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“Sight and Sound Separation” for Adult and Juvenile Populations Requirements under 34 U.S.C. § 11133

Given the passage of Senate Bill 823 (SB 823) and the eventual closure of the state’s youth correctional facilities, the Board of State and Community Corrections (BSCC) understands that agencies may have questions about the housing of youthful offenders in local detention facilities. The BSCC is the designated state agency that monitors local juvenile detention facilities for compliance with the federal Juvenile Justice and Delinquency Prevention Act¹ (JJJPA), which requires that juveniles not have “sight or sound contact” with adult inmates. (34 U.S.C. § 11133(a)(11)(B).) This “Separation Requirement” allows states to define the terms “juvenile” or “minor.” In California, the term “minor” is used to refer to a person under 18 years of age. The JJJPA defines an “adult inmate” as:

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 charge offense. (8 U.S.C. § 11103(26)(A)(i) & (ii).)

In California, the court of jurisdiction is important in determining whether separation is required between a person 18 years of age or older and a minor in a juvenile detention facility. To assist agencies, the BSCC developed the following Frequently Asked Questions (FAQs) and accompanying chart. Please note that the FAQs do not address every possible scenario that agencies may encounter. BSCC staff will update these FAQs as needed.

If you have any questions regarding the JJJPA and the federal standards, please contact Eloisa Tuitama, JJJPA Compliance Monitor, at Eloisa.Tuitama@bscc.ca.gov or Ginger Wolfe, FSO Standards and Compliance Officer, at Ginger.Wolfe@bscc.ca.gov. You may reach either by telephone at (916) 445-5073. Contact your assigned Field Representative with questions related to Title 15 and Title 24 minimum standards and general facility operations questions.

¹ Pub. L No. 93-415 (1974), reauthorized and amended as the Juvenile Justice Reform Act (JJRA) of 2018 Pub. L. No. 115-385 (2018). Except as provided by the JJRA, the BSCC does not monitor compliance with state statutes related to separation; we strongly recommend that you consult with your County Counsel regarding the applicability of state law to separation in your facility.

Frequently Asked Questions

1. What is the age of full criminal responsibility in California?

18 years of age.

2. What is the maximum age of extended juvenile jurisdiction in California?

25 years of age. Under the new section 208.5 of the Welfare and Institutions Code, any person whose case originated in juvenile court can stay in a juvenile facility until the person turns 25.

3. Do we need to separate a 17-year old in our facility who is under the jurisdiction of the Adult Court from other minors?

No. The 17-year old is not an adult inmate. The JJDPA defines an adult inmate as an individual "who has reached the age of full criminal responsibility under applicable State law." In California, this is 18 years of age.

4. If the individual in the scenario above turns 18 while in our custody, do we need to separate them from minors? Do we need to separate an individual under the Adult Court who turned 18 while in our facility?

No. The 2018 reauthorization of the JJDPA codified a long-standing Office of Juvenile Justice and Delinquency Prevention (OJJDP) policy on the matter. Since 2008, an OJJDP policy determined that a juvenile treated as an adult and detained in a juvenile facility is not an "adult inmate" until they reach the state's maximum age of extended juvenile jurisdiction. Accordingly, if a youth under the Adult Court is placed in a juvenile facility and turns 18 while in the facility, the continued placement or "continuous stay" of such youth in a juvenile facility does not constitute a federal sight and sound separation violation. A copy of the supporting federal policy is attached.

5. But what if that same individual is later transferred to a jail, but then is ordered back to our juvenile detention facility? Do we need to separate them?

It depends on the court of jurisdiction.

Yes, if a person remains under the Adult Court, is transferred to adult jail, and then returns to the juvenile facility, then the continued placement in a juvenile facility is broken. There is no longer a "continuous stay" and the individual must be separated from minors.

No, if a person is transferred to a jail, but returns to the juvenile facility under the jurisdiction of the Juvenile Court, even if they are over 18, they do not need to be separated from minors. This result would also apply if the individual were transferred to jail while proceeding through a fitness hearing, and a transfer to Adult Court was denied.

They remain under the juvenile court until they are found unfit.

6. Do we need to separate a person over 18 who leaves the juvenile facility to attend court or other related functions?

No. The person was not transferred to an adult facility. Functions like attending court does not break a "continuous stay."

7. What does "continuous stay" mean?

Federal law and regulations do not define "continuous stay." Fortunately, OJJDP policy sheds some light and provides guidance. In a 2008 memo, OJJDP refers to it as the continued placement in a juvenile facility of individuals under the Adult Court. Put differently, the concept refers to persons who turned 18 while detained in juvenile facilities. Until such a person reaches a state's maximum age of extended juvenile jurisdiction, which is currently 25 in California, their continued stay in a juvenile facility does not require separation from minors.

8. What can break an individual's "continuous stay?"

There is no bright-line rule on what breaks "continuous stay." However, the federal definition of "adult inmate," the principles behind the Separation Requirement, and OJJDP policy provide some guidance. For example, it is generally accepted that a formal placement in an adult facility breaks the continuous stay period. In this light, the following situations could be included:

- A person in a juvenile facility, under the jurisdiction of the Adult Court, who turns 18 and is later transferred to an adult facility, cannot return to the juvenile facility without being separated from minors.
- A person who turned 18 in a juvenile facility, is released and not on juvenile probation, and then is arrested for a new criminal offense is now an "adult inmate" per the JJDPA.
- A person who turned 18 in a juvenile facility, is released on juvenile probation, and then is arrested for a new criminal offense is now an "adult inmate" per the JJDPA because they are accused of committing a new offense and are under Adult Court.

If in doubt, the default is the Separation Requirement.

9. What about an individual who turned 18 in our facility, was released from custody, and later picked up on a juvenile warrant? Do we need to separate them from minors?

No. So long as the individual has not reached the maximum age of juvenile jurisdiction, they do not need to be separated because they are under Juvenile Court.

10. What if an individual who turned 18 in our facility was released from custody, and then arrested for a new criminal offense? Do we need to separate?

Yes. Individuals who are age 18 years and older who are arrested, in custody, or convicted for a criminal offense should not be brought to a juvenile facility.

Additionally, if your agency operates the juvenile facility as a collocated facility, separation must occur. The individual in question is now age 18 or older when the new offense is alleged to have been committed, they are considered an "adult inmate" per the JJDPA.

11. What about an individual who turned 18 in our juvenile facility, was released on juvenile probation, then is arrested for a new criminal offense, AND violated their juvenile probation? If they were brought back to a juvenile facility, do we need to separate them from minors?

This situation will likely require additional consideration; if a person over 18 violates their juvenile probation, they can be brought to a juvenile detention facility without being separated. Absent the booking for violation of probation, the person should be placed in an adult facility. A person over 18 years of age who is arrested for a new offense cannot be placed in a juvenile facility.

BSCC recommends that agencies contact their legal representative or BSCC Field Representative for further discussion.

Separation Chart:
When must an 18 year-old or older be separated from minors?

Jurisdiction	Scenario	Separation Required?
ADULT Court	Turned 18 while in juvenile facility	NO
	Brought to juvenile facility after turning 18 (including a collocated facility)	YES
	Transferred out of juvenile facility to jail, and then brought back on an adult matter.	YES
	Left juvenile facility and brought back on a juvenile matter (e.g. was in juvenile court)	NO
JUVENILE Court	Brought to the juvenile facility on a JUVENILE MATTER, including probation violations or outstanding warrants.	NO
	On juvenile probation, arrested for offense on ADULT MATTER.	Potential conflict with JJDP, but states can be more protective than federal law. In California, this person would be placed in an adult facility.