregon Youth Authority determine that, because of the person's age, immaturity, mental or emotional condition or risk of physical harm to the person, the person should not be incarcerated initially in a Department of Corrections institution.

(b) A person placed in the custody of the Oregon Youth Authority under this subsection shall be returned to the physical custody of the Department of Corrections whenever the Director of the Oregon Youth Authority, after consultation with the Department of Corrections, determines that the conditions or circumstances that warranted the transfer of custody under this subsection are no longer present.

(6) (a) When a person under 18 years of age at the time of committing the offense and under 20 years of age at the time of sentencing is committed to the legal and physical custody of the Department of Corrections or the supervisory authority of a county following waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the person to the physical custody of the Oregon Youth Authority for placement as provided in ORS 420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS 420A.200 to 420A.206.

(b) When a person under 16 years of age is waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of imprisonment in the county jail, the sheriff shall transfer the person to a youth correction facility for physical custody as provided in ORS 420.011 (3).

(7) If the Director of the Oregon Youth Authority concurs in the decision, the Department of Corrections or the supervisory authority of a county shall transfer the physical custody of a person committed to the Department of Corrections or the supervisory authority of the county under subsection (1) or (2) of this section to the Oregon Youth Authority as provided in ORS 420.011 (2) if:

(a) The person was at least 18 years of age but less than 20 years of age at the time of committing the felony for which the person is being sentenced to a term of incarceration;

(b) The person is under 20 years of age at the time of commitment to the Department of Corrections or the supervisory authority of the county;

(c) The person has not been committed previously to the legal and physical custody of the Department of Corrections or the supervisory authority of a county;

(d) The person has not been convicted and sentenced to a term of incarceration for the commission of a felony in any other state;

(e) The person will complete the term of incarceration imposed before the person attains 25 years of age;

(f) The person is likely in the foreseeable future to benefit from the rehabilitative and treatment programs administered by the Oregon Youth Authority;

(g) The person does not pose a substantial danger to Oregon Youth Authority staff or persons in the custody of the Oregon Youth Authority; and

(h) At the time of the proposed transfer, no more than 50 persons are in the physical custody of the Oregon Youth Authority under this subsection.

(8) Notwithstanding the provisions of subsections (5)(a)(A) or (7) of this section, the department

or the supervisory authority of a county may not transfer the physical custody of the person under subsection (5)(a)(A) or (7) of this section if the Director of the Oregon Youth Authority, after consultation with the Department of Corrections or the supervisory authority of a county, determines that, because of the person's age, mental or emotional condition or risk of physical harm to other persons, the person should not be incarcerated in a youth correction facility.

Differences between Oregon Law and the JJDP:

Oregon's policy choice to keep youth offenders committed by juvenile courts and most minors found guilty by adult criminal courts in Oregon Youth Authority facilities up to age 25 fundamentally conflicts with the sight/sound requirement in the federal law because of the definition of "adult inmate."

JAIL REMOVAL REQUIREMENT

The JJDP Act of 2002 states that "no juvenile shall be detained or confined in any jail or lockup for adults,"

Related Oregon State Statute:

ORS 419C.080 Custody; when authorized.

(1) A peace officer, or any other person authorized by the juvenile court of the county in which the youth is found, may take a youth into custody in the following circumstances:

- (a) When, if the youth were an adult, the youth could be arrested without a warrant; or
- (b) When the juvenile court, by order indorsed on the summons as provided in ORS 419C.306 or otherwise, has ordered that the youth be taken into custody.

(2) In any order issued under subsection (1)(b) of this section that may result in a substitute care placement or detention, the court shall include a written finding describing why it is in the best interests of the youth to be taken into custody.

(3) A peace officer or person authorized by the juvenile court shall take a youth into custody if the peace officer or person authorized by the juvenile court has probable cause to believe that the youth, while in or on a public building or court facility within the last 120 days, possessed a firearm or destructive device

ORS 419A.004(31) A "Youth" is defined as a person under the age of 18 who is alleged to have committed an act that is a violation, or if done by an adult would constitute a violation, of a law or ordinance of the U.S., state, county, or city.

ORS 419C.130 Youth or youth offender may not be detained where adults are detained; exceptions.

(1) A youth or youth offender may not be detained at any time in a police station, jail, prison or other place where adults are detained, except as follows:

- (a) A youth or youth offender may be detained in a police station for up to five hours when necessary to obtain the youth or youth offender's name, age, residence and other identifying information.
- (b) A youth waived under ORS 419C.349 or 419C.364 to the court handling criminal actions or to municipal court may be detained in a jail or other place where adults are detained, except that any such person under 16 years of age shall, prior to conviction or after conviction but prior to execution of sentence, be detained, if at all, in a facility used by the county for the detention of youths.
- (c) When detention is authorized by ORS 419C.453, a youth offender may be detained in a jail or other place where adults are detained.

(2) A youth waived to the court handling criminal actions or to municipal court pursuant to a standing order of the juvenile court under ORS 419C.370 (motor vehicle, boating, game), including a youth accused of nonpayment of fines, may not be detained in a jail or other place where adults are detained.

(3) As used in this section, “adult” does not include a person who is 18 years of age or older and is alleged to be, or has been found to be, within the jurisdiction of the juvenile court under ORS 419C.005.

JAIL REMOVAL SIX-HOUR EXCEPTION:

The JJDP Act of 2002 provides the following exception: “ juveniles who are accused of nonstatus offenses who are detained in such jail or lockup for a 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, and only if such juveniles do not have contact with adult inmates.”

Related Oregon State Statute:

ORS 419C.130 Youth or youth offender may not be detained where adults are detained; exceptions.

(1) A youth or youth offender may not be detained at any time in a police station, jail, prison or other place where adults are detained, except as follows:

(a) A youth or youth offender may be detained in a police station for up to five hours when necessary to obtain the youth or youth offender’s name, age, residence and other identifying information.

Oregon utilizes the 6 hour holding exception in jails and lockups. As allowed by state law, juveniles maybe held for up to 5 hours. Youth held securely in adult jails and lockups are reported to the Criminal Justice Commission. Data is verified on-site.

JAIL REMOVAL WAIVER TO ADULT COURT EXCEPTION:

If criminal felony charges have been filed against a juvenile in a court exercising criminal jurisdiction, the juvenile can be detained in an adult jail or lockup. The jail and lockup removal requirement does not apply to those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed or to juveniles over whom a criminal court has original or concurrent jurisdiction and such court’s jurisdiction has been invoked through the filing of criminal felony charges.

Related Oregon State Statute:

ORS 419C.349 Grounds for waiving youth to adult court. The juvenile court, after a hearing except as otherwise provided in ORS 419C.364 or 419C.370, may waive a youth to a circuit, justice or municipal court of competent jurisdiction for prosecution as an adult if:

(1) The youth is 15 years of age or older at the time of the commission of the alleged offense;
(2) The youth, except as otherwise provided in ORS 419C.364 and 419C.370, is alleged to have committed a criminal offense constituting:

(a) Murder under ORS 163.115 or any aggravated form thereof;

(b) A Class A or Class B felony;

(c) Any of the following Class C felonies:

(A) Escape in the second degree under ORS 162.155;

(B) Assault in the third degree under ORS 163.165;

- (C) Coercion under ORS 163.275 (1)(a);
 - (D) Arson in the second degree under ORS 164.315; or
 - (E) Robbery in the third degree under ORS 164.395;
 - (d) Any Class C felony in which the youth used or threatened to use a firearm; or
 - (e) Any other felony or any misdemeanor if the youth and the state stipulate to the waiver;
- (3) The youth at the time of the alleged offense was of sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved; and
- (4) The juvenile court, after considering the following criteria, determines by a preponderance of the evidence that retaining jurisdiction will not serve the best interests of the youth and of society and therefore is not justified:
- (a) The amenability of the youth to treatment and rehabilitation given the techniques, facilities and personnel for rehabilitation available to the juvenile court and to the criminal court which would have jurisdiction after transfer;
 - (b) The protection required by the community, given the seriousness of the offense alleged;
 - (c) The aggressive, violent, premeditated or willful manner in which the offense was alleged to have been committed;
 - (d) The previous history of the youth, including:
 - (A) Prior treatment efforts and out-of-home placements; and
 - (B) The physical, emotional and mental health of the youth;
 - (e) The youth's prior record of acts which would be crimes if committed by an adult;
 - (f) The gravity of the loss, damage or injury caused or attempted during the offense;
 - (g) The prosecutive merit of the case against the youth; and
 - (h) The desirability of disposing of all cases in one trial if there were adult co offenders.

Oregon statutes allow for the transfer of juveniles to adult court (Measure 11). These youth may be held in an adult jail after being formally waived.

