



CHAIRMAN'S MEMORANDUM

NO. 4-2013 February 14, 2013

TO: SHERIFFS, CHIEF ADMINISTRATIVE OFFICERS, COMMISSIONERS OF CORRECTION,
NEW YORK CITY WARDENS, DIRECTORS OF PROBATION

RE: "Scared Straight" Programs

The New York State Commission of Correction has been charged with monitoring the state's compliance with the Juvenile Justice and Delinquency Prevention Act (JJDP). In this regard, the Commission has encountered local correctional facility programs requiring youth attendance inside the facility as a disposition of an offense or as a means of modifying their behavior, commonly referred to as "Scared Straight." For your reference, I have enclosed a memorandum from the Commission's Office of Counsel which discusses how such a program may constitute a violation of the JJDP.

As the memorandum references, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) considers the participation of an accused or adjudicated juvenile delinquent or person in need of supervision (PINS) in an adult correctional facility's "Scared Straight" program to be a violation of the JJDP's separation requirement. As with any JJDP non-compliance, there is the risk of a 20% reduction in federal Formula Grant funds awarded to New York State, as well as the potential loss of the State Advisory Group certification and Title V Community Prevention Grant funds for all units of general local government within the violating county.

With this in mind, it is highly encouraged and recommended that a local correctional facility consider the above before commencing or continuing any such program. As with any issue, please feel free to contact the Commission's Office of Counsel for further guidance.

Thomas A. Beilein, Chairman

**New York State Commission of Correction
Alfred E. Smith State Office Building
80 So. Swan Street, 12th Floor
Albany, New York 12210-8001**

**Thomas A. Beilein, Chairman
Phyllis Harrison-Ross, M.D., Commissioner**



STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
Alfred E. Smith State Office Building
80 S. Swan Street, 12th Floor
Albany, New York 12210-8001
(518) 485-2346
FAX (518) 485-2467

CHAIRMAN
Thomas A. Beilein

COMMISSIONER
Phyllis Harrison-Ross, M.D.

MEMORANDUM

TO: Chairman/Commissioner Thomas A. Beilein
FROM: Brian M. Callahan
RE: "Scared Straight" Programs / Juvenile Justice and Delinquency Prevention Act
DATE: February 7, 2013

The Juvenile Justice and Delinquency Prevention Act (42 U.S.C. sections 5601-5785) is a series of federal statutes generally designed to cease the incarceration of juveniles in adult jails and lockups. The Act also requires that each state provide for a system of monitoring jails and detention facilities to insure compliance with the provisions of the Act. The Commission of Correction, through a contract with the New York State Division of Criminal Justice Services (DCJS), is responsible for establishing and carrying out this monitoring system.

In the Commission's recent experience of compliance monitoring and interaction with the Office of Juvenile Justice and Delinquency Prevention (OJJDP), one of the "core" requirements subject to enforcement is the separation of juveniles from adult inmates, as mandated by 42 U.S.C. §5633(a)(12). In this regard, OJJDP has opined that "no juvenile offender shall enter under public authority (i.e. while in the care, custody, or under the jurisdiction of law enforcement or the juvenile or criminal court, whichever is applicable), for any amount of time, into a secure setting or secure section of an adult jail, lockup, or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g., Shock Incarceration or Scared Straight)." *Guidance Manual for Monitoring Facilities under the Juvenile Justice and Delinquency Prevention Act of 2002*, OJJDP, October 2010, p. 16. For reference, a juvenile offender, for purposes of the Act, is "an individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law." *Id.*, at 50; *see also* 28 CFR 31.304(f). In New York State, this would include any accused or adjudicated juvenile delinquent and person in need of supervision (PINS) while subject to the jurisdiction of the Family Court.

Consequently, the Commission, as part of its monitoring role, is required to report a separation violation following the participation of any accused and adjudicated juvenile delinquent and PINS in a correctional facility's "Scared Straight" program. Non-compliance with any one of

the core protections may result in a 20% reduction of the federal Formula Grant funds awarded to New York State. *Guidance Manual for Monitoring Facilities under the Juvenile Justice and Delinquency Prevention Act of 2002*, OJJDP, October 2010, p. 41. In addition, half the remaining funds must be used to achieve compliance with the violated requirement(s). *Id.* Lastly, a county jail's failure to comply with the JJDPA may further jeopardize State Advisory Group certification and Title V Community Prevention Grant funds for all units of general local government within the county. *Id.*, at 41-42.

Otherwise, visitation of a local correctional facility is governed by Correction Law §500-j, which allows certain individuals to visit at pleasure, including the Governor, Lieutenant-Governor, Secretary Of State, Comptroller, Attorney General, members of the New York State Legislature, judge of the Court of Appeals, justices of the Supreme and County Courts, and clergy and ministers of congregations within the county. "No other person not otherwise authorized by law shall be permitted to enter the rooms of a local correctional facility in which convicts are confined, unless under such regulations as the sheriff of the county ... shall prescribe." Correction Law §500-j.