U. S. Department of Justice
Office of Juvenile Justice and Delinquency Prevention

Forum
on Deinstitutionalization

Selected Readings on Children in Adult Jails and Lockups

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Foreword

The practice of jailing juveniles has traditionally gone undetected by the general public and been cloaked in a litany of myth and misunderstanding. The practice often does not see the light of day until a tragic suicide, a law suit, legislation, or pressure from a citizen advocacy group brings public attention. Even then, information regarding the issues of children in adult jails and alternative strategies and programs is unavailable. The efforts of well-meaning citizens and juvenile justice officials are often bogged down by the conventional wisdom that all confined youth are dangers to the public safety and the court process. More likely than not, action on this issue will take the inappropriate form of a decision to build a separate juvenile detention center.

The Forum on Deinstitutionalization: Selected Readings on Children in Adult Jails and Lockups provides a compendium of recent literature and research in this critical area for use by individuals and organizations interested in eliminating the practice. It is hoped that the information will both inform the public and supplement a responsible and comprehensive planning process at the state and local level.

Ira M. Schwartz
Administrator
Office of Juvenile Justice
and Delinquency Prevention

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National Priority: Removing Juveniles From Adult Jails And Lockups

--James Brown and Doyle Wood

The detention of juveniles in adult jails and lockups has long been a moral issue in this country which has been characterized by sporadic public concern and minimal action toward its resolutions.

It is suspected that the general lack of public awareness, and the low level of official action are exacerbated by the absence of meaningful information, and the low visibility of juveniles in jails and lockups. This situation is perpetuated by official rhetoric which cloaks the practice of jailing juveniles in a variety of poorly-conceived rationales. In fact, the time-honored but unsubstantiated "rationales" of public safety, protection from themselves or their environments, and lack of alternatives break down under close scrutiny.

In reality, the aggressive and unpredictable threat to public safety perceived by the community is often just the opposite. A recent survey of a nine-state area by the Children's Defense Fund indicates that 18 percent of the juveniles in jails have not even been charged with an act which would be a crime if committed by an adult. Four percent have committed no offense at all. Of those jailed on criminal-type offenses, 85 percent are there on property and minor offenses.

Not until 1971, with the completion of the National Jail Census, did a clear and comprehensive picture of jails surface. By its own admission, the Census showed only a snapshot of American jails and the people who live in them. Significantly, it excluded those facilities holding persons less than 48 hours. This is critical with respect to juveniles because it is the police lockup and the drunk tank to which alleged juvenile offenders are so often relegated awaiting court appearance.

The Census did, however, give us the first nationwide indication of the number of juveniles held in jail. On March 15, 1970, 7,800 juveniles were living in 4,037 jails. A comparable census in 1974 estimated that the number had grown to 12,744. The inadequacy of the data is compounded when a determination of the number of juveniles admitted to adult jails and lockups each year is sought.

Recent surveys indicate that this figure ranges up to 500,000. The Children's Defense Fund states that even the half-million figure is "grossly understated" and that "there is an appalling vacuum of information...when it comes to children in jails." Regardless of the true figure, it is clear that the practice of jailing juveniles has not diminished during the last decade.

deplorable conditions

While the social and emotional consequences of incarceration on the growth and development of youth needs further examination, we know that many of the county jails and municipal lockups are in deplorable condition. They provide inadequate program, procedural, and environmental situations for adults, much less juveniles. Further, we know that detention begets commitment, and that once held in a secure setting the likelihood of continued incarceration is disproportionately increased. We also know that suicides among incarcerated youths occur at alarming rates and that the repeated reports of physical and sexual abuse can only be considered as the tip of the iceberg, in view of the cloak of secrecy that surrounds the secure and obscure confines of these facilities.

The major catalyst for change in this area has been the passage of the 1974 Juvenile Justice and Delinquency Prevention Act. The President of the United States, in signing the reauthorization of the 1974 Juvenile Justice and Delinquency Prevention Act, stressed that "...in many communities of our country two kinds of crimes, the serious and one not very serious, are treated the same, and young people have been incarcerated for long periods of time...for committed offenses which would not even be a crime at all if they were adults...This Act very wisely draws a sharp distinction between these two kinds of crimes. It also encourages local administrators, states, and local government to deinstitutionalize those young people who have not committed serious crimes." (Emphasis added.)

The requirements of the 1974 Juvenile Justice and Delinquency Prevention Act, with respect to juveniles in adult jails and lockups, are embodied in Section 223(a) (13):

> (13) *provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.*

Implementation of the Act has been principally directed toward changing the traditional response

of institutionalization. Schools, parents, police, the courts, and the community in general have been required to examine their perception of juvenile delinquency and their methods of dealing with youth in trouble. Recent survey research and national standards have provided strong and unequivocal support for the mandates of the Act, particularly with respect to the removal of juveniles from adult jails and lockups.

As early as 1961, the National Council on Crime and Delinquency stated that:

> The answer to the problem is to be found neither in writing off the sophisticated youth by jailing him, nor in building separate and better designed juvenile quarters in jails and police lockups. The treatment of youthful offenders must be divorced from the jail and other expensive 'money saving' methods of handling adults.

The President's Commission on Law Enforcement Administration of Justice established that "adequate and appropriate separate detention facilities for juveniles should be provided."

should be eliminated

In 1974, the National Assessment of Juvenile Corrections assumed and defended the position that "placing juveniles in adult jails and lockups should be entirely eliminated." Similarly, the Children's Defense Fund advocated, "To achieve the goal of ending jail incarceration of children, states should review their laws to prohibit absolutely the holding of children of juvenile court age in jails or lockups used for adult offenders."

FOUR NATIONAL GROUPS ARE IN AGREEMENT:

NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS states that "jails should not be used for the detention of juveniles."

AMERICAN BAR ASSOCIATION (ABA) and the INSTITUTE FOR JUDICIAL ADMINISTRATION (IJA) stated that "the interim detention of accused juveniles in any facility or part thereof also used to detain adults is prohibited."

NATIONAL SHERIFFS' ASSOCIATION (NSA) stated that "in the case of juveniles when jail detention cannot possibly be avoided, it is the responsibility of the jail to provide full segregation from adult inmates, constant supervision, a well-balanced diet, and a constructive program of wholesome activities. The detention period should be kept to a minimum, and every effort to expedite the disposition of the juvenile's case.

AMERICAN CORRECTIONAL ASSOCIATION (ACA) stipulates that "juveniles in custody are provided living quarters separate from adult inmates, although these may be in the same structure."

While the statements by the NSA and ACA fall short of requiring the removal of juveniles from adult facilities, it is clear that anything less

than sight and sound separation would not meet their requirements.

Many states allow juveniles to be detained in adult jails and lockups as long as they are separated from adult offenders. The ambiguity of most state statutes, however, hinders a detailed analysis of national practices. From the face of the statute, it is often difficult to determine whether a juvenile is not allowed in jail at all, or if it is an acceptable practice as long as they are kept separated from adults. Ohio, for example, has a statute which says, in counties where no detention home is available, the Board of County Commissioners shall provide funds for the boarding of juveniles in private homes. But the statute also deals with the separation of juveniles and adults in jails.

While some states had enacted legislative restrictions prior to the passage of the 1974 Juvenile Justice and Delinquency Prevention Act, most legislative activity in this area occurred in response to the mandates of the Act. Most significantly, the state legislation enacted since 1974 has removed many of the ambiguities which plagued earlier statutes. In addition, states have moved increasingly to an outright prohibition on the jailing of juveniles, rather than the traditional response of mere separation within the facility. These recent trends are especially evident in the states of Maryland, Washington, and Pennsylvania, all of which have legislated an outright prohibition on the jailing of juveniles during the past two years.

three basic precepts

The effort in any community to remove juveniles from adult jails and lockups should be premised on three basic precepts. First, it is important to note that the decision to place a juvenile in a residential program be determined by objective and specific criteria. This is particularly important for those youth awaiting court appearance where historically the release decision has been contingent upon the nonlegal biases of individual intake workers, resulting in widely disparate perceptions of what personal characteristics constitute "likely to commit another offense," likely to run," and "likely to harm himself." The prejudices commonly include attitude, reliability of parents, personal appearance and status in the community, as well as the most prevelant abuses based on sex, race, and income.

Both the IJA and ABA Juveniles Justice Standards Project and the National Advisory Committee Report to the Administrator on Standards for the Administration of Juvenile Justice, recommend objective release criteria based on offense, legal status, and legal history. Experience has indicated that the use of objective criteria dramatically reduces the use of secure detention.

Second, the residential program must be viewed within the context of a network of alternative programs directed toward the use of the least restrictive setting for each youth. The development of one monolithic response to the needs of youth awaiting court appearance, greatly limits flexibility and the ability to respond to changing program needs. This is particularly import-

ant in light of rapidly developing program innovations which meet the needs of youths on both a residential and nonresidential scale. For instance, solely considering the development of a community-based shelter care facility, and excluding other options such as emergency foster care and home detention would severely limit future flexibility. Even greater restrictions are placed on the community which relies totally on a secure residential facility that creates an irreversible commitment well into the 21st Century.

Finally, and perhaps most importantly, it is essential to view the development of residential programs from the perspective of the young persons who will be living there, although on a temporary basis. Traditionally, the views of police, youth workers, the courts and correctional officials, and architects have been most strongly represented in the development of juvenile residential facilities. It is clear that from an operational, financial, and design perspective, traditional interpretations of residential needs would be the most expedient, most convenient, and least costly alternative.

However, this is not what the Act intended. Throughout, the Act mandates an advocacy posture on behalf of youth on all relevant issues and seeks to provide a voice, or representation, of their interests in the planning and operation of all facets of the juvenile system.
Therefore, considerations of size, security, location, and population must be sought from citizens, youth advocates and young people alike, if workable alternatives to the continued use of adult jails and lockups are to be developed.

Obviously, there are several important issues which remain to be resolved in this area. Greater knowledge is needed concerning the social and emotional consequences of incarceration on the growth and development of youth. We need to further examine the validity of offense, legal status, and legal history criteria suggested by the emerging national standards.

Rural communities where the practice of jailing juveniles is greatest, due to a lack of alternative resources, need to emphasize the development of alternatives which are economically feasible in small units such as home detention, emergency foster care, and short-term holdover facilities.

Legally, the courts must resolve the use of adult jails and lockups in view of their responsibilities to hear the merits of waiver, prior to involvement of a juvenile in the criminal justice system. A reluctance to extend these responsibilities and prohibit the jailing of juveniles under the jurisdiction of the juvenile court will only perpetuate the enormous and inappropriate flow of tax dollars into adult jails and lockups, to the detriment of both more workable and cost efficient alternatives and the juveniles involved in the system.

Litigation And The Juvenile Justice And Delinquency Prevention Act

--Michael J. Dale

This article attempts to analyze in rudimentary fashion the relationship between lawsuits and the Juvenile Justice and Delinquency Prevention Act by answering three questions. First, what are the legal issues that can arise under the Act? Second, what is the function of the lawsuit in regard to enforcement of the JJDPA? And third, what actually goes on in such a lawsuit? Thus, if a person is involved in such a case for the first time, he will have some idea of what goes on.

Before reviewing these three questions, there are two preliminary points that must be made. The first has to do with the limits of law. Law is a blunt instrument. Laws do not solve human problems very well. If someone does not want to carry out a law, that person is not going to carry out a law, and the ability of our legal system to force that person to do so is limited. So the reader should not think that laws alone are going to solve each and every problem that occurs for a youngster in the juvenile justice system. This seemingly obvious fact must be laid on the table at the outset when looking at lawsuits for young people. The law is better suited to solving problems of contracts, wills, or auto accidents, and judges are much more comfortable in dealing with those issues. They have a series of problems handling cases involving children. For example, judges become dysfunctional when parties want to talk about why a kid ran away from home. Law is not well-suited to solving social problems.

The second point is that a lawsuit is a limited tool which should be used as a last resort. One should never litigate unless one must. Part of the reason is that the law is a blunt instrument which doesn't get good results. But lawsuits

also are expensive, time-consuming and adversarial. They make people antagonistic.

Nonetheless, there are many times when one has no choice. Perhaps negotiations have failed. Perhaps no one will pay attention. A lawsuit must be filed. The first question, then, is what are the issues?

The JJDPA sets out a series of standards specifically aimed at trying to change the way people deal with kids. The first way that this Federal law requires that we deal with children is that we get them out of jails - deinstitutionalization. The lawyer will seek to enforce the JJDPA by arguing that a state or state official, or a county or a county official, or some group of public agencies, failed to carry out that law. If they receive Federal money, the officials will be held accountable to carry out the law and to comply with all regulations. A judge in turn will be found to enforce the law. However, because the law is only a blunt instrument, it will be very difficult to enforce the "spirit of the law." For example, numbers will be a difficult issue to deal with. The judge will be asked to decide, "Did the state deinstitutionalize or not?" However, a judge isn't going to want to decide whether 37 kids less than last year is enough deinstitutionalization. The judge will look at whether there was an effort to carry out deinstitutionalization. So for the purposes of people in State Planning Agencies, who may be defendants, it is the effort that will be important in a lawsuit. On the other hand, the state may find itself in trouble on its efforts to deinstitutionalize if its monitoring data is inaccurate, outdated or incomplete.

If a municipality or a county is recalcitrant, or unwilling to carry out the federally mandated process of taking children out of jail, or out of the secure detention facility and placing them into foster homes, or other community facilities, the lawsuit is equally relevant if nothing else works.

The second legal issue around which litigation can arise is sight and sound separation under the JJDPA. This requirement is easier to litigate than deinstitutionalization.

The obvious instance is where a youngster is harmed by virtue of being in a place where that youngster, under the Federal law, should not be. In one jurisdiction recently, there was a situation where a young girl was picked up by the police. She was a neglected child and had run away from home. She was placed into a rural jail, a drunk tank, and held there. One hour after she was picked up an inebriate, a drunk driver, was picked up and he was placed into the same cell. Forty-five minutes later she was raped. That state was receiving funds under the JJDPA. That state had the obligation to carry out sight and sound separation. The issue then is, is there liability for the failure to implement that Federal law? The answer is clearly yes.

The third legal obligation under the JJDPA is monitoring. Monitoring is a very difficult task for SPA personnel because of politics and personalities with regard to local officials who usually provide the statistics. For example, there could be a situation where local officials tell state officials that there were no children or virtually no children in a given secure facility,

or adult jail, and it turns out there were children in custody. If one of those children was injured, in addition to other grounds, there would be liability for the failure to monitor. This suggests that state officials strongly urge to local officials, when collecting information, that they must be truthful. If officials are not truthful, all have the possibility of being in "hot water" legally, if an injury occurs, or if an event such as riot in the jail occurs. If a youngster is found in a jail when everybody thought the facility had no kids, and after the state officials monitored, there may well be liability based upon inadequate or inappropriate monitoring.

There are a series of obligations under the federal law having to do with provision of alternative services for youngsters. This is a more difficult issue on which to base litigation because the following question arises for a judge. Someone will argue to the judge that the wrong program was funded. The judge will say, "Look, I can't make those judgments. As long as you have an adequate procedure to decide who gets funded with your Federal monies, that's all I'm concerned about. As long as you have a procedure for deciding it, I'm not going to look to see whether you decided right or wrong, that this particular community group should have gotten it, or that particular community group should not have gotten it." However, in order to avoid the possibility of litigation around inappropriate usage of JJDPA funds, the state, through its SPA, must have an adequate public process for determining who will receive the funds to be given out. An obvious example is that the funds must be used to supplement and not supplant programs. This concept is employed because often there is no other way to convince state authorities to spend these monies on new and different programs. Thus, in general the states can't use the money received to support programs that are in existence and for which the states are already legally obligated.

Finally, there are compliance or filing obligations with regard to OJJDP under the Act. If states file incorrectly with OJJDP, there is the possibility of administrative sanctions by OJJDP. If a state is out of compliance on a particular matter, OJJDP is aware of it, and the agency is trying to convince the state to correct the problem, it is possible for a third party to sue OJJDP and the state to force OJJDP to seek cutoff of funds on behalf of injured children.

Independent of the Juvenile Justice and Delinquency Prevention Act itself, are certain basic constitutional rights that children held in jails are afforded. Lawsuits based upon violations of young persons' constitutional rights involve conditions of confinement, solitary confinement, censorship of mail, and the right to a transfer hearing. Moreover, there are a series of other Federal laws around which litigation can take place, apart from the Civil Rights Act and apart from JJDPA. Included are the Education of All Handicapped Children Act, (P.L. 94.142) section 504 of the Rehabilitation Act of 1973 and Title XX of The Social Security Act. For example, the SPA might fund a program which also receives special education money, and it turns out the agency is picking the wrong kind of kids in violation of the education law. It is conceivable that there could be litigation based upon the

Educational and Handicapped Children Act with regard to that facility that the SPA is funding. The state SPA could be a defendant.

What then is the function of litigation? While it's a limited tool and a last alternative tool, it does have certain advantages. A lawsuit brings an issue into public view immediately. And it causes a response to occur. An example may be helpful. Children's Center was a large children's shelter in the City of New York which housed at one time as many as 350 youngsters. It was located on Fifth Avenue in Manhattan. In that facility children were raped regularly. One youngster was pushed off the roof. There were issues of sexual activities between guards and youngsters and there was expected use of alcohol and drugs by residents. It was a terrible place. The director of the department responsible for the institution knew of the problem, wanted very badly to close down that facility and develop alternative facilties, but was unable to. This writer, through the representation in juvenile court of children living at the facility became aware of the problem. Six months were spent investigating and talking to individual children. It became quite clear the place had to be closed. It couldn't work for children. And it was equally clear that the city officials, who received some OJJDP money, couldn't close it themselves. We didn't know why, at the time of the lawsuit, they couldn't close it, but we knew they couldn't. We got the impression -- the clear impression -- from that city official, that she would not object to a lawsuit. She never said it directly -- it would have been inappropriate of her to have said it directly -- but it became clear to us that the lawsuit would help the agency. The lawsuit was filed and there was a good deal of publicity at the outset. A hearing was held on a preliminary injunction in the Federal Court, and the parties entered into a settlement in which the facility was closed in six months.

During negotiations, counsel learned why the facility stayed open -- because of the Union. That lawsuit helped the agency which could not negotiate with the union without the threat of a closure, without a Federal Judge saying it was going to have to be closed. The lesson learned here was that lawsuits can be helpful to public officials. Lawsuits also serve as learning devices by taking up a lot of time of public officials. At the same time that it takes time away from their work, it causes them to go through a learning process. Many of them will be obligated, contrary to their desires, to learn about the rights of children and obligations of public officials.

There are several longer range effects of litigation including the actual cutoff of federal funds to state agencies and liability for money damages against public officials. And finally, there is publicity, sometimes beneficial, often times upsetting to the agency. It in turn brings investigations and legislative involvement.

An actual civil rights lawsuit under the JJPA is nothing like what one sees on television. No one cracks on the stand. In fact, many cases never result in a trial. They are decided by written opinion of the court upon some legal issue. Litigation is time-consuming for public of-

ficials. They can expect to have three depositions taken, answer interrogatories, reply to document requests, engage in settlement negotiations and sign affidavits. They will spend time with their attorneys, usually the county attorney or attorney general, preparing motions, providing information and explaining policies. If there is a trial they will often testify. If there is a settlement or if a court enters an order requiring them to halt a policy or introduce a new program, they will be forced to act in compliance with the decision. Occasionally, the court will appoint a master, either to assist in the provision for intermediate relief or to supervise the final settlement.

Temporary restraining orders and preliminary injunctions are particularly important aspects of litigation. For example, if conditions in a jail are bad enough, a judge may temporarily enjoin the placement of youngsters in the facility or order the removal of residents. The court might put a ceiling on the number of detainees allowed to be housed, may order changes in the program or require alterations in the physical plant. The defendant agency might be forced to draft new regulations in a short period of time or cease a particular practice. All of these changes can be, and often are, ordered on short notice. Officials may find themselves neglecting their regular tasks in order to comply with the court's directive.

All of the above mitigates in favor of keeping one's house in order to avoid litigation. It is wise to do so for self-protective as well as altruistic reasons. Nonetheless, litigation clearly plays a role in the enforcement of important federal legislation. The Congress recognized this when the JJDPA was passed. And the Office of Juvenile Justice recognizes it. Litigation must be a weapon in the advocate's arsenal.

OJJDP Position Paper - Amending Section 223(a)(13) To Require Removal Of Children From Adult Jails And Institutions

The purpose of this position paper is to provide a recommendation to amend Section 223(a)(13) of the Juvenile Justice and Delinquency Prevention Act of 1974. This paper presents a recommendation which is supported with background information, data, and rationales for change. Section 223(a)(13) of the JJDP Act states that juveniles alleged to be or found to be delinquent, status offenders and non-offenders shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.

recommendations

Change Section 223(a)(13) to read as follows:

> "provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which adult persons are incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges;"

This change is accomplished by deleting the phrase "...they have regular contact with..." after the term "institution" and placing the word "are" between the phrase "...persons incarcerated..."

This change will result in a requirement to remove children from adult jails, lock-ups, and

institutions in lieu of the current requirement which only provides for separation of juveniles and adults.

Separation is an issue in almost all county jails and municipal lock-ups. Recent state experience in achieving "sight and sound" separation has often resulted in living conditions tantamount to isolation in the most undesirable areas of the facility (i.e., isolation cell, drunk tank, etc.). These experiences give rise to the notion that adequate separation as intended by the Act is virtually impossible within the confines of most county jails and city lock-ups.

An effort to require complete removal will strengthen the existing legislation and ensure juveniles' rights are not being violated, from either the constitutional guarantees or from the fact that a child under the juvenile justice system is not placed in an adult facility which is designed for the criminal justice process.

A timeframe for compliance, such as five years from date of amendment enactment, should be considered and built into the statutory language. A specific recommendation regarding a timeframe should be discussed in more detail before it is decided how to incorporate it into the language.

While the arguments for placing juveniles in jails are fragile and founded on incomplete and contradictory information, the arguments against holding juveniles in jail are pervasive and along scientific lines. They are summarized below:

...the "criminal" label creates a stigma which will exist far longer than the period of incarceration. This stigma increases as the size of the community decreases and affects the availability of social, educational, and employment opportunities available to youth. Further, it is doubtful if the community's perception of the juvenile quarters in the county jail is any different than that of the jail itself.

...the negative self image which a youth often adopts when processed by the juvenile system is aggravated by the impersonal and destructive nature of adult jails and lock-ups. Research continues to document the deleterious effects of incarceration and the conclusion that this experience, in and of itself, may be a contributing factor to continued delinquent activity.

...the practice of holding juveniles in adult jails is contrary to the development of juvenile law and the juvenile justice system which, during the past 79 years, has adamantly emphasized the separation of the juvenile and adult systems.

...the occurrence of physical harm and sexual abuse of juveniles by adults is well documented and greatly increased within the secure and obscure confines of an adult jail or lock-up.

It has long been recognized that children require special protections when they come into contact with the criminal justice system. The initial impetus for the development of the juvenile justice court in 1899 was to provide such protections

and remove children from jails and other parts of the adult criminal justice system.

current effort (adequate separation)

OJJDP's initial effort focused on determining and defining the level of separation necessary for compliance with Section 223(a)(13) because of a lack of clarity in the statutory language. In this effort OJJDP considered all possible levels of "contact."

Working from the premise that regular contact between juveniles and adult offenders was detrimental and should be eliminated in secure confinement facilities, the effort was directed at what types of contact should be prohibited. The levels of contact which were considered included physical, visual, aural, and environmental. These various levels of contact were defined as follows:

No Separation: Adult inmates and juveniles can have physical, visual and aural contact with each other.

Physical Separation: Adult inmates and juveniles cannot have physical contact with each other.

Sight Separation: Conversation possible between adult inmates and juveniles although they cannot see each other.

Sound Separation: Adult inmates and juveniles can see each other but no conversation is possible.

Sight and Sound Separation: Adult inmates and juveniles cannot see each other and no conversation is possible.

Environmental Separation: Adult inmates and juveniles are not placed in the same facility. Facility is defined as a place, an institution, a building or part thereof, a set of buildings or an area whether or not enclosing a building, which is used for the secure confinement of adult criminal offenders.

A common thread which ran throughout this effort was an attitude which approached each of the issues from an advocacy posture on behalf of youth. Considerable attention focused on the traditional representation of police, jailers, the courts and correctional officials, as well as the taxpayers and the architects, in matters related to the elimination of regular contact (or establishing it in the first place). It was clear that from an operational, financial, and design perspective that a limited interpretation of regular contact, such as physical only, would be the most expedient, most convenient, and least costly alternative. Obviously, this is not what the Act intended. Throughout, the Act mandates an advocacy posture on behalf of young people on all relevant issues and seeks to provide a voice, or representation, for their interests in the planning and operation of the juvenile justice system. It is from this perspective that OJJDP has addressed the issue of "separation." It is currently the position of OJJDP that Section 223(a)(13) requires at a minimum that "sight and sound" separation be achieved.

rationales for change

Data

The detention of juveniles in adult jails and lock-ups has long been a moral issue in this country which has been characterized by sporadic public concern and minimal action toward its resolution.

It is suspected that the general lack of public awareness, and the low level of official action are exacerbated by the absence of meaningful information, and the low visibility of juveniles in jails and lock-ups. This situation is perpetuated by official rhetoric which cloaks the practice of jailing juveniles in a variety of poorly-conceived rationales. In fact, the time-honored but unsubstantiated "rationales" of public safety, protection from themselves or their environments, and lack of alternatives break down under close scrutiny.

In reality, the aggressive and unpredictable threat to public safety perceived by the community is often just the opposite. A recent survey of a nine-state area by the Children's Defense Fund indicates that 18 percent of the juveniles in jails have not even been charged with an act which would be a crime if committed by an adult. Four percent have committed no offense at all. Of those jailed on criminal-type offenses, 88 percent are there on property and minor offenses.

Not until 1971, with the completion of the National Jail Census, did a clear and comprehensive picture of jails surface. By its own admission, the Census showed only a snapshot of American jails and the people who were incarcerated in them. Significantly, it excluded those facilities holding persons less than 48 hours. This is critical with respect to juveniles because it is the police lock-up and the drunk tank to which alleged juvenile offenders are so often relegated awaiting court appearance.

The Census did, however, give us the first nationwide indication of the number of juveniles held in jail. On March 15, 1970, 7,800 juveniles were living in 4,037 jails. A comparable census in 1974 estimated that the number had grown to 12,744. The inadequacy of the data is compounded when a determination of the number of juveniles admitted to adult jails and lock-ups each year is sought.

Recent surveys indicate that this figure ranges up to 500,000. The Children's Defense Fund states that even the half-million figure is "grossly understated" and that "there is an appalling vacuum of information...when it comes to children in jails."

A recent study funded by OJJDP reports the number of juveniles held in adult jails during the mid-1970's for forty-six states and the District of Columbia. During the mid-1970's, approximately 120,000 juveniles were being admitted annually to the adult jails of the states for which information was available. Again, it is significant to note that municipal lock-ups are not included in this study. The study presented a

comparison of juveniles admitted and the percentage put in adult jails in lieu of detention centers. Fourteen states detained more than half of their alleged juvenile offenders in adult jails with eight of the fourteen detaining over three-quarters in jails. Regardless of the true figure, it is clear that the practice of jailing juveniles has not diminished during the last decade.

Injuries Suffered by Children in Adult Jails

A study developed by the Juvenile Justice Legal Advocacy Project and funded by OJJDP discussed the issue and litigation regarding injuries suffered by children in jails. The following is contained in that study.

Virtually every national organization concerned with law enforcement and the judicial system--including the National Council on Crime and Delinquency, American Bar Association and Institute for Judicial Administration, National Advisory Commission on Law Enforcement, and National Sheriffs' Association--has recommended or mandated standards which prohibit the jailing of children. This near unanimous censure of jailing children is based on the conclusion that the practice harms the very persons the juvenile justice system is designed to protect and assist. As was concluded in Senate hearings on the subject:

> Regardless of the reasons that might be brought forth to justify jailing juveniles, the practice is destructive for the child who is incarcerated and dangerous for the community that permits youth to be handled in harmful ways.

Jailing children hurts them in several ways. The most widely known harm is that of physical and sexual abuse by adults in the same facility. The cases of assault and rape of juveniles in jails are too many to be enumerated and too common to be denied. Even short-term, pre-trial or relocation detention in an adult jail exposes male and female juveniles to sexual assault and exploitation and physical injury. One textbook gives the following description of the dangers of being a juvenile in jail:

> Most of the children in these jails have done nothing, yet they are subjected to the cruelest of abuses. They are confined in overcrowded facilities, forced to perform brutal exercise routines, punished by beatings by staff and peers, put in isolation, and whipped. They have their heads held under water in toilets. They are raped by both staff and peers, gassed in their cells, and sometimes stomped or beaten to death by adult prisoners. A number of youths not killed by others end up killing themselves.

Sometimes, in an attempt to protect a child from attack by adult detainees, local officials will isolate the child from contact with others. This also has been shown to be harmful to the child. As Dr. Joseph R. Noshpitz, past president of the American Association for Children's Residential Centers and Secretary of American Academy of Child Psychiatry testified in Lollis v. New York State Department of Social Services that placing juveniles in jails often causes them serious emotional distress and even illness:

> In my opinion extended isolation of a young-

ster exposes him to conditions equivalent to "sensory deprivation." This is a state of affairs which will cause a normal adult to begin experiencing psychotic-like symptoms, and will push a troubled person in the direction of serious emotional illness.

What is true in this case for adults is of even greater concern with children and adolescents. Youngsters are in general more vulnerable to emotional pressure than mature adults; isolation is a condition of extraordinarily severe psychic stress; the resultant impact on the mental health of the individual exposed to such stress will always be serious, and can occasionally be disastrous.

Having been built for adults who have committed criminal acts, jails do not provide an environment suitable for the care and keeping of delinquents or status offenders. They do not take into account the child's perception of time and space or his naivete regarding the purpose and duration of this stay in a locked facility. The lack of sensory stimuli, extended periods of absolute silence or outbreaks of hostility, foul odors and public commodes, and inactivity and empty time can be an intolerable environment for a child.

For the juvenile offender who is jailed with adults, his term of detention exposes him to a society which encourages his delinquent behavior, even giving him sophisticated criminal technique and contacts. High recidivism rates have shown to be false the belief that the unpleasant experience of incarceration will have a deterrent effect on the child's future delinquent acts. To the contrary:

> If a youngster is made to feel like a prisoner, then he will soon begin to behave like a prisoner, assuming all the attributes and characteristics which he has learned from fellow inmates and from previous exposure to the media.

Being treated like a prisoner also reinforces the delinquent or truant child's negative self image. It confirms what many delinquent children already fear about lack of social acceptance and self worth. In its Standards and Guides for the Detention of Children and Youth, the National Council on Crime and Delinquency concluded:

> The case against the use of jails for children rests upon the fact that youngsters of juvenile court age are still in the process of development and are still subject to change, however large they may be physically or however sophisticated their behavior. To place them behind bars at a time when the whole world seems to turn against them, and belief in themselves is shattered or distorted merely confirms the criminal role in which they see themselves. Jailing delinquent youngsters plays directly into their hands by giving them delinquency status among their peers. If they resent being treated like confirmed adult criminals, they may--and often do--strike back violently against society after release. The public tends to ignore

that every youngster placed behind bars will return to the society which placed him there.

Additionally, incarceration in a jail carries with it a degree of criminal stigma. A community seldom has higher regard for those incarcerated in a jail than it does for the jail itself. This is especially handicapping to a youth from a rural or less sophisticated community with a small population.

Thus, the impact of jailing juveniles is directly in conflict with the purpose of the juvenile justice system which was expressly created to remove children from the punitive forces of the criminal justice system. To expose a girl or boy to the punitive conditions of a jail is to immediately jeopardize his or her emotional and physical well-being as well as handicap future rehabilitation efforts.

Court Decisions/Litigation

In recent years, there has been a growing recognition by courts and commentators that individuals involuntarily committed to institutions for treatment have the "right" to such treatment, and, conversely, that individuals so committed who do not in fact receive treatment thereby suffer a violation of that right. In 1966, the United States Court of Appeals for the District of Columbia Circuit became the first federal court to recognize the right to treatment as a basis for releasing an involuntarily committed individual. The court listed several ways in which confinement without treatment might violate constitutional standards. For example, where commitment is without procedural safeguards, such commitment may violate the individual's right to procedural due process. Indefinite confinement without treatment of one found not criminally responsible may be so inhumane as to constitute "cruel and unusual punishment."

The United States Supreme Court has never squarely ruled on whether there is a constitutionally-based right to treatment. In Kent v. United States, the Court commented on the plight of children in the juvenile justice system:

> There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.

Later, in In re Gault, the Court reiterates the view of Kent that juvenile justice procedures need not meet the constitutional requirements of adult criminal trials, but must provide essential "due process and fair treatment."

Several courts have found a constitutional basis for the right to treatment in the Eighth Amendment's prohibition on cruel and unusual punishments. Their reasoning is generally based upon the principle established by the Supreme Court in Robinson v. California that punishment of certain statutes (e.g., drug addiction) constitutes cruel and unusual punishment. Still other courts have based the right to treatment on the principle that curtailment of fundamental liberties through involuntary confinement must follow the "least

restrictive alternative" available. The principle was stated by the Supreme Court in Shelton v. Tucker:

> In a series of decisions, the court has held that, even though the government purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of abridgement must be viewed in the light of less drastic means for achieving the same basic purposes.

Under this rationale, the state violates the individual's constitutional rights if it fails to confine and provide treatment in the least restrictive setting possible.

The "right to treatment" developed in cases involving persons involuntarily confined for mental illness applies with equal force to the confinement of children in jails. The juvenile justice system is premised on the goal of rehabilitation, and juvenile courts have always been considered analogous to social welfare agencies, designed to provide treatment and assistance for children who have violated criminal sanctions or demonstrated socially unacceptable behavior.

The courts have recognized this principle. Indeed, in an early case considering the right to treatment, the petitioner was a juvenile who was being held in the District of Columbia jail as a result of an alleged parole violation. The court's decision was based on statutory grounds, but, in concluding that a juvenile who had not been waived by the juvenile court and tried as an adult could not properly be held in jail, the court noted:

> Unless the institution is one whose primary concern is the individual's moral and physical well-being, unless its facilities are intended for and adapted to guidance, care, education and training rather than punishment, unless its supervision is that of a guardian, not that of a prison guard or jailor, it seems clear a commitment of such institution is by reason of conviction of crime and cannot withstand an assault for violation of fundamental Constitutional safeguards.

The procedural due process rationale has specifically been used to declare that confinement of children in jails violates the children's constitutional rights. Baker v. Hamilton was a class action brought by parents of two boys who were confined in Jefferson County Jail, Kentucky, for four days and four weeks respectively, against the sheriff, jail warden, and four juvenile court judges. The action was brought on behalf of the two boys and fifty-eight other boys who had been confined in the jail during 1971. After hearing the expert testimony on the effects on juveniles of placement in the jail, and after personally visiting the jail, the court ruled as follows:

> The Court is of the opinion that the present system used by the Juvenile Court Judge and his Trial Commissioners of selective placement of forty-five

juveniles in the Jefferson County jail in pre-dispositional matters and of fifteen juveniles as a dispositional matter, even though these commitments be for limited periods of time, constitutes a violation of the Fourteenth Amendment in that it is treating for punitive purposes the juveniles as adults and yet not according them for due process purposes the rights accorded to adults. No matter how well intentioned the Juvenile Court Judge's acts are in this respect, they cannot be upheld where they constitute a violation of the Fourteenth Amendment.

Several courts have found the basis for juveniles' right to treatment in the Eighth Amendment prohibition on cruel and unusual punishment. In Cox v. Turley the court specifically addressed the pre-adjudication detention of juveniles in county jails. The court was specific in its conclusion. The court held that, taken together, the jailor's refusal to permit the boy to telephone his parents and the boy's confinement with the general jail population without a probable cause hearing, constituted cruel and unusual punishment in violation of the boy's rights under the Eighth Amendment to the Constitution. Furthermore, the court stated:

> The worst and most illegal feature of all these proceedings is in lodging the child with the general population of the jail, without his ever seeing some officer of the court.

In Swansey v. Elrod, juveniles between the ages of 13 and 17 who had been confined in the Cook County, Illinois jail pending prosecution brought a civil rights action against the sheriff and others, alleging that such incarceration constituted cruel and unusual punishment. The court heard expert testimony that the jail experience would cause a "devastating, overwhelming emotional trauma with potential consolidation of (these children) in the direction of criminal behavior." The expert testimony concluded that "the initial period of incarceration is crucial to the development of a young juvenile: if improperly treated the child will almost inevitably be converted into a hardened permanent criminal who will forever be destructive toward society and himself." The court therefore concluded:

> Children between the ages of 13 and 16 are not merely smaller versions of the adults incarcerated in Cook County jail. As noted the effect of incarceration in Cook County Jail on juveniles can be devastating. At present these juveniles remain unconvicted of any crime and therefore must be presumed innocent. Although the Eighth Amendment does not mandate that this court become a super-legislature or super-administrator under these circumstances, the Court is not powerless to act. Under the Eighth Amendment children who remain unconvicted of any crime may not be subjected to devastating psychological and reprehensible physical conditions, and while other juvenile law cases are not strictly on point, they recognize that juveniles are different and should be treated differently. Thus, the evolving standards of decency that mark the progress of a

> maturing society require that a more adequate standard of care be provided for pre-trial juvenile detainees. Plaintiffs therefore have demonstrated that there is a likelihood of success on their Eighth Amendment claim.

In Baker v. Hamilton, the court also concluded that the detention of juveniles in adult jails constitutes cruel and unusual punishment. The court's discussion is particularly significant because many of the conditions present in that case are also present in jails in rural areas.

Moreover, juveniles who are victims of assaults by other inmates may sue for violation of their right to be reasonably protected from violence in the facility. Several courts have held that confinement which subjects those incarcerated to assaults and threats of violence constitutes cruel and unusual punishment. Also, if juveniles are separated from other inmates in jails and kept in isolation, in order to protect them from assaults, the children may nevertheless suffer such sensory deprivation and psychological damage as to violate their Constitutional rights.

In Lollis v. New York State Department of Social Services, the court found that the isolation of a 14-year-old girl in a bare room without reading materials or other form of recreation constituted cruel and unusual punishment. The court relied on expert opinion that such isolation was "cruel and inhuman."

Stance of National Organization

Leading national organizations have worked together to address jail reform and adopted position statements regarding areas of inappropriate confinement in adult jails and lock-ups. On April 25, 1979 the National Coalition for Jail Reform (NCJR) adopted, by consensus, the position that no person under the age of 18 should be held in an adult jail. The coalition believes that confinement in an adult jail of any child is an undesirable practice. Such confinement has known negative consequences for youth--sometimes leading to suicide, always bearing life-long implications. The diversity of the 28 organizations underscores the significance and strength of this position among these groups. Represented on the NCJR are the American Correctional Association, The National Sheriff's Association, the National Association of Counties, the National League of Cities, the National Association of Blacks in Criminal Justice and the American Civil Liberties Union.

In 1974, the National Assessment of Juvenile Corrections assumed and defended the position that "placing juveniles in adult jails and lock-ups should be entirely eliminated." Similarly, the Children's Defense Fund advocated, "to achieve the goal of ending jail incarceration of children, states should review their laws to prohibit absolutely the holding of children of juvenile court age in jails or lock-ups used for adult offenders."

As early as 1961, the National Council on Crime and Delinquency stated that:

> The answer to the problem is to be found neither in "writing off" the sophisticated youth by jailing him nor in building

separate and better designed juvenile quarters in jails and police lock-ups. The treatment of youthful offenders must be divorced from the jail and other expensive "money saving" methods of handling adults.

The President's Commission on Law Enforcement and Administration of Justice established that "adequate and appropriate, separate detention facilities for juveniles should be provided." (The Challenge of Crime in a Free Society, 1967, page 87.)

Subsequent national standards in the area of juvenile justice and delinquency prevention reaffirmed this position.

The National Advisory Commission on Criminal Justice Standards and Goals states that "jails should not be used for the detention of juveniles." (NAC Task Force Report on Juvenile Justice and Delinquency Prevention, Standard 22.3, 1976, page 667.)

The American Bar Association and the Institute for Judicial Administration stated that "the interim detention of accused juveniles in any facility or part thereof also used to detain adults is prohibited." (IJA-ABA Juvenile Justice Standards Project, Interim Status, Standard 10.2, 1976, page 97.)

The National Sheriffs' Association stated that, "in the case of juveniles when jail detention cannot possibly be avoided, it is the responsibility of the jail to provide full segregation from adult inmates, constant supervision, a well-balanced diet, and a constructive program of wholesome activities. The detention period should be kept to a minimum, and every effort made to expedite the disposition of the juvenile's case." (National Sheriffs' Association of Jail Security, Classification, and Discipline, 1974, page 31.)

Isolation

Many jurisdictions have interpreted the level of separation required for compliance with the Act to justify the isolation of juveniles in adult facilities under the guise that they were technically separated by sight and sound. While such movements at the state and local level would constitute violations of constitutional protections and be accomplished to the detriment of juveniles admitted to the particular facilities, past experiences with compliance matters made it clear that such technical deception would most likely occur in selected areas. This practice, however, is clearly addressed in the Federal Juvenile Delinquency Act (18 USC Section 5031 et seq. 7676 Supp.). While it applies only to juveniles being prosecuted by the United States Attorneys in Federal district courts, it nonetheless underscores the intent that "every juvenile in custody shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education and medical care; including necessary psychiatric, psychological, and other care and treatment." Its conspicuous use of the terminology similar to the Juvenile Justice and Delinquency Prevention Act concerning "regular contact" gives credence to the notion that these minimum custodial provisions are under any scheme of

separation. This is further supported by recent court litigation which has been that isolation of children in any facility is not only unconstitutional but is "cruel and inhuman (and) counterproductive to the development of the child." (Lollis v. New York State Department of Social Services)

The Children's Defense Fund in Children in Adult Jails circumscribes the placement of juveniles in jail. One standard approach is to require that children be separated from adult prisoners. "Separation, however, is not always defined in precise terms--sometimes a statute may specify that a different room, dormitory or section is necessary; in other cases, statutes provide that no visual, auditory or physical contact will be permitted. In still other states, the language is unexplained and vague. Although we have seen that one response to implementing this separation requirement is to place children in solitary confinement, legislatures seem not to have realized this would result, and a separation requirement is not usually accompanied by a prohibition on placing children in isolation. In fact, in none of the states studied did the statutes prohibit isolating children in jails.

"It is important to note that a clear and strongly worded separation requirement is no guarantee that children held in jails will receive services particularly geared to their special needs, i.e., educational programs, counseling, medical examinations, and so on. While many separate juvenile detention facilities are required by state statute to have a full range of such services, including sufficient personnel trained in handling and working with children, children in these same states who find themselves in adult jails are not required to be provided with a similar set of services.

"Some states, at least, appear to recognize that the longer a child is detained in jail the greater the possibility of harm. As a consequence, their statutes established time limitations on the period that children can be held in jail; if some exist, extensions of indefinite duration are often sanctioned upon court order."

Federal Legislative History

In introducing a Senate bill which became the Juvenile Justice and Delinquency Prevention Act Senator Bayh described the provision later embodied in Section 223(a)(13):

> My bill contains an absolute prohibition against the detention or confinement of any juvenile alleged or found to be delinquent in any institution in which adults--whether convicted or merely awaiting trial--are confined. Juveniles who are incarcerated with hardened criminals are much less likely to be rehabilitated. The old criminals become the teachers of graduate seminars in crime. In addition, we have heard repeated charges about the homosexual attacks that take place in adult institutions, and confining juveniles in such institutions only increases the likelihood of such attacks. There is no reason to allow adults and juveniles to be imprisoned together. Only harm can come from such a policy, and I would forbid it completely.

During floor debate on the Act in 1974, Senator Hruska declared, "What we are doing here is establishing a national standard of due process in the system of juvenile justice." And in urging enactment of the provisions of the Federal Juvenile Delinquency Act which prohibits confinement of juveniles in jails with adults, which were passed as amendments to Juvenile Justice and Delinquency Prevention Act legislation, Senator Mathias stated:

> Upon Federal Assumption of jurisdiction, the guarantee of basic rights to detained juveniles becomes extremely important. Each juvenile's attitude toward society and his ability to cope with life upon his release will be affected by the treatment received while under detention. We must not permit our young people to be detained under conditions which, instead of preparing them to face life with greater optimism, will assure their future criminality.

Cost Considerations

Preliminary research findings concerning the costs of removing juveniles from adult jails and lock-ups indicates that the economic costs associated with removing juveniles from adult jails and lock-ups may be less expensive than the cost of meeting the "sight and sound" separation mandate of the 1974 Juvenile Justice and Delinquency Prevention Act. The research presents cost estimates for three policy options: (1) continuing existing juvenile pretrial placement practices, (2) achieving the separation of adults and juveniles in local jail facilities, and (3) removing juveniles from adult jails and placing them in alternative juvenile facilities. The cost estimates of these policy alternatives were based on a case study of a seven-county region in East-Central Illinois which considered the costs of child care and custody as well as the transportation costs to be associated with regional cooperation between counties examined.

Several jails in the region were found not to be in strict compliance with the sight and sound separation mandate of the Act. The results indicated that completely separating juveniles from adults in these jails would, in many cases, be architecturally unfeasible and/or cost prohibitive. If all 366 juveniles annually detained in the adult jails of this region were transported to a nearby juvenile detention center (maximum distance of 50 miles), yearly pretrial placement costs would increase by an estimated 31 percent ($50,000) over current costs. Many of the 366 juveniles detained in these adult jails were charged only with status offenses or misdemeanors. Previous research by the Community Research Forum suggests that these children could be released to nonsecure settings without posing a threat to the public safety or court process. Therefore, if all children detained in adult jails were released to appropriate pretrial settings (i.e., shelter care or juvenile detention), pretrial placement costs for this region would increase by only 18 percent ($28,000) over current costs.

The research conducted by the Community Research Forum (CRF) suggests that achieving the sight and sound separation mandate of the Juvenile Justice and Delinquency Prevention Act is not economically

feasible in many existing local jails. Experience suggests that many children are placed in county jails even though alternative juvenile facilities are located only a few miles away in a neighboring county. This study indicates that in regions where alternative juvenile facilities exist, but are not being fully utilized, children can be completely removed from jails at a minimal increase in pretrial placement costs. (Larry Dykstra, "Cost Analysis of Juvenile Jailing and Detention Alternatives," Community Research Forum, University of Illinois. Final report scheduled for release in August 1980.)

Juvenile Deaths by Suicide in Jails

Preliminary research findings concerning the suicide rate among children who are placed in adult jails indicates that juveniles who are incarcerated in jails commit suicide much more frequently than do children in secure juvenile detention centers.

Federal policy currently permits children to be placed in adult jails if they are kept separate from adult prisoners. However, past research suggests that facility and staff limitations of jails often result in juveniles being held in isolation without supervision. These studies imply that placing children in jails, even when separated from adults, is both physically and emotionally damaging to those children. This paper presents data which have been gathered by means of the mail distribution of questionnaires to a national probability sample of adult jails in order to test the following hypothesis: the suicide rate among juveniles held in jails is higher than the suicide rates among children held in secure juvenile detention centers.

Provisional findings strongly support the validity of the working hypothesis. At present, 61 percent of the questionnaires that were mailed out have been received which gives us a total of 1,467 jails in our sample data. The incarceration of 69.214 individuals below the age of 18 during 1978 in those jails have been documented, which indicated that approximately 113,466 juveniles were held in all U.S. jails during that year.* Of those children, five were found to have committed suicide, which means that the suicide rate for juveniles incarcerated in jails during 1978 was approximately 7.2 per 100,000 children. This is roughly seven times the suicide rate among children held in secure juvenile detention centers. Thus, we can conclude that the suicide rate among juveniles incarcerated in adult jails is significantly higher than the suicide rate among children held in secure juvenile detention facilities.

*These figures do not include the number of children detained in the nation's police lock-ups. Data on the incidence of suicide in police lock-ups are now being collected and they will be included in the final report. Furthermore, there is evidence to indicate that some of these data reflect state statutes with regard to the legal definition of juvenile status rather than the requested definition of persons under the age of 18. Michael G. Flaherty, "An Assessment of the Incidence of Juvenile Suicide in Adult Jails, Lockups, and Juvenile Detention Centers," Community Research Forum, University of Illinois. Final report scheduled for release in August, 1980.

Other Considerations Justifying Removal in Lieu of Separation

- The separation of juveniles and adult offenders in most of the nation's jails and lock-ups is not only impractical from a cost standpoint but often architecturally impossible. This is particularly the case when viewed from the perspective that the juvenile area must comport to state or national standards regarding living conditions as well as the required sight and sound separation.

- The separation of juvenile and adult offenders is an enormous operational problem for law enforcement officials at the county and municipal level. The required level of supervision not only creates operational problems but often compounds an already overcrowded jail situation due to the disproportionate amount of living space. The sight and sound separation of juveniles typically involves the designation of an entire residential unit regardless of the number of juveniles held. These situations have been documented as high as a 24-bed unit utilized for two juveniles and are as prevalent in recently constructed facilities as in older jails and lock-ups.

- In several states the move to achieve sight and sound separation has resulted in the diversion of limited youth service dollars. A case in point is the State of New Mexico where, in a time of fiscal austerity, the state legislature appropriated $4 million for the architectural renovation of existing jails and lock-ups. While commendable in principle, the desire by New Mexico officials to meet the mandates of the JJDP Act utilized funds which were sorely needed for alternative programs and youth worker salaries.

- Regardless of sight and sound separation, the confinement of juveniles in adult jails and lock-ups relegates them to the woefully inadequate basic services which have become the hallmark of these facilities. The documented lack of crisis counseling, medical services, recreational areas for indoor and outdoor exercise is particularly critical when viewed in context with the special needs of young people. Nowhere is this situation more acute than in the area of medical services where only ten percent of the county jails maintain a level of service beyond a first-aid kit.

- The sociological arguments regarding the confinement of juveniles in adult jails and lock-ups are pervasive and long-standing. The perception of the community with respect to the adult jail or lock-ups are typically linked to the most sensational and aggravated criminal act. The general citizenry, particularly in rural areas tend to identify all jailed residents in that same light, thereby stigmatizing all youth who are admitted to the facility. The long-term result of this perception is a lessening of opportunities in the community in the area of school and extra-curricular activities, employment and civic responsibilities. Equally as destructive

is the reinforcement of community rejection experienced by the youth and the feeling of negative self-worth.

- The environmental response to residents is typically directed to the most dangerous criminal. In an adult jail or lock-up, security hardware and architecture, staff attitudes and building materials are developed with the serious felon in mind and almost always inappropriate for the majority of adult offenders, let alone the juvenile residents.

  Given the fact that most jails far exceed the residential maximum of 20 beds recommended by the national standards for juvenile facilities, the well documented problems inherent in large facilities are applicable. These include:

  --Larger facilities require regimentation and routinization for staff to maintain control, conflicting with the goal of individualization. Smaller groups reduce custody problems, allowing staff a more constructive and controlled environment.

  --Larger facilities convey an atmosphere of anonymity to the resident and tend to engulf him in feelings of powerlessness, meaningless, isolation and self-estrangement.

  --Larger facilities tend to produce informal resident cultures with their own peculiar codes which function as a potent reference for other residents.

  --As the size of a detention facilities increases, the staff to youth ratio declines.

  --Larger facilities reduce communication between staff and residents, as well as between staff members themselves.

- Preliminary research findings regarding state juvenile codes indicate an increase in the number of state legislatures which have enacted prohibitions against the confinement of juveniles in adult jails and lock-ups. Significantly, the State of Washington, Maryland and Pennsylvania have successfully defended this prohibition in subsequent efforts to amend the legislation. (Jane King, "A Comparative Assessment of Juvenile Codes," Community Research Forum, University of Illinois. Final report scheduled for release in June, 1980.)

  While some states had enacted legislative restrictions prior to the passage of the 1974 Juvenile Justice and Delinquency Prevention Act, the majority of the legislative activity on this subject was in response to the mandates of the Act. More significantly, the legislation enacted since 1974 has removed many of the ambiguities which have plagued the earlier legislation. In addition, states have moved increasingly to an outright prohibition on the jailing of juveniles rather than the traditional response of merely separating within the facility.

- Preliminary research findings regarding

the attitudes toward the practice of confining juveniles in adult jails and lockups indicate a strong opposition to the jailing of non-offenders, status offenders and property offenders. Opinions were mixed (about 50-50) with respect to the jailing of person-offenders. These findings are significant in two respects--offenses against persons represent less than ten percent of all juvenile admissions to adult jails and lockups, and the citizens interviewed live in a rural county where the jailing of juveniles is most prevalent. (Brandt Pryor, "Rural Registered Voters Beliefs about the Practice of Jailing Juveniles." Community Research Forum, University of Illinois. Final report scheduled for release in August, 1980.

Another example, as the Children's Defense Fund points out, is findings and policy of the DOJ's Bureau of Prisons.

Juveniles do not belong in a jail. However, when detaining a juvenile in a jail is unavoidable, it becomes the jailor's responsibility to make certain that he is provided every possible protection, and that an effort is made to help him avoid any experiences that might be harmful. This means that the juvenile must always be separated as completely as possible from adults so that there can be no communication by sight and sound. Exposure to jailhouse chatter or even to the daily activities of adult prisoners may have a harmful effect on the juvenile. Under no circumstances should a juvenile be housed with adults. When this occurs, the jailor must check with the jail administrator to make certain that the administrator understands the kinds of problems that may arise. There is always a possibility of sexual assault by older and physically stronger prisoners, with great damage to the juvenile.

Keeping juveniles in separate quarters is not all that is required. Juveniles present special supervisory problems because they are more impulsive and often more emotional than older prisoners. Their behavior may therefore be more difficult to control, and more patience and understanding are required in supervising them. Constant supervision would be ideal for this group and would eliminate numerous problems.

Juveniles in close confinement are likely to become restless, mischievous, and on occasion, destructive. Their tendency to act without thinking can turn a joke into a tragedy. Sometimes their attempts to manipulate jail staff can have serious consequences. A fake suicide attempt, for example, may result in death because the juvenile goes too far; no one is around to interfere. (U.S. Bureau of Prisons, The Jail: Its Operation and Management)

SUMMARY

While the current language of the Act encourages the removal of juveniles from adult jails and institutions the only requirement is for separation of juveniles and adult offenders. There appears to be ample evidence that the mere placement of juveniles in adult jails, lock-ups and institutions produces many of the negative conditions which Congress sought to eliminate in Section 223(a)(13). These include the stigma produced by the negative perception of an adult jail or lock-up regardless of designated areas for juveniles, the negative self-image adopted by or reinforced within the juvenile placed in a jail, the often over-zealous attitudes of staff in an adult facility, the high security orientation of operational procedures, the harshness of the architecture and hardware traditionally directed towards the most serious adult offenders, and the potential for emotional and physical abuse by staff and trustees alike. In this same vein, it was felt that any acceptable level of separation within adult jails would not only be a costly architectural venture if adequate living conditions were to be provided, but would be virtually impossible in the majority of the existing adult facilities. Thus, the Act should be amended to require the removal of juveniles from adult jails, lock-ups, and institutions.

Inappropriate Confinement Of Children In Adult Jails

--NCJR

I. Statement of Position

The National Coalition for Jail Reform endorses the goal that no child should be held in an adult jail.*

II. Definition

For purposes of this policy statement, the terms child, juvenile and youth are used interchangeably. Also for this policy statement, a child is a person who has not yet reached the age of 18.**

III. Rationale***

It has long been recognized that persons under the age of 19 require special protections when they come into contact with the criminal justice system. The initial impetus for the development of the juvenile court in 1899 was to provide such protections and remove children from jails and other parts of the adult criminal justice system. Despite widespread acceptance that jailing children is a harmful practice, the reality remains that "probably up to 500,000 are processed through local adult jails each year in the United States."[1] As of 1977, all but four states continued to allow the placement of juveniles in adult jails under some circumstances.[2]

Many of the children held in adult jails are not alleged to have committed a serious offense; indeed, many youths placed in adult jails are not even alleged to have committed a criminal act at all. A study conducted by the Children's Defense Fund found that only 11.7 percent of the children housed in the 449 jails surveyed were charged with a serious offense. The remaining 88.3 percent were charged with a property offense, a

minor offense, or no offense. In fact 17.9 percent of the children in the jails surveyed were committed for a status offense and 43 percent had been charged with no offense at all.[3] These findings led the Children's Defense Fund to recommend that state legislation be developed prohibiting admission or holding of any person under 18 years of age in an adult jail.

The Coalition believes that confinement in an adult jail of any child is an undesirable practice. Such confinement has known negative consequences for youths--sometimes leading to suicide, always bearing life-long implications:

> Throughout the United States conditions in jails and most detention facilities are poor; they are overcrowded and lack the basic necessities for physical and mental health; supervision and inspection are inadequate, and little or no in-service training is provided. Lack of continuing supervision is especially problemmatic for jailed youth, since they can be abused by adult prisoners.[4]

Because some jurisdictions never have made alternative arrangements for dealing with juveniles charged with serious crimes, the Coalition recognizes that new procedures, plans, and programs will have to be devised.

A full range of alternatives is needed, such as improved services for youth in their own homes, improved school-related services, crisis centers, diversion and diagnostic units, temporary shelter care, individual and group counseling services for youth and parents, foster homes, outreach intervention, home detention programs, third party custody programs, specialized short-term holding facilities, and strengthened community tolerance. The Coalition will work to see that the goal of a nation in which no child ever is held in a jail for adults is achieved in the immediate, rather than the distant future.

The direction of change needed is clear. The standards of the Institute of Judicial Administration - American Bar Association, for instance, state that the "interim detention of accused juveniles in any facility or part thereof also used to detain adults is prohibited."[5] Rosemary Sarri in a report for the National Assessment of Juvenile Corrections, came to a similar conclusion, that "...placing juveniles in adult jails and lockups should be entirely eliminated."[6] Significant court rulings also lend support to such positions. Swansey vs. Elrod, 386 F. Supp. 1138 (N.D. Illinois), extended the prohibition against jail confinement of children to those children who have been transferred (or 'certified' or 'waived,' whatever the legal nomenclature may be) to the adult criminal court for prosecution as adults. In Swansey, the court agreed with the plaintiffs' expert that confinement in the Cook County (Chicago), Illinois Jail of such transferees would cause a "...devastating, overwhelming, emotional trauma with potential consolidation of (these children) in the direction of criminal behavior..."[7]

In essence,

> the child's emotional and physical nature requires that a higher standard of care be applied to all juvenile pre-trial detainees,

> whether awaiting a juvenile or criminal court trial...
> By prohibiting the jail confinement of children transferred for trials as adults, these courts have explicitly or implicitly recognized that transferees remain children for all intents and purposes and are entitled to a higher standard of treatment and care in accordance with the basic tenets of the juvenile codes. If children who are certified for trial as adults cannot be jailed, obviously, no rationale exists for jailing uncertified children.[8]

Achievement of the changes needed will not be an easy task. Even with an injunction placed on Cook County Jail, the State of Illinois in fiscal 1977 detained 3,354 juveniles in other county jails and 8,288 juveniles in municipal jails and lockups.[9] Obviously, isolated cases such as Swansey vs. Elrod only have limited effect. There is a need for concerted action at the local, state, and national level if the jailing of children is to be eliminated.

Only Arizona, Connecticut, Ohio, and Rhode Island now prohibit by law the detention of juveniles in adult facilities. The remaining states and the District of Columbia allow for the placement of juveniles in adult jails, although the juveniles are to remain "separate and apart" from the adults. In addition, fourteen of these states permit the detention of juveniles in adult facilities only when there is no juvenile facility available; two states require that the juvenile be an alleged felon; and seven states have a minimum age limit (which ranges from 15 to 18 years) under which a child cannot be placed in an adult facility.[10] A chart summarizing the statutory requirements among these states with respect to detaining juveniles in adult jails is attached as Figure 1.

Although comprehensive, recent information is not available, there is reason to fear that compliance with statutory requirements that juveniles be held separate from adults is far from adequate. In the study conducted by the Children's Defense Fund, for example, laws requiring that children be kept separate from adults were in effect in all of the states visited. However, of the jails for which information of separation was obtained, only slightly more than on-third (35.9 percent) were able to assure substantial separation of children from adults. Another 42.3 percent of the jails had only partial separation. Finally, over one-fifth (21.8 percent) of the jails provided no separation at all.[11] Thus, even statutory mandates that juveniles not be held with adults have not proved adequate to achieve that end. The Coalition will need help on many fronts to advance the goal set forth.

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* The Coalition agreed early on to limit its focus to adult jails.

** It is recognized that 18 years is an arbitrary age cut-off point, but 18 is the age at which most adult privileges and responsibilities are bestowed in most states and represents a middle ground between the 16-year demarcations in some places and 12-year cutoffs in others.

*** It should be noted that the National Coalition for Jail Reform has adopted only the "Statement of Position." The "Rationale" is provided as general background information only.

1. Sarri, Rosemary C., Under Lock and Key: Juveniles in Jails and Detention, National Assessment of Juvenile Corrections, The University of Michigan, Ann Arbor, Michigan, December 1974, p.5.

2. Klejbuk, Christine F., and Rosenberg, Beth, "The Juvenile Status Offender and the Law: Abstract," Pennsylvania Joint Council on the Criminal Justice System, Harrisburg, Pennsylvania, April 1977, p. 14. See also Appendix A.

3. Children's Defense Fund, Children in Adult Jails, 1976, pp. 3-5.

4. Op cit., Under Lock and Key, pp. 65-66.

5. Institute of Judicial Administration-American Bar Association, Juvenile Justice Standards Project, Standards Relating to Interim Status: The Release, Control and Detention of Accused Juvenile Offenders Between Arrest and Disposition, Ballinger, Cambridge, Massachusetts, 1977, p. 97.

6. Op cit., Under Lock and Key, p.3.

7. Children in Jails: Legal Strategies and Materials, National Juvenile Law Center, St. Louis University, St. Louis, Missouri, p.11.

8. Ibid., pp. 11-13

9. FY 1977 Annual Report, Bureau of Detention Standards and Services, Illinois Department of Corrections, pp. 19 and 46.

10. Op cit., "The Juvenile Status Offender and the Law: Abstract," p. 14.

11. Op cit., Children in Adult Jails, pp. 32-33.

figure 1

STATUTORY AUTHORIZATION OF DETAINING JUVENILES WITH ADULTS

	ALA.	ALAS.	ARIZ.	ARK.	CAL.	COLO.	CONN.	DELA.	D.C.	FLA.	GEO.	HAW.	IDAHO	ILL.	IND.	IOWA	KAN.	KEN.	LOU.	MAINE	MARY.	MASS.	MICH.	MINN.	MISS.	MO.
PROHIBITED			X				X																			
PERMITTED	X	X		X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
ONLY IF:																										
1. Child shall have no contact with adults	o	o		o	o	o		o	o	o	o	o	o	o	o	o	o	o	o	o	o		o	o		
2. Child shall not be in same cell with adult				o																		o			o	o
3. No juvenile facilities are available		o			o	o					o					o					o			o		
4. By court order								o			o				o											
5. Child is menace to community									o						o	o							o		o	o
6. Child is awaiting transportation																										
7. Child is over 14						o																		o		
8. Child is over 15														o												
9. Child is over 16																					o					
10. Child is over 17																										

	MONT.	NEB.	NEV.	N.H.	N.J.	N.M.	N.Y.	N.C.	N.D.	OHIO	OKLA.	ORE.	PA.	R.I.	S.C.	S.D.	TENN.	TEXAS	UTAH	VER.	VIR.	WASH.	W.VIR.	WISC.	WYO.
PROHIBITED										X				X											
PERMITTED	X	X	X	X	X	X	X	X	X		X	X	X		X	X	X	X	X	X	X	X	X	X	X
ONLY IF:																									
1. Child shall have no contact with adults	o	o	o	o	o	o	o	o			o	o	o		o	o	o	o	o	o	o	o	o	o	
2. Child shall not be in same cell with adult									o																
3. No juvenile facilities available	o		o			o		o	o			o					o								
4. By court order	o											o													
5. Child is menace to community	o											o													
6. Child is awaiting transportation																									
7. Child is over 14																									
8. Child is over 15																									
9. Child is over 16																			o						
10. Child is over 17																									

Source: Klejbuk and Rosenberg, "The Juvenile Status Offender and the Law: Abstract," April 1977.

Juvenile Injustice: The Jailing Of Children In Florida

--Mark Ezell

Executive Summary: The Florida Center for Children and Youth*

The jailing of children has long been criticized due to the dangers and problems inherent in the jail environment. Jails have become perhaps the most inhumane institution in our society because improvements in facilities that are designed for the short-term confinement of alleged or convicted criminals have never been recognized as essential. Filthy, bug-ridden, ill-equipped and unmaintained facilities are inappropriate conditions for the housing of any person, let alone our children. Confinement of children in such an environment provides a constant threat to their physical and mental well-being.

Unacceptable physical conditions are not the only problems confronting children placed in adult jails. Lack of adequate educational, recreational, and health care programs make jail confinement inappropriate for children. While not all inmates confined to jail are hardened criminals, the presence of some experienced criminals is guaranteed; children in contact with these individuals are provided a free course in criminal techniques, making increased criminal activity more likely. The jails' destructive potential is evidenced by reports of physical and sexual abuse of children by larger and stronger inmates, and the frequency with which juveniles find the only solution to their problems to be the taking of their own lives.

*Mark Ezell, Associate Director
Candace Johnson, Project Coordinator
Peter Mitchell, Analyst

In order to prevent the placement of juveniles in adult facilities and to protect those children who are placed in jail, federal guidelines and state laws have been developed which discourage the jailing of children.

The Children in Jails Project of the Florida Center for Children and Youth was developed to take an in-depth look at the problem of children in jails in Florida. A comprehensive survey of Florida's 211 county and municipal jails was designed to determine the state's ability to comply with federal guidelines and state law pertaining to the jailing of children. The survey consisted of three major components:

(1) Telephone interviews - Jail administrators at all 211 jails were interviewed concerning procedures used with juveniles during temporary holding.

(2) In-depth interviews and site visits - the 49 jails which had detained juveniles awaiting hearings or trials in the three months prior to the interviews were visited in order to personally interview jail administrators concerning procedures they followed for handling of juveniles during every activity at the jail.

(3) Interviews of children - Children who had previously been held in an adult jail were interviewed concerning their jail experiences.

federal guidelines

The Juvenile Justice and Delinquency Prevention Act (JJDP Act) of 1974 provides that juveniles may not be detained in any institution where contact with confined adults may occur. The federal guidelines interpret this provision of law as follows:

(1) Each state must develop a plan for removing juveniles from facilities where contact with adult may occur;

(2) In isolated instances where juveniles are confined with adults, procedures for assuring their separation must be implemented. In order for Florida to receive federal funds under the JJDP Act, the state must show evidence that it is in compliance, or moving toward compliance, with this separation requirement.

Telephone interviews with jail administrators identified 26 jails that did not provide sight and sound separation for juveniles who were temporarily held for questioning. Upon review of their records, administrators from these 26 jails revealed that 856 juveniles had been held for questioning during the three months prior to the telephone interview. On an annual basis, therefore, it may be estimated that several thousand juveniles were temporarily held for questioning in jails that violate the federal guidelines regarding the separation of juveniles from adults.

In addition to the telephone interviews, site

visits were conducted on jails which had incarcerated juveniles pending their trial or hearing. Included in this segment of the study were jails that had incarcerated juveniles who had been transferred to jail from DHRS detention facilities. Such transfers are permitted if the supervisor of the juveniles detention facility determines that a child would be beyond their control.

The Federal Guidelines only apply to juveniles who are under juvenile court jurisdiction; and not those who have been transferred for trial as adults. During the three month period surveyed, the study identified 55 jails that had held juveniles pending their trial or hearing. Of this number, 29 jails had housed juveniles who were under juvenile court jurisdiction and therefore, subject to the federal guidelines. In situations involving pre-trial incarceration, federal guidelines require that sight and sound separation from adults be maintained during all activities. This includes admissions, sleeping, eating, showering, recreation, education, health care and transportation. Only one of the 29 jails in question -- Manatee County Jail's female section -- could provide the level of separation required by the federal guidelines.

Unless these jails begin to comply with the federal guidelines regarding separation, Florida's continued receipt of federal funds through the JJDPA is in jeopardy.

state law

Under Florida law juveniles may be placed in jail as long as separation from adults and constant supervision are provided. There are, however, three technical distinctions regarding the separation requirement contained in federal guidelines and those provided under Florida law.

These include the following:

(1) Under Florida law the separation requirements apply to juveniles under juvenile and adult court jurisdiction; federal guidelines only apply to juveniles under juvenile court jurisdiction.

(2) Florida law does not address the separation issue for juveniles who are being temporarily held for questioning and, therefore, only requires separation for juveniles pending trial; federal guidelines require separation in both situations.

(3) Florida law does not specify that "separation" of juveniles and adults includes sight and sound separation.

The exact level of separation and supervision required by Florida law is unclear. In order to determine a minimum level of compliance the following interpretations were used:

(1) Separation - requires only physical separation during more frequent activities; and

(2) Supervision - requires that juveniles be monitored at least every ten minutes.*

Through the telephone interviews, 55 jails were identified as having housed juveniles who were pending trial. Of these, 23 did not provide physcal separation between adults and juveniles during frequent activities. Very few facilities could comply with the requirement in Florida law regarding the supervision of juveniles in adult jails. Only two jails - Jacksonville Correctional Institute and Pinellas County Jail - had staff continually present in the juvenile section; and one jail - Dade County Jail Annex - monitored juveniles at least every ten minutes.

The 52 jails which could not apply with minimum statutory requirements for separation and supervision held 405 juveniles during the three months of the survey.

*Frequent activities include sleeping, dining, showering and recreation. Infrequent activities include admissions, transportation, health care and education.

failure to separate/supervise

It is evident that many of the jails in Florida do not provide adequate levels of separation of supervision as required by law. Two primary reasons were responsible for this lack of compliance.

First, many jailers were unaware of state laws requiring that all juveniles be housed separately from adults. Secondly, many jailers who were aware that juveniles must be separated from adults indicated that lack of space prevented them from doing so.

In order to adequately separate juveniles from adults and still maintain acceptable housing conditions, construction of separate facilities or sections for juveniles would be necessary. However, attempting to rennovate or build additional sections for all jails not providing adequate separation would not be feasible, as costs to cities and counties would be exhorbitant.

The fact that jails in Florida have failed to adequately separate juveniles from adults points to an additional problem -- the failure of the Department of Corrections (D.C.) to enforce its own regulations regarding the separation of juveniles and adults. The D.C. inspectors are responsible for monitoring all local jails, noting where regulations have been violated. The Secretary of the Department is responsible for enforcing these regulations by taking non-compliant jails to court.

These monitoring and enforcement mechanisms, however, have proven to be inadequate. First, inspectors are failing to monitor for the separation standards and secondly, no jail unable to comply with D.C. regulations has ever been taken to court in order to force compliance. By failing both to recognize the problem and to enforce the regulations, the current monitoring system of the Department of Corrections has been an ineffective means of insuring separation of juveniles from adults.

the flow of children in jails

The failure of Florida's jails to provide adequate separation and supervision is not the only source of the problem. Far too many juveniles are currently being held in Florida jails, and the numbers are increasing. This increase of juveniles in jail populations means that not only will more children be enduring jail confinement, but that current inability of local jails to separate and supervise will be magnified. Many factors contribute to this flow of juveniles into adult jails.

First, many juveniles are being transferred from juvenile detention facilities to adult jails by detention center superintendents because they are deemed "beyond control." In many cases, detention staff admit that these problem children are being declared "beyond control" simply because the juvenile detention facilities are understaffed and overcrowded.

Second, Florida law allows a large number of juveniles to be transferred into the adult system, which results in jail detention. In 1977, Florida's system found it necessary to transfer 1,200 children below the age of majority for criminal court processing, while other states with populations of similar size were much less likely to do so. Through the excessive use of the waiver, indictment and the direct file provisions, the court systems of Florida are increasing the flow of juveniles into adult jails.

Third, juvenile judges are contributing to the problem by:

(1) Ordering youths into facilities which cannot adequately separate them from adult inmates; and

(2) Failing to report juvenile jail placements to the board of county commissioners as required by law.

The law states that if a judge orders a juvenile to jail, the receiving facility must have a separate juvenile section. Judges in Florida currently order juveniles to be held in jails even though jailers have indicated that they cannot provide adequate separation. The jailers are hesitant to refuse these court orders since they may be held in contempt of court.

Recent contacts with the board of county commissioners of the 67 counties revealed that only nine had ever received information on jail placements. As a means for both providing information on the extent of juvenile jailing in each county and for insuring the judge's accountability in making only appropriate placements, this monitoring mechanism is ineffective unless judges begin to fulfill this responsibility.

A final factor which contributes to the problem of juveniles in jail involves the current inconsistencies in state law. Housing requirements differ for juveniles placed in adult jails for various reasons; constant supervision is specified for some youth and not for others; the level of separation required is not clearly defined; and finally, state law does not address the temporary holding of juveniles in adult jails. The confusion brought about as a result of these in-

consistencies makes compliance difficult to achieve.

Current laws which allow juveniles to be placed in jail only maintain the flow of children into inadequate, overcrowded, adult facilities. The millions of dollars which would be necessary to separate juveniles from adult inmates would be a poor investment of county, city and state resources. Attempts to administratively or procedurally cut off the flow of juveniles into these facilities would only amount to a piece-meal solution which has already proven to be ineffective.

Consequently, the only viable solution which takes into account the rights of the child and the protection of the public without requiring a substantial expenditure of resources, is the removal of children from adult jails.

Recommendations for a solution to the problem of children in jails are as follows:

(1) No person, under the age 18, who is under juvenile court jurisdiction shall be held or confined in an adult jail. This prohibition shall also include the time period in which a juvenile is being fingerprinted and photographed. Further, no person under the age of 18 under adult court jurisdiction shall be confined in an adult jail until that person has been sentenced by the adult court to receive adult sanctions.

(2) Florida statutes and DHRS policy relating to admission to detention should be improved in order to reduce over-crowding in detention facilities. Further, courts should assure that cases are expeditiously processed according to the statutory time limits and that unreasonable delays and continuances are eliminated.

(3) New and effective monitoring and enforcement procedures for the above two recommendations should be created and funded by the Legislature.

A Rationale For A Juvenile Services Center

--Michael McMillen

The provision of comprehensive intake services to juveniles is a multifaced procedure involving screening, crisis and family counseling, diversion to non-justice youth services, and the expedient search for appropriate placement alternatives, if the youth cannot be returned to his own home pending court appearance. This latter function is perhaps the most crucial in that it is incumbent upon a properly functioning juvenile services operation to refer a juvenile to a beneficial setting as quickly as possible. This will ensure the provision of necessary services and care, thus minimizing the psychological harm which occurs during those first critical hours after police contact.

A juvenile services center, then, is a transitional point along the path from police contact to court appearance if required. It is necessarily a place of rapid decision-making, and must be programmatically and environmentally structured to facilitate this task. Simultaneously, it must present an atmosphere of calm and obvious care to the young people who will be processed there. They must be made aware that their well-being is the object of concern, that steps are being taken in their behalf, not against them. Most importantly, it will serve to limit the penetration of young people into the juvenile justice system and promote the use of least restrictive settings when a youth cannot return to his own home.

Despite this expressed nature of juvenile intake services, i.e., one of rapid developments and beneficial interaction with young people, it is not always possible to determine a proper course of action immediately. The hazards of inappropriate placement and service provision are multiplied when snap decision-making, based on incomplete information, occurs. Neither is it always

possible to obtain an adequate placement once that determination has been made. A return to home may be inadvisable or for various reasons take too much time even if it is desirable. Secure and non-secure placement options may be temporarily unavailable or in some cases difficult to obtain.

Consequently, in the interest of avoiding the use of jails while appropriate residential placements are being pursued in some jurisdictions, it may be advisable to consider the development of some residential capacity of very short duration as an integral component of juvenile intake operations. This would be especially important in rural or semi-rural areas, where a well-developed system of placement alternatives is non-existent, and where adult jails are readily available and commonly used. Since intakes normally take place in such areas as the jail (or police station if separate), the potential for a small-scale juvenile intake facility with some residential capacity, implemented in a totally separate and more normative structure, looms as an attractive alternative for providing enhanced intake services, and for eliminating secure jail placements.

A comprehensive intake service procedure, in and of itself, is capable of greatly reducing the number of placements made outside the home when coupled with appropriate court services. An intake service facility, which provides screening and crisis intervention, combined with a limited short-term holding capability, would reduce the number of improper though temporary placements made, either due to the unavailability of space in appropriate settings, or where parents cannot be contacted. In addition, the number of improper secure placements should be decreased dramatically if not eliminated entirely.

One of the roadblocks to the prototypical investigation of this sort of facility has been the concentration of effort, at the federal level, on the development of non-facility based programs and other alternatives to residential placement. Additionally, emphasis has been placed on developing non-secure facility options, such as group and shelter care homes, as alternatives to secure custody. While this has been a necessary and fruitful activity, it has become apparent that there is a serious deficiency in appropriate alternatives during the period between a juvenile's first contact with the Justice system, and his preliminary disposition to an appropriate setting, especially in instances where adequate placements are unavailable.

Another obstacle to studying the holdover concept has been the apparent service dichotomy which has come to exist in the handling of criminal-type and non-criminal misbehavior (status) referrals. While some options for handling both categories of alleged offenders are the same--both can be released to parents or placed in foster care or non-secure settings--a profound distinction occurs when the matter of secure placement is addressed. The interpretation has been made by Federal authorities, and an express committment made to this resolution, that under no circumstances shall alleged status offenders or neglected/abused children be housed in or taken for processing to a facility with a secure classification, i.e., a facility which holds juveniles securely for criminal-type offenses. It has also been recommended strongly that juveniles alleged

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to have committed less serious, or misdemeanor-type, offenses be handled through non-secure or non-residential alternatives. Even serious offenders, it is felt, should have access to such options and services if no continuing serious threat to the community or court jurisdiction is evident.

These points are well-taken and indicate clearly the overriding concern that placement capability in secure facilities, notably adult jails and lockups, has been abused and would continue to be without proper safeguards. But the question inevitably arises as to what should be done when secure placement prior to trial is necessary and justifiable in communities which have no guaranteed bedspaces in an appropriate detention facility. Some sort of interim alternative must be available if the use of jails is to be eliminated. This solution must also be viable economically and attainable in a community context without extreme difficulty.

The text supports the contention that intake services concentrating on personal interaction between staff and youth should be made readily available in every community; that intake services for juveniles should be physically divorced from any jail or adult holding facility; and that a short-term holding capacity may be included as part of a juvenile (intake) services operation, without debilitating effects on juveniles referred there, or on services provided. Advanced operational principles clearly indicate the benefits of interpersonal interaction at intake, as a method for eliminating trauma and avoiding the confusion and deleterious effects associated with impersonal handling. Under present circumstances, where construction funds are extremely limited, and where jailing is still permissible albeit under the stricture of "sight and sound" separation, a juvenile services center may be a realistic and wholly acceptable compromise, a persuasive strategy for relieving the pandemic jailing of young people.

As noted previously, a serious impediment to a thorough review of the juvenile services center concept has been the thrust toward exclusively programmatic alternatives Basic definitions concerning procedural issues have been proffered for consumption by state and local agencies, definitions of youth, building and programmatic classifications, for the sole purpose of clarifying the intent or raison d'etre of federal legislation. It is now clear that advanced planning principles, as sanctioned and espoused by federal legislation, national organizations, and many state governments, will tolerate no lollygagging in the effort to implement residential and programmatic alternatives in the juvenile courts. Every effort must be expended to develop alternatives and procedures according to the fundamental requisites of "least penetration into the system," "normalization," effective services, and other non-institutional possibilities. Buildings are, or should be the final step, the last if not least consideration when all other avenues of endeavor have been exhausted.

Yet even within the context of these intentions and definitions, it is evident that the concept of a juvenile services center might be considered, certain definitions notwithstanding. For example, the directive that alleged status offenders may not be brought upon contact to a secure residen-

tial facility, seems to exclude a combination of intake services and even limited secure residential capacity. This would assuredly, it is reasoned, result in unnecessary placements. However, it is worth noting that a juvenile need not be classified as a status or criminal-type offender for up to 24 hours after first contact, while screening and placement decisions occur. This implies that all juvenile referrals may be taken to, and at least for 24 hours supervised at a single service area, if the primary function of that place is not custodial in nature. A juvenile service center would not be exclusively custodial, or for that matter, residential in format. It is a processing point and may be permitted the responsibility of over-night care to accommodate the provision of services to young people. It is obvious that if a young person must remain at intake for a briefly extended period while appropriate dispositions or transfer are sought, a bedroom, sitting area, and sanitary facilities would be far more desirable than a metal slab bench in a lifeless waiting room. So even now, a juvenile service center with environmentally sound living conditions may be considered an appropriate systematic response to pressing need for up to 24 hour holding for all juvenile referrals.

With this in mind, a critical juncture is reached. Intake services are always needed, and some sleeping capacity can be justified at intake in select instances which will be enumerated later. Based on the assumption that well-defined criteria can be established to delineate precise circumstances under which youth, may be held overnight, and assuming that such criteria will be rigorously followed, it is reasonable to suggest that living/sleeping accommodations attached to intake may be utilized in particular cases for up to 72 hours. There is nothing magical about the 72-hour figure. It merely represents what is considered the maximum length of time which should be necessary to locate other more appropriate placement alternatives, and effect a transfer, especially in secure custody situations. Juveniles thus held would be subject to intensive crisis counseling, and interaction with court staff, parents and other agencies. Complete residential services, such as educational and recreational activities, would not be mandatory. The object is to 1) eliminate the needless placement of young people in settings not specifically geared to their needs; and 2) to minimize unnecessary shuffling of juveniles between various points, by providing comprehensive services at one place. Intake service workers could thus perform their jobs more effectively.

In order for this type of operation to be developed so that all referrals, regardless of offense classification, could be handled at this single intake point, it would be necessary that the facility not be classified as "secure." Neither should it be categorized as a "residential facility." The intent here is not to obfuscate with semantic games-playing. Rather, it is to clearly and unmistakably delineate the true function of intake services. With this suggested system it is true a youth may be held securely. It is also true that he or she may remain there under court supervision for up to three days, when secure custody is necessary. But either of these may occur only if no other suitable alternative is immediately available. Such capability is intended only to augment an elaborate sys-

tem of intake services. It is meant to heighten the capability of court personnel to provide the most effective personal and family sources possible. And finally, it is firmly associated with an unwavering commitment to not place children in unsavory, hopelessly deficient jails.

In many jurisdictions, the majority of juveniles who have contact with local law enforcement agencies are not placed in jails because of totally disgraceful environmental conditions. This is a commendable attitude which recognizes the potential for emotional and physical damage possible through such placement. At the same time, it is nearly impossible to provide continuing and necessary services to juveniles who have been summarily released in many of these same jurisdictions. And inevitably some juveniles find themselves locked in abysmal holding pens, drunk tanks, and barren cells because there exists an overwhelming need, in the court's view, for them to be detained; and nothing short of jail will do. This sorry condition can be alleviated by utilizing a semi-residential Juvenile Services Center which can be community-based, conveniently located, and properly staffed to provide youth-oriented services.

A feasible approach to the development of a juvenile services center would be its inclusion within the framework of a non-secure residential facility such as a shelter care home. A center of this type would ensure that non-secure services are immediately available, thus minimizing lengthy stays at intake, and also reduce the supervisory and residential function at intake. There would be as well a reduced need, and probably an increased reluctance, to utilize bed-spaces available in intake areas. Equally important is the atmosphere created by a small-scale normative environment, with community linkages and interpersonal interaction typically associated with shelter care, which can be carried over into intake services. This type of scheme offers an attractive option for the implementation of comprehensive juvenile services.

In summary, a juvenile services center is not a be-all and end-all. It cannot operate in a vacuum. It must be coordinated with other essential programs and services, and should be construed as one potentially valuable step among many along the way to a properly functioning juvenile court system. A preference for programmatic and non-facility based alternatives should not obstruct a clear vision of the most important goal, the provision of the most beneficial and effective services. At least some of these services are intimately bound to some sort of physical plant. The object, then, is to accept the need for buildings while ensuring that the availability of such structures does not impede the provision of appropriate services. Some fail-safes, described in the following text, should prevent untoward use of holding space and emphasize the critical importance of staff interaction with young people, along with the necessity for using quantifiable criteria in the placement determination process. At the same time, it should be understood that most juvenile court systems cannot be personified as intrinsic blackguards who would jump at any opportunity to hold children inappropriately or not. Most are simply frustrated, hamstrung by the financial and procedural difficulties which must be overcome when systematic change is undertaken. A

juvenile services center is a palatable and eminently realizable first stage of change when considered in conjunction with other economically feasible and appropriate services.

operating criteria - juvenile services center

Where juvenile court intervention is necessary, all court proceedings and activities should be initiated at a formal point of intake, where comprehensive screening, counseling, case evaluation and determination can be undertaken. If it is to accommodate referrals of all classifications, this single point of entry into the system, must have established, operational guidelines for the handling of each category of alleged offender. This will ensure the application of appropriate services and facilitate effective placement decision making. It will be especially important where overnight holding (or bedspace) capacity offering limited residential services is available at intake. Every precaution must be taken to eliminate unnecessary holding in the semi-residential context which may be attached to intake. Alternative placements or release must be sought in each case with holding occurring on a definitively time-limited basis.

Reception (0-4 Hours)

All referrals will at intake be brought to a reception area at which time crisis intervention and case investigation will begin. Medical services should be rendered at this time if necessary. Upon and during the completion of this initial phase, juveniles will be conducted to a youth waiting area (similar to a residential-type living room), which can be supervised from the reception desk. With adequate and continuous supervision, no additional security precautions need be taken except in cases where a juvenile demonstrates violent behavior, or presents a threat to the safety of other youths. In these instances, a separate waiting area may be utilized as a safety precaution. Where overtly disruptive behavior is evident or anticipated, a youth may be required to wait in a separate counseling or interview room. Only in cases where the youth exhibits pronounced tendencies toward violent behavior and has been referred for an alleged serious offense may one of the single occupancy bedrooms be utilized for waiting purposes. It must be rembered that during this initial screening phase, intensive crisis intervention and personal/family counseling services are to be rendered, while a determination is made concerning the juvenile's status. Only in very unusual circumstances will it be necessary to use bedrooms. A waiting room with a comfortable environmental character, coupled with staff supervision and interaction should suffice in most instances.

The intensive screening/services phase (0-4 hours) should involve several operations, including family contacts, counseling and accumulation of as much information as possible concerning youth, their personal histories, and the events which led to their referral. A determination of the need for continuing services, both residential and non-residential, and for further court appearance should be completed. If continued court involvement is warranted, a placement decision (release to home or family, non-secure al-

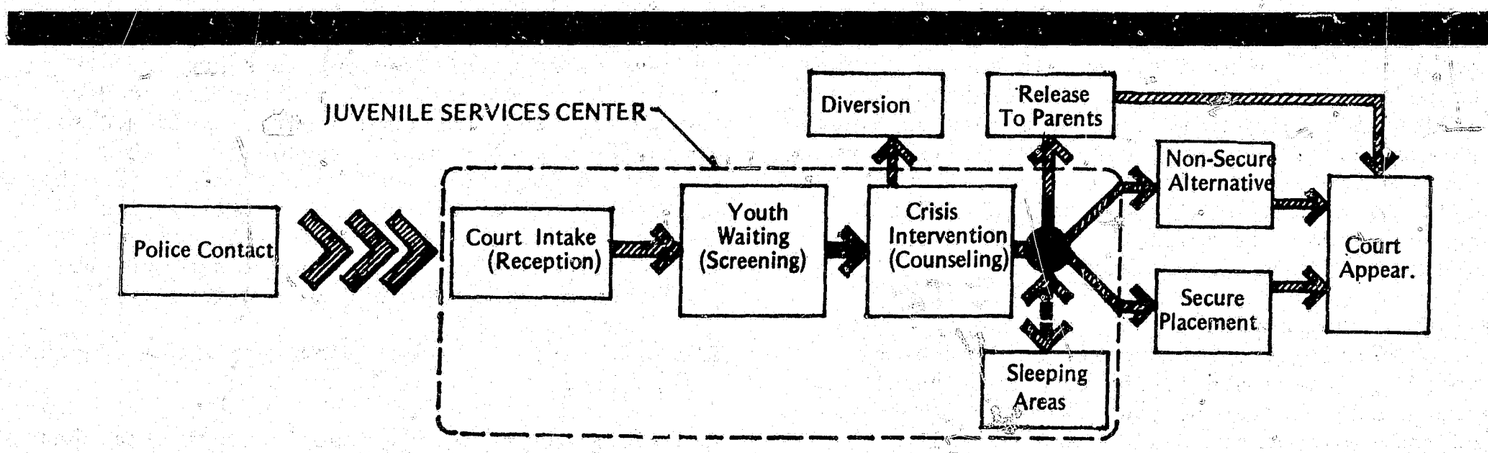


figure 1

ternatives, or secure custody), must be made. The appropriate persons or agencies must then be contacted to arrange for placement. The youth should, whenever possible, be released or remanded to her appropriate settings within this four-hour period. If final arrangements are nearing completion, the juvenile may remain in the youth waiting area for a short time beyond four hours.

conditions for stay at intake (Beyond 4 Hours)

Only in rare circumstances is it anticipated that alleged status offenders will need to remain at intake beyond the initial four-hour screening process. By that time, a return to home or placement in other available non-secure alternatives should be completed. It is possible, however, that a late night first contact or the inability to reach parents or other family may result in the need for a lengthier waiting period. Under such conditions a bedroom space may be made available for sleeping or privacy if desired. Bedrooms should not be locked and should be arranged so as to provide for continuing supervision from the reception area.

Criminal-type Offense Referrals:

The category of alleged offender will be subject to the same intake procedures and services as status offenders. From 0-4 hours intensive screening, counseling, information development, and family/placement contacts should be accomplished. Appropriate transfer or release should then be completed. During this time, the juvenile should remain in the youth waiting area while services are rendered, unless disruptive

behavior occurs. Temporary containment in a separate counseling/interview room will normally be a sufficient deterrent to such behaviors as might interfere with other continuing activities. Any bedrooms which are available as intake should not be used for holding purposes until the initial screening process is completed, unless a threat to others at intake is presented.

Even after the completion of preliminary screening and investigation, bedrooms must not be used for holding unless a decision to file a petition has been made, i.e., the youth will be remanded to custody in a secure residential facility. Bedrooms may then be used for holding in a secure fashion, and then only when immediate transfer cannot be effected. It is recommended that National Advisory Committee criteria serve as the basis for reaching this decision. (See appendix 1.)

Where transfer to a non-secure facility, or release to parents or other appropriate alternatives is desired, the youth waiting area should continue to be utilized, unless transfer or release cannot be immediately accomplished, and the stay at intake will be somewhat prolonged. If bedrooms are used for sleeping, or to provide some level of privacy, they should remain unlocked--regardless of the juvenile's alleged offense--unless secure custody will be sought.

It is imperative that advanced intake/release criteria be utilized as part of standard operational policy, in order to minimize the necessity for secure placements and the corresponding use of secure bedrooms at intake, when transfers will take some time. In most cases, juveniles accused of criminal-type but less serious offenses (misdemeanors) will not require secure placement, thus they should not be held securely at intake. Even serious offenders, if they present no obvious threat to the safety of others or themselves, should not be summarily placed in secure holding rooms. This will only dilute the beneficial effects attainable through the provision of intensive intake services.

Sleeping/Living Accommodations at Intake (Beyond 4 Hours):

According to previously described criteria, bedrooms may be used at intake under varying but precise circumstances, by juvenile referrals of every category. It is necessary, therefore, to describe continuing services which must be provided in each case on a time-limited basis.

Status offenders, as already mentioned, will only be provided a bedroom at intake if sleeping or privacy is desired, and then only on a voluntary basis.

Status offenders should be allowed to remain at intake for no more than 12 hours. Any failure to release or transfer young people of this classification within this specified time period is a definite indication of the lack of appropriate alternatives, and/or adequate intake procedures, in which case the purpose of intake services has been utterly defeated, ignored, or circumvented. An intake services component is not intended to supplant the provision of appropriate alternative services. Since this time at intake is relatively short, the provision of a living space separate from the youth waiting area is not es-

sential. The youth, who will not be locked in his room, will have access to staff and "stretching" space already available as part of the initial intake process. A meal may be served in the bedroom or youth waiting area. If intake is attached to a shelter-type operation, juveniles processed for less serious criminal-type offenses, and who will not be placed in secure custody, should be handled in much the same way as status offenders, with similar placement alternatives and release critieria. They should receive identical intake services. In consequence, it is recommended that their stay at intake also be limited to 12 hours.

It is anticipated that a more extended use of bedrooms at intake, the only time such use will constitute an actual secure holding function, will occur in instances where a secure placement determination has been made. This will involve the holding of juveniles accused of more serious offenses and should only occur when a need for secure custody has been demonstrated. It will be an especially important capability in areas where secure residential bedspaces are not readily available, except in an adult jail or lockup, e.g., where detention placement facilities are located at some distance and/or spaces are not guaranteed, and some waiting period may be involved. In such cases, a holding capacity of up to 72 hours will be permitted while placement arrangements are completed. Counseling, client/staff interaction, and case investigation will continue during this period. Many times, difficulties will be ironed out so that alternative residential arrangements can be made. The holding capability clearly is intended as a means of providing a breathing space, so that adequate services can be arranged and as a precaution against unnecessary secure placement.

The 72-hour waiting period will necessitate the provision of some residential services normally not associated with intake. Some small-scale activities for the juvenile should be available, including individual crafts and games, reading materials, and perhaps television viewing. Supervised recreation or exercise is also worthwhile. In view of these requirements, a small living area, or dayroom should be developed as part of or adjacent to bedroom areas. During times when no juveniles requiring secure custody are present, this space may be used by other referrals after the initial processing period. The spatial arrangement should facilitate ease in supervision and access by staff. Again, security through supervision rather than by overt architectural constraint is most desirable. A shower which may be used by other juveniles should also be available.

design considerations

Size:

In order to avoid great construction cost, promote the development of community-based and appropriately scaled structures, and limit the use of available space for even temporary residential purposes, it is recommended that the maximum number of sleeping spaces be restricted to four, with potentially two additional multipurpose rooms, which may be used for sleeping by referrals who remain at intake for up to 12 hours. Since such spaces tend to be used when available, the development of additional bedspaces would

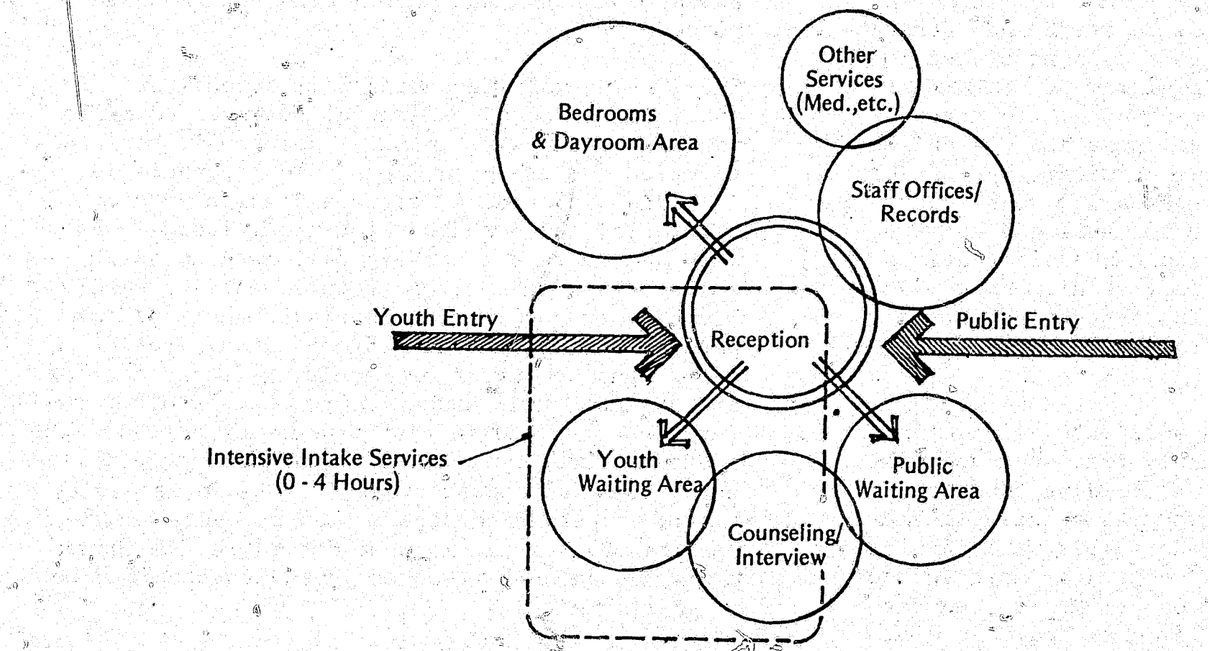


figure 2

cause the facility to assume too strongly the character of a residential setting. If more bedspaces are seen to be needed, the obvious implication is that more alternative placement bedspaces, both secure and non-secure, are required. Under no circumstances should this need be fulfilled at intake.

Spatial Relationships:

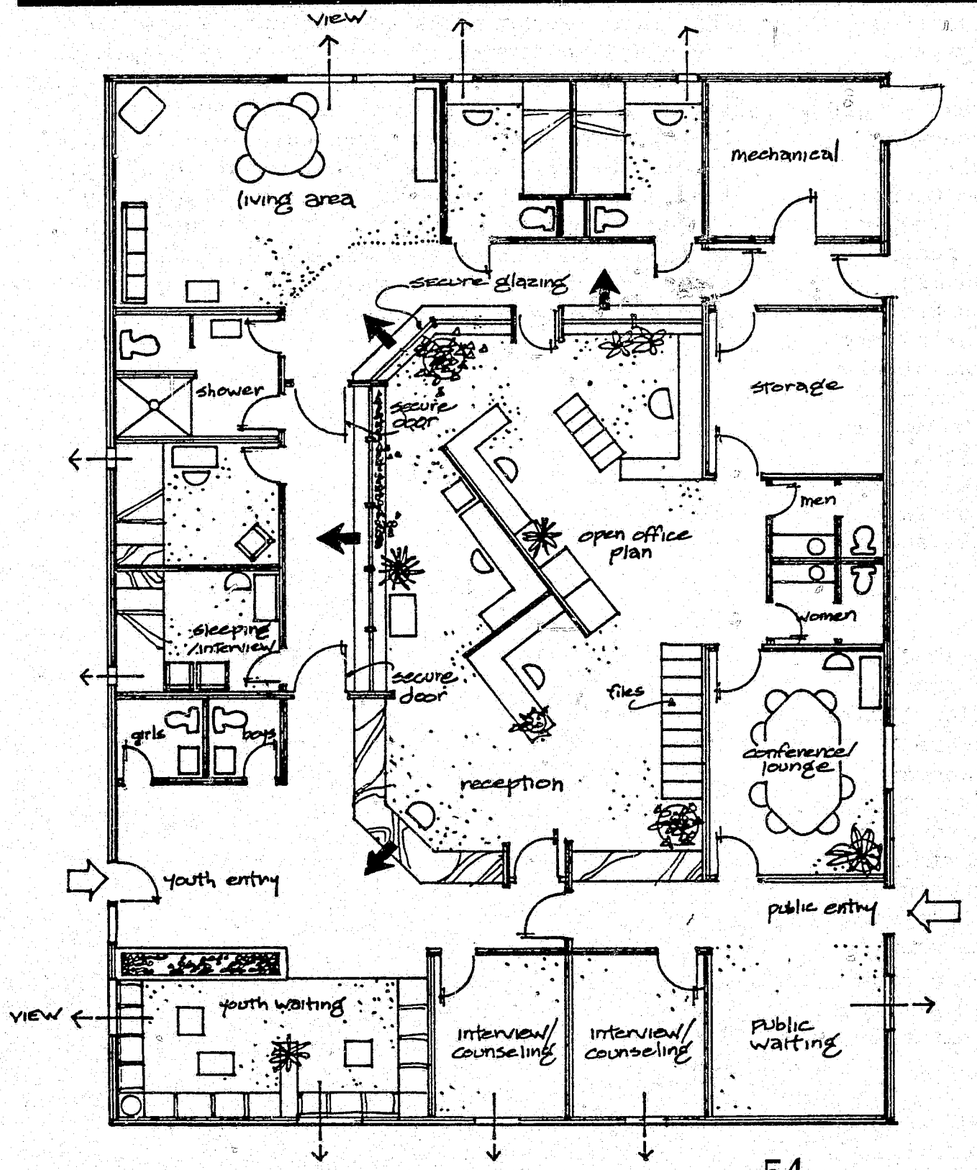
Bedspaces must be arranged to accomodate constantly changing intake needs. These would include situations where no sleeping spaces are needed, where there is a requirement for both secure and non-secure bedspaces, and where exclusively secure or non-secure sleeping arrangements are required. The spatial design must compliment this sort of varying population composition as well as simplify screening/supervision responsibilities. Spaces may be multiple use in nature by supporting various types of activities (sleeping, interviewing, waiting), thus avoiding the necessity for constructing separate areas. All areas should be of a comfortable character, reflecting the environmental ideals envisioned for normative, homelike and least-restrictive settings.

The diagram on the preceeding page illustrates many of the desired spatial relationships.

Public and youth entries and waiting areas should be separated. A single reception area serving both would be most efficient operationally. The reception area should be visually linked to all service areas, including youth waiting, sleeping and interview rooms, any living spaces, access points between these spaces, and with public areas. Where reception is combined with general staff office space, supervision of all areas may be simplified through an open office type of plan where intake personnel circulate freely among desk areas, files and reception, while maintaining visual contact with all facility spaces. An added advantage is that staff members are never far removed from spaces occupied by juveniles and can circulate freely between juvenile and office work areas. This should encourage increased staff/youth contact.

The schematic plan as illustrated in figure 3 depicts the arrangement of spaces for a prototypical juvenile services center providing intake screening/counseling, secure and non-secure sleeping space for juvenile referrals, and a small living area for juveniles remaining at intake up to 72 hours. All spaces are sized according to program and operational requirements. It would be possible to add a medical component, though any bedroom may be used for this purpose. More serious injuries or health problems should be handled by conventional medical service providers (hospitals, clinics, etc.). Spaces may be utilized according to the diagrams featured in figures 4, 5, and 6.

This plan demonstrates the maximum recommended capacity requirements. Smaller facilities may be planned with fewer sleeping spaces and smaller living areas. If alternative placement capability for both secure and non-secure care is well-developed, so that a maximum stay at intake is limited to 24 hours, then the facility may be arranged according to figure 7. In either event, it should be possible to develop juvenile services operations which are responsive to the specific needs of each community.



total square feet	**3120**
cost = $60/sq. ft.	**x60**
	$187,000

figure 3

JUVENILE SERVICES CENTER – SCHEMATIC ARRANGEMENT

(72 Hour Model)

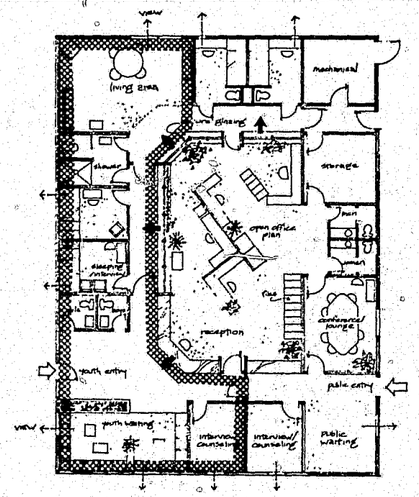


FIGURE 4 - Space available for use by all referrals at intake (living and waiting areas, sleeping and interview rooms) when no rooms are being utilized for secure custody purposes.

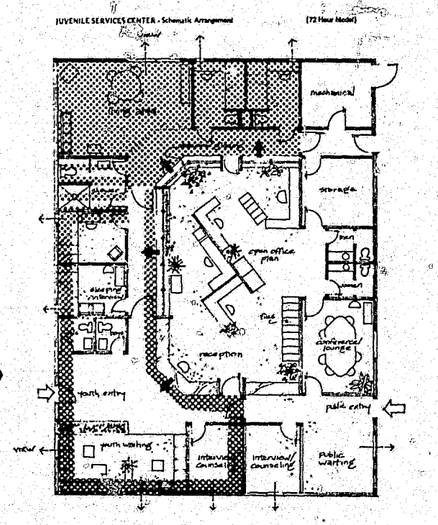


FIGURE 5 - Space utilization when a few secure bedspaces are needed. Remaining areas and rooms used for intake, non-secure waiting and sleeping purposes.

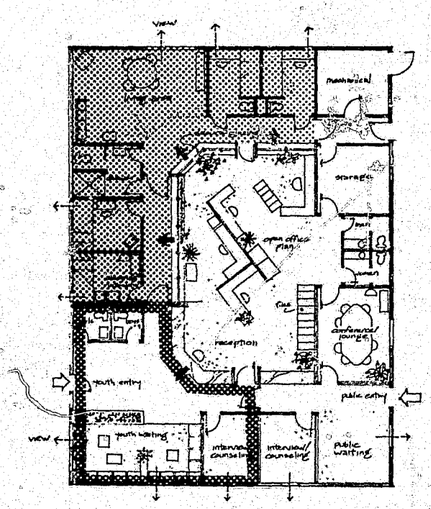
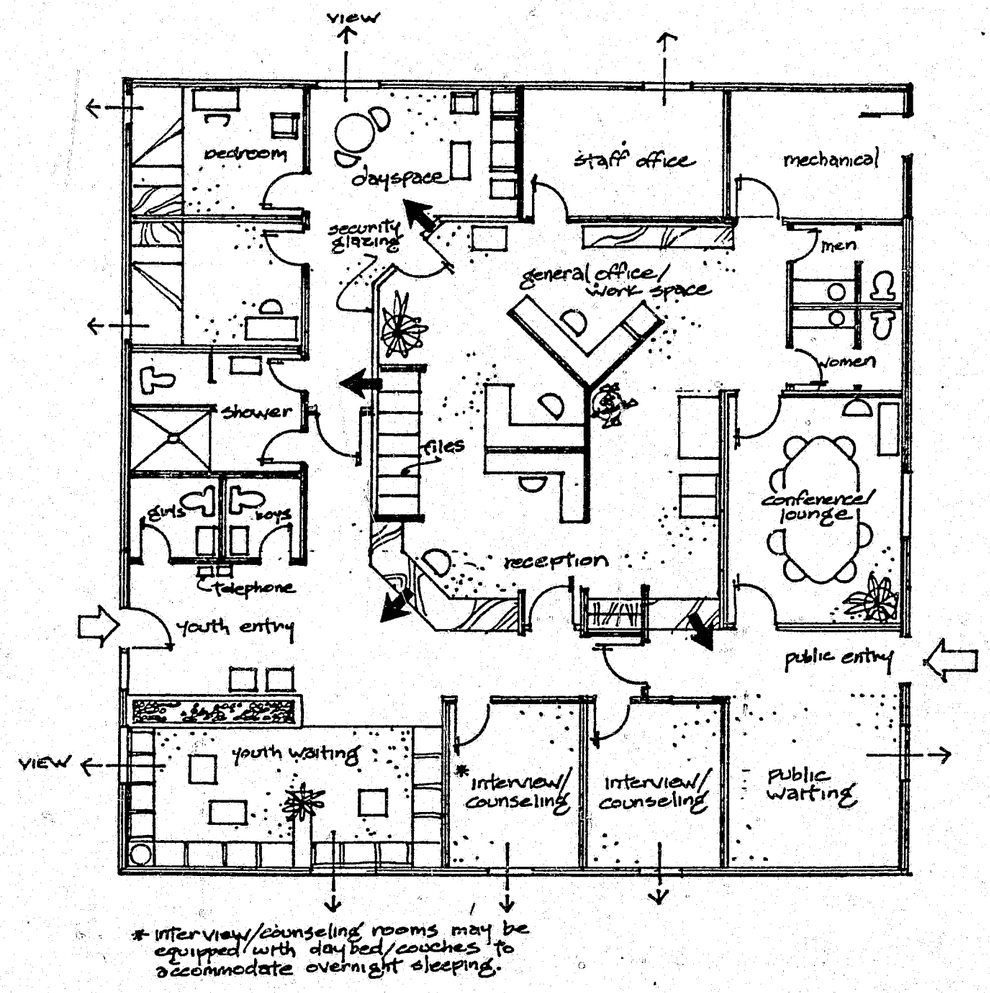


FIGURE 6 - Space utilization during periods of increased secure bedspace need. Bedrooms on left are made secure by closing corridor door. Interview/ counseling rooms may be used for non-secure sleeping.

SECURE AREAS

NON - SECURE AND INTAKE AREAS



total square feet	2400
@ $60/sq. ft.	x60
total construction cost	$144,000

figure 7

JUVENILE SERVICES CENTER – SCHEMATIC ARRANGEMENT (24 Hour Model)

appendix

Juveniles subject to the jurisdiction of the family court over delinquency should not be detained in a secure facility unless:

1. they are fugitives from another jurisdiction;
2. they request protection in writing in circumstances that present an immediate threat of serious physical injury;
3. they are charged with murder in the first or second degree;
4. they are charged with a serious property crime or a crime of violence other than first or second degree murder which if committed by an adult would be a felony, and:
   a. they are already detained or on conditioned release in connection with another delinquency proceeding;
   b. they have a demonstrable recent record of willful failures to appear at family court proceedings;
   c. they have a demonstrable recent record of violent conduct resulting in physical injury to others; or
   d. they have a demonstrable recent record of adjudications for serious property offenses; and
5. there is no less restrictive alternative that will reduce the risk of flight, or of serious harm to property or to the physical safety of the juvenile or others.

A. Mandatory release. The intake official should release the accused juvenile unless the juvenile:

1. is charged with a crime of violence which in the case of an adult would be punishable by a sentence of one year or more, and which if proven is likely to result in commitment to a security institution, and one or more of the following additional factors is present:
   a. the crime charged is one of first or second degree murder;
   b. the juvenile is currently in an interim status under the jurisdiction of the court in a criminal case, or is on probation or parole under a prior adjudication, so that detention by revocation of interim release, probation, or parole may be appropriate;
   c. the juvenile is an escapee from an institution or other placement facility to which he or she was sentenced under a previous adjudication of criminal conduct;
   d. the juvenile has a demonstrable recent record of willful failure to appear at juvenile proceedings, on the basis of which the official finds that no measure short of detention can be imposed to reasonably ensure appearance; or

2. has been verified to be a fugitive from another jurisdiction, an official of which has formally requested that the juvenile be placed in detention.

B. Mandatory detention. A juvenile who is excluded from mandatory release under subsection A. is not, pro tanto, to be automatically detained. No category of alleged conduct in and of itself may justify a failure to exercise discretion to release.

C. Discretionary situations.

1. Release vs. detention. In every situation in which the release of an arrested juvenile is not mandatory, the intake official should first consider and determine whether the juvenile qualifies for an available diversion program, or whether any form of control short of detention is available to reasonably reduce the risk of flight or misconduct. If no such measure will suffice, the official should explicitly state in writing the reasons for rejecting each of these forms of release.

2. Unconditional vs. conditional or supervised release. In order to minimize the imposition of release conditions on persons who would appear in court without them, and present no substantial risk in the interim, each jurisdiction should develop guidelines for the use of various forms of release based upon the resources and programs available, and analysis of the effectiveness of each form of release.

3. Secure vs. nonsecure detention. Whenever an intake official determines that detention is the appropriate interim status, secure detention may be selected only if clear and convincing evidence indicates the probability of serious physical injury to others, or serious probability of flight to avoid appearance in court. Absent such evidence, the accused should be placed in an appropriate form of nonsecure detention, with a foster home to be preferred over other alternatives.

Removing Children From Adult Jails: A Citizen's Guide To Action*

--Barbara J. Sewell

On December 1, 1978, a seventeen-year old inmate of the Collier County Jail in Florida committed suicide by tearing up a shower curtain and using the material to fashion a noose by which he took his own life. On February 14th, another juvenile committed suicide in the Collier County Jail.**

An investigative report recommended that the Collier County Jail develop a better system of classifying juveniles. Yet no action was taken by the state to stop the housing of juveniles in this or other Florida jails.

who are the children in jails?

It is estimated that 500,000 juveniles a year are held in adult jails and lockups in the United States. The Children's Defense Fund states that even the half-million figure is "grossly understated." Abuses including severe physical punishment, rape and lengthy periods of solitary confinement are pervasive in these institutions, and suicide by juveniles is not uncommon.

Although the Juvenile Justice and Delinquency Prevention Act of 1974 requires states and territories receiving funds under the Act to sepa-

*This work is not intended as a scholarly article, but as an action handbook.

**"Children in Jails: The Real Crime," Newsline, 3, No. 7, 1979, p. 1.

rate juvenile and adult offenders by "sight and sound," they are confined together in jails and lockups across the nation. In some places, the sight and sound guideline has been distorted, so that juveniles are isolated in solitary confinement for long periods.

Yet most children are in jails for property or minor offenses. Eighteen percent of all children in jails are locked up for status offenses, including running away, being "ungovernable," and truancy--acts which would not be crimes if committed by adults. Neglected, disturbed, retarded and handicapped children are also found in this group.

According to the National Council on Crime and Delinquency's Criminal Justice Newsletter:

> New Jersey's four-year-old juvenile code has 'proved that there is no need to lock up children for noncriminal misbehavior.
>
> Such is the assertion of a state department of human services task force on the juvenile code. The task force has recently published a report entitled, Juvenile Justice in New Jersey: An Assessment of the New Juvenile Code.
>
> The code, which became effective in March 1974, separated Juveniles in Need of Supervision (JINS) from delinquents.
>
> More significantly, the code prohibited placement of these status offenders in either secure detention before disposition or correctional facilities after disposition.
>
> Based on a comparison of samples of juveniles before and after the law took effect, the task force found compliance with these deincarceration requirements to be 'virtually universal.'
>
> Yet, though they are no longer locked up, status offenders are still treated more harshly than delinquents at almost every stage of juvenile justice system processing, according to the task force.

JINS Shelters. Aside from getting status offenders out of jails and training schools, another visible result of the juvenile code was the creation of 20 JINS shelters. This represented a virtual doubling of the number of beds available in New Jersey for predispositional holding of juveniles.

Fortunately, the task force found that the JINS shelters 'drained off' status offenders from detention facilities, rather than simply providing additional beds to hold more juveniles. The task force backs this claim by showing that the total numbers of juveniles held in temporary custody, JINS and delinquents, remained constant after the JINS shelters were established.

At the post-adjudication stage, few

boys, but a large proportion of girls, were placed in the JINS shelters instead of institutions. So much so that the State Home for Girls, whose population had been two-thirds status offenders, was able to be closed after the JINS shelters became available.

JINS Processing. Other than the lack of incarceration, however, the task force found that the juvenile code has not significantly changed the way the juvenile justice authorities handle status offenders.

Indeed, the report indicates that, generally, JINS are handled more stringently than delinquents by New Jersey's juvenile justice agencies.

With the exception of police--who are more likely to send delinquents to court than JINS cases--the status offenders fare worse at each stage of the system. They are twice as likely as delinquents to be held in predispositional custody, less likely to have their cases dismissed or informally adjusted, and more likely to be retained in custody for longer periods.

Moreover, at each stage female JINS receive more stringent treatment than their male counterparts. In fact, the observed differences between the processing of JINS versus delinquents 'can often be traced to rather drastic differences between the processing of female JINS and delinquents. The differences between male status offenders and delinquents are much less striking.

The task force believes one reason status offenders are treated more stringently is that they are more often referred to court by parents or school officials, i.e., persons with a stronger stake in having the complaint pursued.

It is also suggested that juvenile courts tend to be governed more by the paternalistic parens patriae ideals in JINS cases, where due process safeguards are less strict than in delinquency cases.

'In summary, it seems very likely that the differential treatment of JINS in the juvenile justice system represents a large number of instances where parents or officials perceive they are signing the JINS complaint for the juvenile's own good, and the court joins forces as a benevolent agent of authority and social control.'

Next Steps. Now that deinstitutionalization has proven itself, the task force suggests it may be time to tackle the broader questions of social policy regarding status offenders.

These include the fundamental questions of how JINS come to the attention of the court and whether the juvenile court is the appropriate agency to address the

needs of status offenders.

Coincidentally, a private group, the Association for Children of New Jersey, has recently examined many of the same issues as the official state task force.

Specifically on status offenders, the association questions whether the JINS shelters truly represent the 'least restrictive alternative.' The association's report argues that many status offenders could be spared placement in the shelters. If support services were available in the community, it is suggested that JINS could often remain in their homes or stay with relatives.

In their new work, The Juvenile Offender: Control, Correction, and Treatment, C. Bartollas and S. J. Miller state:

> Most of the children in...jails have done nothing, yet they are subjected to the cruelest of abuses. They are confined in overcrowded facilities, forced to perform brutal exercise routines, punished by beatings by staff and peers, put in isolation, and whipped. They have their heads held under water in toilets. They are raped by both staff and peers, gassed in their cells, and sometimes stomped or beaten to death by adult prisoners. A number of youths not killed by others end up killing themselves.

A recent study of 755,000 juvenile runaways shows that many were not seeking adventure, but were fleeing emotional, physical, or sexual abuse:

> Larry Dye, director of the Youth Development Bureau of the Department of Health, Education and Welfare, said that a growing number of teenagers were what the bureau describes as 'throwaways,' young people who are forced out of their homes.
>
> 'We're finding in programs that we're seeing an increase in the number of kids that are being pushed out of their homes, or they leave their homes at 15, 16 years of age by some kind of mutual agreement between the parent and the young person,' Mr. Dye said.
>
> 'When the young are forced out of the homes, we're talking about adolescent abuse, sexual abuse; we're talking about the destruction of the family unit being such that the young people are just told to go out and make it on their own,' he said.
>
> Bill Treanor, director of National Youth Alternatives, a national organization of community-based youth services in Washington, says there is another kind of 'throwaway,' the teen-ager who is forced out of his home for economic reasons.

'With inflation in general and the housing market in particular, people are living in smaller and smaller units with less and less space, sort of like, just how many little birds can fit in a nest?

Well, somebody gets pushed out and you see this particularly in large cities with minority young people where they just don't fit in the apartment any more; that seems to be an increasing factor of a lot of homeless youth.'

When we jail youngsters such as these, we are imposing "our country's most severe sanction short of the death penalty, (i.e., deprivation of liberty) on children who have never even committed a crime," according to the National Coalition for Jail Reform.* Subjected to impersonal procedures such as strip searches, forced to wear institutional clothing, harassed by physical and verbal abuse, juveniles may suffer the destruction of their self-esteem, and worse.

From the November 16, 1979 issue of the Juvenile Justice Digest, we learn that a youth hung himself in a West Virginia jail that routinely ignored making cellblock inspection rounds:

> Sheriff's deputies routinely falsify jail records and incarcerate juveniles with adults in Kanawha County, W. Va., the Charleston Gazette claims in an extensive article published last week which quotes a deputy suspended for neglect of duty.

Nobody ever thought of it as falsifying records because the practice was so common,' J. S. Batman told the newspaper. 'It would be humanly impossible for deputies to inspect the cell block areas every 30 minutes. After each shift is over, the deputies always put their initials on the inspection records, regardless of whether inspections have been done.'

Batman said deputies routinely placed adults in the jail's juvenile section. 'You could subpoena any number of people and would find out that adult prisoners were placed in the juvenile section,' she said.

Deputies made various excuses for placing juveniles in the adult section, too, Batman said. 'At one time, they said they did it so that an adult would supervise the juveniles.'

In late October, Kanawha County Sheriff Kemp Melton suspended three deputies, two for allegedly falsifying records relating to the time during which a juvenile hanged himself in a cell. Melton also suspended Batman for neglect of duty, though Batman said she doesn't know what the charge refers to.

*The NCJF is made up of 28 organizations comprising conservatives, liberals, practitioners, planners, local and national organizations.

The records allegedly falsified pertain to security inspections of the cell areas. Deputies are supposed to inspect the cell area every 30 minutes and record the inspections. The juvenile who hanged himself, Michael Jeffery, died in the jail about 3:30 p.m. on Sept. 30.

About a week later, state Supreme Court Justice Darrell McGraw attempted to inspect the cell in which Jeffery died. McGraw engaged in a scuffle with sheriff's deputies and was subsequently arrested. Jeffery's death and the McGraw incident are currently under grand jury investigation.

There are many similar instances of mistreatment of juveniles in adult jails. For example, a juvenile charged with running away from an abusive stepfather was housed in a county jail in what is described as a large steel box. He hung himself on the second day. A youngster charged with running away spent seven weeks in a condemned Indiana jail--to teach him a lesson.

A 9-state survey by the Children's Defense Fund found that children, including status offenders, frequently "are placed in cells with adults charged with violent crime." They discovered that:

A 15-year-old girl was confined with a 35-year-old woman jailed for murder.

A 16-year-old boy was confined with a man charged with murder, who raped the boy on three occasions.

A 16-year-old boy, arrested for shoplifting, was confined in a cell with a man charged with shooting another man.

A 16-year-old boy was confined with five men. One was AWOL from the military, one was charged with assault and battery, one was an escaped prisoner from another state, one was in jail charged with murder of his wife, and one was charged with molesting three boys on the street.

A 14-year-old girl was confined in a cell with two women charged with drug use, who constantly cut themselves with pieces of glass.

A 16-year-old boy was confined in a cell with a man charged with murder.

A 15-year-old boy was confined with three adults, two were charged with drunkenness and one with murder.

Inadequate separation also means that children are held in cells with the mentally disabled. We learned that juveniles are regularly mingled with inmates who are mentally ill or retarded or with inmates awaiting competency hearings.

Should these children be exposed to the physical and emotional abuse of adult jails and lockups? Does jail deter them from future "criminal" behavior? According to Sherwood Norman of the National Council on Crime and Delinquency, detaining a child "in forced association with other

delinquents intensifies his hostility to society and exalts his status in the delinquent group."

What's more, state and local governments are wasting money by institutionalizing these children. Since 1974:

> ...when Maryland prohibited the locking up of status offenders, communities have reduced their tendency to use the juvenile courts as a dumping ground for truants, runaways and ungovernable youths, according to a recent report. The number of status offenders referred to court has steadily dropped and many more referrals are being closed at court intake. In addition, the state has saved money. The cost of placing a young-
>
> ster in a state correctional institution is between a reported $12,000 and $14,000, but a greater number of juveniles are being sent to group homes which cost $8,200, or placed in foster care at a cost of $2,400.

Rape, other forms of physical abuse and harassment, and suicides are just some of the consequences of confining juveniles with adults. Other negative consequences derive from the horrendous conditions of many of the county jails and municipal lockups in which juveniles are held. In Rosemary Sarri's Under Lock and Key, Judge Don J. Young describes such a jail:

> When the total picture of confinement in the Lucas County Jail is examined, what appears is confinement in cramped and over-crowded quarters, lightless, airless, damp and filthy with leaking water and human wastes, slow starvation, deprivation of most human contacts, except with others in the same subhuman state, no exercise or recreation, little if any medical attention, no attempt at rehabilitation, and for those who in despair or frustration lash out at their surroundings, confinement, stripped of clothing and every last vestige of humanity...

In Jails, Ronald Goldfarb notes:

> Since most jail employees are law enforcement personnel, often uninterested in or hostile to their assignments to guard inmates, people in jail are... placed in the hands of those who are least likely to teach or exhibit (respect for law and order)...the least qualified and the poorest paid employees in the criminal justice system, the jail guards.

American Jails, a publication of the Centennial Congress of Corrections, states:

> The majority of county and city jails are more or less independent units, each having a certain autonomy. The grounds, buildings and equipment are owned by the respective counties and cities. In a majority of cases the buildings are old, badly designed, poorly equipped, and in most instances in need of urgent repairs. They are not properly heated, ventilated

nor lighted; they do not have the necessary facilities for the preparation and service of food; proper and adequate provision for bathing and laundering are missing; sanitary arrangements are, for the most part, primitive and in a bad state of repair; only in rare instances are there proper hospital facilities or means for caring for the sick and infirmed; religious services are infrequent; educational activities are almost completely unknown...Recreation is mostly restricted to card-playing, and in general, complete idleness is the order of the day. Filth, vermin, homosexuality and degeneracy are rampant, and are the rule rather than the exception. Of these there is no more pressing nor delicate problem, among the many confronting jail administrators today, than the ever-present and increasing problem of homosexual behavior among those incarcerated in jails all over the nation.

The Youngest Minority, a publication of the American Bar Association, asserts:

> Besides deliberate and intentional infliction of discipline in a cruel manner, punishment can also imply a wrong in institutional management that is not erased by good intent and lofty purposes. For example, a fourteen-year-old juvenile was serving ninety days on a chain gang for petty larceny. He was shot in the face by a trusty guard and lost both eyes and suffered brain damage.

Adult jails often lack the most basic medical services. In the questionnaire survey of "medical facilities" in 1,431 jails, the American Medical Association found that 759 provided "First Aid Only." Further investigation revealed that many of the "medical facilities" listed were nothing but first-aid kits.

A recent study by Yale University researchers found that three-quarters or more of the violent children in a Connecticut reform school "had been seriously abused by their parents or caretakers." This included being hit with a belt buckle or whip, and being burned and beaten with a stick. 96% of this group were "found to have brain or neurologic disorders or psychiatric problems."

In adult jails and lockups, the mental and physical ailments of juveniles, including drug reactions and diabetes, go unnoticed. This neglect can and does lead to unnecessary deaths.

Adult jails are not required to provide educational, recreational, or indeed any services or programs for juveniles. According to the last National Jail Census, many states had no visiting facilities. In an interview with a Children's Defense Fund staffer, a 12-year-old confined in a jail cel in the men's section, said:

> all steel and you can't see nothing. There was nothing to read, nothing to do at all. I did nothing. I screamed at the cops. It's the only thing to do. Then sometimes they'd push me around. The worst thing--it was boring. You could be dying in there and they wouldn't even

know. Once I ripped a handle off a wall. I wanted to see if they would see me in the camera. But no one came. Another time I smashed a great big hole in the wall and they didn't know.

Self-reports of juvenile crimes show that nearly 98 percent of all adolescents will commit at least one criminal act which will go unreported to police. But it is poor children, unable to marshall the support of parents, lawyers, or other resources, who are most likely to be jailed. In Jails: The Ultimate Ghetto of the Criminal Justice System, Ronald Goldfarb points out:

> The flexibility of the delinquency concept has aggravated the tendency, already severe, toward class and race discrimination in the administration of juvenile justice. Offenses by young people are common, but, generally, poor children in trouble end up in jails and other correctional institutions. Minority group children are disproportionately represented, white children underrepresented.

myths about children in jails

A number of myths are associated with the jailing of juveniles. We hear most often that these children are dangerous and "the community must be protected." The truth is that while serious lawbreaking receives a great deal of publicity, only about 10% of delinquent youth who appear in court are violent. A 1978 report to the Ford Foundation, Violent Delinquents, reveals that "violent acts by juveniles account for 10-11% of all juvenile arrests...repeated violence by juveniles is not a common phenomenon," and "simple assault is the most common violent crime committed by juveniles." A survey by the Children's Defense Fund found that of 162 children for whom jails had recorded charges, only 19 (11.7%) were in jail for alleged dangerous acts. In a study of 1,138 juvenile offenders in Columbus, Ohio, the Academy for Contemporary Problems learned that "Youths arrested for violent offenses constituted less than one-half of 1% of juveniles born in Franklin County, Ohio in 1956-68, and less than 2% of all such persons with a pre-adult police record."

In Children in Jails: Legal Strategies and Materials, the National Center for Youth Law reported that:

> ...a recent NCCD study, conducted in Upper New York State, revealed 43% of the children in local jails were alleged PINS (persons in need of supervision), none of whom were charged with any crime. A Montana survey found that dependent and neglected children were routinely held in jails; at over half of the jails, children were confined as a deterrent, even absent formal charges against them. The census reported that 2/3 of all juveniles in jail were awaiting trial. In 7 states, all children detained are held in jail and in 21 states, more children are held in jail than in equally available juvenile detention facilities. Analysis of correctional programs in 16 states revealed

> that 50% of children between 13 and 15 in these programs had previously been in jail one or more times.

A report on juvenile correctional reform in Massachusetts, prepared by the Center for Criminal Justice at Harvard Law School, compares an "old system" in which all detention was in secure settings, with a "newer system" of detention in open settings, such as shelter care. The report concluded that "In the newer system, since around 80 percent of the youth are in relatively open settings with relatively low recidivism rates, the policy implication is clear. It is possible to put the majority of youth in open settings without exposing the community to inordinate danger."

To protect children from themselves or from dangerous home environments is another rationale for jailing juveniles. The Children's Defense Fund reveals that:

> in the name of protecting children, we found many youngsters in the filthiest, most neglected and understaffed institutions in the entire correctional system. One child was in jail because her father was suspected of raping her. Since the incest could not be proven, the adult was not held. The child, however, was put in jail for protective custody.

The President's Crime Commission was told of "four teen-age boys, jailed on suspicion of stealing beer, who died of asphyxiation from a defective gas heater, after being left alone for eleven hours in an Arizona jail." In Indiana, a thirteen year old boy, veteran of five foster homes, "drove his current foster father's car to the county jail and asked the sheriff to lock him up. The child was segregated from adults, pending a hearing for auto theft. A week later his body was found hanging from the bars of his cell; a penciled note nearby read, 'I don't belong anywhere.'"

A recent study of North Carolina jails found young males arrested on drinking charges are particularly prone to suicide--usually within the first 24 hours of incarceration.

For children who are abused or self-destructive, being caged with dangerous offenders, in inadequate facilities lacking sufficient or trained staff, is a life-threatening situation. In 1979, the National Coalition for Jail Reform, comprising 29 organizations including the American Bar Association, the National Sheriff's Association, the National League of Cities, the American Institute of Architecture, and the National Council on Crime and Delinquency, unequivocally endorsed "the goal that no child should be held in an adult jail," and stated that, "confinement in an adult jail of any juvenile is an undesirable practice. Such confinement has known negative consequences for youths--sometimes leading to suicide, always bearing life-long implications." The National Coalition for Jail Reform is in accord with Dr. Rosemary Sarri's assertion that:

> Throughout the United States conditions in jails and most detention facilities are poor; they are overcrowded and lack the basic necessities for physical and

mental health; supervision and inspection are inadequate, and little or no in-service training is provided. Lack of continuing supervision is especially problematic for jailed youth, since they can be abused by adult prisoners.

In a four-year study conducted by New York State's Select Committee on Child Abuse, a "definite link" between child abuse and neglect and juvenile delinquency was shown. Reviewing this, and similar findings in other studies from across the nation, Gwen Ingram, director of the National Council on Crime and Delinquency Youth Center, concludes, "If children first visit court as victims and receive no assistance, they return to the same problems and develop survival skills that often cause their return to court as the accused."

Children are also put in jails, "To teach them a good lesson." However, this lesson often backfires. In their Dangerous Offender Project, a three-year effort funded by the Lilly Endorsement, the Academy for Contemporary Problems discovered that, "Incarceration seems to speed up, rather than retard, the recidivism of the 'violent few' among juvenile offenders." The researchers charge that "Juvenile court dispositions swing from a total lack of punishment at the beginning of a criminal career to overly harsh incarceration a few crimes later on." Early on, "A youth learns that he can break the law and not be punished. He is unimpressed with the seriousness of the law." When finally put behind bars, he is likely to regard it as merely "the luck of the draw." The study concludes that "legislators and judges ought to devise intermediate sanction measures that will make incarceration less frequently necessary. Among these might be restitution, community service orders, restrictions to a group home, and other losses of liberty designed to show that the court means business."

The lavishly praised "Scared Straight" program, in which prison inmates brutally try to frighten youngsters out of careers as lawbreakers by sneering, making homosexual advances, and offering tales of how men are crippled in jails, has been shown to be a failure. A recent study by Rutgers Professor James O. Finckenauer traced 46 juveniles who had graduated from the Rahway prison sessions and set up a control group of 35 similar youths who had not attended them. "Contrary to televised claims that 80 to 90 percent of the project's alumni had stayed out of trouble, Finckenauer found that only 59 percent of his subjects avoided arrest; in contrast 89 percent of the control group had not been arrested. Worse yet, of nineteen youngsters who went to Rahway with no criminal record, six later broke the law." According to Newsweek reporters Aric Press and Donna Foote, "Many authorities express shock that unspeakable prison conditions, instead of being corrected, are being touted as a remedy for youth crime."

Children are terrified by jails. They associate them with abuse--homosexual abuse, abuse by guards, and abuse by other prisoners. As a result, they learn they cannot trust adults charged with carrying out the law. They learn to hate. Milton G. Rector, President, National Council on Crime and Delinquency, states:

The fact that murders and other violent

crimes are committed by children does not make the criminal justice system any more suited to the task of control and rehabilitation of young people. Every study of prisons for adults has demonstrated the disabling effects and inappropriateness of prison environment for bringing about positive change in attitudes and behavior. The intensive, specialized efforts needed for the serious young offender have a better chance to evolve from programs and experimentation within the juvenile system.

The act of remanding violent young offenders to the criminal courts is often a surrender and a cop-out by otherwise responsible public officials. In too many cases it is a political ploy to appear tough on crime rather than face up to the need for an intelligent attempt to cope with serious crimes by children within the juvenile justice system and to contend with the causes of such crimes.

It is ironic that leaders in the juvenile justice field choose to push the most serious offenders into the criminal courts and to devote their resources to truants, runaways, and unruly children, who were pushed into their laps by education, welfare and mental health systems which also prefer to appear tough rather than smart.

Law enforcement officials and judges often regret jailing children, but justify their actions in the belief that, "Juvenile detention facilities are unavailable, overcrowded or inappropriate." The fact is that even where detention centers are readily available and existing legislation prohibits the jailing of juveniles, children are still placed in jails. In 7 out of 8 states where surveys were conducted by the Community Research Forum of the University of Illinois, it was found that the availability of detention centers did not in itself preclude children from being placed in jails. The Children's Defense Fund discovered that several thousand children were confined in adult jails every year in a Texas county with a large detention center. Where the practice of jailing children is permitted legally, or through lack of enforcement of statutory prohibitions, jails will be used to hold children.

Overcrowding of juvenile centers should not be used as an excuse for jailing children, since many could be released or held in a community-based setting pending trial. A survey of the effects of an employees' strike, which resulted in the furloughing of many juveniles from state training schools in Pennsylvania, found that "of 426 young people released for a period of two days to three weeks, nearly all returned without incident."

In Confronting Youth Crime, a report by the Twentieth Century Fund, a task force chaired by former Ohio Senator Robert Taft, concluded that preventive pre-trial detention is "inappropriate and unjust," and that community supervision, rather than detention, should be utilized to insure that young defendents appear for trial. However, the Supreme Court, which has broadened the

rights of children charged with delinquent acts, has yet to act at all on procedural guarantees for young people facing legal sanctions for "misbehavior or uncontrollability."

Children who are mentally ill or seriously retarded, and difficult to place are also put in jails. A Children's Defense Fund team discovered children in jails who were on waiting lists for mental hospitals, along with children who simply had no place to go. "One boy's mother had been hospitalized, and because no relative or neighbor had been able to take him the sheriff took him to jail." In Under Lock and Key, Dr. Rosemary Sarri notes that in Montana where dependent and neglected children were held in jails "when necessary," "Juveniles could remain in jail for indefinite periods since only a few counties or cities had procedures for controlling the maximum number of days they could be held." Can we not provide more humane treatment than homes in jail cells for dependent and neglected children?

The final myth concerning the jailing of children is that it's appropriate to "jail children who have been waived from juvenile court to adult criminal court," a practice which is increasing. Guided by public fears and pressures, many broad statutes are being enacted to permit juveniles to be tried in criminal courts. Disturbed youth and juveniles who have committed simple assaults are swept up with those who murder or rape. "All these laws will do is lock a few kids up for a longer period of time," says Marcia Lowry of the ACLU's Children's Rights Project. More than that, they will legally subject juveniles including less serious offenders to the risks and harms of comingling with adult criminals.

In Florida, a 16-year-old boy was waived to an adult court for pursesnatching. He spent 201 days in an adult maximum security facility, much of it in solitary confinement, while his case was continued repeatedly in adult court. He became increasingly disturbed, telling an officer he would set the place on fire if he was not let out:

> The officer reported this to the supervisor and was told to watch the prisoner's conduct carefully to determine if additional solitary confinement procedures should be used. Within five minutes, smoke was coming from polyurethane mattresses stored outside the cell, which the prisoner apparently had ignited by throwing lighted newspaper near them.

One officer and ten prisoners, including the boy himself, lost their lives in this fire. Yet in 1978, Florida enacted a law permitting states' attorneys to prosecute in adult court any 16 or 17-year-old who has previously committed two delinquent acts, one of which is a felony. Felonies may include such acts as auto theft and selling marijuana. Having been deprived even of a waiver hearing, the juvenile may then be tried and handled in every respect as if he were an adult. And similar statutes are being enacted despite official crime statistics which show juvenile crime lessening in many areas.

the juvenile justice and delinquency prevention act of 1974

In 1973, the Senate Subcommittee to Investigate Juvenile Delinquency heard clear and convincing testimony concerning the harmful effects of comingling juvenile and adult offenders:

> Regardless of the reasons that might be brought forth to justify jailing juveniles, the practice is destructive for the child who is incarcerated and dangerous for the community that permits youth to be handled in harmful ways.

From this and similar testimony came the Juvenile Justice and Delinquency Prevention Act of 1974.

The requirements of the Act with respect to juveniles in adult jails and lockups are embodied in section 223 a (13):

> (13) provide that juveniles alleged to be or found to be delinquent and (status and non-offenders) shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.

The implementation of the Act has been directed principally towards changing the traditional practice of institutionalizing juveniles. Schools, parents, police, the courts, and the community in general, have been required to examine their perceptions of juvenile delinquency and their methods of dealing with youth in trouble. Recent research and national standards have provided strong support for the mandates of the Act, particularly with respect to the removal of juveniles from adult jails and lockups.

Still, in most states, the criteria for secure detention of a juvenile are that he be "likely to run, likely to commit a new offense, or likely to harm himself." This concept of "likely to" has been denounced as vague and subjective by the American Bar Association, the National Advisory Commission of Criminal Justice Standards and Goals, and other organizations concerned with juvenile justice standards. They assert that language such as "likely to" gives too much latitude to law enforcement officers and others who make decisions about releasing or detaining children. Views of what constitutes "the best interests of a child," or which child is "likely to" engage in harmful behavior are as varied as the attitudes of each arresting officer. Organizations such as the American Bar Association suggest that specific criteria including type of offense, legal history, and legal status be used in determining whether to detain or release a child. In this way, decisions can be reached irrespective of sex, race, appearance, socio-economic status, access to legal counsel, etc.

Studies by the Community Research Forum of the University of Illinois show that where objective standards concerning juveniles have been adopted, reductions of up to 80 percent have occurred in the number of youth requiring secure detention.

While the Juvenile Justice and Delinquency Prevention Act holds that juveniles can be detained in adult jails and lockups as long as they are kept separate from adult offenders, "separation" is poorly defined in most state statutes. Often, a reading of the statute does not clarify whether juveniles are ever permitted in adult jails, or if they may be held in adult jails, if they are separated from adults. What is meant by "separation" is also unclear as to physical, sight, sound or other separation, and open to individual interpretation. In addition, these statutes are neither specific nor objective as to which juveniles to release and which to detain, further allowing personal biases to influence such decisions.

In response to the Act, however, several states have moved in the direction of an outright prohibition on jailing juveniles. Maryland, Washington, and Pennsylvania have legislated such a prohibition during the last two years.

Recent court litigation has also supported this prohibition. In Witite v. Reid, the jailing of children was denounced as lacking due process, and in Baker v. Hamilton as cruel and unusual punishment. In Swansey v. Elrod, the court extended the prohibition against jail confinement to children who have been waived or certified to adult court.

These legal arguments, further extended by the National Coalition for Jail Reform and the National Center for Youth Law, show the potential for a court decision regarding the constitutionality of jailing children.

alternatives to secure detention

> Joan M., 14 years old, ran away from home because she did not get along with her mother. Eric, 17, left because there was not enough room for him at home.
>
> Both needed help. And they found it at a runaway house here (Washington, D.C.), one of the many facilities in the country that provides short-term aid to such youngsters.
>
> The New York Times, May 20, 1979

There are many examples of successful alternatives to the secure detention of juveniles. In their careful analysis of home detention, attention homes, runaway programs, and private residential homes, University of Chicago researchers Thomas Young and Donnell Pappenfort found that upwards of 90% of juveniles in programs providing alternatives to secure detention neither committed new offenses nor ran away. The following is a summary of their study, Use of Secure Detention for Juveniles and Alternatives to its Use, which was conducted under a grant from the LEAA.

Home detention programs permit youths to reside with their parents while meeting with probation officer aides at least daily. Some jurisdictions emphasize the supervision and surveillance aspects of this approach, while others stress the service components. But all seven programs studied authorized the aides to send a youth

directly to secure detention when he or she did not fulfill program requirements such as daily contact with the aide, or attendance at job or school. Programs studied were Community Detention of Baltimore; Outreach Detention Program of Newport News, Virginia; Non-Secure Detention of Panama City, Florida; Home Detention of St. Joseph/Benton Harbor, Michigan; Home Detention Program of St. Louis, Missouri; Community Release Program of San Jose, California; and Home Detention Program of Washington, D.C.

Attention Homes are group homes usually housing between five and twelve juveniles plus one set of live-in house-parents. Frequently the home is a converted single family dwelling in a residential neighborhood so that the juveniles can continue attending their schools. Social service workers are often available to the juveniles and to the adults providing care. The research team studied Discovery House Inc. of Anaconda, Michigan; Holmes-Hargadine Attention Home of Boulder, Colorado; and Attention Home of Helena, Montana.

Runaway programs are also group residences, but they differ in certain respects from each other and from the attention homes. Amicus House of Pittsburgh is designed for runaway youths from that area. Admission is not limited to juveniles referred from detention intake, and the program emphasizes intensive counseling to resolve immediate crises, followed by referrals for longer-term help if needed. In contrast, Transient Youth Center of Jacksonville, Florida is geared to youths who are primarily from other states and who are brought in by police and court officials. Youths usually only stay a short time since the primary goal is to help them return to their natural parents.

Private residential foster homes can be quite different from one another. For example, the Proctor Program in New Bedford, Massachusetts is run by a private social work agency. It pays single women aged 20-30 to take one girl at a time into their homes for 24-hour care and supervision while agency staff develop full treatment plans. In contrast, the program studied in Springfield, Massachusetts is a network of foster homes (two beds each), two group homes (five beds each), and a "receiving unit" group home (four beds). Besides the foster parents and group home parents, a small number of professional staff provide counseling and advocacy services. This relatively extensive program was credited with helping Springfield to have a very low detention rate for a city its size.

Program Results. For the 14 programs studied the "failure rates"--i.e., proportions of youths allegedly committing new offenses or running away while in the program--ranged from 2.4% to 12.8%.

None of the four types of programs was associated with consistently better or worse failure rates, and "similar programs can produce different results" in different contexts, according to the study.

The researchers concede that their "failure rates" are open to challenge by those who claim that in home detention programs any juvenile referred to secure detention represents a "failure."

If this criterion were used, the failure rates for the seven home detention programs in this study ranged from 8.1% to 24.8%.

Recommendations Offered. Young and Pappenfort offer several conclusions for the benefit of communities considering alternatives-to-detention programs, among them the following:

--Since overuse of secure detention continues in many parts of the country, the main alternative should not be another program. A large proportion of youths should simply be released to their parents or guardians to await court action.

--The various program formats appear to be roughly equal in their ability to keep their charges out of trouble and available to the court.

--The higher rates of failure appear to be due to factors outside the control of program employees, such as excessive lengths of stay caused by slow court processing.

--Residential programs, i.e., group homes and foster homes, are being used successfully for both alleged delinquents and status offenders.

--The attention home format seems well suited to the needs of less populated jurisdictions, where separate programs for several special groups may not be feasible. It is also suitable for a mixed population of alleged delinquents, status offenders, and others.

--A range of types of alternative programs should probably be made available in jurisdictions other than the smallest ones.

--Even when alternatives are available, certain courts are "unnecessarily timid" in defining the kinds of juveniles to be assigned to them.

In the state of Michigan, and in Spokane, Washington, highly successful crisis intervention programs have been developed involving round-the-clock intake services.

In Michigan, skilled professionals, youth attendants (individuals recruited from the community to work on an hourly basis), and foster parents combine to provide emergency care for serious offenders awaiting court appearances. In 1978, this program placed 1,300 youths in 32 separate foster homes, and had a truancy rate of only 10 percent.

Spokane's program uses a team of professionals and paraprofessionals who provide an alternative to juvenile court intake 24 hours a day, 7 days a week. On call to the police, the team goes wherever a family crisis involving a juvenile has developed, and attempts to stabilize the crisis situation. Where necessary, the team makes referrals to community agencies, and follows up on their outcome. In four months, this program reduced the number of status offenders referred to juvenile court by 60%. And in fact,

placement in shelter facilities was not needed as much as expected, since often the crisis intervention was enough to handle the problem.

There will continue to be a steady, if irregular need for secure detention for some juveniles charged with serious offenses. But isolating juvenile offenders into substandard living conditions in adult jails will not answer that need. Nor will the indiscriminate use of a separate secure detention facility. There must be flexibility in handling juvenile offenders, so that the number of juveniles in secure settings, including adult jails and lockups, is reduced. This can be accomplished through the use of specific criteria for release or detention, 24-hour intake screening, next-day court appearance, regular review of all detention cases, and a network of alternative programs.

you can make the difference: how citizens can help

In this country, we often hear that, "children are our most precious resource." Yet, "Adults don't seem to like kids just now," comments Michael Dale, executive director of San Francisco's Juvenile Justice Legal Advocacy Project. "Parents, judges and legislators want to lock them up when they go wrong." "Politicians often look for simplistic solutions," according to Newsweek writers Frederick V. Boyd and Linda Walters, "but the problems involved in administering the juvenile justice system are extraordinarily complicated. The courts must deal with two kinds of youthful lawbreakers: the basic criminal types who rob and murder, and the mixed-up kids (status offenders) who run away from home or become truants." Children's Defense Fund Director, Marion Wright Edelman, notes that, "for too long policy-makers have paid attention only to special interest lobby groups and no attention to the needs of children who don't vote...advocates for children have been viewed as soft, unorganized, uncoordinated, and not much to worry about. This has resulted in children's needs being last on everybody's totem pole."

But the indiscriminate jailing of children can be stopped. Concerned citizens, acting independently and through organized groups, can become a powerful force in promoting public interest and support for the removal of children from adult jails and lockups. The target for their efforts must include not only jails and jailers, but the system which involves all who use jails or who, by inaction, permit this abuse to continue. Citizen groups can press for more effective, humane, less costly alternatives to secure detention, and not submit to those who wish to place children in adult jails.

Chief Justice Warren Burger, speaking before the National Conference on Corrections, stated:

> ...it is my deep conviction that when society places a person behind walls, we assume a moral responsibility to try to change and help that person. The law will define legal duties but I confess I have more faith in what a moral commitment of the American people can accomplish than I have in what can be done

by the compulsion of judicial decrees.

An informed and active citizenry can:

(1) Monitor the admissions practices and living conditions in the jails and lockups in their own community and report this information to citizen groups, the public, the media, professional groups, city, county, and state officials, and other interested persons.

This includes touring the facility and asking the following questions:

--What is their physical layout: the cleanliness, the plumbing, the heating, the ventilation, and the lighting?

--What provisions are made for emergency admissions, regular medical services, and mental health services?

--What, if any, arrangements are made for keeping inmates occupied?

--Is there provision for regular out-of-door exercise, education or other recreation?

--How long are the children held in the local jails?

--Is supervision available 24 hours per day?

--Are the jails used to hold mentally ill, mentally retarded or emotionally disturbed children?

--Are the jails used to "shelter" neglected or abused children in the absence of appropriate foster care facilities?

--Are the jails used to hold children charged with status offenses, including truancy, disobedience to parents, violations of curfew?

--Does the state plan required by the 1974 Juvenile Justice Act as a condition to receiving federal grants provide for the establishment of alternative facilities, and how have they been implemented?

In Inspecting Children's Institutions, the National Coalition for Children's Justice describes methods of conducting an inspection of children's institutions, many of which are valuable in the inspection of adult jails and lockups.*

An outstanding example of how citizens can assist significantly in reducing the number of children in jails is the Alston Wilkes Society's Jail Services Committees Program, established in many areas of South Carolina. Working in conjunction with the South Carolina Youth Bureau, volunteers check the local jails twice daily to see if status offenders are being held. When status

*For more information contact the National Coalition for Children's Justice, 66 Witherspoon Street, Princeton, New Jersey 08540.

offenders are discovered, the volunteers phone the Youth Bureau. Youth workers then try to arrange emergency housing with local families, reunite juveniles with their own families, and refer the youths for day or residential counseling programs. A survey of the effects of this program in Spartansburg, South Carolina shows that, "the number of youths held in jail has been reduced 32 percent and the time they spend behind bars reduced 72 percent." There is no cost for the volunteer project.*

Partly in response to the problem of children in adult jails, the Children's Defense Fund, a Washington, D.C. based child advocacy group, is developing a "Children's Public Policy Network," at the national, state and local levels. The network will work with local child advocates in educating the public about children's needs and in making those needs known to policy makers. The network provides:

--a toll free number for child advocates who need current and accurate information on national policy developments affecting children (800/424-9602).

--information exchange and referral on positive policies, practices, programs, and activities that can be used as models.

--a series of "how-to-do-it" pamphlets for use by local child advocates in pursuing local change.

--technical assistance by fulltime network staff to bolster the effectiveness and coordination of groups and individuals.

--policy briefings on federal developments of importance to children and families.

The aim of the Children's Defense Fund is to keep children in the home by resolving family or parent/child problems, so that institutionalization becomes unnecessary. The Children's Defense Fund publication, Children in Adult Jails, provides a complete checklist of practices and policies related to the jailing of children.**

(2) Participate in state and local planning efforts to remove juveniles from inappropriate confinement, including adult jails and lockups.

The Juvenile Justice and Delinquency Prevention Act mandates that each state receiving funds under the Act establish an advisory group in juvenile justice and delinquency prevention, which may:

...participate in the development and review of the state's juvenile justice plan;

*For more information contact the Alston Wilkes Society, P.O. Box 363, Columbia, South Carolina 29202.

**For more information contact the Children's Defense Fund, 1520 New Hampshire Avenue, N.W., Washington, DC 20036.

...advise the state planning agency and its supervisory board;

...advise the Governor and the legislature on matters related to its functions, as requested;

...have an opportunity for review and comment on all juvenile justice and delinquency prevention grant applications;

...be given a role in monitoring state compliance with requirements to deinstitutionalization of status offenders and removal of juveniles from adult jails and lockups, advising the state planning agency on the composition of the state supervisory board and maintenance of effort and the review of the progress and accomplishments of juvenile justice and delinquency prevention projects funded under the comprehensive state plan.

The Act requires the advisory group to be appointed by the chief executive of the state, with the stipulation that a majority of members, including the chairperson, not be full-time employees of the federal, state or local governments.

Many cities, counties, and governmental agencies establish similar advisory groups at the local level, or temporary task forces with specific objectives. For example, thirteen members of the West Virginia State Advisory Group conducted on-site inspections of 55 county jails to examine living conditions, the extent to which juveniles were being held in these facilities, and the degree of contact between juveniles and adult offenders. The members worked in teams and completed all inspections in a 60-day period. The quality of the information was good, serving as the basis of the State Monitoring Report to the Office of Juvenile Justice and Delinquency. Total cost was $1000 and each of the SAG members felt it was a valuable experience which provided first-hand information on the problems of children in adult jails.

In Lexington, Kentucky, the Fayette County Juvenile Justice Coalition was formed in response to a court order prohibiting the use of the county jail for juveniles. Composed of citizens and professional organizations, the Coalition was instrumental in planning alternative programs to adult jails.

(3) Mobilize existing groups with an interest in juvenile justice and delinquency prevention on the issue of children in jails.

Groups such as service clubs, professional and fraternal organizations, business associations, labor unions, and private child advocacy groups have contributed long hours of voluntary services as well as organizational influence to create change in the criminal justice system at all levels.

The Association of Junior Leagues, Inc., has produced a guide for citizens who want to im-

prove criminal justice procedures and resources. This "how-to" handbook is based on a two-year study of 50 individual Junior League projects and offers case studies of eight of these. The handbook was produced with the aid of a grant from the Law Enforcement Assistance Administration.*

The National Council on Crime and Delinquency and the Community Services Department of the AFL-CIO have cooperated in establishing educational programs to acquaint workers with the criminal justice system in their communities.

The Florida Center for Children and Youth conducted a statewide examination of admission procedures, living conditions, and detention practices in the state's adult jails and lockups. They discovered many factors which perpetuated the jailing of children, enabling them to make inexpensive but high impact recommendations to the state legislature, state agencies, and jail officials.

(4) Volunteer to work on programs for juveniles which present alternatives to jails and detention centers.

Nationally, there are noteworthy programs where volunteers help provide alternatives to adult jails and other types of secure detention.

When Florida prohibited the detention of status offenders, the Division of Youth Services developed a system of volunteer coordinators to recruit foster parents, plan and implement funding, and organize volunteers to assist these children. Foster parents are interviewed, carefully checked for qualifications, and approved by the court in a formal ceremony. There are now 900 volunteer foster homes in the program--which provides youngsters comfortable place to stay, with little stigma attached, at a cost of about $4.75 a day. The keystone of the program is the volunteer coordinator, who keeps in constant contact with the family, lending both real and moral support.

conclusion

A recent book, The Value of Youth: A Call for a National Youth Policy, ed. by Arthur Pearl, J. D. Grant, and Ernest Wenk, looks at youth as an effective force for solving problems they create primarily through projects involving youth participation. It examines promising programs through which young people are helping to improve their communities, and calls for a positive federal youth policy in which "youth are seen as resources rather than as problems to be solved by adults."

Children are our most precious resource. Rather than locking up wayward children in adult jails, and throwing away the key, we must see the humane treatment of children as the key to a healthy society.

*For more information, contact Impact Project Director, the Association of Junior Leagues, Inc., 825 Third Avenue, New York, New York 10022.

An Alston Wilkes Society volunteer tells us about a twelve-year-old boy being taken to a volunteer emergency home after spending several days in jail:

> He had been found by a motel owner asleep behind the ice machine to keep warm. The owner called the police who put him in a cell for lack of an alternative. The counselor who was taking the boy to the emergency home had a bumper sticker on his car which said, 'Runaway children don't belong in jail.' The boy stopped, read the bumper sticker and became very serious. He turned to the counselor and said, 'Thank you.'

While clear and concise state legislation is the foundation for a prohibition on jailing children, experience indicates that it does not eliminate the practice. Only an informed and concerned citizenry can stop the indiscriminate jailing of children and put an end to the revolving door of child abuse, delinquency, incarceration, and crime.

Juvenile Justice Amendments

--Hon. Ray Kogovsek

Mr. Speaker, I submit this series of questions and answers regarding section 223 of H.R. 6704, the Juvenile Justice Amendments of 1980, requiring that all juveniles not be detained in jails and lockups. H.R. 6704 is expected to come before the House in the very near future and I believe this information will be helpful to my colleagues at that time:

Questions and Answers Regarding the Removal of Juveniles from Adult Jails and Lockups.

A major consideration in the 1980 reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974 is an amendment which would require that States participating in the Act's formula grant program agree not to detain or confine juveniles in adult jails or lock-ups after five years from approval of the amendment. The amendment responds to the enormous human costs and operational inefficiencies which results from the detention of juveniles in adult facilities. Support for the removal of juveniles from adult jails and lock-ups is pervasive and longstanding among juvenile justice practitioners and citizen advocates. The purpose of this paper is to respond to the following questions which have been raised regarding the amendment and the need to remove juveniles from adult jails and lock-ups as proposed by H.R. 6704 as reported.

1. What Is An Adult Jail Or Lockup?

1. A jail is a lock facility, administered by state, county, or local law enforcement or correctional agencies, the primary purpose of which is to detain individuals charged with violating the criminal law prior to trial. (Jails are also used to hold convicted offenders, usually those sentences to serve a term of less than a year.)

A lock-up is similar to a jail except that it is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

2. How Many Childre Are Held In Adult Jails and Lockups Each Year?

2. It is conservatively estimated that 500,000 children are detained in the Nation's jails and lock-ups each year. Precise national information on the numbers and characteristics of those held are unavailable because of different definitions of "juvenile" used by various states, differences in sample sizes, and the confidentiality of juvenile records. In addition, facilities holding persons less than 48 hours are not included.

3. Why Are Children Jailed? With What Offense Are They Charged?

3. Nine percent are charged with crime to a person; 69 percent are charged with property offenses; 18 percent are status offenders (runaways, truants); 4 percent have been charged with no offenses.

Eighty-three percent of those jailed are male, 17 percent female. Eighty-one percent of those jailed are whilte, 19 percent non-white. The average child's stay in jail is 4.8 days.

The more serious an offense, the less frequent the involvement of juveniles. Only 6.1 percent of arrests for violent crimes in 1976 were juveniles under age 15; only 22 percent were juveniles under age 18. Only 4 percent of the total number of juveniles arrested are charged with violent crimes. Thus, only a small number of those children now jailed actually need this level of security because they are likely to run, likely to commit a new offense, or failure to appear.

4. What Happens To Children In Adult Jails and Lock-ups?

4. The following harms to children in adult jails and lock-ups have been documented:
-Rape, physical assault, exploitation, and injury by adults in the same facility or staff;
-Isolation in maximum security cells or drunk tanks, with sensory deprivation;
-Emotional stress (demonstrated by a suicide rate for children in adult facilities seven times the rate for children in juvenile detention facilities);
-Failure to provide services to meet the needs of juveniles;
-Negative labeling as a result of the first placement decision;
-Negative impact on preparation of defense;
-Adverse impact on a judge's decision to release a child to a non-secure post-trial setting.

Jails and lock-ups have been constructed for adults; they were not intended for children and staff is not trained to deal with children.

5. Does Current Law Permit The Jailing Of Juveniles?

5. Each state may establish its own criteria for incarceration of juveniles, subject to general constitutional constraints. Those

States which participate in the Juvenile Justice and Delinquency Prevention Act have agreed that juveniles alleged to be delinquent, status offenders, and non-offenders shall not be detained or confined in any institution in which they have regular contact with adults convicted of a crime or awaiting trial on criminal charges. Thus, juveniles may be placed in jails or lock-ups if no regular contact.

State statutes may limit the admission of certain juveniles to adult jails or lock-ups. Common requirements relate to age, offense, time held, or other available alternatives.

Connecticut, Maryland, Mississippi, Pennsylvania, Rhode Island, Washington, and the District of Columbia have the strongest prohibitions against the jailing of juveniles.

6. What Does "No Regular Contact" With Adults Mean With Regard To Jails And Lockups?

6. "No regular contact" does not mean complete removal, although removal is encouraged. The current position of the Office of Juvenile Justice and Delinquency Prevention is that section 223(a)(13) of the Juvenile Justice and Delinquency Prevention Act requires, at a minimum, sight and sound separation of adults and juveniles in all institutions, including jails and lock-ups.

7. How Is Sight And Sound Separation Of Juveniles And Adults Implemented In Jails and Lockups? Why Isn't It Considered Adequate?

7. Jails, having been built for adults who have committed criminal acts, do not provide an environment suitable for the care or keeping of delinquents or status offenders. Many states have interpreted the level of separation required for compliance with the law to justify isolation of juveniles in adult facilities under the guise that they are technically separated by sight and sound. Adequate separation as contemplated is virtually impossible in most existing jails and lock-ups. Juveniles are often placed in the most undesirable parts of the facilities, such as solitary cells and drunk tanks. There is no guarantee that children held in jails, even though separated from adults will receive even minimal services required to meet their special needs.

The separation of juveniles and adult offenders in most of the nation's jails and lock-ups is very costly to achieve and may be architecturally impossible. Overcrowding is exacerbated by sight and sound separation.

8. What Is The Court's View Of The Jailing Of Juveniles?

8. There have been a growing number of court decisions holding that the jailing of juveniles constitutes either cruel and unusual punishment or a denial of due process. The U.S. Supreme Court has never squarely ruled on this issue, but there has been a growing recognition that individuals involuntarily committed to institutions have a right to treatment.

9. What Has Been The Experience Of Jurisdiction Which Require The Removal Of Juveniles From Adult Jails and Lockups?

9. Pennsylvania enacted a total prohibition on the jailing of juveniles in 1977, effective in 1980. This is a model for other states. It provided a period of planning to remove juveniles and set up a system of State subsidized "negative" incentives. Utah, Oklahoma, Louisiana, and Michigan have each found that the number of secure beds for juveniles can be substantially reduced and that complete removal of juveniles from adult jails and lock-ups is more cost effective than adequate sight and sound separation.

10. What Specifically Does The Amendment Propose?

10. The amendment currently included in H.R. 6704 adds to the Juvenile Justice and Delinquency Prevention Act, as a condition of assistance, a requirement that each State plan for formula grants provide that, beginning 5 years after enactment of the amendment, no juveniles shall be detained or confined in any jail or lock-up for adults. When enacted, a State need not immediately remove all juveniles from jails, but just must start planning for removal in 5 years. An additional 2 years can be granted if there is substantial compliance. Juveniles may be held for a short period for identification and placement, even after fully implemented.

11. Is This An Effort By The Federal Government To Direct State Action?

11. This is not Federal compulsion, but leadership in a major reform. Each state has the option of agreeing to removing juveniles from adult jails and lock-ups. If the State so agrees, Federal funds are available to help achieve the objective.

12. How Much Does It Cost To Hold Juvenile In Jail? How Much Would It Cost To Remove Them And Implement The Amendment? Where Would The Money Come From?

12. The American Justice Institute estimates that merely jailing a juvenile, without providing the necessary services, costs $24 a day. Home detention ($14), attention homes ($17), and small groups homes ($17) are less costly alternatives that provide services. Secure detention with full services would cost $61 per day per child.

Using these figures, the number of juveniles (as defined by State law), and the average time held, it is estimated that current costs over a two-year period are about $24 million If complete sight and sound separation were attempted in existing facilities, the two year cost would be $36 million. If, however, objective release/detention criteria are implemented and those not needing secure detention, are placed in less restrictive alternatives, while those who need secure detention are placed in adequate facilities, the two-year cost would be $28 million.

Planning and implementation of screening criteria would reduce or eliminate the need

for new capital construction. Each new bed costs about $41,600. Renovation to provide sight and sound separation with adequate living conditions is equal to or slightly more expensive than new construction.

The funding assistance necessary to implement the amendment may be provided under the Juvenile Justice Act through several mechanisms. Because status offenders will soon be deinstitutionalized formula grant funds will be available. Additional discretionary funds can be used for these purposes. Technical assistance and training will also be provided.

Jurisdictions should realize a net savings, both in economic and human costs, by removing juveniles from adult jails and lock-ups.

These estimates do not include the saving realized from removing from jail (actually diverting) those who are now held less than 48 hours.

13. What Alternatives To Jail Are Available?

13. Objective screening procedures and detention/release guidelines have been shown to significantly reduce the detention rate of juveniles without significantly impacting on the re-arrest rate or rate of appearance for trial. Assuming such practices are implemented, there are many models for alternatives placements. Included are Night Intake Projects, Youth Attendent Programs, Home Detention Programs, Attention Homes, Runaway Homes, Residential Foster Homes, Reception/Diagnostic Centers, Holdover Facilities and Juvenile Detention Centers.

14. Haven't Most States Made A Big Investment In Sight And Sound Separation That Would Be Wasted If The Amendment Is Approved?

14. It is difficult to determine the actual investment, however, it appears that little would be wasted. Most renovation funds have been used to improve basic living conditions and in already separated areas. No jails have been constructed for the purpose of achieving sight and sound separation. The majority of construction has been in response to litigation and the inclusion of a juvenile area was incidental. Juvenile areas could be used for others, helping reduce overcrowding.

15. Won't A Large Capital Outlay Be Required To Remove Juveniles From Adult Jails? With The Existence Of More Facilities, Won't More Children Be Incarcerated?

15. The intent of the amendment is to reduce, not increase, the overall number of children incarcerated each year.

It is widely recognized that approximately 10 percent of all juveniles detained actually require secure detention. With the establishment of objective intake criteria, the need for secure beds is reduced so significantly that there is no justification for constructing a new facility. Existing appropriate settings can be used to handle the small number of juveniles requiring short term detention.

If a jurisdiction decided to develop a facility for those few who require secure holding, established procedures are available to assure that the bed space provided corresponds to the bed space needed.

16. Don't The Conditions Of Jails Deter The Jailing Of Juvenile?

16. The existence of jails with conditions documented as being harmful to children has not served as a deterrent to an estimated 500,000 juveniles being placed in jails and lock-ups for adults each year. Without objective and specific release/detention criteria, it is likely that those making the placement decision will take the easiest course of action.

17. Since The Amendment Only Applies To Jails And Lockups, Will It Lead To More Juveniles Being Placed In Other Facilities, Or The Imposition Of Longer Sentences?

17. When a requirement was enacted that all status offenders be deinstitutionalized, some expressed fear that these children would be recharged as criminals to justify their incarceration. This has not happened, and should not happen with the jail removal amendment. States have statutory criteria and sanctions to enable waiver to criminal courts. These are based on the offense, not availability of bed space. A hearing must be held and judicial determination made. Thus, a juvenile couldn't be jailed based on the arresting officer's beliefs that a juvenile may be later charged as an adult and waived.

18. What Happens Under The Amendment To Juveniles Who Commit Serious Crimes Against Persons Or Are Chronic Offenders?

18. The House Report on H.R. 6704 indicates that the prohibition on placing juveniles in jails and lock-ups extends to a juvenile who may be subject to the exercise of juvenile court jurisdiction for the purposes of adjudication and treatment based on age and offense limitations established by state law. If a juvenile is formally waived or transferred to a criminal court by a juvenile court and criminal charges have been filed, or a criminal court with original or concurrent jurisdiction over a juvenile has formally asserted its jurisdiction through the filing of criminal charges against a juvenile, the prohibition no longer applies.

A Court order does not change youths into adults. They still need the same treatment and services that other children do. Because the adult criminal justice system is not suited to the needs of children, placement of any person under age 18 in adult facilities should be done only where clearly justifiable.

19. Won't The Amendment Impact The Hardest On Rural Areas? What Can Be Done To Meet The Special Requirements Of Rural Areas With Respect To This Amendment?

19. The implementation of objective and specific release criteria can reduce the rate of detention in both rural and urban settings without a significantly higher rate of rearrest or failure to appear for court hearings.

Almost 400 existing juvenile detention centers are located within 75 miles of 80-90 percent of the Nation's population. The need for secure detention of juveniles in more rural areas is minimal and, for the most part, cannot justify the development of a separate detention facility. Typically, such areas may have the need for secure detention services on 30 to 60 days a year.

Contractual around-the-clock supervision can be provided for short-term holding in available facilities. In some instances, transportation costs for a limited number of trips to more distant full-service facilities will be less costly than providing full services. The use of distant, full-service detention centers for rural areas of Maine, Utah and Michigan has been operated in a cost effective manner for many years. In rural Kansas, the municipal lock-up is designated as the juvenile detention facility with the county jail used to house adult offenders only. Youths are held up to 72 hours, supported by 24 hour attendants.

20. Why Is A New Provision Being Proposed When Only A Few States Are Now In Compliance With Sight And Sound Separation?

20. The reason only 15 States report compliance with sight and sound separation has been the difficulty involved. Fewer juveniles are being detained, but sight and sound separation has been particularly hard to accomplish in jails and lock-ups. Faced with large additional costs for renovation, those in charge of jails end up isolating juveniles in undesirable areas and fail to provide minimal services. Sight and sound separation is also an enormous operational problem for officials.

Because sight and sound separation with suitable living conditions means an enormous expense with questionable results, every jurisdiction which has carefully studied its options has decided complete removal is the best alternative.

21. What Organizations Support Removal From Adult Jails And Lockups?

21. While not all addressing the specific amendment, many groups have called for removal of juveniles from all adult jails and lock-ups, including the U.S. Department of Justice, President's Commission on Law Enforcement and Criminal Justice (1967), American Bar Association and Institute for Judicial Administration, National Council of Juvenile and Family Court Judges, National Advisory Committee on Criminal Justice Standards and Goals, and Los Angeles Times (Editorial of March 28, 1980).

All members of the National Coalition for Jail Reform support removal of juveniles from jails and lock-ups. Members include: American Correctional Assocation, ACLU, National Assoc. of Counties, National League of Cities, National Center for State Courts, National Sheriff's Association, National Urban League, NLADA, Jail Managers Association, NCCD, Criminal Justice Planners, and 16 others.

* United States Government Printing Office:1980--311-379/1432

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