

Juvenile Sight and Sound Separation in Court Holding Facilities

The legal requirement for sight and sound separation between juveniles and adult inmates states that “juveniles alleged to be or found to be delinquent or juveniles within the purview of paragraph (11) will not be detained or confined in any institution in which they have sight or sound contact with adult inmates.” [34 U.S.C.A. §11133\(a\)\(12\)\(A\)](#). It may be somewhat intuitive to understand how this requirement applies in settings where adults are detained for long periods of time—such as jails and lockups. The application of this requirement in court holding facilities may be less intuitive. This post explains how sight and sound separation applies in the context of the courthouse.

Legal Authority for the Sight and Sound Separation Requirement

The sight and sound separation requirement is one of the four core requirements necessary for states to access juvenile justice and delinquency prevention funding under a federal [formula grants program](#). The other three core requirements are 1) deinstitutionalization of status offenders, 2) removal of juveniles from adult jails and lockups and 3) addressing racial and ethnic disparities. States are required to monitor their compliance with all four core requirements and to provide annual reports on their compliance to the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP). [34 U.S.C. § 11133\(a\)\(14\)](#). Failure to comply with the core requirements can result in fiscal penalties to the state, reducing the availability of federal funding for juvenile justice and delinquency prevention activities. [34 U.S.C. § 11133\(c\)](#).

Where Does Sight and Sound Separation Apply in the Courthouse?

The sight and sound separation requirement applies to the detention or confinement of a juvenile in any “institution.” Institution is not defined in the statute. Federal guidance dictates that institution means a “secure facility.” [82 Fed. Reg. 4787, Footnote 4 \(January 17, 2017\)](#). Under the federal regulations, secure facilities are facilities in which there are “construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.” [28 C.F.R. §31.304\(m\)](#).

OJJDP therefore explains that the separation requirement applies in facilities that law enforcement or court authorities use to detain or confine juveniles or adults who are accused of offenses, are awaiting adjudication or trial, or have been adjudicated delinquent or convicted as an adult. [An Overview of Statutory and Regulatory Requirements for Monitoring Facilities for Compliance with the Deinstitutionalization of Status Offenders, Separation, and Jail Removal Provisions of the Juvenile Justice and Delinquency Prevention Act, \(hereinafter “Overview”\) p. 18](#). The secure areas of the courthouse where juveniles and/or adults are held by law enforcement or court authorities while they wait for court appearances and for transport to a detention center or jail, also known as

court holding facilities, are one type of secure facility. Therefore, juveniles must be sight and sound separated from all adult inmates in court holding facilities.

Because the separation requirement applies in areas where juvenile and adults are held securely, it does not generally apply in the courtroom itself or in any other public area of the courthouse. For example, if a juvenile is sitting in the jury box under the supervision of the adults in the courtroom, that juvenile is not considered to be in a secure facility and the sight and sound separation requirement does not apply. See [Frequently Asked Questions: Title II Formula Grants Program, p. 6](#). OJJDP strongly recommends that sight and sound separation is maintained in nonsecure areas of the courthouse, but it is not a requirement. [Overview, p. 18](#). It is notable that juveniles are considered to be in a secure custody status when they are physically secured to a cuffing rail or other stationary object. Therefore, if a juvenile is physically secured to a courtroom fixture, then they are being held securely, triggering the separation requirement. [28 C.F.R. § 31.03\(d\)\(i\)](#).

Who Does Sight and Sound Separation Apply to?

The separation requirement applies to contact between juveniles who are covered by the statute and those who meet the definition of adult inmate.

Juveniles

The separation requirement applies to juveniles who are:

- alleged to be or have been adjudicated delinquent,
- alleged to be or have been adjudicated undisciplined, or
- are not charged with any offense and who are unauthorized immigrants or alleged to be dependent, neglected, or abused. [34 U.S.C. § 11133\(a\)\(12\)](#).

The separation requirement also generally applies to juveniles (under age 18) who have been transferred to superior court for trial as adults. Federal law does provide an exception to this rule. The court must hold a hearing and make written findings that it is in the interest of justice for a juvenile who has been transferred to superior court to have sight and sound contact with adult inmates in secure facilities (including court holding facilities) while the juvenile awaits trial. [34 U.S.C. § 11133\(a\)\(11\)\(B\)](#). The court must consider the following factors in making this determination:

- the age of the juvenile;
- the physical and mental maturity of the juvenile;
- the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;
- the nature and circumstances of the alleged offense;
- the juvenile's history of prior delinquent acts;

- the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and
- any other relevant factor.

Adult Inmates

For the purposes of the separation requirement, an adult inmate is a person who has reached the age of 18 and 1) has been arrested and is in custody for and awaiting trial on criminal charges or 2) is convicted of a criminal offense. [34 U.S.C. § 11103\(26\)\(A\)](#).

The term adult inmate does not include anyone who was under 18 at the time of their offense and was committed to the North Carolina Department Juvenile Justice, when that person is between the ages of 18 and 21. [34 U.S.C. § 11103\(26\)\(B\)](#).

What Constitutes Separation?

The separation requirement prohibits sight or sound contact between juveniles and adult inmates. Sight and sound contact is defined as “any physical, clear visual, or verbal contact that is not brief and inadvertent.” [34 U.S.C. § 11103\(25\)](#). Federal regulations further define sight contact as “clear visual contact between incarcerated adults and juveniles within close proximity to each other.” [28 C.F.R. § 31.303\(d\)\(i\)](#). That same regulation further defines sound contact as “direct oral communication between incarcerated adults and juvenile offenders.”

How can Sight and Sound Separation be Accomplished in Court Holding Facilities?

Sight and sound separation can be accomplished either through 1) architectural design that allows for separate court holding facilities for juvenile and adults or 2) implementation of policies that require time phasing so that the court holding facility is never being simultaneously used for adults and juveniles. [28 C.F.R. § 31.303\(d\)\(i\)](#). An architectural solution is one in which there are distinct holding facilities in the courthouse for juveniles and for adults. The separate facilities would not allow for any sight or sound contact. They would also be used exclusively for either juveniles or adults.

A policy solution requires creation and implementation of policies that require the holding facility to be used exclusively for juveniles at a certain time or times and exclusively for adults at other times. The facility must provide the state a clear written time phasing policy and be able to demonstrate that it adheres to that policy. [Frequently Asked Questions: Title II Formula Grants Program, p. 16](#). OJJDP recommends the use of a log at the court holding facility to document that juveniles and adults are not held in the court holding facility at the same time. [Overview, p. 18](#).

Please feel free to reach out with any questions you may have on this topic. As always, you can

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