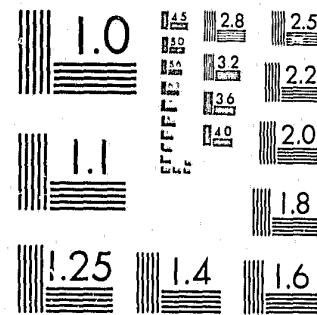


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# JUVENILE INJUSTICE

## The Jailing of Children in Florida

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THE JAILING OF CHILDREN IN FLORIDA

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The jailing of children has long been criticized due to the dangers 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 poorly maintained facilities are inappropriate 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.

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 Juvenile Justice and Delinquency Prevention Act (JJDPA) 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 adults 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.

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 study 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 study had 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 interview jail administrators personally, concerning procedures they followed for handling juveniles during every activity at the jail.
- (3) Interviews with children--Children who had previously been held in an adult jail were interviewed concerning their jail experiences.

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 interviews. On an annual basis, therefore, it may be estimated that several thousand juveniles temporarily were 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 to 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 the Department of Health and Rehabilitative Services (DHRS) detention facilities. Such transfers are permitted if the supervisor of the juvenile 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 to 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 pretrial 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 JJDP is in jeopardy.

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 are 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 physical 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 comply with minimum statutory requirements for separation and supervision held 405 juveniles during the three months of the survey.

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

First, many jailers were unaware of state laws requiring that all juveniles be housed separately from adults. Second, 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 separate juveniles from adults adequately, and still maintain acceptable housing conditions, construction of separate facilities or sections for juveniles would be necessary. However, attempting to renovate or build

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

additional sections for all jails not providing adequate supervision would be infeasible, as costs to cities and counties would be exorbitant.

The fact that jails in Florida have failed to separate juveniles from adults adequately 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. 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 noncompliant jails to court.

In May, 1979, a class-action suit, Arias v. Wainwright was filed in U.S. District Court to address problems within Florida's jails. The suit alleged that the Secretary of the Department of Corrections had failed to carry out his statutory duty to develop and enforce jail rules which meet minimum constitutional standards. In May, 1981, D.C. fully revised their rules for jails operations. In June, 1981, a partial settlement was reached in the Arias case. This settlement states that D.C. shall conduct "exacting, comprehensive and adequately documented" inspections of each jail in Florida at least twice annually. Additionally, D.C. "shall vigorously, promptly, effectively and thoroughly enforce...all jail rules and standards."

In order to monitor the stipulations of this settlement, the court appointed the attorneys for Arias as compliance counsel. They have the authority to monitor jail conditions, and will be awarded fee payments, if it become necessary to force D.C. to comply with the settlement of the case. This settlement, however, does not address the quality and constitutionality of the current D.C. regulations. Further action in court must be generated to address the deficiencies of the newly adopted rules for jails.

A glaring deficiency in the current D.C. jail rules is a neglect of the statutory mandate to separate juveniles and adults within jails. Florida Statute S39.032(5)(b) states that "the receiving facility (adult jail) shall contain a separate section for juvenile offenders...." While clearly stated in the law, this requirement for a separate section for juveniles is not translated into a D.C. jail rule. Although the current inspection report form does ask whether the facility has a separate action for juveniles, the absence of a rule to this effect brings the legitimacy of a negative inspection report into question.

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 being held currently in Florida jails, and the numbers are increasing. This increase of juveniles in jail populations indicates that more children will be enduring jail confinement, and the current inability of local jails to separate and supervise, 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 1980, Florida's system found it necessary to transfer 2,699 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) Permitting transfers from juvenile detention to adult jails.

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 boards of county commissioners of the 67 counties revealed that only nine had ever received information on jail placements. As a means for 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--provision of information--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 youths 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 inconsistencies makes compliance difficult to achieve.

Current laws which allow juveniles to be placed in jail 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 ineffective.

Consequently, the only feasible 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 overcrowding in detention facilities. Further, courts should assure that cases are processed expeditiously 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.

**END**