

3. PLAN FOR COMPLIANCE WITH THE FIRST THREE CORE PROTECTIONS OF THE JJDPA AND THE STATE'S COMPLIANCE MONITORING PLAN

A. Plan for Deinstitutionalization of Status Offenders (DSO)

California's Welfare and Institutions Code (WIC) requires that status offenders and nonoffenders must not be held in secure custody outside of specific situations. WIC § 601 defines status offenders in California and exceeds federal requirements by requiring that status offenders and delinquents be separated. WIC § 207 dictates the situations and length of time that a status offender may be held in secure detention; this statute exceeds current federal requirements. WIC § 300 defines dependents (nonoffenders) in California, and WIC § 206 prohibits nonoffenders from being held in secure detention.

The BSCC is mandated to biennially inspect local juvenile detention facilities pursuant to WIC § 209 and adult jails and lockups pursuant to Penal Code (PC) § 6031 and WIC § 209.

DSO Rates

DSO violation rates in juvenile detention facilities have trended downward since 2005, with minimal fluctuation. Within the last several years, violations continue the downward trend. During the 2016 Federal Fiscal Year (FFY) there were 15 instances of DSO violation reported to the BSCC by juvenile detention facilities. During the 2017 FFY there were 13 instances reported.

DSO violations in lockups decreased from 37 in FFY 2016 to 27 during the 2017 reporting period. BSCC staff have been providing increased targeted technical assistance to lockups with respect to status offenders and have streamlined our reporting forms over the past few years, leading to better data. Awareness of the issues and clearer understanding of reporting requirements by local facilities have attributed to the 27% decrease.

Strategy to Remain in Compliance

Juvenile Detention Facilities

The BSCC annually queries all county juvenile detention facilities within the state to determine whether they intend to hold status offenders as defined by WIC § 601, and whether they hold non-delinquent minors on contract with the federal government. Since the BSCC has been responsible for Compliance Monitoring, the state continues to receive 100% response from juvenile detention facilities. Facilities' responses are entered into a database for analysis and are verified during an on-site inspection. Each county juvenile detention facility is biennially inspected pursuant to WIC § 209.

If a juvenile detention facility reports that it will be holding status offenders or federal minors (undocumented immigrant youth and youth in the custody of the Bureau of Indian Affairs), the facility is mandated by WIC § 207 to report the number and duration of secure detentions of such minors to the BSCC via the Status Offender Detention Report or the Federal Minors in Custody Report. The BSCC aggregates, analyzes and reports this data in accordance with JJDPA reporting requirements.

Any facility reporting that an adjudicated status offender has been securely detained subsequent to a violation of a valid court order (VCO) must complete and attach the VCO Exception checklist

and accompanying minute order to ensure that the facilities are complying with the provisions of the JJDP. In addition, a minimum of 10% of the uses of the VCO are verified; Field Representatives will review the original data source to ensure compliance. There were zero reported violations of VCO violation during the 2017 FFY reporting period.

BSCC staff continually reviews all secure detentions identified on the Status Offender Detention Report and Federal Minors in Custody Report. Secure detentions are verified by a Field Representative during the on-site biennial inspection. Appropriate data is also reviewed by a Field Representative during the on-site biennial inspection to verify that nonoffenders (WIC § 300) were not held in secure detention.

Continual technical assistance is conducted throughout the BSCC biennial inspection cycle, either via telephone or an on-site visit. In addition, a pre-inspection briefing is held prior to an on-site inspection, and the elements of the DSO core requirement are reiterated to the agency.

With respect to inspection of nonsecure juvenile facilities that hold nonoffenders (WIC § 300), the California Department of Social Services periodically visits each of these facilities to ensure that they remain nonsecure.

The BSCC continues to target agencies with higher levels of DSO violations. The self-reporting forms that agencies use to capture DSO data have been streamlined and enhanced for ease of use in past years.

Adult Facilities

Pursuant to WIC § 210.2(b), the BSCC annually queries all law enforcement facilities to determine if they contain a jail or lockup and, if so, whether they will hold minors for any period of time.

Pursuant to WIC § 207.1(d)(1)(F), adult facilities that hold minors are required to keep logs to track the number, duration, and reason for secure detention of minors. These logs become the basis for monthly reporting to the BSCC and for annual reporting to OJJDP.

BSCC staff verifies the number and duration of secure detentions in adult jails and lockups on a monthly basis. A BSCC Analyst or Field Representatives will contact a facility if it appears as though a violation of DSO has occurred to verify if a violation did indeed occur or to determine if a reporting error was made.

If violations are identified during the on-site inspection or through monthly reporting, the BSCC will provide targeted technical assistance and training to those agencies. Continual technical assistance is conducted throughout the BSCC biennial inspection cycle, either via telephone or during an on-site visit. In addition, a pre-inspection briefing is held prior to an on-site inspection, and the elements of the DSO core requirement are reiterated to the agency.

We will continue to provide targeted technical assistance to all agencies. Those agencies where violations are concentrated will receive additional technical assistance and training to determine how to discontinue the use of secure detention for status offenders.

B. Plan for Separation of Juveniles from Adult Offenders

WIC § 207.1(b), § 208(a) and California Code of Regulations, Title 15, Sections 1101, 1144 and 1161 relate specifically to the separation of minors from adult offenders in adult facilities. WIC § 207.1(h) relates specifically to co-located facilities. California statute exceeds federal requirements in many instances.

The BSCC is mandated to biennially inspect local juvenile detention facilities pursuant to WIC § 209 and adult jails and lockups pursuant to PC § 6031 and WIC § 209.

Separation Violations

The number of separation violations has varied widely during the past decade. From 2002-2004, the BSCC reported zero violations. A high of 44 violations was reported in 2005 with immediate decreases in subsequent years until 2010 when there were no violations of the separation core requirement. As stated in California's previous Three-Year Plan, there was one documented situation which resulted in noncompliance with 42 U.S.C. § 5633(a)(12) during 2014. It resulted in an immediate removal of the youth with subsequent technical assistance provided to the facility. There were zero violations reported during the 2017 reporting period.

Targeted training and technical assistance continues to be provided at all levels of service to ensure compliance with the separation core requirement. Where there are isolated incidents of violations (such as the case in 2014), the BSCC collaborates with service providers at all levels of the juvenile justice system to ensure that such violations do not occur in the future. During onsite inspections Field Representatives review facility policy and practice providing technical assistance on separation as needed.

Strategy to Maintain Compliance

There are several mechanisms in place to ensure that instances of noncompliance do not occur in the future. First and foremost, BSCC Field Representatives conduct regular compliance monitoring inspections of all detention facilities in the state. During these inspections, compliance with both state and federal law relative to separation is verified; focus is given to programs where contact may occur between adults and juveniles. The BSCC continues to closely monitor situations in which there is potential for contact between adult inmates and minors in detention facilities.

Additionally, the BSCC provides ongoing pre-inspection training, new manager/supervisor training, and annual training regarding the separation core requirement.

Adult Facilities

Pursuant to WIC § 210.2(b), the BSCC annually queries all local jails and lockups to determine if they will hold minors for any length of time. If a facility answers this query positively, WIC § 207.1(e) requires that the BSCC provide technical assistance specific to minors in custody to the agency.

The BSCC verifies that separation of minors and adult offenders is appropriate during an on-site inspection; each adult facility that holds minors is biennially inspected pursuant to WIC § 209(a) and (b) (this includes jails, lockups and court holding facilities). Agencies that hold minors are also required to develop policy and procedures to ensure the separation of minors and adult offenders pursuant to Title 15, California Code of Regulations.

Continual technical assistance is conducted throughout the BSCC biennial inspection cycle, either via telephone or an on-site visit. In addition, a pre-inspection briefing is held prior to an on-site inspection, and the elements of the separation core requirement are reiterated to the agency.

Juvenile Detention Facilities

The BSCC biennially inspects all county juvenile detention facilities. During each on-site inspection, Field Representatives verify that no programs are operating within the facility that allow inmate workers to come into contact with minors.

The BSCC provides continual technical assistance and training to county probation departments reiterating the separation core requirement. These agencies are aware that they violate both federal and state law when there is contact between adult inmates and minors. In addition, a pre-inspection briefing is held prior to an on-site inspection, and the elements of the separation core requirement are reiterated to the agency.

Co-located Facilities

Prior to 2017 there was one existing co-located facility in California: Yolo County Juvenile Hall. There are also five county facilities (Alameda, Butte, Napa, Nevada, and Santa Clara) that are in varying stages of beginning co-located pilot programs as a result of Senate Bill 1004, which allows for deferred entry of judgement for eligible defendants aged 18 to 20 on the date their offense occurred. Section 1000.7(i) of the California Penal Code requires the BSCC to review the pilot program and ensure compliance requirements of the JJPDA are met, relating to “sight and sound” separation between juvenile and adult inmates. Pursuant to WIC § 207.1(h), co-located facilities must meet the following criteria:

- The juvenile facility is physically or architecturally separate from the portion that holds adult offenders so that contact between the two is prevented;
- Shared non-residential programs only occur when there are written policies and procedures to assure that there is time-based use of those areas that prevents contact between juveniles and adult offenders;
- Juvenile facility has a dedicated and separate staff from the portion that holds adult offenders (this requirement exceeds federal requirements); and
- Juvenile facility complies with all applicable state and local statutory, licensing and regulatory requirements for juvenile facilities of this type.

BSCC staff conducts annual inspections of co-located facilities to verify compliance with federal and state criteria and with California Code of Regulations, Title 15, Minimum Standards for Juvenile Facilities. When the SB 1004 pilot program has been fully implemented there will be five co-located facilities in the state. BSCC staff will continue to provide ongoing technical assistance to these and all facilities, beginning with the planning and/or construction review phases.

C. Plan for Removal of Juveniles from Adult Jails and Lockups

WIC § 207.1 provides that minors shall not be held in an adult jail unless they are under the jurisdiction of the adult court, or are held under specific circumstances and requirements specific to separation of minors and adult inmates. This statute mirrors the federal jail removal requirement for minors in secure detention and exceeds federal regulation by imposing a six-hour limit on the non-secure detention of minors. WIC § 210.2(a) authorizes the BSCC to develop standards for law enforcement facilities that hold minors to ensure compliance with WIC § 207.1. California Code of Regulations, Title 15, Articles 8-10 relate specifically to minors in adult facilities.

The BSCC is mandated to biennially inspect adult jails and lockups pursuant to PC § 6031 and WIC § 209.

Rates of Jail Removal Violations

The majority of jail removal violations occur when a minor has been charged with a serious crime and agencies exceed their six-hour exception during interviews and interrogation. Other common reasons include delay in parents, guardians, or social services picking up the minor and delays in having the minor transported to a juvenile detention facility. Law enforcement agencies are reminded that these situations, while sometimes unavoidable, do constitute violations of both federal and state law. On January 17, 2017, the definition of “detain or confine” was amended at 82 Federal Register 4793. The amendment specified that minors held solely for the reunification with a parent, guardian, or social services agency is not considered to be in detention.

To mitigate violations, the BSCC staffs two compliance monitors, and one compliance monitor analyst to provide service to the field as the number of facilities within California’s compliance monitoring universe continue to increase. Our compliance monitors continue to provide targeted training and technical assistance to agencies relative to the jail removal core requirement on an annual basis. Over the last decade, the total number of jail removal violations have decreased overall. The total number of jail removal violations during the 2016 reporting period was 76, seeing a minimal decrease to 73 in the 2017 FFY. Our jail removal violations continue to be instances where extensive investigations for serious crimes prohibit law enforcement agencies from releasing the youth to a juvenile detention center or releasing from custody within six hours. BSCC staff continue to review trends and provide targeted training for those agencies that are most in need. We are confident that our local agencies refrain from keeping youth in secure detention longer than six hours without a reasonable cause.

Strategy for Remaining in Compliance

Pursuant to WIC § 210.2(b), the BSCC annually queries all law enforcement facilities to determine if they contain a jail or lockup and, if so, if they will hold minors for any period.

Pursuant to WIC § 207.1(d)(1)(F), adult facilities that hold minors are required to keep logs to track the number, duration, and reason for secure detention of minors. These logs become the basis for monthly reporting to the BSCC and for annual reporting to OJJDP. Field Representatives verify the number, duration and reason for secure detention during each on-site biennial inspection. Appropriate data is reviewed to identify violations of Jail Removal. If violations are identified during the on-site inspection or through monthly reporting, the BSCC will provide targeted technical assistance and training to those agencies.

BSCC staff also verifies the number and duration of secure detentions in adult jails and lockups on a monthly basis. BSCC Analysts or Field Representatives contact a facility if it appears as though a violation of Jail Removal has occurred to verify if a violation did indeed occur or to determine if a reporting error was made. Technical assistance is offered during this contact and is followed up during the on-site biennial inspection. Note: California does not use the rural exception.

The BSCC currently employs compliance monitors who annually inspect lockups that hold minors in secure detention. At this inspection, data will be collected and analyzed, and the facility’s classification will be verified. It is anticipated that increasing the frequency of inspection will enhance compliance with the jail removal core requirement. Compliance monitors will continue

to verify those facilities that are classified as non-secure at least once every three years. Field Representatives will continue to conduct inspections as mandated by state law.

SAG Role in Maintaining Compliance with Three Core Protections

The SAG/SACJJDP monitors California's compliance with the JJDPA. The SACJJDP will continue to be kept apprised of the BSCC's plan for compliance monitoring and will be involved in the identification of barriers and strategies for compliance monitoring. The SACJJDP is also required to review and approve the state's plan for compliance monitoring.

D. Plan for Compliance Monitoring for the First Three Core Protections of the JJDPA

- 1) **Policy and Procedures.** Please see BSCC Attachment 1, Compliance Monitoring Manual.
- 2) **Monitoring Authority.** Please see page 2 of BSCC Attachment 1, Compliance Monitoring Manual.
- 3) **Monitoring Timeline.** Please see page 4 of BSCC Attachment 1, Compliance Monitoring Manual and BSCC Attachment 2, Monitoring Authority and Violation Procedures.
- 4) **Violation Procedures.** Please see BSCC Attachment 2, Monitoring Authority and Violation Procedures.
- 5) **Barriers and Strategies.**
 - a) The volume of admissions to juvenile detention facilities, adult jails and lockups and the number of facilities requiring inspection/validation makes it difficult for Field Representatives and compliance monitoring staff to review all appropriate data outside of the biennial inspection cycle.
 - Law enforcement agencies and probation departments submit regular data to the BSCC via the Jail and Juvenile Detention Profile Surveys and monthly data collection. This data is continually reviewed; this data supplements regular on-site reviews of data.
 - The BSCC has streamlined its data collection material to ensure ease of submission from law enforcement agencies and probation departments.
 - b) The high number of facilities in California makes it difficult to verify all appropriate data annually on-site and by survey.
 - The BSCC has retained two additional staff to concentrate on Compliance Monitoring Inspections as a supplement to the work of the Field Representatives and has hired one Field Representative who will serve as the state's Compliance Monitor.
 - c) The turnover in staff of these facilities creates a gap of knowledge with respect to core requirements and data submission in some of these facilities; constant training is required.
 - The BSCC provides on-going technical assistance to law enforcement agencies and probation departments, both general and targeted. If a facility's data appears incongruous with previous data, or if there is an increase in violations, specific technical assistance and training will be provided.
 - The BSCC developed training aids specific to the Jail Removal core requirement.

- The BSCC completed a 40-minute training video that outlines federal and state requirements relative to minors in detention. The training video is accompanied by a workbook designed to aid the detention facility staff.
 - BSCC staff provides pre-inspection briefings to law enforcement agencies and probation departments. All information relevant to the upcoming inspection is provided, including detailed information on core requirements and essential data.
- d) BSCC staff provides continuous training and technical assistance to county juvenile justice commissions (JJC) on issues related to JJDPa compliance. Pursuant to Welfare and Institutions Code section 209, JJC are responsible for inspecting all juvenile detention facilities that hold youth in secure detention for more than 24 hours; they also must inspect local lockups that hold youth in secure detention for any amount of time. To assist JJC and encourage collaboration, the BSCC provides the following:
- Regular reports on lockups that hold youth in secure detention in their county, highlighting those with violations of JJDPa.
 - All biennial inspection reports of juvenile detention facilities.
 - Ad-hoc data on youth in detention in facilities in their county upon request.
 - Regular training on BSCC inspection process and the JJC role in monitoring compliance with the core protections of the JJDPa.

6) Definition of Terms. Please see BSCC Attachment 3, BSCC Minors in Custody Compliance Monitoring Manual, Attachment A- Definitions. California uses federal definitions in the monitoring process.

7) Identification of the Monitoring Universe. Please see BSCC Attachment 1, BSCC Minors in Custody Compliance Monitoring Manual.

The Compliance Monitoring Universe is updated annually through a survey distributed to all law enforcement agencies and probation departments. This information is compared with law enforcement and detention facilities throughout the state via information available from constituent groups (e.g., California State Sheriff's Association, Chief Probation Officers of California, COPSWEST, USACOPS.com, etc.).

During regularly scheduled monitoring visits, Field Representatives will ensure that each agency's facilities are adequately represented in the Compliance Monitoring Universe.

Pursuant to PC § 6029, the BSCC is also required to review the plans and specifications for any local detention facilities and local juvenile detention facilities for compliance with Minimum Standards. As facilities are planned and constructed, they are appropriately added to the Compliance Monitoring Universe.

8) Classification of Monitoring Universe. Many of the facilities in California's Compliance Monitoring Universe are classified according to their definition. Please see BSCC Attachment 3, BSCC Minors in Custody Compliance Monitoring Manual, Attachment A - Definitions.

The classification of the universe is linked to the identification of the universe. As mentioned above, each facility in the universe is annually queried to determine initial classification; classification will be verified during an on-site visit.

9) Inspection of Facilities. Please see BSCC Attachment 1, BSCC Minors in Custody Compliance Monitoring Manual and BSCC Attachment 2, BSCC Monitoring Authority and Violation Procedures. Refer specifically to WIC § 209 and PC § 6031.

10) Data Collection and Verification. Specific detail regarding data collection and verification is included in the description of each core requirement's Strategy for Maintaining Compliance. Each facility identified self-reports annual data relevant to their classification, and if applicable, submits monthly reports relevant to minors in their detention facilities. All self-reported data is reviewed upon receipt and verified by comparing the data with the detention logs or admission records that contain applicable information.