



December 16, 2022

Liz Ryan, Administrator
Office of Juvenile Justice and Delinquency Prevention
810 Seventh Street NW
Washington, DC 20531

SUBJECT: REQUEST FOR CLARIFICATION ON THE SIGHT AND SOUND SEPARATION REQUIREMENT

Dear Administrator Ryan,

We, the undersigned, write collectively to seek clarification from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) regarding the sight and sound separation requirement under the Juvenile Justice and Delinquency Prevention Act (JJDP) as stated in 34 U.S.C. § 11133(a)(12). As the current administrators of California's Title II Formula Grants Program, we are concerned that OJJDP's current guidance conflicts with existing federal law and California's goals of providing youth under the jurisdiction of the juvenile court system with age-appropriate, rehabilitative housing and programming.

The sight and sound separation requirement, which is one of the core requirements for Title II funding, establishes that juveniles "will not be detained or confined in any institution in which they have sight or sound contact with adult inmates." (34 U.S.C. § 11133(a)(12)(A).) Without question, California supports this requirement to ensure that juveniles are not placed into adult facilities.¹ However, we are concerned about the current guidance² from OJJDP that requires California to classify a youth under the jurisdiction of the juvenile court as an "adult inmate" in cases where the youth has attained the age of criminal responsibility and has been charged with a new offense, even when that youth remains under concurrent jurisdiction of a juvenile court and is in custody in a juvenile facility.

California is currently in the process of realigning its juvenile justice system to better fit the needs of youth and local communities. To ensure that justice-involved youth are closer to their families and receive developmentally appropriate care, California has

¹ See, e.g., Cal. Welf. & Inst. Code, § 208.

² Policies and Procedures Manual for Monitoring Compliance with Core Requirements of the Formula Grants Program Authorized Under Title II, Part B, of the Juvenile Justice and Delinquency Prevention Act (December 15, 2021) at p. 8.

shifted the care and custody of all youth under the jurisdiction of juvenile courts from state to county responsibility and is in the process of closing its state-operated secure juvenile detention facilities by June 30, 2023. As part of this shift, California also amended the state's maximum age of juvenile jurisdiction and created the presumption that any person whose case originated in juvenile court may remain in a juvenile facility until they turn 25 years of age. (Cal. Welf. & Inst. Code, § 208.5.) Additionally, California Senate Bill 92 (SB 92) (Chapter 18, Statutes of 2021) allows local counties to establish "secure youth treatment facilities" for wards 14 years of age or older and until the maximum age of juvenile jurisdiction, where juveniles may receive developmentally appropriate programming, treatment, and education. In short, California is seeking to care for youth as youth and to keep youth out of adult criminal justice facilities by allowing juvenile courts to continue to exercise discretion regarding the appropriate placement of youth under the jurisdiction of the juvenile court, even after a youth has committed a new offense after attaining the age of criminal responsibility. Strict compliance with OJJDP's current guidance could force transitional-aged youth to be removed from juvenile facilities and housed with adult inmates in adult facilities, including movement from local county facilities to state prisons. This result will undermine California's efforts in providing the benefit of rehabilitative opportunities to youth closer to their communities.

We are requesting the ability to provide guidance to counties to allow all youth under the jurisdiction of the juvenile courts to be placed in juvenile facilities without sight and sound separation. We believe that this is in accord with the recent amendments to the JJDPA (the Juvenile Justice Reform Act of 2018) and, as explained below, would not constitute a violation of the sight and sound separation requirement of the JJDPA.

"Adult inmate" in the amended JJDPA is defined as an individual who - (i) has reached the age of full criminal responsibility under applicable State law; and (ii) 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 - (i) 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 (ii) 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. (34 U.S.C. § 11103(26) [emphasis added].) We believe that a reasonable interpretation is that transitional-aged youth, i.e., youth 18-and-older and under the age of 25 in California and who remain under the jurisdiction of a juvenile court are not "adult inmates" within the meaning of the JJDPA and therefore do not require sight and sound separation from youth within a juvenile facility even when they commit a new offense.³

³ Please note: Section 1352 of Title 15 of the California Code of Regulations requires that youth be classified and placed in appropriate housing in local juvenile detention facilities. Such classification requires that specific factors such as age, maturity, and program needs are considered. As such, we are not advocating that it would be appropriate that older youth and under-18 youth should be comingled in all cases; facilities are already able to make placement decisions on a case-by-case basis. However, we also believe that strict sight and sound separation is also not appropriate in all cases for youth that remain under the jurisdiction of the juvenile court, even with a pending adult court case.

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Consequently, we are asking OJJDP to reconsider its current guidance or allow California the option to not report these instances involving concurrent jurisdiction as violations of the separation requirement.

For these youth, California wants to invest in them by offering many opportunities for developmentally appropriate treatment, education, and services only available in juvenile facilities.

This request is submitted with the concurrence of the Office of Youth and Community Restoration, and with the approval of the chair of our State Advisory Group, the State Advisory Committee on Juvenile Justice & Delinquency Prevention (SACJJDP).

It is our hope that the clarification will allow California to continue as a participating state in the Title II Formula Grants program. Thank you for your consideration.

Sincerely,



LINDA M. PENNER
Chair
Board of State & Community Corrections



KATHERINE LUCERO
Director
Office of Youth & Community Restoration



RACHEL RIOS
Chair
State Advisory Group (SACJJDP)

cc: Janet Chiancone, Deputy Administrator