

South Dakota Department of Corrections



Compliance Monitoring Manual: Administrative Policies and Procedures for the Custody of Juveniles in South Dakota

Updated March 2024

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Juvenile Justice Delinquency Prevention Act

The [Juvenile Justice and Delinquency Prevention Act](#) (JJDPA) of 1974, as amended [[42 U.S.C. 5601](#)], was adopted by the U.S. Congress in order to establish a comprehensive nationwide program of juvenile delinquency prevention, offender rehabilitation, and juvenile justice system improvements. States, which receive JJDPA funds, are required to comply with the requirements contained in the JJDPA. Since South Dakota is a recipient of the Formula Grants Program, staff throughout the juvenile justice system assists in complying with the requirements of the Act.

The JJDPA established following core requirements:

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

Pursuant to [34 U.S.C. § 11133\(a\)\(11\)\(A\)](#), juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult shall not be placed in secure detention facilities or secure correctional facilities.

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

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

Pursuant to [34 U.S.C. § 11133\(a\)\(13\)](#) no juvenile shall be detained or confined in any jail or lockup for adults, with exceptions.

- **Sight and Sound Separation of Juveniles from Adult inmates (Separation)**

Pursuant to [34 U.S.C. § 11133\(a\)\(12\)](#) juveniles alleged to be or found to be delinquent, status offenders, and non-offenders will not be detained or confined in any institution in which they have sight or sound contact with adult inmates.

- **Reduction of-Racial and Ethnic Disparities (RED)**

Pursuant to [34 U.S.C. § 11133\(a\)\(15\)](#), state plans shall address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups, who come into contact with the juvenile justice system

For the purposes of this manual, only monitoring for the requirements of DSO, section 223(a)(11)(B), Jail Removal, and Separation will be explained. Information concerning compliance with the RED requirement is covered in South Dakota's 3-Year Plan Formula Grants Program Application. This manual is also provided to demonstrate South Dakota's adherence to maintaining an effective system of compliance monitoring.

Legislative Authority

States are required under [34 U.S.C. § 11133\(a\)\(1\) and \(2\)](#) to designate an agency (referred to as the Designated State Agency, or the DSA) and provide satisfactory evidence that the DSA has authority, by

legislation, if necessary, to administer the Title II Formula Grant Program, including monitoring for compliance with the DSO, separation, Section 223(a)(11)(B), and jail removal requirements.

South Dakota codified law (SDCL) 1-15-27 states that the state shall participate in the Formula Grants Program and [\(SDCL\) 1-15-28](#) designates the South Dakota Department of Corrections as the DSA to supervise South Dakota's participation in the JJDP. The Department of Corrections is responsible for implementing the state plan in a manner which will ensure compliance with Sections 223(a)(12), (13), and (14) of the Act. The law also reads that the Department of Corrections shall seek necessary authority and take all necessary action as provided by law to enforce compliance with the JJDP.

[SDCL 24-11-16](#) supports the Department of Correction's authority to monitor facilities by requiring that jails must maintain records and make them available to the Department of Corrections for the purposes of monitoring compliance with the requirements of the JJDP.

Compliance Monitoring System

States participating in the JJDP Formula Grants Program must provide for an effective system of monitoring adult jails, adult lockups, secure detention facilities, and secure correctional facilities to ensure that the core requirements are met pursuant to the monitoring and reporting requirement at [34 U.S.C. § 11133\(a\)\(14\)](#).

Monitoring Policies and Procedures: Pursuant to [28 C.F.R. § 31.303\(f\)\(1\)\(i\)](#), one of the required elements of an effective system of monitoring is that states must describe their policies and procedures for monitoring for compliance with the core requirements. The purpose of this manual is to satisfy the policies and procedures element, as well as describe how South Dakota satisfies the following additional elements required for an effective system of compliance monitoring, ensuring that the juveniles of the state are being detained consistent with the core requirements of the JJDP.

Responsible Entities: The South Dakota Council of Juvenile Services, whose members are appointed by the Governor, serves as the Advisory Group for the State's participation in the Formula Grants Program. The Council approves the Formula Grant budget, subgrants, and all compliance monitoring strategies. Per SDCL [1-15-27](#) through [1-15-31](#), the Department of Corrections, under the Juvenile Justice Specialist, is the agency responsible for the SD Compliance Monitoring System, the administrative requirements of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Formula Grants Program, and staffing the Council of Juvenile Services. The Department of Corrections must submit a written plan that provides for an effective system of monitoring facilities to ensure that the core requirements of the JJDP are met.

Juvenile Classification: The Department of Corrections monitors compliance with the requirements of the JJDP through applying the core requirements to the following three juvenile categories:

- Accused and Adjudicated Juvenile Delinquents - [South Dakota Law Chapter 26-8C](#)
- Status Offenders (Children in Need of Supervision) - [South Dakota State Law Chapter 26-8B](#)
- Abused and Neglected Children - [South Dakota State Law Chapter 26-8A](#)

Monitoring Universe: States under the JJDPa must ensure that all state and local facilities that might detain or confine individuals including adult jails, adult lockups, secure detention facilities, and secure correctional facilities are identified and reported as part of the monitoring universe.

1. **Identification of the Monitoring Universe:** This refers to the identification and monitoring of all secure detention facilities, secure correctional facilities, adult jails, and adult lockups in the state. These facilities come under the purview of the monitoring requirements. This also includes those facilities owned or operated by public and private agencies.

Identification of the monitoring universe begins with verifying known facilities in the state and working with justice partners to identify any new facilities. A variety of resources is used in this identification process including state departments and other contacts.

- The Department of Corrections supplies information pertaining to those facilities that are run by the Department of Corrections for juveniles in the custody of the department and for adult inmates. These facilities make up the “Correctional Facility” category within the monitoring universe.
- The Division of Criminal Investigation maintains the South Dakota Criminal Justice Directory from which a list, of Local Police Departments and County Operated facilities, is created. These facilities make up the “Local Police Department” and “County Law Enforcement” categories.
- The Department of Social Services maintains a list for the licensed facilities approved by their department. Licensed residential treatment centers and intensive residential treatment centers are excluded from the monitoring universe as placement in these facilities is based on medical necessity (<http://sdlegislature.gov/rules/DisplayRule.aspx?Rule=67:16:47:04.04>).
- In addition to these resources, the Department of Corrections Compliance Monitor is responsible for the approval for any colocated facility and monitors county and regional juvenile detention centers within the state.
- The Department of Corrections Compliance Monitor sends a survey to counties and municipalities every four years to gather information regarding their adult and juvenile justice facilities. This information is then reviewed and categorized within the monitoring universe by the Department of Corrections.

2. **Classification of the Monitoring Universe:** The Department of Corrections Formula Grants staff is responsible for the classification of all adult jails, adult lock ups, secure detention facilities, and secure correctional facilities in the state that may securely hold juveniles. Accurate classification ensures that the correct facilities are being monitored for compliance with the Act. Classification within the Monitoring Universe is as follows:

- a. Facility Type
 - i. Secure Correctional Facilities
 - ii. Adult Jails
 - iii. Adult Lockups
 - iv. Secure Detention Facilities
- b. Offender Type
 - i. Adult and Juvenile
- c. Residential or Non-residential

- d. Placement Facility Type
 - i. Public and Private Facilities

Definitions for each facility type are located in Appendix A.

Department of Corrections staff utilizes the previously mentioned survey to ensure that all facilities are accurately identified and classified in the universe.

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

All facilities classified as secure detention or correctional facilities, jails, and lockups, including court holding facilities, in South Dakota's monitoring universe have periodic, on-site inspections to determine compliance with the core requirements. All other facilities outlined in the universe that do not fit the classifications of secure detention or correctional facilities, jails, lockups, or court holding facilities such as administrative law enforcement offices or facilities that are designed as non-secure will be spot checked or visited as needed to ensure that their classification is accurate and that there are no 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 within the facilities or offices. Inspections conducted by the Department of Corrections Formula Grants staff include:

1. A review of the physical accommodations to determine whether it is a secure or non-secure facility and whether adequate sight and sound separation between juvenile and adult inmates exists if applicable.
2. A review of the record keeping system to determine whether sufficient data is maintained to determine compliance with DSO, jail removal, Section 223(a)(11)(B), and separation.
3. Collocated facilities will have an in-depth review of records and policies to ensure adherence to South Dakota Collocated Standards.

Data Collection and Verification: As part of an effective system of monitoring facilities, the Department of Corrections Formula Grant staff is responsible for the data collection and verification from all adult jails, adult lockups, secure detention facilities, and secure correctional facilities. Data collection and verification are required to determine whether facilities in the state are in compliance with the applicable requirements of DSO, jail removal, Section 223(a)(11)(B), and separation. Data will be submitted from jails and detention centers at a minimum on a quarterly basis to the state Compliance Monitor if youth were detained or confined and annually if no youth were detained or confined. Department of Corrections Formula Grant staff is responsible for analyzing all data collected from facilities to determine compliance with the DSO, jail removal, separation, and section 223(a)(11)(B) requirements. In most cases, facilities provide compliance data from their data systems via an electronic log with specified fields.

Deinstitutionalization of Status Offender Analysis:

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

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

The following methods are utilized to identify DSO violations:

1. Identify all juveniles placed in secure detention facilities and secure correctional facilities for the reporting period.
2. Remove all non-secure holds in a juvenile only facility.
3. Remove all delinquent admissions.
4. Identify any Department of Corrections admissions reported as adjudicated Children in Need of Supervision that have a history of delinquent offenses documented in the Comprehensive Offender Management System (COMS) under their current commitment to change their admission type to delinquent.
5. Conduct verification with the Unified Judicial System (UJS) Odyssey Data System to identify and verify juvenile status (accused or adjudicated), offense type, and placement records.
6. Contact facilities for additional information regarding specific admissions such as police reports or case notes that may clarify the type of juvenile being held.
7. Remove all youth held in accordance with federally approved exceptions.

a. 24-Hour Rule

- i. The JJDP Act provides that status offenders and non-offenders not detained or confined in secure detention or correctional facilities. There may be rare situations, however, where short-term secure custody of accused status offenders may be necessary. For example, detention in a juvenile facility for no more than 24 hours, prior to an initial court appearance, following an initial court appearance, or for investigative purposes or identification. Detention for a brief period of time under juvenile court authority may also be necessary in order to arrange for appropriate shelter care placement. Therefore, OJJDP regulations allow a facility to hold an accused status offender in a secure juvenile detention facility for up to a combined 24 hours before and after the hearing. Status offenders who fail to appear for court hearings remain status offenders; they cannot be upgraded to delinquent offenders for their failure to appear.

b. Valid Court Order Exception

- i. The Valid Court Order (VCO) exception at [34 U.S.C. § 11133\(a\)\(11\)\(A\)\(i\)\(II\)](#) provides that accused or adjudicated status offenders found to have violated a valid court order may be placed in a juvenile detention or correctional facility. The JJDP Act defines a valid court order as a court order given by a juvenile court judge to a juvenile who has brought before the court and made subject to such order; and who received, before the issuance of the order, the full due process rights guaranteed to such juvenile by the Constitution of the United States. It is important to note that status offenders who violate a valid court order cannot be detained in a secure detention facility or secure correctional facility, as defined at 34 U.S.C. § 11103(12) and (13), which may include jails and lockups for adults for any length of time. For the VCO Exception to apply, the Act requires that the following actions occur when a status offender is taken into custody for violating a valid court order:

- An appropriate public agency must be promptly notified that the status offender is held in custody for violating the order;
- Not later than 24 hours during which the status offender is held, an authorized representative of the agency shall interview, in person, such status offender;
- Not later than 48 hours during which such status offender is so held--
 - such representative must submit an assessment to the court that issued such order regarding the immediate needs of the status offender.
 - such court shall conduct a hearing to determine--
 - whether there is reasonable cause to believe that such status offender violated such order; and
 - the appropriate placement of such status offender pending disposition of the violation alleged; and
 - If such court determines the status offender should be placed in a secure detention facility or correctional facility for violating such order—
 - The court must issue a written order that--
 - identifies the valid court order that has been violated;
 - specifies the factual basis for determining that there is reasonable cause to believe that the status offender has violated such order;
 - includes findings of fact to support a determination that there is no appropriate less restrictive alternative available to placing the status offender in such a facility, with due consideration to the best interest of the juvenile;
 - specifies the length of time, not to exceed 7 days, that the status offender may remain in a secure detention facility or correctional facility, and includes a plan for the status offender's release from such facility; and
 - may not be renewed or extended; and
 - the court may not issue a second or subsequent order described in subclause (I) relating to a status offender unless the status offender violates a valid court order after the date on which the court issues an order described in subclause (I); and

- there are procedures in place to ensure that any status offender held in a secure detention facility or correctional facility pursuant to a court order described in this paragraph does not remain in custody longer than 7 days or the length of time authorized by the court, whichever is shorter.

In the event the court orders the juvenile detained pending the disposition, the disposition hearing should be held as soon as possible while still allowing reasonable time for the court to obtain additional information to enable it to make a disposition in the best interest of the status offender.

[SDCL 26-8B-3](#) explains how a valid court order must be employed in order for South Dakota to take advantage of the Valid Court Order Exception. If the requirements are not met under federal law the juvenile must be counted as a violation of the DSO requirement.

The UJS Odyssey Data System is used to verify accurate use of the Valid Court Order exception. As this system contains all juvenile court assessments and case details that correspond with the Valid Court Order requirements.

c. Interstate Compact on Juveniles Exception

- i. Pursuant to the DSO requirement at [34 U.S.C. § 11133\(a\)\(11\)\(A\)\(i\)\(III\)](#), status offenders may be held in accordance with the Interstate Compact on Juveniles, as enacted by the state. Juveniles held pursuant to the Interstate Compact on Juveniles enacted by the state are excluded from the DSO requirements in total. States must verify that all status offenders subject to an out-of-state placement were held pursuant to the Interstate Compact on Juveniles. Where the interstate placement of status offenders was not in accordance with the Interstate Compact on Juveniles, the placement must be reported as an instance of non-compliance by the state in which the juvenile is placed.

South Dakota participates in the Interstate Commission for Juveniles which is responsible for promulgating and enforcing rules to implement the Interstate Compact for Juveniles (ICJ). Per [SDCL-26-12-15](#), the compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. Data regarding such juveniles is also reported and maintained in the state's monitoring efforts.

d. Juveniles Held in State or Local Facilities under Federal Authority

- i. Since the Formula Grant Program addresses juveniles in state custody within a state juvenile justice system, "placement," for purposes of the DSO requirement refers to situations in which the state (or a local

government) is acting as a sovereign (or a subdivision of a sovereign), rather than as an agent of the federal government. Thus, for example, when a state has contracted with a federal agency to hold a juvenile alien in a secure detention or secure correctional facility, pursuant to federal law, the state has not “placed” the juvenile in such a facility. Rather, the state is acting as an agent of the federal government, and the juvenile has been placed pursuant to federal authority. In this instance, although detained in a state facility, the juvenile is in federal custody, and the DSO requirement is inapplicable. Data regarding such juveniles is also reported and maintained in the state’s monitoring efforts.

e. Youth Handgun Safety Exception

- i. The DSO requirement does not apply to juveniles charged with or found to have committed a violation of the Youth Handgun Safety Act (18 U.S.C. 922(x)), which prohibits possession of a handgun by a minor under the age of 18, or a similar state law. Such juveniles may be placed in secure detention or secure correctional facilities without violating the DSO requirement.

South Dakota does not utilize the Youth Handgun Safety Exception.

Jail Removal Analysis:

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

- A juvenile accused of a delinquent offense may be detained for no more than 6 hours for the purposes of processing or release or while awaiting transfer to a juvenile facility.
- A juvenile who has been adjudicated as delinquent may not be detained in an adult jail or lockup, for any length of time, without resulting in an instance of noncompliance with the jail removal requirement.

The following methods are utilized to identify jail removal violations:

1. Identify all juvenile admissions for the reporting period.
2. Contact facilities for additional information regarding specific admissions including police reports or court documentation that verifies the status of the youth.
3. Remove all youth held in accordance with federally approved exceptions.

a. Six-Hour Exception

- i. A juvenile accused of a delinquent offense may be detained for no more than 6 hours for the purposes of processing or release, while awaiting transfer to a juvenile facility, or during which period the juvenile makes a court appearance. Any detention of juveniles should be limited to the absolute minimum time necessary to complete these purposes, not to exceed 6 hours.
 1. The 6-hour hold exception provides for a cumulative total of 6 hours that a delinquent offender may be detained in an adult jail or lockup during which the juvenile makes a court appearance. This does not allow for the detainment of a juvenile for up to 6 hours before and then up to an additional 6 hours after a court appearance.
 2. Once a juvenile accused of a delinquent offense has been detained or confined and the 6-hour period has begun, the

facility cannot temporarily take the juvenile out of a custody status and begin the 6-hour time period again. For example, if a juvenile was detained or confined for 4 hours, then was taken to a non-secure interview room for 1 hour during which he was free to leave, then was detained or confined for 2 hours, the total time to report for the jail removal provision is 7 hours and would result in a violation with the jail removal requirement.

- ii. Juveniles adjudicated as delinquents cannot be detained or confined for any length of time in adult jails or lockups.

b. Rural Exception

- i. Sections 34 U.S.C. § 11133(a)(13)(B)(i) and (ii)(I) of the JJDPa provide for a “rural” exception, allowing the temporary detention beyond the 6-hour limit of juveniles accused of delinquent offenses who are awaiting an initial court appearance for as long as 48 hours (excluding weekends and holidays). It is important to note that the rural exception does not apply to status offenders and may not be held for any length of time in an adult jail or lockup.
- ii. All the following conditions must be met in order for an accused juvenile delinquent offender, awaiting an initial court appearance, to be detained in an adult jail or lockup under the rural exception:
 - 1. The geographic area having jurisdiction over the juvenile must be outside a metropolitan statistical area (i.e., qualify as a “rural” area) as defined by the Office of Management and Budget;
 - 2. A determination must be made that there is no existing acceptable alternative placement for the juvenile pursuant to criteria developed by the state;
 - 3. A policy is in effect that requires individuals who work with both juveniles and adult inmates in colocated facilities to have been trained and certified to work with juveniles;
 - 4. The state must provide documentation that conditions listed above have been met for each facility.
- iii. If all the above conditions are met, a juvenile awaiting an initial court appearance may be detained for the following time periods:
 - 1. Up to 48 hours (excluding weekends and holidays), or
 - 2. If the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation does not allow for court appearances within 48 hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed 48 hours) delay is excusable; or
 - 3. If the facility is located where conditions adverse to safety exist (e.g., severe, life-threatening weather conditions that do not allow for reasonably safe travel), the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.
- iv. Department of Corrections staff reevaluate a facility’s status as a “rural exception” facility during on-site monitoring visits.

c. Travel Conditions Exception

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

d. *Conditions of Safety Exception*

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

Sight and Sound Separation Analysis: The following methods are utilized to identify sight and sound separation violations:

1. Separation violations occur when a juvenile has sight or sound contact with an adult inmate.
2. Any reports submitted as sight and sound contact violations would constitute a violation. Formula Grant Staff receive sight and sound verification data along with data from justice facilities for the DSO and Jail Removal requirements.
3. Pursuant to [34 U.S.C. § 11133\(a\)\(12\)](#), juveniles alleged to be or found to be delinquent, status offenders, and juveniles who are not charged with an offense and who are unauthorized immigrants or alleged to be dependent, neglected, or abused may not be detained or confined in any institution in which they have sight or sound contact with adult inmates.

a. *Juveniles Transferred, Certified, or Waived to Criminal Court*

- i. Juveniles who have been transferred, certified, or waived to criminal court, and are therefore charged as adults, may not be detained in an adult jail or lockup or have sight or sound contact with adult inmates in a secure facility, unless it is pursuant to one of the exceptions at [34 U.S.C. § 11133\(a\)\(13\)\(B\)](#).
- ii. However, a court may determine that it would be in the interest of justice to do so consistent with [34 U.S.C. § 11133\(a\)\(11\)\(B\)](#). See Appendix B on 223(a)(11)(B), which applies to juveniles charged as adults. If a juvenile who has been charged as an adult has been convicted and sentenced for the criminal offense, however, Section 223(a)(11)(B) no longer applies

b. *Reaching Age of Full Criminal Responsibility After Arrest or Adjudication*

- i. Individuals who commit an offense while still a juvenile and who have reached the age of full criminal responsibility only after arrest or adjudication, but remain under juvenile court jurisdiction, are not adult inmates and need not be separated from juveniles until they have reached the state's maximum age of extended juvenile jurisdiction.

- ii. By contrast, individuals who are under juvenile court jurisdiction and who subsequently commit a separate offense after reaching the age of full criminal responsibility, are adult inmates, who must not have sight or sound contact with juvenile detainees.
- c. *Programs In Which Juveniles Have Sight or Sound Contact with Adult Inmates*
 - i. Programs in which juveniles have sight or sound contact with adult inmates in an attempt to educate juveniles about life in prison and/or deter them from delinquent or criminal behavior (such as Scared Straight or shock incarceration programs) may result in instances of noncompliance with the separation (and possibly DSO and jail removal) requirements. South Dakota does not utilize or support the use of these programs.

Data Verification: South Dakota Department of Corrections Formula Grant staff verifies data submissions through the previously described analysis steps which include verification through the Unified Judicial System and Department of Corrections data systems. Prior to facility inspections, staff will review the current records received from the facility as well as those that were reported as violations in current and previous compliance monitoring reporting periods. During the inspection process, staff will review data record systems and verify that the reported data was accurate.

State Violation Procedures: South Dakota Department of Corrections Formula Grant staff address violations and concerns associated with detaining or confining juveniles in accordance with federal requirements through the following steps:

1. Investigate and gather information regarding the potential violation;
2. Upon confirmation of the violation, communicate with the facility administrator the results of the investigation and any corrective action needed to address the occurrence via a letter.
3. If the facility continues to violate, a letter outlining the instances of violations will be sent to the presiding judge of the circuit where the violations are occurring seeking assistance with compliance.
4. If compliance is not established through communication with the presiding judge, staff will seek the assistance of the Department of Corrections attorney and send a letter to the County States Attorney the State Court Administrator explaining the facts of the violation and asking for a response that indicates agreement that the violation occurred and the actions to be taken to ensure a pattern is not established going forward.
5. If the facility continues to violate after the aforementioned steps, a letter will be sent to the Governor seeking permission for the Attorney General to be contacted for an investigation into the violation.
6. Records of violations are kept on department servers and maintained within state retention laws.

The Department of Corrections Formula Grants staff is available to provide resources and technical assistance to the facility to ensure compliance with federal requirements at any step of the violation process.

Reporting Requirements: Under [28 C.F.R. § 31.303\(f\)\(5\)](#), annual compliance monitoring reports must cover the previous federal fiscal year, except that the OJJDP Administrator may grant an extension of the reporting deadline, for good cause, upon a state's request. Compliance data and supporting documentation is submitted annually through OJJDP's [Compliance Reporting Tool](#).

The South Dakota Compliance Monitor is responsible for annually submitting compliance materials, including data from 100% of facilities required to report data, for OJJDP to determine South Dakota's compliance with the core requirements through the Office of Juvenile Justice and Delinquency Prevention's Compliance Reporting System by outlined due dates. The Compliance Monitor will also assist with the annual state plan for the Title II Formula Grants Program application which includes an annual compliance monitoring plan.

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

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

Appendix A: Definition of Terms

Abused or Neglected Child: Per [SDCL 26-8A-2](#), the term abused or neglected child, means a child:

1. Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;
2. Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian;
3. Whose environment is injurious to the child's welfare;
4. Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being;
5. Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian;
6. Who is threatened with substantial harm;
7. Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;
8. Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care;
9. Who was subject to prenatal exposure to abusive use of alcohol or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B;
10. Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacturing of methamphetamines.

Accused Delinquent: A person charged with an offense that, if committed by an adult, would be a criminal offense.

Accused Status Offender: A person charged with an offense that would not be a criminal offense if committed by an adult.

Adjudicated Delinquent: A person found to have committed an offense that, if committed by an adult, would be a criminal offense.

Adjudicated Status Offender: A person found to have committed an offense that would not be a criminal offense if committed by an adult.

Adjudicatory Hearing: [SDCL 26-7A-1](#) defines an adjudicatory hearing as a hearing to determine whether the allegations of a petition alleging that a child is abused or neglected are supported by clear and convincing evidence or whether the allegations of a petition alleging a child to be in need of supervision or a delinquent are supported by evidence beyond a reasonable doubt.

Adult: [SDCL 26-7A-1](#) defines an adult as a person eighteen years of age or over, except any person under twenty-one years of age who is under the continuing jurisdiction of the court or who is before the court for an alleged delinquent act committed before the person's eighteenth birthday.

Adult Inmate: [34 U.S.C. § 11103 \(26\)](#) means an individual who has reached the age of full criminal responsibility under applicable state law and has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense, and does not include an individual who (1) at the time of the offense, was younger than the maximum age at which a youth can be held in a juvenile facility under applicable state law; and (2) was committed to the care and custody or supervision, including post-placement or parole supervision, of a juvenile correctional agency by a court of competent jurisdiction or by operation of applicable state law.

Adult Jail: [SDCL 24-11-1](#) defines a jail as any building or place provided or used by any county, municipality, or civil township for the detention of adult persons convicted or accused of the violation of any law of this state, any ordinance or bylaw of any municipality or civil township, or any rule or regulation of any board, commission, or public officer having the effect of law; or for the detention of adult persons hailed as witnesses or committed for contempt's, except juvenile detention facilities located outside jails and lockups and approved collocated detention facilities operated by counties. The governing body or commission responsible for the operation of a jail shall classify its jails based upon the types of persons detained therein and the maximum length of detention of person sin such jails.

See Jail or Lockup for Adults for federal definition.

Advisory Hearings: [SDCL 26-7A-1](#) defines an advisory hearing as the initial hearing conducted by the court to inform the child and the child's parents, guardian, custodian, or other interested parties of their statutory and constitutional rights.

Assessment: [34 U.S.C. 11103\(38\)](#) includes, at a minimum, an interview and review of available records and other pertinent information – (A) by an appropriately trained professional who is licensed or certified by the applicable state in the mental health, behavioral health, or substance abuse fields; and (B) which is designed to identify significant mental health, behavioral health, or substance abuse treatment needs to be addressed during a youth's confinement.

Best Interest of the Child Rule: Legal doctrine establishing court as determiner of best environment for raising a child. An alternative to the Parens Patriae Doctrine.

Child: [SDCL 26-7A-1](#) defines a child as a person less than eighteen years of age and any person under twenty-one years of age who is under the continuing jurisdiction of the court or who is before the court for an alleged delinquent act committed before the person's eighteenth birthday.

Child in Need of Supervision (CHINS): [SDCL 26-8B-2](#) defines a child in need of supervision as:

1. Any child of compulsory school age who is habitually absent from school without legal excuse;
2. Any child who has run away from home or is otherwise beyond the control of the child's parent, guardian, or custodian;
3. Any child whose behavior or condition endangers the child's own welfare or the welfare of others;

4. Any child who has violated any federal, state, or local law or regulation for which there is not a penalty of a criminal nature for an adult, except violations of subdivision 34-36-2(2), or petty offenses;
5. Any child who has violated § 35-9-2 or 32-23-21
6. If a child is an enrolled member of a tribe, the INDIAN CHILD WELFARE ACT applies. This law requires that an Indian child's tribe be notified. A tribe may intervene in the proceedings and transfer the Indian child to its jurisdiction.

See Status Offender for federal definition.

Collocated Facility: [34 U.S.C. § 11103 \(28\)](#) means facilities that are located in the same building or are part of a related complex of buildings located on the same grounds.

Commit: [SDCL 26-7A-1](#) defines commit as to transfer custody of a person.

Core Requirements: [34 U.S.C. § 11103 \(30\)](#) means the requirements described at [34 U.S.C. § 11133\(11\), \(12\), \(13\), and \(15\)](#).

Court or Juvenile Court: [SDCL 26-7A-1](#) defines court or juvenile court as the circuit court.

Court Services Officer: An employee appointed by the court who investigates and reports to the court regarding the child and the incident bringing the child to the attention of the court. Court services officers make recommendations to the judge regarding disposition and can be appointed to supervise the child placed on probation.

Custodian: [SDCL 26-7A-1](#) defines a custodian as any foster parent, employee of a public or private residential home or facility, other person legally responsible for a child's welfare in a residential setting, or person providing in-home or out-of-home care; for purposes of this definition, out-of-home care means any day care as defined in §§ 26-6-14, 26-6-14.1, and 26-6-14.8.

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: [28 C.F.R. § 31.304\(a\)](#) is 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.

Custody: Physical and/or legal control of a child. The exercise of care, supervision, and control over a juvenile offender or no offender pursuant to the provisions of the law or of a judicial order or decree.

Deinstitutionalization of Status Offenders (DSO): The DSO requirement reads as follows: "juveniles who are 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, 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.” 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 facilities or secure correctional facilities.” DSO is one of the core requirements of the JJDPa in which a state could be found out of compliance with.

Delinquent Child: [SDCL 26-8C-2](#) defines delinquent child as any child ten years of age or older who, regardless of where the violation occurred, has violated any federal, state, or local law or regulation for which there is a penalty of a criminal nature for an adult, except state or municipal hunting, fishing, boating, park, or traffic laws that are classified as misdemeanors, or petty offenses or any violation of §35-9-2 or 32-23-21.

Detain or Confine: [28 C.F.R. § 31.304 \(b\)](#) means to hold, keep, or restrain a person such that he or she is not free to leave or that a reasonable person would believe that he is not free to leave. The exception is a juvenile that law enforcement holds solely to return him to his parent or guardian or pending his transfer to the custody of a child welfare or social service agency. In this case, the youth is not detained or confined within the meaning of this definition.

Detention: [SDCL 26-7A-1](#) defines detention as the temporary custody of a child in secured physically restricting facilities for children, sight and sound separated from adult prisoners.

Disposition: The determination by the court of what treatment, rehabilitation or punishment the child will receive, after a finding by the court that the child is a CHINS or delinquent child.

Dispositional Hearing: [SDCL 26-7A-1](#) defines a dispositional hearing as a hearing after adjudication at which the court makes an interim or final decision in the case.

Group Care Center: Non-secure group care centers are community-based residential facilities in which juveniles may be placed pursuant to law enforcement or judicial authority. Because non-secure community-based facilities do not meet the definition of secure detention or correctional facilities, do not house adult inmates, and are not jails or lockups for adults, the core requirements do not apply. Non-secure, community-based facilities are, therefore, exempt for the purpose of reporting data for compliance with the DSO, separation, and jail removal requirements.

Guardian: [SDCL 29A-5-102](#) defines guardian as a person appointed by a court to be responsible for the personal affairs of a minor or protected person but excludes one who is merely a guardian ad litem.

Institution: means a secure facility that law enforcement or a juvenile or criminal court authority uses to detain or confine juveniles or adults (1) accused of having committed a delinquent or criminal offense, (2) awaiting adjudication or trial for the delinquent or criminal offense, or (3) found to have committed the delinquent or criminal offense.

Intake Officer: [SDCL 26-7A-1](#) defines an intake officer as a judge of a circuit court or the court’s designee who may not be a court services officer, law enforcement officer, or prosecuting attorney,

who must decide, based upon established criteria, whether to temporarily hold a child in custody until a temporary custody hearing can be held.

Jail or Lockup for Adults: [34 U.S.C. § 11103 \(22\)](#) means a secure facility that a state, unit of local government, or any law enforcement authority uses to detain or confine adult inmates.

Jail Removal: The [JJDP](#) reads that “no juvenile shall be detained or confined in any jail or lockup for adults.” Jail Removal is one of the core requirements of the JJDP in which a state could be found out of compliance with.

Juvenile Offender: [28 C.F.R. § 31.304 \(d\)](#) defines juvenile offender as 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.

Maximum Age of Extended Juvenile Court Jurisdiction: means the age above which a juvenile court may no longer exercise jurisdiction under state law.

Minor: [SDCL 26-7A-1](#) defines a minor as a person who has not reached his or her eighteenth birthday.

Monitoring Universe: all public and private facilities in which law enforcement or criminal or juvenile court authority detain juveniles and/or adult inmates.

Noncompliance with Core Requirements: Each state received 20 percent of its total fiscal year allocation for participating in the Title II Formula Grants Program of the JJDP and an additional 20 percent for compliance with each of sections 223(a)(11), (12), (13), and (15). A state’s Formula Grants Program award is reduced by 20% for noncompliance with each of sections 223(a)(11), (12), (13), and (15).

Non-Offender: [28 C.F.R. § 31.304 \(i\)](#) defines non-offender as 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.

Parents: [SDCL 26-7A-1](#) defines parents as the biological or adoptive parents of a child, including both parent, any single or surviving parent, and any custodial or noncustodial parent, jointly or severally.

Petition or Juvenile Petition: A written statement that tells the youth, parents, and the court what he or she is charged with doing and which brings the child within the court’s jurisdiction.

Private Facilities: Facilities operated by private nonprofit or for-profit corporations or organizations in which the employees working daily in the facilities and directly with the residents are employees of the private corporation or organization.

Public Facilities: Facilities operated by state or local government agencies in which the employees working daily in the facilities and directly with the residents are state or local government employees.

Residential: means equipped with beds, cots, or other sleeping quarters and has the capacity to provide for overnight accommodations for juveniles or adults who are accused of committing or who have committed an offense.

Rural Removal Exception Jails: Jails allowed to temporarily detain or confine juveniles beyond the 6-hour limit of juveniles accused of delinquent offenses who are awaiting an initial court appearance with 48 hours (excluding weekends and holidays).

Secure: as defined under [28 C.F.R. § 31.304 \(m\)](#) and used to define a detention or correctional facility 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 Correctional Facility: [34 U.S.C. § 11103 \(13\)](#) means any public or private residential facility which—(1) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and (2) is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense or any other individual convicted of a criminal offense.

Secure Detention Facility: [34 U.S.C. § 11103 \(12\)](#) means any public or private residential facility which— (1) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and (2) is used for the temporary placement of any juvenile who is accused of having committed an offense or of any other individual accused of having committed a criminal offense.

Shelter: [SDCL 26-7A-1](#) defines a shelter as a physically-unrestricting home or facility for temporary care of a child.

Sight or Sound Contact: [34 U.S.C. § 11103 \(25\)](#) means any physical, clear visual, or verbal contact that is not brief and inadvertent. When a juvenile is placed in an adult jail, lockup, or collocated facility, access to sight or sound contact with an adult inmate is strictly prohibited under the JJDPa. This provision seeks to prevent juveniles from threats, intimidation, or other forms of psychological or mental abuse. Sight and sound separation are one of the core requirements of the JJDPa in which a state could be found out of compliance with.

State: [34 U.S.C. § 11103\(7\)](#) means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Status Offender: [34 U.S.C. § 11103\(42\)](#) defines status offender as a juvenile who is charged with or has committed an offense that would not be criminal if committed by an adult. The following are examples of status offenses:

- Truancy.
- Violations of curfew.
- Runaway.

Temporary Custody: [SDCL 26-7A-1](#) defines temporary custody as the physical and legal control of a child prior to final disposition.

Temporary Custody Hearing: [SDCL 26-7A-18](#) defines a temporary custody hearing as the hearing at which the court shall consider the evidence of the need for continued temporary custody of the child in keeping with the best interests of the child.

Transfer: Taking a case out of juvenile court and placing it in adult court or taking a case out of adult court and referring it to juvenile court.

Twenty-Four Hours: a consecutive 24-hour period, exclusive of any hours on Saturdays, Sundays, public holidays, or days on which the courts in a jurisdiction otherwise are closed.

Valid Court Order (VCO): [34 U.S.C. § 11103\(16\)](#) is a court order that a juvenile court judge gives to a juvenile who was brought before the court and made subject to the order and who received, before the issuance of the order, the full due process rights that the U.S. Constitution guarantees to the juvenile.

Waived: Choosing to give up a right, such as to confront and cross-examine witnesses or the right to remain silent.

Appendix B: Removal of Juveniles Prosecuted as Adults from Adult Facilities

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

A juvenile charged as an adult may be detained in an adult jail or lockup if one of the exceptions at 34 U.S.C. § 11133(a)(13) applies (Six-Hour Exception, Rural Exception, Travel Conditions Exception, and Conditions of Safety Exception).

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

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

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

Appendix C: Compliance Monitoring Timeline

The following time table delineates activities associated with South Dakota's Compliance Monitoring System.

Monthly Activities

- ☐ Data collection from colocated facilities, regional juvenile detention centers, jails, and lockups. (Data submitted from each location to the Department of Corrections)

Quarterly Activities

- ☐ Analyze collected data. (Compliance Monitor, Juvenile Justice Specialist, and Compliance Intern, if available)
- ☐ Reach out to facilities for follow-up associated with data submissions. (Compliance Monitor)
- ☐ Present a summary of data submitted and analyzed to the Council of Juvenile Services. (Compliance Monitor and/or Juvenile Justice Specialist)

Annual Activities

- ☐ Compile and submit compliance monitoring report to OJJDP. (Compliance Monitor and Juvenile Justice Specialist)
- ☐ Distribute the Council of Juvenile Services' Annual Report to law enforcement entities and juvenile facilities. (Compliance Monitor and Juvenile Justice Specialist)
- ☐ Visit and inspect all colocated facilities. (Compliance Monitor and/or Juvenile Justice Specialist)
- ☐ Visit and inspect a minimum 1/3 of adult jails, lockups, and regional juvenile detention centers. (Compliance Monitor and/or Juvenile Justice Specialist)
 - NOTE: More than the minimum 1/3 may be visited due to a request for a visit from the facility, a recommendation from the Council of Juvenile Services or DOC Administration, or if their submitted data requires on-site data verification or clarification prior to their regularly scheduled visit in the 3-year rotation.
- ☐ Review compliance monitoring universe and update as needed.

Targeted Activities

- ☐ Conduct a survey of facilities in the monitoring universe to ensure accuracy of all information associated with the facility in the universe. (Compliance Monitor, Juvenile Justice Specialist, and Compliance Intern, if available)

Ongoing Activities

- ☐ Correspond with facilities within the monitoring universe as needed or requested. (Compliance Monitor and/or Juvenile Justice Specialist)
- ☐ Look for enhancements to monitoring procedures, tools, and information sharing. (Director Juvenile Services, Compliance Monitor, and Juvenile Justice Specialist)

Appendix D: Comparison of Federal and State Laws

The following table provides a comparison of Federal standards under the JJDPa with South Dakota State Law as it relates to the placement or detention of juveniles.

Federal JJDPa	South Dakota Codified Law
Jail Removal	
Prohibits the detention or confinement of juveniles in adult jails or lockups, with certain exceptions..	SDCL 26-7A-26 : No apparent, alleged, or adjudicated abused or neglected child may be securely detained at any time in a jail, lockup, or in any type of detention or temporary care facility containing adult prisoners. An apparent, alleged, or adjudicated child in need of supervision may not be securely detained in a jail, lockup, or in any type of detention or temporary care facility containing adult prisoners except for approved collocated detention centers as defined in § 26-7A-1 and as authorized in §§ 26-8B-3, 26-8B-6, and 26-7A-20.
Prohibits use of adult jails and lockups for accused delinquent offenders beyond a 6-hour period (rural exception for up to 48 hours, if State has an enforceable law or court rule requiring a court hearing within 48 hours, excluding weekends and holidays) [223(a)(13)]	<p>SDCL 26-7A-26: An apparent or alleged delinquent child may be held in an adult lockup or jail for up to six hours for purposes of identification, processing, interrogation, transfer to juvenile facility, or release to parents if the child is sight and sound separated from adult prisoners.</p> <p>In any area not designated as a metropolitan statistical area by the United States Bureau of the Census, an apparent or alleged delinquent child may be held in an adult lockup or jail for up to forty-eight hours excluding holidays and weekends or until the temporary custody hearing, whichever is earlier, if the facility has been certified by the Department of Corrections as providing sight and sound separation of juveniles from adults and if no suitable juvenile facility is available.</p>
Separation	
When juveniles are detained or confined in adult facilities there must be sight and sound separation from adult inmates [223(a)(12)(A)]	SDCL 26-7A-26 : An apparent or alleged delinquent child may be held in an adult lockup or jail for up to six hours for purposes of identification, processing, interrogation, transfer to juvenile facility, or release to parents if the child is sight and sound separated from adult prisoners.
DSO	
Prohibits the placement of status offenders and non-offenders who are alleged to be dependent, neglected, or abused, in secure detention or secure correctional facilities but provides for an exception of 24 hours for processing accused status offenders (excluding weekends and holidays). The 24-hour exception does not apply to non-offenders. [223(a)(11)(A)]	SDCL 26-8B-3 : A child may be placed in detention for no more than twenty-four hours, excluding Saturdays, Sundays, and court holidays, if the intake officer finds that the parents, guardian, or custodian are not available or are not suitable to receive the child, and finds at least one of the following circumstances exists: (1) The child has failed to comply with court services or a court-ordered program; (2) The child is being held for another jurisdiction as a parole or probation violator, as a runaway or as a person under court-ordered detention; (3) The child has a demonstrated propensity to run away from the child's home, from court-ordered placement outside of the child's home or from agencies charged with providing temporary care for the child; (4) The child is under court-ordered home detention in this jurisdiction; or (5) There are specific, articulated circumstances which justify the detention for the protection of the child from potentially immediate harm to the child or to others. The shelter or detention authorized shall be the least restrictive alternative available. The child may be held in detention up to an additional twenty-four hours following the temporary custody hearing pending transfer to shelter or release.
Under Section 223(a)(11)(B) , a juvenile who is charged as an adult cannot be detained in an adult jail or lockup or have sight or sound contact with adult inmates in a secure adult facility, except as provided in Appendix B.	

Appendix E: South Dakota Collocated Standards

State of South Dakota Department of Corrections Collocated Juvenile Detention Facility Approval Standards

I. Definition of Collocated Facility

Federal Definition – [34 U.S.C. § 11103 \(28\)](#) means facilities that are located in the same building or are part of a related complex of buildings located on the same grounds. 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, sewer) or beyond specialized services such as medical care, food service, laundry, maintenance, and engineering.

State Definition - 26-7A-1. Terms used in this chapter and in chapters 26-8A, 26-8B, and 26-8C mean: ...
(16) "Detention facility," a secured, physically-restricting facility designed, staffed, and operated for children and separated by sight and sound from adult prisoners or a facility for children in the same building or secure perimeter as an adult jail or lockup, where children are sight and sound separated from adult prisoners, where staff in the detention facility are trained and certified by the entity operating facility to work with children, and the facility had been approved as a collocated facility by the Office of Juvenile Justice and Delinquency Prevention;

II. Collocated Juvenile Facility Approval Process

Facility provides written notice that they wish to be approved as a collocated juvenile detention facility.

Facility provides copies of the following materials to the Department of Corrections:
a floor plan, with juvenile, adult and shared spaces clearly delineated;
copies of policies and procedures and facility and program descriptions which outline how sight and sound separation is provided throughout the facility;
a description of the medical, dental, mental health, counseling and education services available for detained youth and the identity of the providers of these services
a training plan for facility staff shall be submitted which includes training on working with children
(Note: Training records for custody staff will be checked during site visits.)

The Department will review the materials, request any needed clarifications or supplemental material and schedule a site visit.

The Department will conduct a site visit and facility review.

Based on the materials submitted and the facility review, the Department will issue an approval or a corrective action plan.

If a corrective action plan is issued, the Department will work with the facility operator to make those changes necessary to meet the standards, if feasible.

The Department of Corrections will review all approved colocated juvenile detention facilities on an annual basis.

III. Collocated Facility Approval Standards

1. Sight and Sound Separation of Juveniles from Adult Inmates

Standard 1.A. Floor plan and policies and procedures provide for no sustained sight and sound contact between juveniles and adult inmates.

Standard 1.B. Total separation of juveniles from adult inmates is achieved in residential areas – sleeping, bathroom, and lavatory areas.

2. Staff Training and Certification

Standard 2.A. Facility has a staff training plan for staff who works with juveniles and training plan provides for adequate staff training on the following items:

- sight and sound separation of juveniles from adults,
- facility operations;
- security procedures;
- emergency procedures;
- safety procedures;
- supervision requirements;
- working with adolescents – which shall include, at a minimum, youth development, adolescent physical and mental health and nonviolent crisis intervention;
- suicide risks and precautions; and
- use of force.

Standard 2.B. Training records reveal staff are provided training consistent with the training plan and Standard 2.A. Training can be a combination of pre-service and in-service and classroom and on the job. Staff who are assigned to work in the facility have been certified by the facility administrator to work with juveniles.

3. Medical, Dental, Mental Health Services

Standard 3.A. Facility has identified medical, dental, mental health service providers and provides access to routine and emergency 24-hour medical, dental, and mental health services.

Standard 3.B. A medical, dental, mental health intake screening or questionnaire is completed upon admission by a health trained staff person (intake or custody staff trained by a health care professional) or a qualified health care professional (Nurse, Physician's Assistant, Certified Nurse Practitioner, or Medical Doctor).

Standard 3.C. A medical assessment or health appraisal is completed within one week of admission by or a qualified health care professional (Nurse, Physician's Assistant, Certified Nurse Practitioner, or Medical Doctor).

4. Access to Education

Standard 4.A. Youth detained more than 2 days, excluding holidays and weekends, are provided access to educational services.

5. Environmental Conditions

Standard 5.A. All areas of the facility complies with the following environmental conditions:

- Temperature of the facility is maintained within a range between 68°-80°;
- Ventilation is appropriate;
- Artificial lighting in residential and programming space is at least 20 foot candles;
- Facility is clean and free from pests;
- Facility is free from conditions that present safety or suicide hazards.

6. Supervision of Youth

Standard 6.A. Facility policy and procedures require staff to have direct visual observation of each youth at least every 30 minutes if the area is monitored by an assigned staff person through cameras and monitors. In facilities and areas without cameras and monitors, policy and procedures require staff to have direct visual observation of each youth at least every 15 minutes. Youth placed on suicide precautions shall be check by direct visual observation at least every 5 minutes. Logs shall be utilized to document all visual observation checks.

7. Emergency Procedures

Standard 7.A. Facility has emergency plans to address fire, disturbances, suicide prevention and response and medical emergencies. Staff are trained in the emergency plans. Emergency plans are developed in conjunction with other agencies that will respond in case of emergency.

8. Fire Safety

Standard 8.A. Facility has a fire alarm and automatic detection system that is tested at least quarterly.

Standard 8.B. Facility conforms to applicable federal, state and local fire safety codes. A qualified state or local fire safety official inspects facility annually.

Standard 8.C. Facility has a written evacuation plan which is reviewed and updated annually and shared with the local fire jurisdiction.

9. Food Service

Standard 9.A. A dietician reviews at the food service menu least annually.

Standard 9.B. The facility has the ability and procedures in place to provide special diets as ordered by medical or dental personnel or to meet requests based on religious practices.

10. Youth Activities

Standard 10.A. Operational plan for the facility provides for the following:

- Access to recreation is provided on a daily basis, subject to restriction based on the youth's behavior, which includes access to outside recreation as weather permits;

- Reasonable visitation privileges, that may be restricted based on the youth's behavior or violations of visitation rules, is provided on a scheduled basis. Contact visits with immediate family members is allowed unless violations of visitation rules have occurred in the past;
- Facility schedule allows for the opportunity of at least one-hour out of cell time per 24-hour period. This can be accomplished through visitation or recreation or other activities that occur outside the cell area.

Appendix F: South Dakota Juvenile Holding Matrix

Updated 2020	Abuse & Neglect	Juvenile Court					
		Accused CHINS	Adjudicated CHINS	Accused CHINS Probation Violator	Adjudicated CHINS Probation Violator	Accused or Alleged Delinquent	Adjudicated Delinquent
Non-secure and Shelter Care Facilities	No Detention Restrictions	No Detention Restrictions	No Detention Restrictions	No Detention Restrictions	No Detention Restrictions	No Detention Restrictions	No Detention Restrictions
A physically-unrestricting facility for temporary care of a child located in a non-secure section of a juvenile detention facility or a shelter care facility.							
Secure Juvenile Facilities (Collocated Facilities and Regional Detention Centers)	Secure Detention Prohibited	Secure detention limited to 24 hours prior to and 24 hours after an INITIAL court appearance (excluding weekends and holidays).	Secure Detention Prohibited	Juvenile must be interviewed by an appropriate agency within 24 hours of placement in secure custody. The court must receive an assessment from the public agency and the juvenile must have a cause hearing within 48 hours of placement in secure custody. Documentation must be kept on file.	No Detention Restrictions IF the violation was due to a delinquent act OR there is documentation showing due process was followed. Documentation must be kept on file.	No Detention Restrictions	No Detention Restrictions
A secured, physically- restricting facility designed, staffed, and operated for children or 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.							
Adult Jail or Lockup	Secure Detention Prohibited	Secure Detention Prohibited	Secure Detention Prohibited	Secure Detention Prohibited	Secure Detention Prohibited	Secure detention limited to a cumulative 6 hours for purposes of identification, processing, interrogation, transfer, or release to parents.	NO JUVENILES MAY BE DETAINED FOR THE PURPOSE OF DISPOSITION/ SERVING SENTENCE.
Secure cell whether or not the cell door is locked, detoxification tank whether or not the cell door is locked, room within secure perimeter, secure booking area when a non-secure booking area is available*, handcuffed to stationary object. *When a secure booking area is the only available booking area, juveniles are allowed in the booking area for booking purposes (photograph and fingerprinting) only as long as under constant supervision and then must be moved to a non-secure location for the purposes of interrogation, contacting parents, or arranging an alternative placement. This does not apply to a secure booking area within the adult jail or lockup.							
Police Departments/Sheriff's Office	No Detention Restrictions	No Detention Restrictions	No Detention Restrictions	No Detention Restrictions	No Detention Restrictions	No Detention Restrictions	No Detention Restrictions
Non-secure office, lobby, or multipurpose room.							

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