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GAVIN NEWSOM
Governor

October 8, 2020

Executive Board

California Association of Probation Institution Administrators (CAPIA)

<https://www.cpoc.org/capia>

RE: JUVENILE JUSTICE DELINQUENCY AND PREVENTION ACT; SEPARATION REQUIREMENT AND JUVENILE JUSTICE REALIGNMENT

Dear CAPIA:

Given the passage of Senate Bill 823 (SB 823) and the eventual closure of the DJJ facilities, I write to address the transition of youthful offenders to local county jurisdictions and compliance concerns with the federal Juvenile Justice and Delinquency Prevent Act (JJDP A); in particular, the Separation Requirement.

The Board of State and Community Corrections is the designated state agency to monitor compliance with the JJDP A within the State of California. Cal. Pen. Code § 6024(a) (2018). The JJDP A is the governing federal law that establishes federal minimum standards for the protection, safety, care, and treatment of youth in custody. The Separation Requirement mandates sight and sound separation between adult inmates and juveniles.

Per federal law and policy, a juvenile treated as an adult and detained in a juvenile facility, including a juvenile correctional facility, is not considered an "adult inmate" until he or she reaches a state's maximum age of extended juvenile jurisdiction. SB 823 recently raised that age. As a result, the continued placement of such youth in a local juvenile facility does not constitute a federal sight and sound separation violation as long as the youth does not exceed California's maximum age.

For your convenience, attached is a copy of the supporting federal policy.

If you have any questions regarding the JJDP A and these federal standards, please do not hesitate to contact me at Eloisa.Tuitama@bscc.ca.gov, or Ginger Wolfe, our Standards and Compliance Officer, at Ginger.Wolfe@bscc.ca.gov. You may reach either of us by telephone at (916) 445-5073.

Sincerely,

Eloisa Tuitama
Field Representative
JJDP A Compliance Monitor
Facilities Standards and Operations Division



U.S. Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Office of the Administrator

Washington, D.C. 20531

MEMORANDUM

AUG 18 2008

TO: State Agency Directors
Juvenile Justice Specialists
State Advisory Group Chairs

FROM: J. Robert Flores 
Administrator, OJJDP

SUBJECT: Compliance with section 223(a)(12) (Separation Requirement) of the Juvenile Justice and Delinquency Prevention Act of 2002

Section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention Act ("JJDP"), 42 U.S.C. § 5633(a)(12) ("Separation Requirement"), requires states to ensure that no juvenile is "detained or confined in any institution in which they have contact with adult inmates." State compliance with this provision is a key requirement to qualify for JJDP Part B formula funds. Failure to comply results in the imposition of funding penalties authorized by Section 223(c)(1) of the JJDP.

On October 30, 2003, the Office of Juvenile Justice and Delinquency Prevention ("OJJDP") provided guidance ("Guidance") to states regarding compliance with the Separation Requirement, specifically with respect to juveniles transferred, certified or waived into the adult criminal justice system, while detained in juvenile facilities. Stated another way, these are juvenile offenders who age into adulthood after having committed offenses and after having been taken into custody as juveniles ("TCW population"). The Guidance directed states to separate members of the TCW population, from the juvenile populations in juvenile facilities. Recognizing that compliance with the Guidance may have required state law, policy and practice changes, OJJDP allowed states a period of six months to develop plans for accomplishing separation between the juvenile and adult (including TCW) populations, and an additional two years for plan implementation.

Based on genuine issues of concern raised by the states, I sought legal guidance, from within the Department, regarding permissible interpretations of the JJDP definition of "adult inmate," as that term is used in the Separation Requirement, as well as the scope of my discretionary authority as Administrator of OJJDP. Based upon the guidance received, I believe it to be within my discretion to determine, as I have now done, that no individual who reaches the age of full criminal responsibility only *after* arrest or conviction will be understood to be an "adult inmate" within the meaning of the Act until he reaches the state's maximum age of extended juvenile jurisdiction. The result is that the continued placement of a member of the TCW population in a juvenile facility, not to exceed the state's maximum age of extended juvenile jurisdiction, does not constitute a sight and

sound separation requirement violation. This decision provides states the maximum flexibility allowed under the Act regarding the placement of members of the TCW population. I have every confidence that states will continue their work to ensure that the TCW population does not jeopardize the safety of or interfere with the rehabilitative opportunities of youth under the original jurisdiction of the juvenile justice system.

As always, I commend states on their efforts to ensure that youth within the juvenile justice systems, while held accountable for their actions, continue to be detained in a safe environment when necessary, while awaiting reintegration into their communities.

Should you have any further questions, please contact your OJJDP/SRAD State Representative at 202/307-5924.