



New Mexico Children,
Youth & Families Department

JUVENILE JUSTICE SERVICES
SPECIAL PROGRAMS UNIT

New Mexico's Guide for Effective Implementation of the Core Protections of the Juvenile Justice Reform Act of 2018

Safe and Appropriate Holding of Juveniles in Secure Settings and Facilities

New Mexico Children, Youth & Families Department

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Introduction

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

As a participant in the Juvenile Justice and Delinquency Prevention Act, New Mexico maintains and monitors compliance with the core protections of the JJDP Act. The New Mexico Children, Youth & Families Department (CYFD) is the state agency designated to administer several JJDP Act grant fund programs, to monitor compliance with the core protections of the JJDP Act, and to staff the state advisory group defined in the JJDP Act. In New Mexico, this advisory group is the governor-appointed Juvenile Justice Advisory Committee (JJAC). Working in conjunction with the JJAC and other juvenile justice system agencies, the CYFD provides the leadership necessary to coordinate the JJDP Act and juvenile justice efforts.

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

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JJDP Act Purpose and Intent

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

Participating states enter into a partnership with the federal government. The State Relations and Assistance Division (SRAD) of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) provides technical assistance, training and coordination of resources to the states. Governors of participating states designate a State Planning Agency which oversees implementation of the JJDP Act. The State Planning Agency in New Mexico is the New Mexico Children, Youth & Families Department (CYFD). The Department’s Juvenile Justice Services/Special Program Unit staffs the governor-appointed state advisory group which allocates funds awarded to New Mexico through Title II of the JJDP Act. In New Mexico this advisory group is known as the Juvenile Justice Advisory Committee.

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

New Mexico communities interested in applying for delinquency prevention funds under Title II of the JJDP Act must first be certified as being in compliance with the protections.

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

Summary of JJDP Act Core Protection Requirements

The Juvenile Justice and Delinquency Prevention Act of 2002, Public Law 93-415, 42 U.S.C. 5601, applies four core protections to all juveniles, except those under criminal (adult) court jurisdiction:

1. Deinstitutionalization of Status Offenders – Section 223(a)(11)(A)

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

offense and who are aliens or alleged to be dependent, neglected, or abused shall not be placed in secure detention facilities or secure correctional facilities.”

2. Separation of Juveniles from Incarcerated Adults – Section 223(a)(12)

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

3. Removal of Juveniles from Adult Jails and Lockups – Section 223(a)(13)

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

4. Disproportionate Minority Contact – Section 223(a)(22)

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

Reasons for Compliance with the Core Protection Requirements

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

- NM State Statute: 32A-2-4.1 NMSA 1978, Adult jails and lockups used as temporary holding facilities: reports
 - A. A child arrested and detained for an alleged delinquent act may be temporarily held in an adult jail or lockup for no longer than six hours. A child who is detained in an adult jail or lockup shall be placed in a setting that is physically segregated by sight and sound from adult offenders. After six hours, the child may be placed or detained pursuant to the provisions of Section [32A-2-12](#) NMSA 1978.
 - B. An adult jail or lockup used as a temporary holding facility for alleged delinquent offenders shall file an annual report regarding its compliance with federal requirements. The juvenile justice advisory committee and the department shall determine the format of the annual reports.
- Prevent juvenile suicide: Juveniles placed in adult jails or lockups commit suicide at a rate eight times higher than if they were placed in a juvenile detention center. Talk with any law enforcement officer who has been on duty during a juvenile suicide. It is devastating for all involved.
- State Funding Reduction: Non-compliance with any of the four core protections results in a 20% reduction of the federal Formula Grant funds awarded annually to New Mexico. In addition, 50% of the remaining funds must be used to achieve compliance with the violated core protection(s). Reduced funding to New Mexico means reduced juvenile justice and delinquency prevention funds to local programs.
- Local Community Funding Ineligibility: A community's non-compliance with any of the four core protections means that it is ineligible to apply for juvenile justice funds through the Children, Youth & Families Department.

- Liability Exposure: Jailing juveniles inappropriately places the community at risk of loss of federal funding, at risk of paying for a civil suit and at risk of being labeled as a community which places New Mexico in funding jeopardy.

Determining Secure and Non-Secure Custody Status

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

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

Facility Types for Core Protection Requirement Monitoring

1. Adult Jails and Adult Lockups

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

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

The New Mexico Children's Code was revised in 2009 to require that a child arrested and detained for an alleged delinquent act may not be held in an adult jail for lockup for longer than six hours, and that any child detained in such adult jail or lockup be placed in a setting physically segregated by sight and sound from adult offenders. The Children's Code was also revised to require that an adult jail or lockup used as a temporary holding facility for alleged delinquent offenders file an annual report regarding its compliance with federal requirements.

The Monitoring Timeline can be found in Appendix A. In order for the Compliance Coordinator to determine if a facility is in compliance, facility staff must record the necessary information about all juveniles that are held securely on the Secure Juvenile Holding Log and complete Adult Lockup and Adult Jail Certification Forms (see Appendix A, Forms.)

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

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

Each applicable core protection along with its rules and regulations are discussed in the next Section: Four JJDP Act Core Protection Requirements.

When a juvenile is physically detained or confined in a locked room or cell, or is handcuffed to a stationary object it is considered secure confinement. The juvenile is not free to leave the building. Facility officials must record this holding on the secure juvenile holding log.

When juvenile may be in custody but is "free" to leave the building it is considered non-secure confinement. The juvenile may be handcuffed to him/herself but not to a stationary object, and may be placed in a room with no lock on the door. Do not record this non-secure holding of the juvenile on the holding log.

Note, if a juvenile is in non-secure custody, none of the core protection requirements apply.

Forms have been distributed and are available on the CYFD Website at the following link <https://cyfd.org/ijs-special-programs/state-and-federal-compliance/compliance-monitoring>.

These forms certify that adult jails and /or lockup policies reflect the federal requirements and state statutory requirements regarding Sight and Sound Separation, and Deinstitutionalization of Status Offenders. Secure Juvenile Holding Logs are distributed annually to all law enforcement agencies, adult jails and lockups.

2. Court Holding Facilities

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

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

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

3. Collocated Facilities

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

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

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

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

separation of juveniles and adults can serve both populations (subject to State standards or licensing requirements). The day-to-day management, security, and direct care functions of the juvenile detention center must be vested in totally separate staff, dedicated solely to the juvenile population within the colocated facilities; and

4. New Mexico has established standards for licensing requirements for juvenile detention facilities; the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate.

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

Colocated facilities comply with the core protections regulations in the same way a juvenile detention center complies.

Four JJDP Act Core Protection Requirements

Deinstitutionalization of Status Offenders (DSO)

A “Status Offender” is a juvenile who has been charged with, or adjudicated for, conduct that would not be criminal if committed by an adult. Examples include: running away, curfew violation (if the curfew ordinance applies only to juveniles) and truancy. Possession of a handgun by a juvenile is excluded from the status offense classification by state and federal laws. Juveniles who are illegal immigrants and have not committed a delinquent act are monitored as status offenders.

A “delinquent” is a juvenile who has been charged with, or adjudicated for, any conduct that would be criminal if committed by an adult. Examples include: D.W.I., open container in a vehicle, trespass, assault, burglary, etc.

Federal DSO Rules and Regulations

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

Trends: The number of DSO violations in New Mexico has not risen to the level of non-compliance and continued monitoring is being utilized to insure New Mexico remains in compliance.

Sight and Sound Separation

Sight and Sound Contact is defined as any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees.

Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. **Sound contact** is defined as direct oral communication between incarcerated adults and juvenile offenders.

Federal Sight and Sound Separation Rules and Regulations

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

Removal of Juveniles from Adult Jails and Lockups (Jail Removal)

For the purposes of Jail Removal requirements, “Accused” means a juvenile accused of, or charged with, committing an offense, or alleged to have committed an offense (not yet adjudicated). “Adjudicated” means the court has determined that is has been proven beyond a reasonable doubt that the juvenile has committed a delinquent act or status offense, or that the juvenile has pled guilty to committing a delinquent act or status offense.

A “Status Offender” is a juvenile who has been charged with, or adjudicated for, conduct that would not be criminal if committed by an adult. Examples include: running away, curfew violation (if the curfew ordinance applies only to juveniles) and truancy. Possession of a handgun by a juvenile is excluded from the status offense classification by state and federal laws. Juveniles who are illegal immigrants and have not committed a delinquent act are monitored as status offenders.

A “Delinquent” is a juvenile who has been charged with, or adjudicated for, any conduct that would be criminal if committed by an adult. Examples include: D.U.I., open container in a vehicle, trespass, assault, burglary, etc.

Federal Jail Removal Rules and Regulations

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

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

- Status offenders held in a secured setting of a jail or lock-up for any period of time. Holding status securely counts as 2 violations - one under Deinstitutionalization of Status Offenders (DSO) and one under Jail Removal.
- Accused delinquents held in an adult jail or lockup for purposes other than identification, investigation, processing, release to parents, awaiting transfer to court or transfer to a juvenile facility following initial custody. Therefore, if a juvenile is being held as “punishment” or to teach them a lesson it is a violation, no matter what length of time they are securely held.
- A juvenile who is transferred to a jail or lockup from a juvenile detention center for disciplinary reasons unless additional criminal charges are filed relative to the infraction and then only for processing purposes. See the above statement. If a juvenile is brought to an adult jail or lockup after an infraction at another facility and is not being charged with that offense, it is assumed that the holding is for punishment purposes, or for a cooling off period, and is therefore a violation since no other criminal charges were filed.
- Accused delinquents held over the 6-hour grace period. A juvenile may not be removed from the secure setting and placed back again to “stop the 6-hour clock”. Once the clock starts it cannot be turned off until the juvenile is permanently removed from the secure setting.

Jail Removal Rule – Six-Hour Hold Exception

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

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

Racial and Ethnic Disparities (RED)

The “racial and ethnic disparity” means minority youth populations are involved at a decision point in the juvenile justice system at disproportionately higher rates than non-minority youth at that decision point. 34 U.S.C. § 11103(41).

Federal RED Rules and Regulations

The JJRA requires that states “must implement policy, practice and system improvement at the state, territorial, local, and tribal levels, as applicable, to identify and reduce racial and ethnic disparities among youth who come into contact with the juvenile justice system, without establishing or requiring numerical standards or quotas. . .”. The JJRA further gives three methods to comply with the requirement:

- (A) Establishing or designating existing coordinating bodies, composed of juvenile justice stakeholders (including representatives of the educational system) at the state, local, or tribal levels, to advise efforts by states, unit of local government, and Indian Tribes to reduce racial and ethnic disparities.
- (B) Identifying and analyzing data on race and ethnicity at decision points in state, local, or tribal juvenile justice systems to determine which such points create racial and ethnic disparities among youth who come into with the juvenile justice system; and
- (C) Developing and implementing a work plan that includes measurable objectives for policy, practice, or other system changes, based on the needs identified in the data collection and analysis under subparagraph (B).

States are required to submit a three-pronged, research-driven, outcomes-based strategy for RED work to OJJDP annually.

**Juvenile Justice and Delinquency Prevention Act of
2002 Compliance Chart for Adult Jails, Adult
Lockups and Court Holding Facilities**

Type of Juvenile	JJDP Act Regulations
<u>All Juveniles</u>	All juveniles held securely must be sight and sound separated from incarcerated adults. Under current OJJDP policy and proposed regulation, New Mexico must assure that no juvenile offender under public authority shall enter, for any amount of time, into a secure setting or secure section of any jail, lockup or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g. Shock Incarceration, Scared Straight or Shape Up).
<u>Status Offender</u> - The juvenile has committed an offense that would not be criminal if committed by an adult: e.g., running away, curfew violation, truancy. Warrants, FTA, or FTC where the original offense was a status offense remain status offenses. Illegal immigrants with no delinquent charges are monitored as status offenders.	The status offender may not be held securely. Secure holding constitutes violations of two core protection requirements, Deinstitutionalization of Status Offenders and Jail Removal. A status offender may be held in a non-secure setting and the juvenile must be under continual law enforcement supervision. Warrants, FTA's, FTC's where original offense is a status offense remain status offenders.
<u>Accused Delinquent</u> - The juvenile is "accused" of committing an offense that would be criminal if committed by an adult.	The juvenile may be held securely in a sight and sound separated area for up to six hours but only for processing, investigation, or arranging transportation or release.
<u>Adjudicated Delinquent</u> - The juvenile is found by the court to have committed the offense that would be criminal if committed by an adult. E.g., Juvenile is returning to court for sentencing or probation revocation.	The juvenile may be held securely for up to 6 hours before a court appearance and for 6 hours following a court appearance. The juvenile may not be held for punitive purposes.
<u>Disposition of a Delinquent Offender</u>	No juvenile may be sentenced by a judge to an adult jail or adult lockup. Disposed cases of secure incarceration may only be to a Juvenile Detention Facility.

Monitoring Authority

The monitoring authority for the JJDP Act is expressed in the NM State Statute 32A-2-(1-33) specifically, 32A-2-4. Detention facilities; standards; reports; appeals, which states:

- A. The department shall promulgate updated standards for all detention facilities, including standards for site, design, construction, equipment, care, program, personnel and clinical services. The department shall certify as approved all detention facilities in the state meeting the standards promulgated. The department may establish by rule appropriate procedures for provisional certification and the waiving of any of its standards for facilities in existence at the time of the adoption of the standards, except that it shall not allow waiver of any standard pertaining to adequate health and safety protection of the residents and staff of the facility. No child shall be detained in a detention facility unless it is certified as approved by the department, except as otherwise provided in Chapter [32A](#), Article 2 NMSA 1978.
- B. The department shall inspect all detention facilities in the state at least once each twelve months and shall require those reports it deems necessary from detention facilities in a form and containing the information determined by the department. If as the result of an inspection a certified detention facility is determined as failing to meet the required standards, its certification is subject to revocation or refusal for renewal by the department.

The department shall promulgate rules establishing procedures that provide for prior notice and public hearings on detention facilities' standards adoption and changes. The department shall also promulgate rules establishing procedures for facility certification, renewal of certification, refusal to renew certification and revocation of certification. The procedures adopted on these matters shall provide for adequate prior notice of intended action by the department, opportunity for the aggrieved person to have an administrative hearing and written notification of the administrative decision. Rules promulgated under this subsection shall not be effective unless filed in accordance with the State Rules Act [[14-4-1](#) NMSA 1978].

- C. Any person aggrieved by an administrative decision of the department rendered under the provisions of this section may petition for the review of the administrative decision by appealing to the district court pursuant to the provisions of Section [39-3-1.1](#) NMSA 1978.
- D. After January 1, 1994, no state or county detention facility shall hold juveniles sentenced by a federal court, unless the facility meets state standards promulgated by the department.
- E. A juvenile detention facility certified by the department shall comply with the daily reporting requirement for children in detention, including reports on the length of stay for each child. This information shall be reported as required by the department.

Additionally, 32 A-2-4.1. Adult jails and lockups used as temporary holding facilities; reports, states:

- A. A child arrested and detained for an alleged delinquent act may be temporarily held in an adult jail or lockup for no longer than six hours. A child who is detained in an adult jail or lockup shall be placed in a setting that is physically segregated by sight and sound from adult offenders. After six hours, the child may be placed or detained pursuant to the provisions of Section [32A-2-12](#) NMSA 1978.
- B. An adult jail or lockup used as a temporary holding facility for alleged delinquent offenders shall file an annual report regarding its compliance with federal requirements. The Juvenile Justice Advisory Committee (JJAC) and the department shall determine the format of the annual reports.

Monitoring Timeline

The New Mexico Compliance Coordinator surveys one third of the Law Enforcement (Local, Sheriff and Police lockups) in the state each year, distributes secure juvenile holding logs, and obtains signed certifications. In addition, the Compliance Coordinator monitors all adult jails, courthouse lockups, University and state police stations, and obtains signed certifications from jail administrators.

The Children Youth and Families Department certifies all Residential Treatment Centers in New Mexico annually. In addition, CYFD annually certifies all juvenile detention centers and collocated facilities in the state using JJDP Act, ACA, and the State of New Mexico Statutory requirements.

Violation Procedures

According to 32A-2-4 (NMSA 1978), CYFD shall promulgate standards for all detention facilities' certifications, and 32A-2-4.1 provides for the use of adult jails and lockups used as temporary holding facilities in compliance with federal requirements with annual reports. The Compliance Coordinator visit the facilities each year. Any violations are discussed with the appropriate authorities and a letter written regarding the findings and suggestions for remedy. The Compliance Coordinator follow up with each violation to ensure compliance with the JJDP Act.

Appendix A provides the Violation Letter format.

Definition of Terms

The definition of terms used in New Mexico are attached in Appendix C and conform to the federal definition of terms.

Monitoring Universe

CYFD is the state agency responsible for administering the Formula Grants Program and for monitoring compliance with the Juvenile Justice and Delinquency Prevention Act (JJJPA). For state fiscal year 2020, CYFD's system to monitor compliance with the core requirements of the JJDP Act includes the CYFD Compliance Coordinator, the CYFD Quality Assurance Unit and the CYFD Licensing and Certification Unit.

Identifying Facilities in the Monitoring Universe

New Mexico Children, Youth & Families Department updates its Monitoring Universe on an annual basis. The Compliance Coordinator performs annual tasks to update the monitoring universe and classify all agencies within it. An annual mailing (physical and/or electronic; usually performed in July) is completed to update contact information, classification and all other forms needed. In partnership with the New Mexico Counties Association, New Mexico Sheriff's Association and New Mexico Municipal League identification of facilities is performed annually. Additionally, as Secure Juvenile Holding Logs are submitted monthly, any changes to the agency's status or contact person are updated at that time. Those agencies that do not submit monthly logs are contacted by the Compliance Coordinator promptly to maintain data integrity. On-site visits are also used to verify that this information is accurate. During onsite inspections, interview questions are asked about new facilities or agencies and any closures of facilities or agencies; this assists in identifying sites for the monitoring universe.

Facility Inspections

The Compliance Coordinator is responsible for inspecting annually at least one-third of the approximately two hundred and fifty-five (255) facilities currently identified in our monitoring universe. The Compliance Coordinator is also responsible for reviewing all admission logs from adult facilities to make sure all fields of information were fully completed and following up with facilities when there was missing information or when potential violations were detected. New Mexico's monitoring universe is categorized as the following:

- Adult Jails: 29
- Adult Lockups: 169
- Collocated: 3
- Court Holding: 37
- Juvenile Detention Facilities: 3
- Adult Correctional Facilities: 10
- Juvenile Correctional Facilities: 4

The Compliance Coordinator is also responsible for inspecting and certifying all county juvenile detention facilities in New Mexico. The CYFD Quality Assurance Team inspects the juvenile correctional facilities.

An onsite inspection checklist includes interview questions that include inquiries regarding any new sites in the area; this also includes changes to any sites (example: Other law enforcement agencies in the area?; New detention/correctional facilities?; Any changes to the court building(s)?). Additionally, partnership with the New Mexico Counties Association, New Mexico Sheriff's Association and New Mexico Municipal League provides opportunity to update and/or change the monitoring universe.

The Children Youth and Families Department (CYFD) certifies and inspects group homes (GHS), shelter beds (Shelter), Residential Treatment Centers (RTC) and secure hospitals (PRTF) in the state. Annual inspections conducted by CYFD units are to monitor for compliance with the standards and/or licensure set for each type of facility. It is the responsibility of all agencies and departments to assist the state in maintaining compliance to assure the safe and appropriate holding of juveniles, and to retain these funds for juvenile justice programming.

Classification of Monitoring Universe

CYFD and the Special Programs Unit identify the monitoring universe. All secure detention and correctional facilities and lockups at the state and local level, which detain juveniles, are included. Facilities for juveniles are classified by CYFD as being secure or non-secure. Facilities classified as secure whose purpose is to detain juveniles who have allegedly committed an offense or who have been adjudicated delinquent are monitored by CYFD, and are classified as long-term separate juvenile detention facilities, 48-hour separate juvenile detention facilities, and 6-hour holding facilities (adult jails/police lockups with separate sections for juvenile holds). An annual mailing (physical and/or electronic) of a facility profile is completed; which is followed by onsite verification.

The non-secure facilities are classified as group homes, residential treatment centers, and treatment foster homes. There is also a secure psychiatric hospital classification. Appendix D provides the Monitoring Universe detail.

Inspection of Facilities

Inspection of secure juvenile detention facilities is performed by CYFD, as described above. These facilities are inspected annually for compliance with all juvenile detention standards. Unannounced spot checks are also performed during the course of the year, as needed. Additionally, the Compliance Coordinator is in charge of inspections and inspects 1/3 of all law of all law enforcement agencies to include lockups, and adult detention centers each year.

Group homes, shelter beds, Residential Treatment Centers (RTC's) and secure hospitals are monitored annually by the Children Youth and Families Department's Licensing and Certification Unit (LCA).

The Compliance Coordinator uses standardized inspection forms and records of prior year inspections identifies the facilities due inspection during each calendar year. Once the facilities are identified, the Compliance Coordinator will schedule site inspections through coordination with agency heads and/or points of contact to arrange site inspections in an efficient manner (by County, region, etc.) to minimize time and travel.

Site visits will consist of the following:

- In person visit to the facility to meet with the agency head and/or point of contact,
- Tour of the facility to include where juveniles are processed and/or detained pending transport to a detention facility;
- Obtain copies of current policies and/or procedures utilized by the agency pertaining to juvenile arrests, processing and detention;
- Photographs of any measures used to secure juvenile while in the custody of the agency and photographs of the locations used by the agency for processing and/or detaining juvenile offenders;
- The Compliance Coordinator will notify the agency head and/or their point of contact of any problems or concerns during the visit and prior to leaving; and
- Provide the agency head and/or their point of contact with a copy of the written site inspection report once completed.

The Compliance Coordinator will maintain a record of all site inspections completed and a schedule of when a facility is due its next site inspection.

Data Collection and Verification

The Compliance Coordinator is responsible for assisting the law enforcement agencies, adult detention centers, municipal jails, and courthouses with proper holding log completion and collection. Logs are inspected as they are received, and any issues are brought to the attention of the administration and technical assistance is offered. The Compliance Coordinator will also follow up on violations and provide technical assistance to agencies as needed. Additionally, log submission deadline is monthly. This provides a quicker turn-around time to address violations and provide technical assistance. The Compliance Coordinator makes contact (phone, email, mail, onsite) with sites that do not submit monthly logs.

Appendix A:

Violation Letter Format (On Letterhead)



State of New Mexico
CHILDREN, YOUTH and FAMILIES DEPARTMENT



JJDP/JJRA Compliance Violation Report

Agency/Facility Name _____ County _____
Name of agency

Agency/Facility Address _____

Contact Person and Title _____
Sheriff, Chief, Director, Administrator or Contact person

Contact Phone _____ Contact Fax _____

Contact E-Mail Address _____

Date of Violation(s) _____
Date the violation(s) occurred

Violation Narrative _____

Describe the violation. "On this date, juvenile was held securely from hour until hour for offense"

Reason for Violation _____
Describe why it is a violation and what core requirement(s) was/were violated.

Investigation Date _____
Date you either reviewed logs onsite or by mail.

Compliance Coordinator _____
Which compliance coordinator is reviewing, phone number

Suggested Follow Up _____

Describe what follow up action is required or requested. It may be a memo to all officers, may be a modification in handling juveniles, may be a reprimand, and may be that the compliance monitor needs to provide technical assistance.

Date This Letter Sent _____
Date you sent the compliance violation form.

Agency Response _____

When you receive a response, you should describe in this section.

Reminder – Title V funds contingent upon compliance.

(Copy to facility administrator or contact and copy for Facility File)

Submit completed form to Samantha Lucas, Compliance Coordinator
Email: Samantha.Lucas@state.nm.us Fax: (505) 841-6601 Questions? Call: (505) 490-1067

Revised: 1/1/2020

Appendix B: Secure Juvenile Holding Log

Date form revised: March 1, 2020

New Mexico Children, Youth and Families Department Juvenile Justice and Delinquency Prevention Act Secure Juvenile Holding Log

Agency Name and Location: _____ Dates This Log Covers: _____
 Contact Person Name: _____ Phone: _____
 Email: _____

Instructions: (Please print clearly and record in military time)

- Status offenders shall not be placed in a secure setting such as holding cells, locked rooms, or handcuffed to a stationary object. A status offense is a runaway, incorrigible child, curfew violator, or habitual truant.
- Delinquents may only be held for up to six (6) hours for processing purposes. Sight and sound separated from adult offenders.
- Record juveniles who are held in a secure setting using the log below.
- New Mexico Secure Juvenile Holding Log shall be submitted **monthly** to the New Mexico Compliance Coordinator. In accordance with New Mexico § 32A-2-4.1.

Name	Age	Race	Gender	Most Serious Charge (No status offenses) <i>Please write out charge</i>	Case #	Secure Setting Information				Officer	Released To	
						Date In	Time In	Date Out	Time Out			

Email or Fax completed form to Samantha Lucas, Compliance Coordinator
 Email: Samantha.lucas@state.nm.us Fax: (505) 841-6601
 Questions? Call (505) 490-1067

Electronic forms can be found at: <https://cyfd.org/files-special-programs/state-and-federal-compliance/compliance-monitoring>

Appendix C: Definition of Terms

In classifying facilities and identifying the types of offense behavior of the juvenile to be counted for monitoring purposes, New Mexico needs to operate under definitions that are compatible with those found in the federal formula grant regulations.

The definitions from the formula grant regulations, the JJDP Act, and the OJJDP Compliance Monitoring Guideline Manual will take precedence and will be used for monitoring purposes.

FORMULA GRANT REGULATION DEFINITIONS 28 CFR Part 31 (as amended)

New Mexico/OJJDP Definitions Crosswalk

Term	Federal Definition	State of NM Definition
Adult Inmate	<p>JJDP Act Definition 42 USC 5603 Sec 103(26) An adult inmate is 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 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 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>32A-1-4. Definitions. (2009) As used in the Children's Code: A. "adult" means a person who is eighteen years of age or older;</p>
Adult Jail	<p>28 CFR 31.304(m) A secure facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.</p>	Use Federal definition
Adult Lockup	<p>28 CFR 31.304(n) Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.</p>	Use Federal definition
Court Holding	<p>A court holding facility is a secure facility, other than an adult jail or lockup, which is used to temporarily detain persons immediately before or after detention hearing, or other court proceedings. Court holding facilities, where they do not detail individuals overnight (i.e., are not</p>	Use Federal definition

	<p>residential) and are not used for punitive purposes or other purposes unrelated to a court appearance, are not considered adult jails or lockups for purposes of section 223 (a) (14) of the JJDP Act. However, such facilities remain subject to the section 223 (a) (13) (42 U.S.C. 5633 (a) (13)) separation requirement of the Act.</p>	
<p>Collocated Facility</p>	<p>28 CFR 31.303 (e)(3)(l)(1)-(4) Collocated facilities are facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds.</p> <p>A related complex of buildings is two or more buildings that share physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer); or the specialized services such as medical care, food service, laundry, maintenance, engineering services, etc.</p> <ul style="list-style-type: none"> • Separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and incarcerated adults. Separation can be achieved architecturally or through time phasing of common use nonresidential areas and; • 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 a full range of separate program services. Juveniles and adult inmates may share no program activities. Time phasing of common use nonresidential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and • If the state will use the same staff to serve both the adult and juvenile populations, there is in effect in the state a policy that requires individuals who work with both juveniles and adult inmates to be trained and certified to work with juveniles; and • In states that have established standards or licensing requirements for secure juvenile 	

	detention facilities, the juvenile facility meets the standards and be licensed as appropriate. If there are no state standards or licensing requirements, OJJDP encourages states to establish administrative requirements that authorize the state to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards.	
Delinquent:	<p>OJDP Guideline Manual</p> <p>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>32A-2-3. Definitions. (2009)</p> <p>As used in the Delinquency Act:</p> <p>A. "delinquent act" means an act committed by a child that would be designated as a crime under the law if committed by an adult.</p>
Detain or Confine	<p>28 CFR - 31.304(q) To hold, keep, or restrain a person such that he is not free to leave, or such that a reasonable person would believe that he is not free to leave, except that a juvenile held by law enforcement solely for the purpose of returning him to his parent or guardian or pending his transfer to the custody of a child welfare or social service agency is not detained or confined within the meaning of this definition.</p>	<p>32A-2-9. Taking into custody. (1993)</p> <p>A child may be taken into custody:</p> <p>A. pursuant to the order of the court issued because a parent, guardian or custodian fails when requested to bring the child before the court after having promised to do so when the child was delivered upon release from custody;</p> <p>B. pursuant to the laws of arrest for commission of a delinquent act; or</p> <p>C. by a juvenile probation and parole officer proceeding pursuant to the provisions of Section 32-2-5 [32A-2-5] NMSA 1978.</p>
Facility	<p>28 CFR - 31.304(c)</p> <p>A place, an institution, a building or part thereof, set of buildings or an area whether or not</p>	Use Federal definition

	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 who is accused of having committed an offense	28 CFR - 31.304(d) A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal type offender or a status offender and no final adjudication has been made by the juvenile court.	Use Federal definition
Juvenile who has been adjudicated as having committed an offense	28 CFR - 31.304(e) A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal type offender or a status offender	Use Federal definition
Non-Offender	28 CFR- 31.304(l) 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.	Use Federal definition
Non-Secure Custody	The following policy criteria, if satisfied, will constitute non-secure custody of a juvenile in a building that houses an adult jail or lockup facility: (1) the area(s) where the juvenile is held is an unlocked multi-purpose area, such as a lobby, office, or interrogation room which is not designated, set aside or used as a secure detention area or is not a part of such an area, or, if a secure area, is used only for processing purposes; (2) The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility; (3) the use of the area(s) is limited to providing non-secure custody only long enough and for the purposes of identification, investigation, processing, release to parent, or arranging transfer to an appropriate juvenile facility or to court; (4) in no event can the area be designed or intended to be used for residential purposes; and (5) the juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in non-secure custody.	Use Federal definition
Public Agency	JJDP Act Definition- 103 (11)	Use Federal definition

	The term "public agency" means any State, unit of local government, combination of such States or Units, or any department, agency or instrumentality of any of the forgoing.	
Private Agency	<p>28 CFR - 31.304(a) A private non-profit agency, organization or institution is:</p> <p>A. Any corporation, foundation, trust, association, cooperative, or accredited institution of higher education not under public supervision or control.</p> <p>B. Any other agency, organization, or institution which operates primarily for scientific, education, service charitable or similar public purposes, but which is not under public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax exempt under the provisions of section 501 (c)(3) of the 1954 Internal Revenue Code.</p>	Use Federal definition
Secure Custody	<p>28 CFR - 31.304(b) As used to define a detention or correctional facility this term includes residential facilities that include construction fixtures 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.</p>	Use Federal definition
Secure correctional facility	<p>JJDP Act Definition- 103 (13) (A) (B) The term "secure correctional facility" means any public or private residential facility which:</p> <p>A. Includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility.</p> <p>B. Is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense, any non-offender, or any other individual convicted of a criminal offense.</p>	Use Federal definition
Secure Detention Facility	<p>JJDP Act Definition - 103 (12) (A) (B) The term "secure detention facility" means any public or private residential facility which:</p> <p>A. Includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility.</p>	Use Federal definition

	<p>B. Is used for the temporary placement of any juvenile that is accused of having committed an offense, of any non-offender, or of any other individual accused of having committed a criminal offense.</p>	
<p>Sight and Sound Separation</p>	<p>28 CFR - 31.303 (d)(I)(I) Secure custody status is when a juvenile offender is physically detained or confined in a locked room or area. Secure detention or confinement may result either from being placed in such a room or area and/or being physically secured to a cuffing rail or other stationary object. Separation must be accomplished architecturally or through policies and procedures in all secured areas. Sight contact is when a juvenile has clear visual contact with an incarcerated adult within close proximity. Sound contact is when a juvenile can have direct oral communication with an incarcerated adult. In accordance with OJJDP policy the state must assure that no juvenile offender shall enter, under public authority, for any amount of time, into a secure setting or secure section of any jail, lockup, or correctional facility as a disposition of an offense or as a means of modifying their behavior.</p>	<p>Use Federal definition</p>
<p>Status Offender</p>	<p>28 CFR - 31.304(h) A juvenile offender who has been charged with or adjudicated for conduct, which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. (Status offenses include truancy, violations of curfew, runaway, underage possession of alcohol or tobacco, underage alcohol offenses).</p>	<p>Use Federal definition</p>
<p>Valid Court Order</p>	<p>28 CFR - 31.304(o) The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word "valid" permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States.</p>	<p>Use Federal definition</p>

JJDP ACT DEFINITIONS

Secure Detention Facility - 103 (12) (A) (B):

The term "secure detention facility" means any public or private residential facility which:

A. Includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility.

B. Is used for the temporary placement of any juvenile that is accused of having committed an offense, of any non-offender, or of any other individual accused of having committed a criminal offense.

Secure correctional facility - 103 (13) (A) (B):

The term "secure correctional facility" means any public or private residential facility which:

A. Includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility.

B. Is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense, any non-offender, or any other individual convicted of a criminal offense.

Public Agency - 103 (11):

The term "public agency" means any State, unit of local government, combination of such States or Units, or any department, agency or instrumentality of any of the forgoing.

Adult Inmate – 42 USC 5603 Sec 103(26)

An adult inmate is 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.

OJP GUIDELINE MANUAL

Delinquent: 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.

Reasonable Cause Hearing (In JJDP Act): In the context of the VCO Exception, the reasonable cause hearing (also referred to as a probable cause hearing or preliminary hearing) is a court proceeding held by a judge to determine whether there is sufficient cause to believe that a juvenile status offender accused of violating a valid court order and to determine the appropriate placement of such juvenile pending disposition of the violation alleged. (42 U.S.C. 5633 Sec. 223(a)(23)(C)(ii)).

New Mexico State Statute

32A-1-4. Definitions. (2009)

As used in the Children's Code:

- A. "adult" means a person who is eighteen years of age or older;
- B. "child" means a person who is less than eighteen years old;
- C. "court", when used without further qualification, means the children's court division of the district court and includes the judge, special master or commissioner appointed pursuant to the provisions of the Children's Code or supreme court rule;
- D. "court-appointed special advocate" or "CASA" means a person appointed as a CASA, pursuant to the provisions of the Children's Court Rules [10-101 NMRA], who assists the court in determining the best interests of the child by investigating the case and submitting a report to the court;
- E. "custodian" means an adult with whom the child lives who is not a parent or guardian of the child;
- F. "department" means the children, youth and families department, unless otherwise specified;
- G. "disproportionate minority contact" means the involvement of a racial or ethnic group with the criminal or juvenile justice system at a proportion either higher or lower than that group's proportion in the general population;
- H. "foster parent" means a person, including a relative of the child, licensed or certified by the department or a child placement agency to provide care for children in the custody of the department or agency;
- I. "guardian" means a person appointed as a guardian by a court or Indian tribal authority or a person authorized to care for the child by a parental power of attorney as permitted by law;
- J. "guardian ad litem" means an attorney appointed by the children's court to represent and protect the best interests of the child in a court proceeding; provided that no party or employee or representative of a party to the proceeding shall be appointed to serve as a guardian ad litem;
- K. "Indian child" means an unmarried person who is:
 - (1) less than eighteen years old;
 - (2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and
 - (3) the biological child of a member of an Indian tribe;
- L. "Indian child's tribe" means:
 - (1) the Indian tribe in which an Indian child is a member or eligible for membership; or
 - (2) in the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts;
- M. "Indian tribe" means a federally recognized Indian tribe, community or group pursuant to 25 U.S.C. Section 1903(1);
- N. "judge", when used without further qualification, means the judge of the court;
- O. "legal custody" means a legal status created by order of the court or other court of competent jurisdiction or by operation of statute that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline

the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act [32A-6A-1 NMSA 1978]; and the right to consent to the child's enlistment in the armed forces of the United States;

P. "parent" or "parents" includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child;

Q. "permanency plan" means a determination by the court that the child's interest will be served best by:

- (1) reunification;
- (2) placement for adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;
- (3) placement with a person who will be the child's permanent guardian;
- (4) placement in the legal custody of the department with the child placed in the home of a fit and willing relative; or
- (5) placement in the legal custody of the department under a planned permanent living arrangement;

R. "person" means an individual or any other form of entity recognized by law;

S. "preadoptive parent" means a person with whom a child has been placed for adoption;

T. "protective supervision" means the right to visit the child in the home where the child is residing, inspect the home, transport the child to court-ordered diagnostic examinations and evaluations and obtain information and records concerning the child;

U. "reunification" means either a return of the child to the parent or to the home from which the child was removed or a return to the noncustodial parent;

V. "tribal court" means:

- (1) a court established and operated pursuant to a code or custom of an Indian tribe; or
- (2) any administrative body of an Indian tribe that is vested with judicial authority;

W. "tribal court order" means a document issued by a tribal court that is signed by an appropriate authority, including a judge, governor or tribal council member, and that orders an action that is within the tribal court's jurisdiction; and

X. "tribunal" means any judicial forum other than the court.

History: 1978 Comp., § 32A-1-4, enacted by Laws 1993, ch. 77, § 13; 1995, ch. 206, § 2; 1999, ch. 77, § 2; 2003, ch. 225, § 1; 2005, ch. 189, § 1; 2009, ch. 239, § 7.

32A-2-3. Definitions. (2009)

As used in the Delinquency Act:

A. "delinquent act" means an act committed by a child that would be designated as a crime under the law if committed by an adult, including the following offenses:

- (1) any of the following offenses pursuant to municipal traffic codes or the Motor Vehicle Code [66-1-1 NMSA 1978]:

- (a) driving while under the influence of intoxicating liquor or drugs;
 - (b) failure to stop in the event of an accident causing death, personal injury or damage to property;
 - (c) unlawful taking of a vehicle or motor vehicle;
 - (d) receiving or transferring of a stolen vehicle or motor vehicle;
 - (e) homicide by vehicle;
 - (f) injuring or tampering with a vehicle;
 - (g) altering or changing of an engine number or other vehicle identification numbers;
 - (h) altering or forging of a driver's license or permit or any making of a fictitious license or permit;
 - (i) reckless driving;
 - (j) driving with a suspended or revoked license; or
 - (k) an offense punishable as a felony;
- (2) buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse. As used in this paragraph, "restaurant" means an establishment where meals are prepared and served primarily for on-premises consumption and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals. "Restaurant" does not include an establishment, as defined in regulations promulgated by the director of the special investigations division of the department of public safety, that serves only hamburgers, sandwiches, salads and other fast foods;
- (3) a violation of Section 30-29-2 NMSA 1978, regarding the illegal use of a glue, aerosol spray product or other chemical substance;
- (4) a violation of the Controlled Substances Act [30-31-1 NMSA 1978];
- (5) escape from the custody of a law enforcement officer or a juvenile probation or parole officer or from any placement made by the department by a child who has been adjudicated a delinquent child;
- (6) a violation of Section 30-15-1.1 NMSA 1978 regarding unauthorized graffiti on personal or real property; or
- (7) a violation of an order of protection issued pursuant to the provisions of the Family Violence Protection Act [40-13-1 NMSA 1978];
- B. "delinquent child" means a child who has committed a delinquent act;
- C. "delinquent offender" means a delinquent child who is subject to juvenile sanctions only and who is not a youthful offender or a serious youthful offender;
- D. "detention facility" means a place where a child may be detained under the Children's Code [32A-1-1 NMSA 1978] pending court hearing and does not include a facility for the care and rehabilitation of an adjudicated delinquent child;
- E. "felony" means an act that would be a felony if committed by an adult;
- F. "misdemeanor" means an act that would be a misdemeanor or petty misdemeanor if committed by an adult;

G. "restitution" means financial reimbursement by the child to the victim or community service imposed by the court and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to a person and lost wages resulting from physical injury, which are a direct and proximate result of a delinquent act. "Restitution" does not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses. As used in this subsection, "victim" means a person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers or juvenile probation authorities. Nothing contained in this definition limits or replaces the provisions of Subsections A and B of Section 32A-2-27 NMSA 1978;

H. "serious youthful offender" means an individual fifteen to eighteen years of age who is charged with and indicted or bound over for trial for first degree murder. A "serious youthful offender" is not a delinquent child as defined pursuant to the provisions of this section;

I. "supervised release" means the release of a juvenile, whose term of commitment has not expired, from a facility for the care and rehabilitation of adjudicated delinquent children, with specified conditions to protect public safety and promote successful transition and reintegration into the community. A juvenile on supervised release is subject to monitoring by the department until the term of commitment has expired, and may be returned to custody for violating conditions of release; and

J. "youthful offender" means a delinquent child subject to adult or juvenile sanctions who is:

(1) fourteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:

(a) second degree murder, as provided in Section 30-2-1 NMSA 1978;

(b) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;

(c) kidnapping, as provided in Section 30-4-1 NMSA 1978;

(d) aggravated battery, as provided in Subsection C of Section 30-3-5 NMSA 1978;

(e) aggravated battery against a household member, as provided in Subsection C of Section 30-3-16 NMSA 1978;

(f) aggravated battery upon a peace officer, as provided in Subsection C of Section 30-22-25 NMSA 1978;

(g) shooting at a dwelling or occupied building or shooting at or from a motor vehicle, as provided in Section 30-3-8 NMSA 1978;

(h) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;

(i) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(j) robbery, as provided in Section 30-16-2 NMSA 1978;

(k) aggravated burglary, as provided in Section 30-16-4 NMSA 1978;

(l) aggravated arson, as provided in Section 30-17-6 NMSA 1978; or

(m) abuse of a child that results in great bodily harm or death to the child, as provided in Section 30-6-1 NMSA 1978;

(2) fourteen to eighteen years of age at the time of the offense, who is adjudicated for any felony offense and who has had three prior, separate felony adjudications within a three-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior

adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees are not considered a prior adjudication for the purposes of this paragraph; or

(3) fourteen years of age and who is adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978.

History: 1978 Comp., § 32A-2-3, enacted by Laws 1993, ch. 77, § 32; 1995, ch. 204, § 2; 1995, ch. 205, § 2; 1995, ch. 206, § 10; 1996, ch. 85, § 2; 2003, ch. 225, § 3; 2005, ch. 189, § 11; 2009, ch. 239, § 10.

32A-2-9. Taking into custody. (1993)

A child may be taken into custody:

A. pursuant to the order of the court issued because a parent, guardian or custodian fails when requested to bring the child before the court after having promised to do so when the child was delivered upon release from custody;

B. pursuant to the laws of arrest for commission of a delinquent act; or

C. by a juvenile probation and parole officer proceeding pursuant to the provisions of Section 32-2-5 [32A-2-5] NMSA 1978.

History: 1978 Comp., § 32A-2-9, enacted by Laws 1993, ch. 77, § 38.

Appendix D: Monitoring Universe

Agency	Responsible For:	Contact	Address	Phone	E-Mail
Children, Youth and Families Department	CYFD provides an array of prevention, intervention, rehabilitative and after-care services to New Mexico children and their families.	Brian Blalock, Cabinet Secretary Nick Costales Deputy Director, JJS Field Services	Children, Youth and Families Department 1120 Paseo de Peralta, Santa Fe, NM 87501		Brian.Blalock@state.nm.us Nick.Costales@state.nm.us
Juvenile Justice Field Services	Special Programs Manager / Juvenile Justice Specialist.	William Kearney, Juvenile Justice Specialist	Children, Youth and Families Department 4775 Indian School Rd, Suite 210 Albuquerque, NM 87110	(505) 469-5325	William.Kearney@state.nm.us
Compliance Coordinator	Responsible for inspection of secure juvenile detention and correctional facilities statewide. Responsible for on-site inspection of New Mexico state, county, municipal, court and educational facilities for OJJDDP Act compliance and collection of Secure Detention Logs	Samantha Lucas	Children, Youth and Families Department 4775 Indian School Rd, Suite 210 Albuquerque, NM 87110	(505) 490-1067	Samantha.Lucas@state.nm.us
CYFD Licensing and Certification Unit	Certifies and inspects sixty group homes and residential treatment centers.	Lillian Rainer	Children, Youth and Families Department 4000 Edith Blvd NE, Albuquerque, NM 87107	(505) 231-3129	Lilian.Rainer@state.nm.us
New Mexico State Police	NMSP is organized into Districts; there are 12 districts. Within those 12 districts there are district and sub-district offices.	Chief Tim Q. Johnson	New Mexico State Police Headquarters 4491 Cerrillos Road in Santa Fe, NM.	(505) 827-9219	Tim.Johnson@state.nm.us
New Mexico Sheriffs Association Jails/Court Holding	Not all County Sheriffs are responsible for jails. Updating the list of jails and court holding facilities is based on on-site visits.	Steve Poswiatowski, Executive Director	The New Mexico Sheriffs' Association PO Box 15574, Rio Rancho NM 87174	(505) 328-0569	steve@wmepnm.com

<p>New Mexico Chiefs of Police</p> <p>Association Lockups/Court Holding</p>	<p>The Chiefs Association is not responsible for lockups or Police Dept.'s, in fact not all Police Depts. are members. Updating the list of PD's and court holding facilities is based on on-site visits.</p>	<p>Anita Tafoya</p>	<p>NMMLA/NMACP Staff Liaison 1229 Paseo de Peralta Santa Fe, NM 87501</p>	<p>505.982-5573 or 800.432-2036</p>	<p>atafoya@nmml.org</p>
<p>Department of Corrections</p> <p>Adult Public and Private Correctional Facilities</p>	<p>Adult correctional facilities. The list of facilities is updated annually on the website.</p>	<p>Alisha Tafoya Lucero, Cabinet Secretary</p>	<p>New Mexico Department of Corrections, 4337 State Road 14 Santa Fe, NM 87507</p>	<p>(505) 827-8645</p>	