

Raising the Upper Age of Juvenile Jurisdiction: Implications of Federal JJDPA and PREA Requirements

Does raising the upper age of juvenile justice jurisdiction over a youth's 18th birthday run afoul of federal laws that seek to keep youth separated from adults in correctional settings?

This is a question that has been posed in states that are actively considering the benefits of expanding the jurisdiction of the juvenile justice system to include youth who allegedly committed offenses after their 18th birthdays in order to provide more effective and developmentally appropriate responses to these emerging adults and increase public safety. **This Fact Sheet explains that neither the federal Juvenile Justice Delinquency Prevention Act nor the Prison Rape Elimination Act pose obstacles to states' proposals to raise the upper age of juvenile jurisdiction over age 18.** By enacting laws that explicitly include youth over age 18 in the juvenile justice system, states can protect these youth from harm from older adults in the same way that they now protect youth under age 18.

The Juvenile Justice Delinquency Prevention Act (JJDPA)

First enacted in 1974 and last re-authorized in December 2018, the JJDPA requires states to ensure sight and sound separation of juveniles in order to receive federal funding. Specifically, the JJDPA provides that “juveniles alleged to be or found to be delinquent [...] will not be detained or confined in any institution in which they have contact with adult inmates.”¹

The JJDPA defines an “adult inmate” 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.”² It 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 [...] of a juvenile correctional agency by a court of competent jurisdiction or by operation of applicable State law.”³ In other words, JJDPA’s requirement to separate juveniles from adults turns on the State’s designation of an individual in its adult vs. juvenile system rather than a specific cut-off age. If State law sets, by default, the upper age limit of its delinquency (juvenile) court jurisdiction higher than an individual’s 18th birthday at the time of allegedly breaking the law or such individual is tried as a juvenile by means of a “youthful offender” statute,

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¹ 34 USCS §11133 (12) (A).

² 34 USCS § 11103 (26) (A).

³ 34 USCS § 11103 (26) (B).

such older youth does not need to be separated from younger youth. Raising the upper age of juvenile court jurisdiction would, therefore, not lead to unintended violation of JJDPa.

Most states already mingle youth under and over age 18 in their juvenile systems. The upper age limit of juvenile court jurisdiction takes into account the age at which an individual allegedly broke the law. This means that in a State where the upper age limit of juvenile court jurisdiction is set at age 18, youths that allegedly broke a criminal law a day before their 18th birthdays are, by default, tried in juvenile (or family) court (unless transferred to an adult court) and, if found delinquent, could be committed to juvenile correctional facilities even if they are now over their 18th birthdays. In practice, the maximum extended age of juvenile jurisdiction in most states is, thus, over age 18, extending in some states as far as age 24.⁴

The JJDPa bans the mingling of individuals over 18 who are criminally charged or convicted as “adults.” It does not bar the housing of youth processed in the juvenile (delinquency) system over age 18 with those under age 18.

The Prison Rape Elimination Act (PREA)

The federal Prison Rape Elimination Act (PREA), passed in 2003 to establish a zero-tolerance standard for sexual violence in juvenile and criminal justice institutions, similarly requires that “youthful inmates” may not be housed anywhere in which they will “have sight, sound, or physical contact with any adult inmate [...].”⁵

PREA requires sight, sound, and physical separation of “youthful inmates,” a category defined as youth under age 18 who are under adult court supervision and are held in adult facilities.⁶ Such age-based segregation does not apply to youth in juvenile facilities. Although PREA defines a “juvenile” as any person under the age of 18 (unless under adult court supervision and held in adult facilities),⁷ the set of standards for juvenile facilities applies to all “residents,” defined as “any person confined or detained in a juvenile facility” without requiring age-based segregation.⁸ Therefore, as long as the facilities are designated as “juvenile facilities,” they would not be subject to PREA requirement for age segregation when older youth are included in the juvenile justice systems of states that raise the upper age of juvenile court jurisdiction above age 18.

PREA’s sight, sound, and physical separation requirement applies only to adult facilities. Age segregation is not a federal requirement for youth in juvenile facilities.

⁴ Office of Juvenile Justice and Delinquency Prevention (October 2010). Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002.” Appendix K: Age of Full Criminal Responsibility and Maximum Age of Extended Juvenile Court Jurisdiction – 50 State Survey.

⁵ 28 C.F.R. §115.14 (2012).

⁶ 28 C.F.R. §115.5.

⁷ *Id.*

⁸ National Standards to Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106, 37115 (June 20, 2012) (to be codified at 28 C.F.R. §115).