

New Teen Custody Rules Would Widen Feds' Oversight of Juvenile Justice

July 21, 2014

[The Crime Report](#)

by Ted Gest

The Department of Justice (DOJ) is preparing to impose new requirements on states for confining juveniles suspected of crimes. The rules could require state and local officials to spend significantly more money at a time when federal aid for juvenile justice is declining.

The rationale for the new policy, which has not been formally announced, was disclosed last month by Robert Listenbee, administrator of DOJ's Office of Juvenile Justice and Delinquency Prevention, at a private meeting in Washington, D.C. of juvenile justice officials from around the U.S. .

It is based on a new legal interpretation of the federal Juvenile Justice and Delinquency Prevention Act, which is marking its 40th year on the books this summer.

The law imposes four "core requirements" that states must meet to obtain federal aid. The most prominent of these are that juvenile inmates must be separated from adults; that juveniles may be held in adult jails for no more than six hours; and that "status offenders" whose crimes are due only to their juvenile status not be held in custody more than 24 hours.

For decades, the DOJ has interpreted the law to apply to "secure" facilities like prisons and county jails with stringent security that restricts inmates' movement.

Listenbee told the juvenile justice group, which was scheduled to coincide with the annual convention of the Coalition for Juvenile Justice, that a new DOJ legal opinion says that the enhanced requirements also apply to juveniles held in "nonsecure" facilities, such as local lockups that may have considerably less security than a prison or jail.

For example, the rules might apply to a room in a sheriff's office or small police station that is used to detain suspects temporarily.

The change was announced in a two-page memo on "revised guidance" that "represents a departure from the previous approach that will require changes in state practices."

Last week, DOJ issued a memo to states declaring that, “OJJDP’s goal is to promote the well-being of young people and limit their contact with the justice system.”

The memo continued: “We recognize this may require changes in state monitoring practices and compliance reporting. Specifically, it means states will need to monitor, collect data, and report violations of all juveniles who are detained or confined in nonsecure custody.”

DOJ’s public statements have not laid out evidence that juveniles are being abused in nonsecure settings.

The DOJ has not defined “nonsecure,” and the rule-making process might take several years. (Congress enacted the Prison Rape Elimination Act, known as PREA, in 2003, but only this year, 11 years later, are states being told that they may lose federal funds if they don’t comply with its provisions.)

Still, some states are alarmed that Washington may impose new requirements for juveniles with no proof that they are necessary.

The impact could be extensive in big states.

For example, one Texas official estimated that of 2,385 facilities across the state where juvenile suspects could be detained, only 439 are considered legally secure. Additional monitoring of non-secure facilities could cost the state \$500,000 more annually, weighed against a federal aid total of \$3.1 million.

Glenn Brooks, chair of the Texas Juvenile Justice Advisory Board, told *The Crime Report* that many of the non-secure facilities are located “in small rural communities, so it would be very costly to monitor this number of facilities.”

He added that state officials “do not know why, after 40 years of the OJJDP Act, they have now decided to change the interpretation of the Act and require that non-secure facilities be included. We need a fuller explanation from OJJDP.”

Retired Judge George Timberlake, chair of Illinois’ juvenile justice board, said the new DOJ guidance might be legally justified because “there seems to be no real difference in secure/non-secure custody as to extent of the core requirements.”

He added, “On the other hand, we really do not know the impact on law enforcement agencies. We intend to ask questions of those agencies in the coming months. Any change results in initial concern but we want to develop a factual basis before any alarm.”

Because the new DOJ policy was disclosed only a month ago, it would be premature to say how it will play out.

Texas Gov. Rick Perry has said that his state will not comply with PREA even if it means foregoing federal aid, and such a scenario could play out with the new rules on juveniles in “nonsecure” facilities.

The Justice Department says it will be “convening a series of listening sessions with states beginning in late July to learn what training, guidance, and other resources are needed to support implementation of the revised guidance.”