

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

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DEPARTMENT OF LAW OPINION NO. 72-2 (R-21)

REQUESTED BY: A. LaMONT SMITH, D.P.A.
Deputy Director
Arizona State Department of Corrections

QUESTION: May the Department of Corrections provide a correctional training facility where youth and adult offenders co-mingle during the day in the shops, classrooms, dining rooms and visitors' area, although segregated by age during the evening lock-up?

ANSWER: No.

The Department of Corrections has proposed a unique training facility where youth and young adult offenders would co-mingle during the day, although segregated during the evening lock-up.

Article 22, Section 16 of the Arizona Constitution prohibits the imprisonment or confinement of minors under the age of 18 with adult offenders.

"Section 16. It shall be unlawful to confine any minor under the age of eighteen years, accused or convicted of crime, in the same section of any jail or prison in which adult prisoners are confined. Suitable quarters shall be prepared for the confinement of such minors."

This constitutional provision prohibits the type of training facility proposed by the Department of Corrections. The co-training facility would be a prison or jail. A.R.S. § 41-1641 states in part as follows:

"The director of the department of corrections is authorized to establish the Arizona correctional training facility, for the confinement of males under the custody of the

director of corrections. The facility shall be a medium type security institution. Its primary purpose shall be to provide custody, care, industrial, vocational and other training to persons confined therein. . . ."

The facility proposed by the Department does not override the Arizona Constitution by calling the lock-up "confinement" and the shops and classrooms "supervision". It is clear that the inmates are confined throughout. They are not at liberty to leave. A.R.S. § 41-1606.01. Imprisonment and confinement may be by mere supervision (even assuming there were no walls around the shops and classrooms).

In the case of Vigileos v. State, 84 Ariz. 404, 330 P.2d 116 (1958), the court agreed that the confinement of a minor under the age of 18 in the Arizona State Prison, where he mixed with adult offenders was unlawful. Although the petitioner was not entitled to habeas corpus relief in that case, the court was clear in its holding that it was the co-mingling which was forbidden.

It therefore appears that the inmates are confined during the day as well as during the evening, and that the proposed co-mingling of the adult and minor offenders under the age of 18 is contrary to the constitutional prohibition.

Respectfully submitted,



GARY K. NELSON
The Attorney General