

## ***Final Rules for Adoption***

### **Division 155 – Compliance Monitoring Authority under the Juvenile Justice Delinquency Prevention Act**

#### **OAR 423-155-0001**

##### **Definitions**

For purposes of OAR 423-155-0001 to 423-155-0035, the following definitions apply:

- (1) “Adult Jail or Lockup” means a secure Facility that is used by a State, unit of local government, or law enforcement authority to detain or confine adult inmates.
- (2) “Collection” means Data obtained by the Monitoring Agency for the sole purpose of determining compliance, or providing technical assistance, with one or more of the four core requirements (when applicable) as described in the JJDP.
- (3) “Compliance Monitor” means a staff role within the Monitoring Agency responsible for surveying Facilities, inspecting Institutions, collecting, and verifying Data submitted from Adult Jails and Lockups or Secure Detention and Correctional Facilities.
- (4) “Compliance Plan” means a document or set of documents that outline how the Institution will comply with the core requirements (when applicable) or recommendations made as part of a corrective action plan when detaining or confining juveniles in lawful custody. This can be a memorandum, guidance manual, or policy that outlines how, where, why, and when custody may occur.
- (5) “Construction Feature” means a feature designed to physically restrict the movements and activities of persons in custody as listed below:
  - (a) “Holding Cell” means a secured room with reinforced materials designed to limit the movements of individuals detained or confined in lawful custody. A holding cell does not include rooms which have had their locking feature reversed to prevent unauthorized entry, and repurposed for non-custodial use.
  - (b) “Locking Interview Room” means a room equipped with locking features designed to limit movements of individuals in lawful custody and may sometimes include visual, or audio recording devices. A lockable interview room does not include rooms which sole locking feature is designed to prevent unauthorized entry (witness tamper locks), or rooms secured only by a crash-style bar that temporarily delays egress (must be approved by a fire marshal).
  - (c) “Secured Perimeter” means a locked enclosure designed to prevent unauthorized egress by individuals detained or confined in lawful custody such as an intake, booking, or secured residential area.
  - (d) “Stationary Cuffing Apparatus” means a ring, bar or bench that are securely mounted to a Facility floor or wall for the purpose of physically restricting the movements of someone in lawful custody. A stationary cuffing apparatus does not include the use of personal handcuffs unless fixed to a stationary object.
- (6) “Core Violation” means a juvenile detained or confined beyond what is permitted by exception in 34 U.S.C. § 11133 Section 223(a) subsection (11), (12), or (13) of the JJDP.
- (7) “Criminal Justice Information System” or “CJIS” means an electronic information system developed and maintained by the State of Oregon, administered by the Oregon State Police in

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partnership with county sheriffs' offices.

(8) "Data" means key information gathered anytime a juvenile is referred, detained, or placed in an Institution. This information is then used by the Monitoring Agency for determining the purpose of custody, length of stay, status of confinement, date of court appearance (if applicable), and release placement of each juvenile, including whether any racial or ethnic disparities exist. The following Data elements are required within a Detention Report. Where there are multiple options presented for a Data element, an Institution must choose one option to disclose that element as part of the Data cohort:

(a) Identification number, such as a case number, booking number, youth number, JJIS number, or other number linked to the identity of the juvenile offender;

(b) Age information, provided as either a date of birth or the age of the individual at time of referral, detention, or placement;

(c) Racial or ethnic identity;

(A) American Indian or Alaska Native;

(B) Asian;

(C) Black or African American;

(D) Hispanic or Latino;

(E) Native Hawaiian or other Pacific Islander;

(F) White;

(G) Other.

(d) Gender identity;

(e) Decision point;

(f) Most serious alleged offense;

(g) Date and time juvenile arrived in custody at the Institution;

(h) Date and time of probable cause hearing (if applicable);

(i) Date and time the juvenile was released from custody at the Institution.

(9) "Decision Point" means the purpose for lawful custody such as referral, arrest, pre-trial detention, diversion, secure confinement, or transfer to adult court.

(10) "Declaration Report" means detention report except that a declaration is submitted in the absence of any juveniles detained or confined within the specific year requested by the Monitoring Agency.

(11) "Detain" or "Confine" means to hold, keep, or restrain a person such that he or she is not free to leave. There are two exceptional circumstances where lawful custody would not constitute the juvenile being detained or confined, provided only that the juvenile is not held using Construction Features:

(a) A juvenile that law enforcement holds for their own benefit for the sole purpose of returning the juvenile to custody of a parent or guardian; or

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(b) A juvenile that law enforcement holds for their own benefit pending the transfer of the juvenile to the custody of a child welfare or social service agency.

(12) “Detention Report” means a document or set of documents that contains Data relative to juveniles detained or confined within a specific year requested by the Monitoring Agency.

(13) “Facility” means an Institution, a place, a building or a part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings, which is used for the lawful custody and treatment of juveniles and may be owned or operated by public or private agencies.

(14) “Floor Plan” means a visually illustrated route or set of routes to and from secure areas for the purpose of establishing how separation will be maintained during on-site inspections. This can be a document created specifically for this purpose, a blueprint, or emergency evacuation floor plan.

(15) “Inspection” means a scheduled on-site visit to an Institution for the purpose of determining the level of separation available through either structural, or time-phased use of secure holding areas, as well as verifying the accuracy of information submitted to the Monitoring Agency via survey or Data collection.

(16) “Institution” means a Facility equipped with one or more Construction Features that a law enforcement or a juvenile or criminal court authority uses to detain or confine juveniles or other individuals accused of having committed a delinquent or criminal offense, awaiting adjudication or trial for a delinquent or criminal offense, or found to have committed a delinquent or criminal offense.

(17) “Juvenile Policies” means document(s) that guide a Facility’s handling of juveniles in lawful custody. Juvenile Policies can include standards for the treatment of juveniles during arrest, intake, booking, admissions, court proceedings, and other activities, as applicable to normal activities of the Facility and specified in Compliance Monitoring guidance published by the Monitoring Agency.

(18) “Juvenile Offender” means an individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by state law, i.e., a criminal-type offender or a status offender.

(19) “Juvenile Justice and Delinquency Prevention Act” or “JJDPA” means federal law promulgated pursuant to 34 U.S.C. § 11133 and administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) for the purpose of extending resources to participating states and additional 4th Amendment protections to juveniles when detained inside of an Institution.

(20) “Juvenile Justice Information System” or “JJIS” means an electronic information system developed and maintained by the state through the Oregon Youth Authority (OYA) and administered in partnership with county juvenile departments.

(21) “Lawful Custody” means the exercise of care, supervision, and control over a juvenile offender or non-offender pursuant to the provisions of the law or a judicial order or decree.

(22) “Monitoring” means surveying places, spot-checking Facilities, and inspecting Institutions. Monitoring also includes collecting and analyzing Data from Adult Jails and Lockups, and Secure Detention and Correctional Facilities, for the purpose of verifying compliance with each of the four core requirements and determining eligibility for funds (if applicable).

(23) “Monitoring Agency” means the Youth Development Division or YDD.

(24) “Office of Juvenile Justice and Delinquency Prevention” or “OJJDP” means the federal agency charged with administering and providing guidance on compliance with the Juvenile Justice and

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Delinquency Prevention Act (JJDP A).

(25) “Racial and Ethnic Disparity” or “RED” means when a specific minority group’s rate of contact at a particular decision point in the juvenile justice system is different than the rate of contact for non-Hispanic whites or other minority groups. The race and ethnicity categories and definitions outlined in the federal standards include:

(a) “American Indian or Alaska Native” means a person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

(b) “Asian” means a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(c) “Black or African American” means a person having origins in any of the black racial groups of Africa;

(d) “Hispanic or Latino” means a person of Cuban, Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race.

(e) “Native Hawaiian or Other Pacific Islander” means a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(f) “White” means a person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

(g) “Other” means a person who does not identify with any of the other six race and ethnic categories, or is used if documentation of a person’s race or ethnicity is unavailable, and if the observer is not able to make a reasonable determination.

(26) “Racial and Ethnic Disparities Coordinator” means a staff role within the Monitoring Agency responsible for monitoring and verifying compliance with the Racial and Ethnic Disparities core protection of the JJDP A.

(27) “Secure Detention or Correctional Facility” means any public or private residential Facility that includes Construction Features designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody that are awaiting trial and accused of having committed an offense, or who have been adjudicated or convicted as having committed an offense that would be criminal if committed by an adult.

(28) “Spot-check” means an unscheduled on-site visit to a surveyed Facility for the purpose of verifying the absence of Construction Features.

(29) “Survey” means a series of questions relating to the type and use of a place, building, or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings. A Survey determines whether

(a) The place is used for the lawful custody and treatment of juveniles,

(b) The place is owned or operated by a public or private agency, and

(c) If the place is secured through the installment of Construction Features.

(30) “Youth Development Council” or “YDC” means the governing body that serves as the

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Statewide Advisory Group for the JJJDP A in Oregon.

(31) “Youth Development Division” or “YDD” means the designated state agency (DSA) responsible for carrying out Compliance Monitoring activities under the authority of the YDC, and is solely responsible for administering funds in Oregon distributed pursuant to the JJDP A.

(32) “Youth offender” means a person at least 18 and but no older than 24 years of age who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age. This term also refers to an “individual under extended juvenile court jurisdiction” as described in the JJDP A and OJJPD guidance.

*Statutory Authority: ORS 417.847*

*Statutes Implemented: ORS 417.850, ORS 417.851, ORS 417.852 and 417.855*

*Other Federal references pertaining to this section can be found in: 28 C.F.R. § 31.303 and 34 U.S.C. § 11103*

### **OAR 423-155-0010**

#### **Maintaining Compliance with Custody and Facility Provisions of the Juvenile Justice and Delinquency Prevention Act (JJDP A)**

(1) To perform its duties as required by the JJDP A in ORS 417.850 (12), the YDD may collect Data and inspect any Facility, as defined in rule, in which juveniles are detained.

(2) Places established as Facilities under the definition in OAR 423-155-0001, shall be surveyed either online or in person by the YDD, for the purpose of determining if a Facility meets the classification of one of the following types, in accordance with definitions found in U.S.C. § 11103, and for the purpose of determining the standards applicable when analyzing Data collected pursuant to 34 U.S.C. § 11333:

(a) Institution;

(b) Secure Detention or Correctional Facility; or

(c) Adult Jail or Lockup.

(3) Facilities that do not fall under OAR 423-155-0010 (2)(a) – (2)(c), but are still secured through the installment of Construction Features, may be classified as an Other Secure Holding Facility, and made exempt from inspection, and will only be monitored through Survey and Spot-Check.

(4) Facilities classified as Institutions shall be inspected once every three years to verify the need and ability to provide adequate separation between juveniles and adult inmates when both are detained in accordance with the standards set forth in 34 U.S.C. § 11333 Section 223 (a)(12).

(5) Institutions that also meet the definition of Secure Detention or Correctional Facilities will have their Data collected once per federal fiscal year for the purpose of establishing whether any status or non-offender type juveniles were detained or confined in violation of the standards, or pursuant to applicable exceptions set forth in 34 U.S.C. § 11333 Section 223(a)(11). The YDD may collect Data at a rate more than once per federal fiscal year if the corrective action process, as described in OAR 423-155-0025, becomes initiated.

(6) Institutions that also meet the definition of Adult Jails or Lockups will have their Data collected once per federal fiscal year for the purpose of establishing whether any juveniles were detained or confined in violation of the standards, or pursuant to applicable exceptions set forth in 34 U.S.C. §

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11133 Section 223(a) (13). The YDD may collect Data at a rate more than once per federal fiscal year if the corrective action process, as described in OAR 423-155- 0025, becomes initiated.

- (7) Violations identified through collection of Data, or during on-site inspections will be addressed through a corrective action process as described in OAR 423-155-0025.
- (8) A Compliance Plan may be requested from Institutions under the following circumstances:
  - (a) During an on-site inspection once every three years;
  - (b) Whenever there is a violation of the standards applicable; or
  - (c) Anytime the YDD finds that an Institution's juvenile policies have changed and the policy on record at the YDD is outdated.
- (9) The YDD shall assist Facilities in complying with the JJDPA by way of technical assistance, manuals, or other guidance made available upon request or on the YDD's website.

*Statutory Authority: ORS 417.847*

*Statutes Implemented: ORS 417.850, ORS 417.851, ORS 417.852 and 417.855*

*Other Federal references pertaining to this section can be found in: 28 C.F.R. § 31.303 and 34 U.S.C. § 11103*

### **OAR 423-155-0020**

#### **Maintaining Compliance with Racial and Ethnic Disparities Provisions of the Juvenile Justice and Delinquency Prevention Act (JJDPA)**

- (1) Upon collection and analysis of Data received from Institutions, the YDD may:
  - (a) Request additional Data if the initial Data submission is not complete or sufficient for the purpose of establishing whether racial or ethnic disparities exist;
  - (b) Provide recommendations and technical assistance to reduce any identified racial and ethnic disparities, in accordance with the JJDPA.
- (2) The Racial and Ethnic Disparities Coordinator will analyze Data in order to make a determination of whether the Data demonstrates that disparities exist, or illustrates reductions in disparities.
- (3) Data and analysis will be compiled by the Racial and Ethnic Disparities Coordinator and reported to the YDC and the OJJDP.

*Statutory Authority: ORS 417.847*

*Statutes Implemented: ORS 417.850, ORS 417.851, ORS 417.852 and 417.855*

*Other Federal references pertaining to this section can be found in: 28 C.F.R. § 31.303 and 34 U.S.C. § 11103*

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## **OAR 423-155-0025**

### **Technical Assistance Process for Institutions out of Compliance**

- (1) Upon collection of Data received from Institutions, the YDD shall:
  - (a) Analyze the received Data for sufficiency in making a compliance determination.
  - (b) Request additional Data necessary to make a compliance determination.
  - (c) Initiate a corrective action process, in the case of the following:
    - (A) The Data received is not sufficient for making a compliance determination;
    - (B) The Data received indicates that a Core Violation has occurred; or
    - (C) The Institution is non-reporting and the Data cannot be obtained.
  - (d) Recommend changes for the purpose of reducing violations or producing sufficient Data.
- (2) Upon identification of a Core Violation, the YDD shall notify the Institution in writing of the following:
  - (a) The core requirement violated; and
  - (b) Recommended actions to reduce or eliminate future violations.

*Statutory Authority: ORS 417.847*

*Statutes Implemented: ORS 417.850, ORS 417.851, ORS 417.852 and 417.855*

*Other Federal references pertaining to this section can be found in: 28 C.F.R. § 31.303 and 34 U.S.C. § 11103*

## **OAR 423-155-0035**

### **Identification and Correction of Racial and Ethnic Disparities**

- (1) Upon collection of Data received from Institutions, the YDD shall:
  - (a) Analyze the received Data to ensure it is sufficient to make a disparities determination.
  - (b) Request additional Data necessary to make a disparities determination.
  - (c) Initiate a corrective action process, in case of the following:
    - (A) The Data received is not sufficient for making a disparities determination;
    - (B) The Data received indicates that a disparity does exist; or
    - (C) The Institution is non-reporting and the Data cannot be obtained.

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- (d) Recommend changes for the purpose of reducing disparities or producing sufficient Data.
- (2) Upon identification of a disparity, the YDD shall notify the Institution in writing of the following:
  - (a) The races or ethnicities implicated in the disparity;
  - (b) Recommended actions to reduce or eliminate future racial and ethnic disparities.

*Statutory Authority: ORS 417.847*

*Statutes Implemented: ORS 417.850, ORS 417.851, ORS 417.852 and 417.855*

*Other Federal references pertaining to this section can be found in: 28 C.F.R. § 31.303 and 34 U.S.C. § 11103*