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REAUTHORIZATION OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON JUVENILE JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

TO

'HE CONTINUED DETENTION OF JUVENILES IN ADULT JAILS AND LOCK-UPS

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REAUTHORIZATION OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

THURSDAY, FEBRUARY 24, 1983

U.S. SENATE,
SUBCOMMITTEE ON JUVENILE JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:03 a.m. in room SD 226 of the Dirksen Senate Office Building, Hon. Arlen Specter (chairman) presiding.

Present: Senator Specter.

Staff present: Mary Louise Westmoreland, counsel; Ellen Greenberg, professional staff member.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, CHAIRMAN, SUBCOMMITTEE ON JUVENILE JUSTICE

Senator SPECTER. Good morning, ladies and gentlemen. This hearing of the Juvenile Justice Subcommittee of the Committee on the Judiciary will proceed at this time.

The purpose of this hearing is to inquire into the continued detention of juveniles in adult jails and lockups. An original mandate of the Juvenile Justice and Delinquency Prevention Act was to separate juveniles from adult offenders in secure facilities. Though a stated objective of the juvenile justice system for many years, this mandate has not yet been achieved in the United States. We have circumstances in this country today where some 500,000 juveniles are detained in facilities used to house adults. Many of these juveniles have been charged with no criminal offense at all and are merely status offenders or have been abandoned or neglected. The circumstances of such detention have regrettably been very unfortunate for many, many juveniles.

Beyond the issue of juveniles who are held in detention where they have been charged with no crime, there are many juveniles who are imprisoned with adult offenders. Such inappropriate placement may result in the institution becoming a breeding and a training ground for further criminal activity on behalf of the juveniles.

It is well known that juvenile offenses account for an enormous body of crime in the United States and that juveniles may graduate to become adult career criminals. The placement of juveniles with adult offenders is doubtless a significant, if not a major, cause of juvenile crime and later adult crime. Moreover, the commingling

of status offenders and neglected or abandoned juveniles with adult offenders may serve as a breeding ground to train otherwise innocent children in ways of criminal conduct, causing much crime and contributing to the enormous crime problem in this country.

Legislation has been introduced on these subjects in the U.S. Senate, and today's hearing is a continuation of our effort to find out what is going on in institutions in this country as they affect juveniles and as they have a greater impact on juvenile crime and adult crime.

There is an extensive opening statement which has been prepared, which, without objection, will be inserted at this point in the record.

[The prepared statement of Senator Specter follows:]

PREPARED STATEMENT OF SENATOR ARLEN SPECTER

A principal mandate of the Juvenile Justice and Delinquency Prevention Act is the removal of juveniles from adult jails and lockups by 1985.

It is undeniable that we have, under the Act, begun the process of removing children from jails. It is equally undeniable that almost half a million children each year continue to be incarcerated in adult jails and that many, as a result, suffer physical and psychological abuse. Accordingly, on February 17 I introduced the Juvenile Incarceration Protection Act to prohibit in all states the incarceration of juveniles in adult jails.

The most recent studies indicate that almost 500,000 juveniles are held in secure detention each year in almost 9,000 different adult jails and lockups. Only 14 percent of these juveniles were held for serious criminal offenses.

This problem has been with us for hundreds of years. In the distant past we were ignorant of the consequences of jailing juveniles with adults. We did not realize that this particular solution to attempting to control children and their delinquent behavior was, in fact, exacerbating the situation. As long ago as 1899, however, with the founding of the first juvenile court in Chicago, knowledgeable citizens, youth workers, correctional officials, and political leaders have called for the complete removal of juveniles from adult jails. In 1961 the National Council on Crime and Delinquency declared:

> 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.

Since then dozens of national organizations have taken similar positions including the American Bar Association, the American Correctional Association, the National Urban League, the American Public Health Association, the National Youth Work Alliance, the National Association of Counties, the National League of Cities, and perhaps most significantly, the National Sheriff's Association. These organizations and dozens more have joined together to form the National Coalition for Jail Reform. Such a wide-ranging coalition was in large part responsible for convincing Congress to clarify in the 1980 amendments to the Juvenile Justice and Delinquency Prevention Act that removal means more than sight-and-sound separation.

During the past several months the Senate Subcommittee on Juvenile Justice has conducted an extensive investigation into the operation of State-run juvenile institutions in one of the six States not participating in the Juvenile Justice and Delinquency Prevention Act. One of the clearest patterns of abuse to emerge from interviewing juveniles incarcerated in these institutions, typically at first for no crime at all, was that they had been in adult jails. Almost all of the juvenile witnesses interviewed at length by the Subcommittee's staff had been in at least one adult jail. Three of the four juvenile witnesses who came to Washington to appear before the Subcommittee had been held in adult jails. One young man even complained of being sprayed with mace by a jailer while locked in his cell.

In further investigating this fact, the Subcommittee discovered that the incarceration of juveniles in adult jails does not occur solely or even principally in the six nonparticipating states.

For example, on May 31, 1982, Christopher Peterman, age 17, was tortured and murdered in Boise, Idaho. Mr. Peterman's offense was that he owed $73 in traffic fines. For 4½ hours he was beaten and toilet paper was stuffed between his toes and lit on fire. He was beaten in his cell which he shared with five other youths. He was beaten in the exercise yard in view of many adult prisoners. All five of his cellmates have been charged with murder. During these hours of sadistic torture the staff of the undermanned jail apparently only strolled through every few hours. Later it was learned that another youth, Richard Yellen, was beaten by three of the same people in the same cell 2 weeks earlier. After being treated in a Boise hospital Mr. Yellen was returned to the same cell.

The problem here is not just that we have a poorly run jail but the very fact that there were any juveniles in there at all. A properly run and staffed juvenile detention facility would have spared the Boise community seven casualties -- one dead, one badly beaten, and five charged with murder.

Another tragedy unfolded in an adult jail in Ironton, Ohio, during a February 1981 weekend. Two 15-year-old girls ran away from home, taking a family car. Picked up by the police 600 miles from home they returned voluntarily. Over the objections of their parents they were placed in an adult jail for the weekend. This was in keeping with Juvenile Judge Lloyd W. Burwell's conviction that he could make "kids be good" with time in the county jail. During the weekend the two girls were sexually assaulted by a jailer and male prisoners. When the incident came to light one girl's

father sued Lawrence County and the judge settled, and agreed to pay $37,000 in damages before trial. In another case involving the same judge a 16-year-old boy committed suicide while held in the Lawrence County adult jail.

The judge discounted both the sexual assaults and the suicide as out of the ordinary. For the suicide at least, it is all too ordinary for juveniles in adult jails. The suicide rate of juveniles in adult jails is, according to a recent study commissioned by the Office of Juvenile Justice and Delinquency Prevention, 4.6 times higher than in the general youth population. The key variables are neither arrest nor incarceration. The suicide rate of youth in juvenile detention centers is considerably lower than in the general population and only one-tenth the suicide rate of juveniles in adult jails.

In August of 1982 the U.S. District Court for the District of Oregon held that constitutional rights of juveniles were violated by confinement of juveniles in adult jails. In particular, the court found that juvenile pretrial detainees were being confined in a manner that resulted in punishment stemming from failure to provide "any form of work, exercise, education, recreation, or recreational materials;" "minimal privacy when showering, using toilets, or maintaining feminine hygiene;" "staff supervision to protect children from harming themselves" or others; failure "to allow contact between children and their families;" and by placing "intoxicated or drugged children in isolated cells without supervision or medical attention," among other practices. As the judge observed:

> A child who has run away from home or is out of parental control is clearly a child in distress, a child in conflict with his family and his society. But nobody contends he is a criminal ...No child who is a status offender may be lodged constitutionally in an adult jail.

The witnesses at our hearing today are well qualified to address this issue -- our first panel includes two young people who have been held in adult jails on noncriminal charges -- 15-year-old Greg Horn and 17-year-old Daytona Stapleton. Joining Greg, Daytona and their mothers will be Mark Soler, Director of the Youth Law Center.

Our next panel will include Deputy Warden John Masters from Chester County Pennsylvania and Sheriff John Turner from Henrico County, Virginia.

Our final panel will consist of Jim Brown who performed a comprehensive study for the Office of Juvenile Jsutice and Delinquency Prevention on the costs of removal and Robert Shepherd, Professor of Law and Director of the Youth Advocacy Clinic, T.C. Williams School of Law, University of Richmond.

Senator SPECTER. We will now move directly to our first panel, Mark Soler, Esq., executive director of the Youth Law Center, San Francisco; and Mrs. Rita Horn and Greg Horn from LaGrange, Ky.; and Mrs. Shirley Stapleton and Daytona Stapleton from Ironton, Ohio.

We welcome you here, ladies and gentlemen. We very much appreciate your coming here to share with this subcommittee and the entire Congress the experiences which you have had which bear on this very important subject.

Mr. Soler, welcome. I would appreciate it if you would begin your testimony by outlining your own background and your specific familiarity with the juvenile issue which we are exploring here today.

STATEMENTS OF MARK SOLER, EXECUTIVE DIRECTOR, YOUTH LAW CENTER, SAN FRANCISCO, CALIF.; RITA HORN AND GREG HORN, LAGRANGE, KY.; SHIRLEY STAPLETON AND DAYTONA STAPLETON, IRONTON, OHIO

Mr. SOLER. I am the director of the Youth Law Center which is a public-interest law firm in San Francisco, Calif. For the past 4½ years, the Youth Law Center has been directly involved with the issue of removal of children from adult jails. During that time we have responded to requests for assistance in juvenile justice issues from local officials, children's advocates, and parents in more than 30 States, and we have been directly involved with investigations and requests for assistance on the issue of removal of children from jails in 19 States. I have personally inspected jails in seven States where children have been held.

So we have been directly involved in this issue for a substantial period of time, and I think have developed some expertise in that area.

Senator SPECTER. All right, would you then proceed with your testimony, please.

Mr. SOLER. Yes; perhaps I can best convey to you some of the problems of children in jail by giving you some examples, three examples that we have been directly involved in of what happened to children in jails in three different States.

ABUSE OF CHILDREN BY JAIL STAFF

In February 1981, a 15-year-old girl, who we later called Deborah Doe to protect her privacy, ran away from home in Ironton, Ohio, with a girlfriend. The girls were soon tired and out of money, and called their parents and asked to get picked up and taken home. After they were safe at home with their parents, the local juvenile court judge decided to "teach them a lesson" by ordering them into the county jail for 5 days. On the fourth night Deborah was in jail, she was sexually assaulted by a 21-year-old male deputy jailer.

Senator SPECTER. Before you move from that case, what was the facility that Deborah Doe was placed in?

Mr. SOLER. It was the county jail in Lawrence County, Ohio.

Senator SPECTER. And was that a facility which was used to house adults as well as juveniles?

Mr. SOLER. Yes, it was.

Senator SPECTER. And it was used to house women as well as men?

Mr. SOLER. That's correct.

Senator SPECTER. And do you know what the facilities were for segregating the women from the men?

Mr. SOLER. Yes; except for the trustees, the men, the regular men prisoners, were in one cell block, separated by a wall from the cell blocks that housed adult women, juvenile males and juvenile females. There was certainly no sound separation between the juveniles in the jail and the adults in the jail.

Senator SPECTER. And Deborah Doe was how old?

Mr. SOLER. She was 15 years old at the time.

Senator SPECTER. And what was the authority of the juvenile court judge for putting her in that jail, if you know?

Mr. SOLER. Yes; the petition said that she was beyond control of her parents.

Senator SPECTER. Who filed the petition?

Mr. SOLER. When Deborah Doe first left home, her parents contacted the juvenile court, and asked for advice, and the juvenile court probation officer said that they should come down and sign a runaway warrant which would allow a police officer to pick up their daughter and bring her back home. They did that. When the girl then returned home, the parents went back—went down to the juvenile court and the warrant was withdrawn. After the warrant was withdrawn, the judge on his own motion filed the petition and held her in custody.

Senator SPECTER. And put her in that institution.

Mr. SOLER. That's correct.

Senator SPECTER. Was the jailer who sexually assaulted her prosecuted criminally?

Mr. SOLER. He was prosecuted criminally; felony charges were filed against him. Pursuant to a plea bargain, he pleaded guilty to a felony, but under Ohio's shock parole provision, he ended up spending only 30 days in State prison. He then was released and left the State, and is now outside the jurisdiction of Ohio.

Senator SPECTER. All right, would you proceed with your next case, Mr. Soler?

ABUSE OF CHILDREN BY OTHER INMATES

Mr. SOLER. Yes; in May 1982, in Boise, Idaho, 17-year-old Ricky Yellen was arrested for possession of smoking tobacco. He was put in the juvenile cell in the Ada County jail in Boise. Also in the cell were four other juveniles who had been charged with a total of 50 criminal acts, including 32 felonies. Several of them had long histories of violence. Although the jail officials were supposed to check the jail at least hourly, they were nowhere to be seen when, on May 18, over a 3-hour period, the other juveniles brutally beat Ricky Yellen in his head, his stomach and his back, and forced his head down into the toilet bowl in the cell.

On May 28 in Boise, 17-year-old Christopher Peterman was arrested for failing to pay $73 in traffic tickets.

Senator SPECTER. Before you leave the Ricky Yellen case, what answer is there when a juvenile is charged? You say he was charged with smoking?

Mr. SOLER. With possession of smoking tobacco.

Senator SPECTER. Possession of smoking tobacco. Is that an offense under Idaho law?

Mr. SOLER. Yes, it is.

Senator SPECTER. For a juvenile.

Mr. SOLER. That's correct.

Senator SPECTER. What is the answer to that kind of an issue if you have a State law where a charge has been lodged against a juvenile, and he is then placed in custody with other juveniles? There you do not have a mixture of juveniles and adults. You do not have the detention of the juvenile who is simply neglected or abandoned, but you have some colorable charge. However, we may disagree with whether possession of smoking tobacco for a 17-year-old ought to justify detention. That is an issue for the State—or perhaps it isn't an issue for the State. Is that an unconstitutional charge?

Mr. SOLER. Well, the charge of possession of smoking tobacco was a status offense since he could not have been prosecuted if he was an adult. Therefore, under the Juvenile Justice Act, at least under the spirit of the Juvenile Justice Act, he never should have been held in secure detention whatsoever, let alone in a jail. In addition, under the Idaho detention statute, children are only to be detained if they are a threat or a danger to themselves or others.

Senator SPECTER. Under the Idaho law?

Mr. SOLER. Yes, that's correct. So under the Idaho law he was not an appropriate child for any sort of detention whatsoever, because he was not a danger to himself or to others.

In addition to that, Idaho has a working juvenile detention facility which is not far away from the jail. So if, for some reason which escapes me, the juvenile court judge felt that he had to be detained, he could have been detained in the detention facility which was nearby. But, of course, the appropriate thing, if the judge felt that the boy needed some help, was to put him in foster care or a shelter facility or something of that nature, some nonsecure placement, but certainly not in the jail.

Senator SPECTER. Well, what if you have a situation with slightly different facts—assume that the juvenile has been detained for some charge, say assault and battery, where he could be prosecuted, but it is a minor incident, say a fist fight and he is placed in custody with a bunch of tough juveniles.

What can be done to protect him under those circumstances?

Mr. SOLER. Well, the first thing is that the child should not be in the jail; he should be in a detention facility where there are properly trained staff and proper supervision to deal with children rather than a facility designed and created for adults.

Senator SPECTER. But this facility was for juveniles, you say.

Mr. SOLER. The Ada County jail was an adult facility.

Senator SPECTER. But the people who beat him up were juveniles?

Mr. SOLER. That's correct. Now, some of them were being prosecuted for adult crimes, and some of them were being prosecuted as juveniles. But they were all lumped together. I think it's an indication of the failure of this jail, as well as other jails, to properly classify prisoners and provide for their safety.

Senator SPECTER. Well, the problem exists on a number of levels. But when you come to the level of the juvenile who has been charged with a crime and is being detained with other juveniles who have been charged with a crime, there you have a mixture which is hard to legislate against since it turns on having proper supervision in the institution.

Mr. SOLER. Yes, I think that's true. I think though, that you can legislate against children being in jail whatsoever. And I think the problem of children being in jail leads to these kinds of problems, because the jails are simply not equipped to make proper classifications of prisoners. All corrections theory would argue that there should be proper classifications so that dangerous prisoners are not placed with nondangerous prisoners. The jails are simply not equipped to make those classifications, and when you bring a number of children in, the facilities get so overcrowded and overworked that it's impossible to make those classifications.

Senator SPECTER. All right, would you proceed, Mr. Soler.

Mr. SOLER. Yes. The second example from Boise, on May 28, 17-year-old Christopher Peterman was arrested for failing to pay $73 in traffic tickets. He was put into the same cell in which Ricky Yellen had been incarcerated and with the same other inmates. With the jail officials unaware of any problem in that cell, over a 14-hour period, from late Sunday night on May 30 until Monday afternoon on May 31, the other inmates tortured Chris Peterman, burned him with flaming pieces of toilet paper, and eventually beat him to death.

The third example I would give, in December of last year, in LaGrange, Ky., Robert Lee Horn was ordered held in the Oldham County jail——

Senator SPECTER. Before you move from the Peterman case, what is the answer there? That Peterman should not have been detained for $73 in traffic tickets, obviously?

Mr. SOLER. That's correct.

It seems an incredibly punitive response to a failure to pay parking tickets, particularly given the violent nature of those other inmates themselves.

Senator SPECTER. Well, that problem may be addressed on a number of levels. Is it constitutional for a State to detain a juvenile for traffic tickets? What do you think, Mr. Soler? The answer is probably yes on that.

Mr. SOLER. Probably yes—I don't think there is any law on it, but I think the answer is probably correct, that it is constitutional.

Senator SPECTER. So that if you put a youngster like Peterman in jail with other hardened juveniles, you can't have a Federal law which says juveniles have to be segregated from other juveniles; then it's a matter of the supervision of the institution.

Mr. SOLER. That's correct, and it certainly is unconstitutional for a local authority to put a juvenile in a facility where the child will not be safe. Every inmate——

Senator SPECTER. Well, how do you make that determination?

Mr. SOLER. Well, there certainly may be situations which are on the borderline. This one I think was a clear situation—four juve-

niles with long histories of violence, lots of priors, and a boy who comes in, actually a very small boy, comes in on a very minor kind of offense. I think that is a situation where anyone with any sort of proper training in the problems involving juveniles in correction, would know this is going to be a troubled situation.

Senator SPECTER. All right, would you go ahead with your next example, please?

SUICIDES BY CHILDREN IN JAILS

Mr. SOLER. Yes, in December 1982, Robert Lee Horn was ordered held in the Oldham County jail in Kentucky for truancy. He spent part of each day at the jail, under order of the juvenile court, from December 12 to December 16. On December 16, at approximately 11 p.m., after a dispute with his mother, Robbie was again confined in the juvenile cell on the second floor of the jail. Between 11 p.m. and 11:30, the boy committed suicide by tying one sleeve of his shirt around his neck and the other sleeve to the bars of his cell, and jumping from the top of the shower stall. The deputy jailer was on duty in his office on the first floor of the jail.

I think these incidents are examples of the ways that children may be hurt in jail, that is, they may face danger from jail staff, they may face dangers from other inmates, they may face dangers from themselves.

With me today are some people who have been intimately involved with these sorts of problems: Daytona Stapleton from Ironton, Ohio, and her mother, Shirley Stapleton, are here, and Greg Horn of LaGrange, Ky., and his mother, Rita Horn. Daytona Stapleton was locked up in the same jail in which Deborah Doe was raped, and Greg Horn was locked up in the same jail where his brother, Robbie, committed suicide.

And if I may, before the children and their mothers talk about their experiences, I would just like to put their testimony in some context by saying a few more words about our experience at the Youth Law Center with the problems of children in jail.

CONDITIONS OF CONFINEMENT IN JAILS

I have brought some photographs with me of some jails that we have looked at. I think you can tell from the photographs that the conditions in some of these facilities are absolutely abominable. The toilets are filthy, the showers are encrusted with mold and mildew, the light is often dim, and the air is often foul smelling. The children rarely have access to recreation or exercise areas or to educational programs or to staff who are trained in helping children to deal with their problems. Medical care is often inadequate, and basic screening of incoming children for medical or psychological problems is usually nonexistent. In some places children are unable to have visits or telephone calls from their parents and friends. In misguided efforts to safely separate children from adults, the children are often kept locked away in isolation cells, thus heightening their depression rather than relieving their anxiety.

Some of the conditions are truly horrifying. In one jail I visited, noisy or disruptive children were placed in the drunk tank; that is,

a room with no bed, a concrete floor, padded walls, and a hole in the floor instead of a toilet. In another jail the girls were taken to a second floor room and locked in a cage, similar to a zoo cage for wild animals, which was in the center of the room.

On one Indian reservation I saw a child in the jail had cut his wrists in a suicide attempt and had been waiting 2 weeks in the jail for psychiatric treatment.

Senator SPECTER. Do you have those photographs handy, Mr. Soler?

Mr. SOLER. Yes, I do.

Senator SPECTER. May I see them, please?

Mr. SOLER. The photographs are labelled with the name of the jail.

Senator SPECTER. You may proceed.

Mr. SOLER. The child who had tried to commit suicide by cutting his wrists was in a cell directly next to an adult male alcoholic who was moaning in delirium tremens during my entire 1-hour visit to the jail.

THE CHILDREN CONFINED IN JAILS

The question is: Who are the children who are locked up in these jails? They are in general not murderers or rapists or armed robbers; on the contrary, in our experience, the vast majority are charged with minor crimes, such as petty theft or possession of alcohol or drugs, or with status offenses such as truancy or being beyond the control of their parents.

Yet the numbers are enormous. More than 470,000 children a year are held in adult jails and lockups, according to the Community Research Center. More than 100,000 children in California alone, according to statistics from the California Youth Authority; in fact, the California Youth——

Senator SPECTER. How many in California again?

Mr. SOLER. More than 100,000 a year.

Senator SPECTER. Do you think that California accounts for 20 percent of the national problem?

Mr. SOLER. Yes.

Senator SPECTER. Why would that be? That would be a disproportionate percentage of the California population. The California population is about 10 percent.

Mr. SOLER. That's correct. I don't know the answer to that. A lot of those children are held in rural jails and it may be that that is a solution of choice in many of those rural areas.

Senator SPECTER. Do you think California juveniles are more likely to be incarcerated than the national average?

Mr. SOLER. I think they are more likely to be incarcerated; I don't think they are more likely to commit crime or dangerous crimes than children in other States.

Senator SPECTER. Well, why would California juveniles be more likely to be incarcerated?

Mr. SOLER. Well, I think there is a combination of attitudes by a number of juvenile court judges, geographical reasons, established procedures, lack of alternatives—various reasons why children are locked in jail.

Senator SPECTER. What are the geographical considerations?

Mr. SOLER. That there are a lot of rural areas where the local officials feel there is simply no place to put the children——

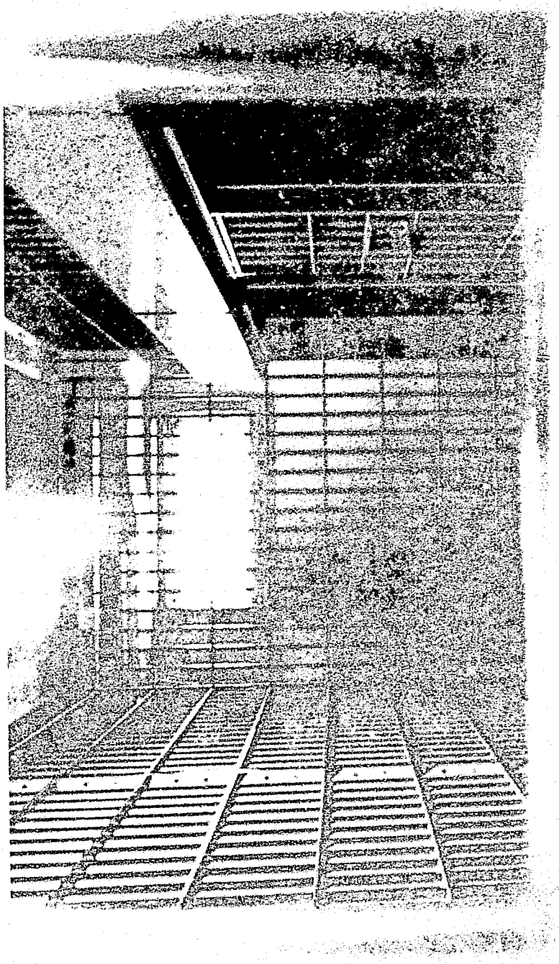
Senator SPECTER. No more rural areas in California than in North Dakota or Kansas or even Pennsylvania proportionately.

Mr. SOLER. Well, of course, that's true, in North Dakota there are children locked up in jails. Pennsylvania has an excellent record because of the State legislation which gets kids out of those jails.

It's true—I don't mean to say that the rural problems in California are worse than rural problems in other States; the problems are serious in terms of rural areas.

Senator SPECTER. Thank you for the photographs, Mr. Soler. These will be made a part of the record.

[The following photographs were submitted for the record:]



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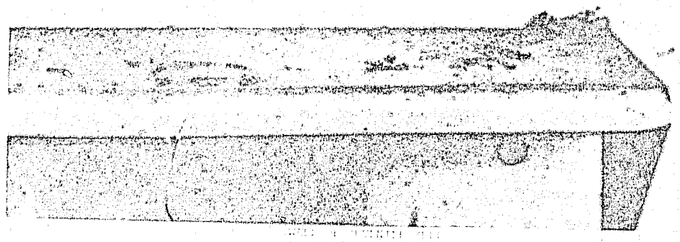
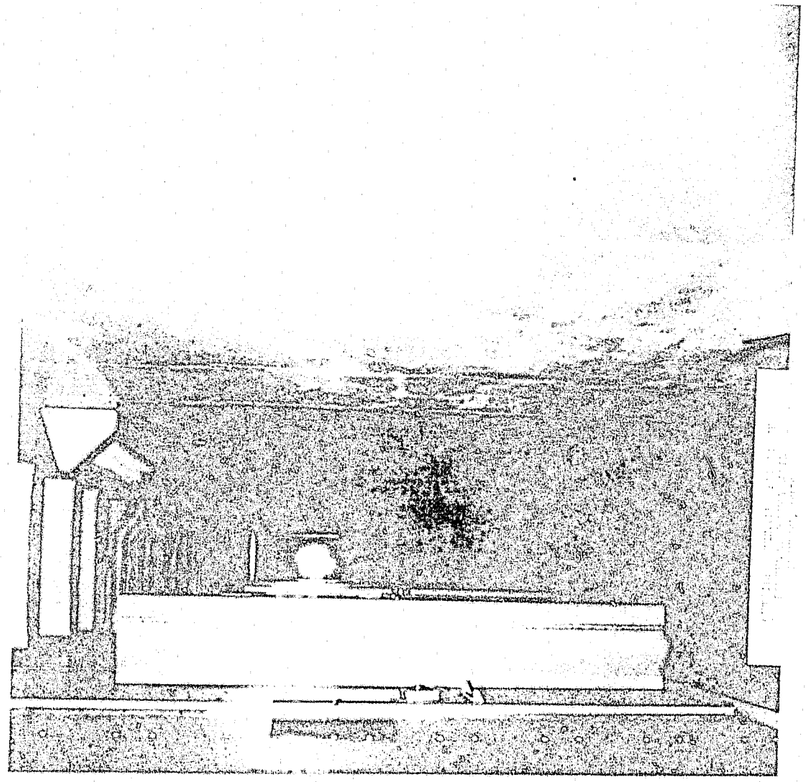
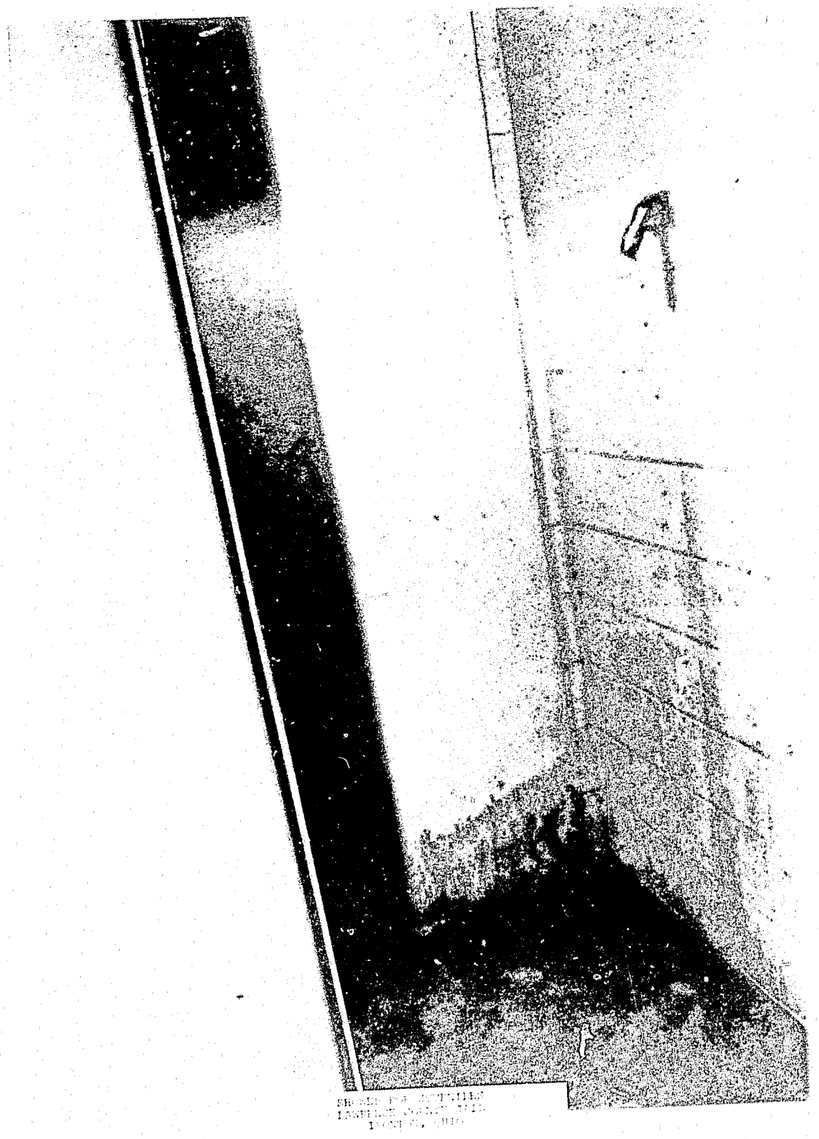
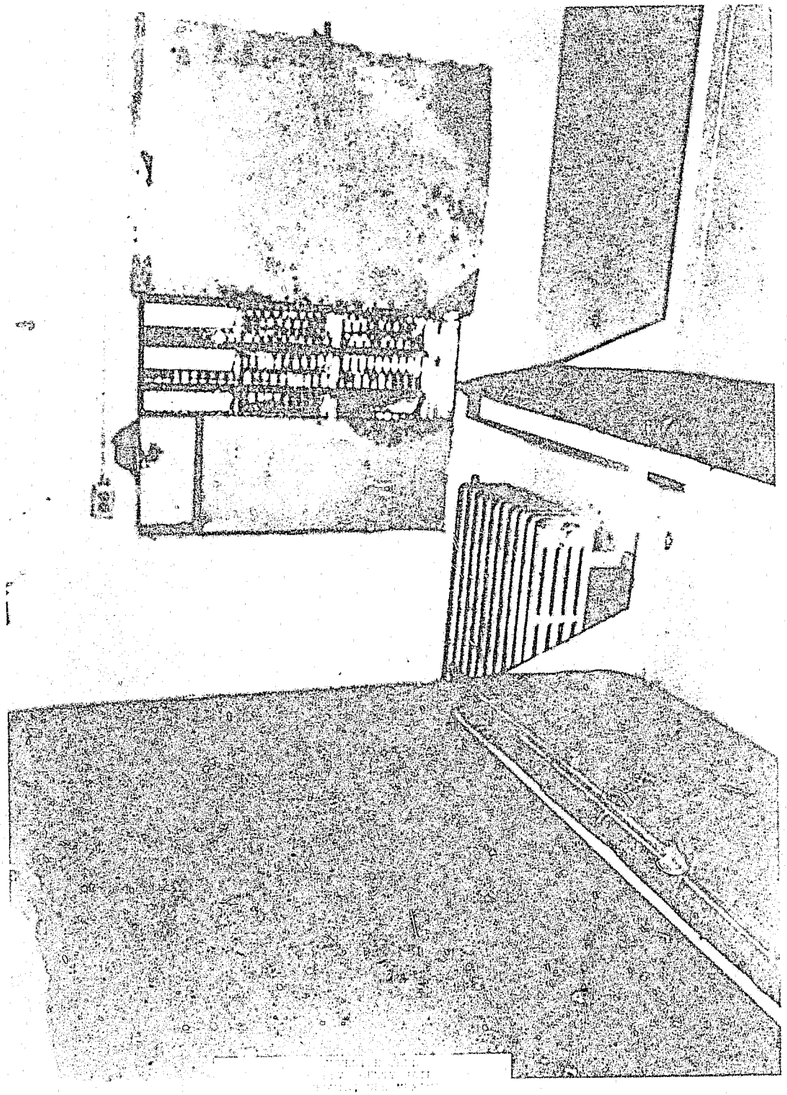
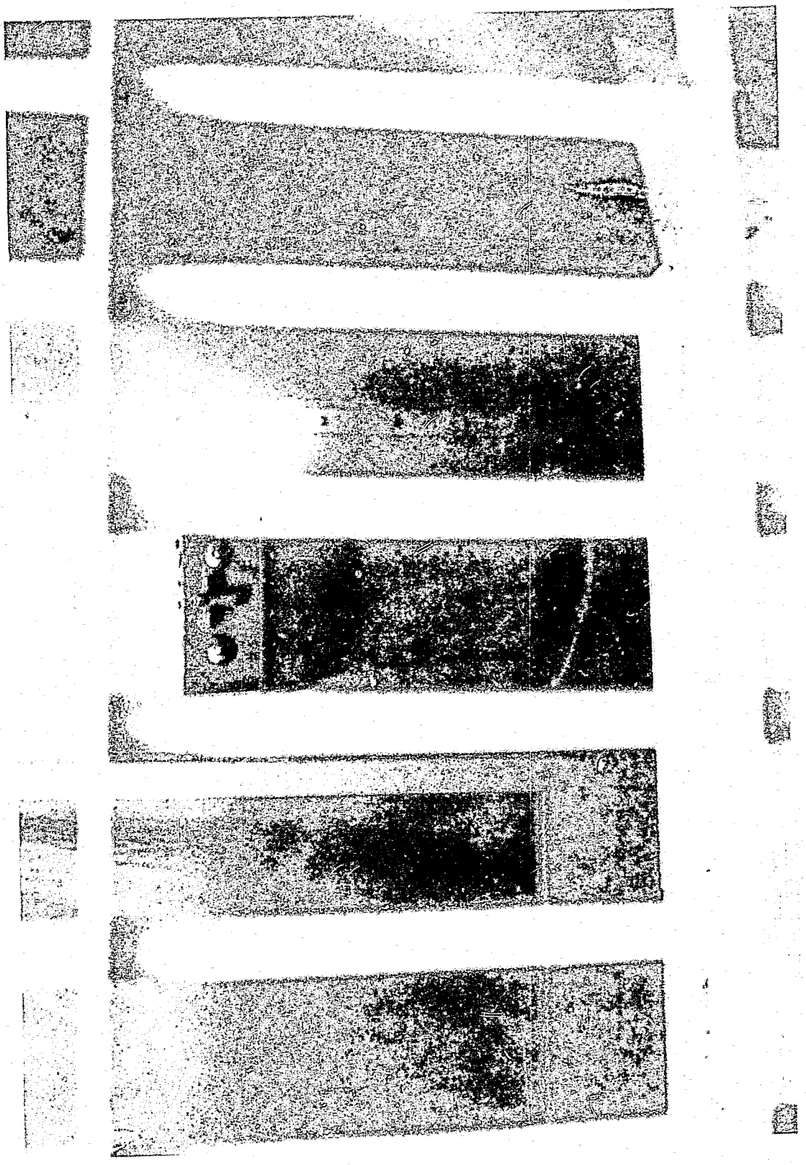
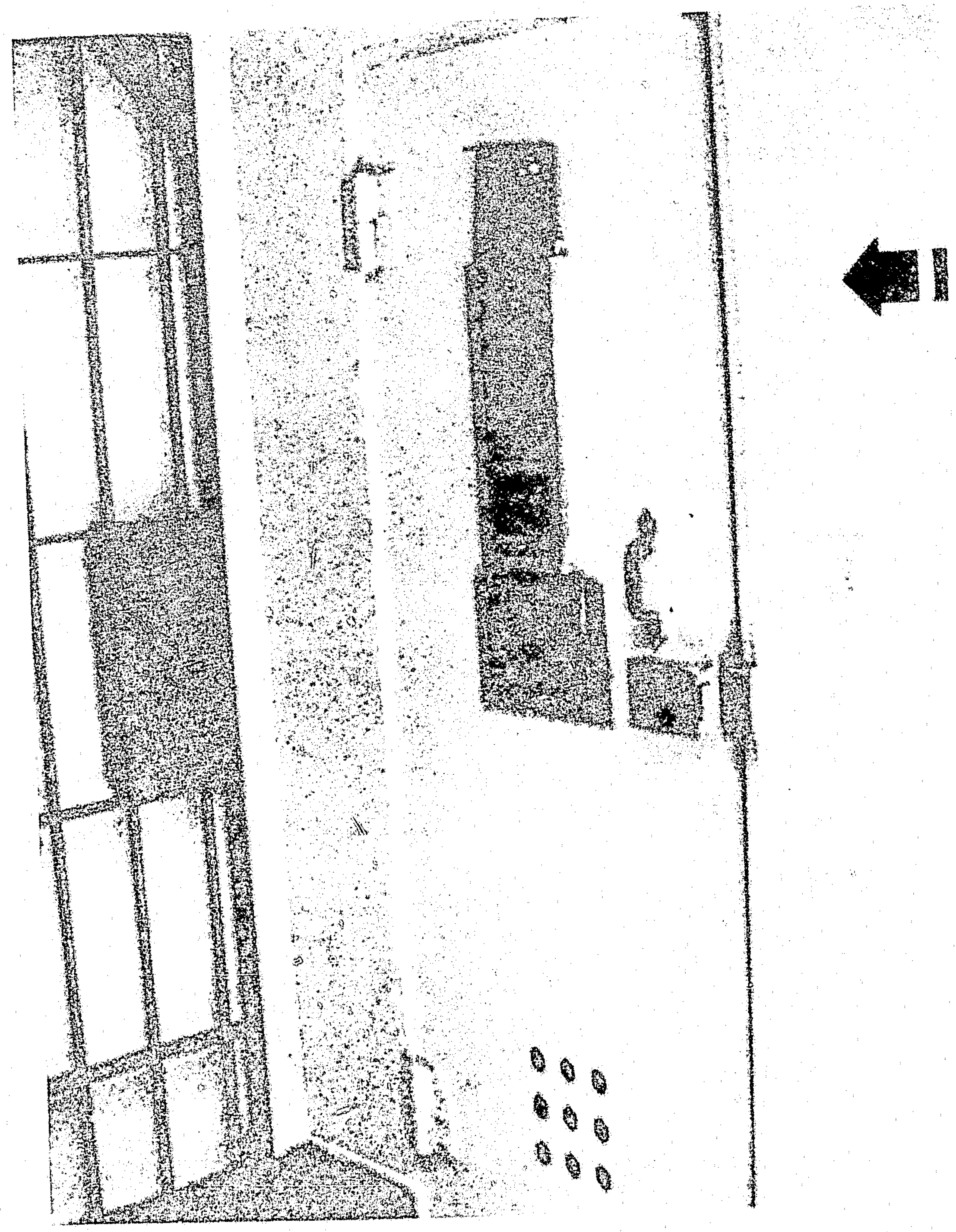




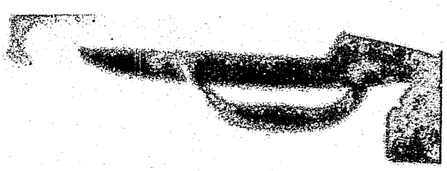


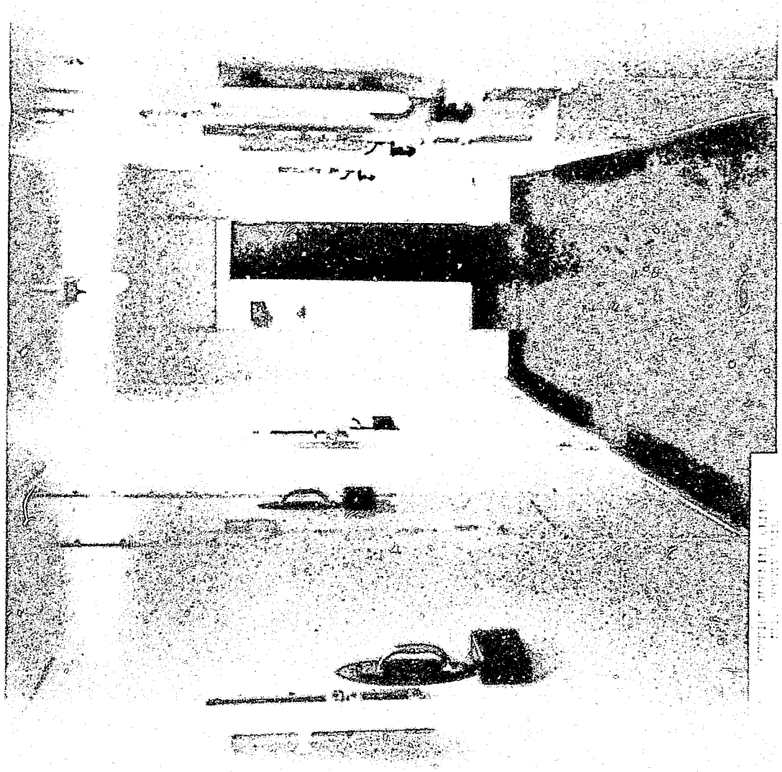


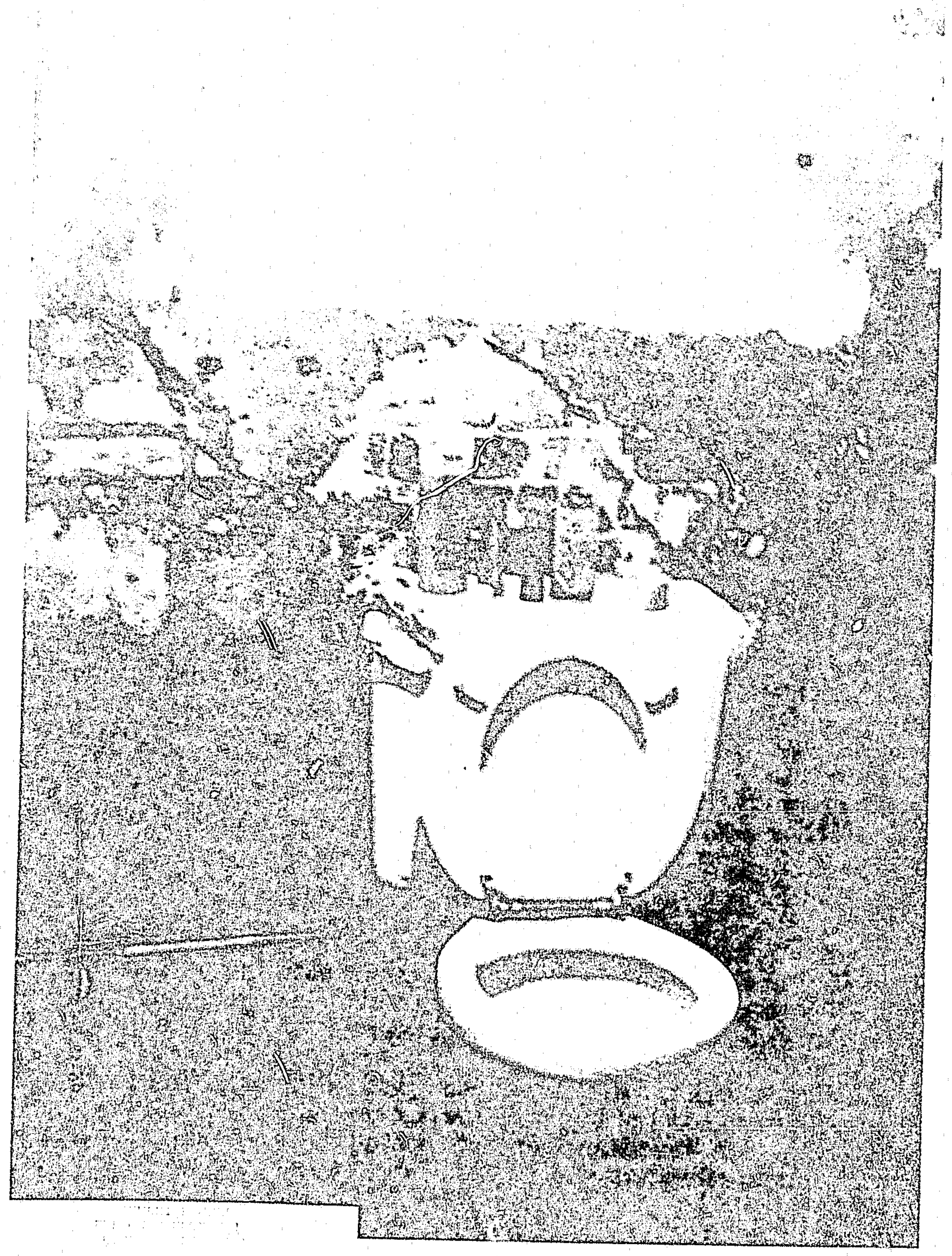




JUVENILE CELL
CURRY COUNTY JAIL
CLOVIS, NEW MEXICO







ROLE OF FEDERAL LEGISLATION

Senator SPECTER. What, if anything, can Federal legislation do about such jail conditions? These photos do show very deplorable jail conditions. It is a touchy subject, as you well know, and there can be Federal legislation, and has been, on having the States improve circumstances as a condition for Federal funds. The legislation which I have introduced earlier this month would put a requirement on the States to house juveniles and adults in separate facilities. We feel there is now an adequate Federal basis for that kind of legislation.

But can you legislate sanitary conditions in county jails by the Federal Government?

Mr. SOLER. No, I think the only answer to the problem is to legislate a total removal of children from all jails. I will tell you that of the jails which I have seen and the jails that my staff attorneys have seen, there is not a single jail that we have ever seen that is an appropriate place to lock up a child.

Senator SPECTER. But you can't prohibit States from locking up all juveniles; you have some 12-year-old juveniles charged with serious robbery, rape, or burglary. You cannot prohibit the incarceration, nor should we, in my judgment, prohibit the incarceration of all juveniles.

Mr. SOLER. No, absolutely not, and I would be the last to say that.

Senator SPECTER. That is to say, there is no jail fit for a juvenile.

Mr. SOLER. No jail; there certainly are detention centers which are juvenile facilities set up and run by people who have training to deal with the problems of juveniles. That is where the juveniles who need to be detained should be detained; they simply should not be in an adult facility. That, I think, is the proper role of the Juvenile Justice Act, to mandate a total removal of children from the jails.

IMPACT OF JAILING ON CHILDREN

Senator SPECTER. Mr. Soler, what impact do you think that these instances of detention with adults, has on instilling an attitude in juveniles to commit crimes? Do these jail conditions cause subsequent juvenile crime from those who were so incarcerated, in your judgment?

Mr. SOLER. I think the impact is a twofold impact. First of all, as I think you said at the beginning, when you put children into a jail where they can have some contact with adults, those children start out as minor offenders and can end up as relatively well-educated criminals.

Senator SPECTER. Can, but do they?

Mr. SOLER. And some of them certainly do.

Senator SPECTER. What in your professional judgment is the cause-and-effect relationship between mixing juveniles and adults in these institutions on, first, juvenile crime by these juveniles, and, second, on later adult crime once they pass out of the juvenile status as a matter of age?

Mr. SOLER. Well, I don't know if there is any research or if it's possible to make a very specific cause-and-effect relationship. It's

clear, though, that the children who go into these jails and have direct contact with adult criminals learn how to be adult criminals. They learn how to be adult criminals; in addition, they begin to perceive of themselves as adult criminals.

Senator SPECTER. Do you think they then become adult criminals?

Mr. SOLER. Well, some of them certainly do.

Senator SPECTER. As a result of their experiences in these institutions?

Mr. SOLER. Some of them certainly do. But others of them, I think—and the most tragic ones—are the ones who are traumatized by the situation and are either assaulted or try to commit suicide or are mistreated in some other way.

Senator SPECTER. Mr. Soler, I would like to move to Mrs. Horn, if we may.

[The prepared statement of Mr. Soler and additional material follow:]

PREPARED STATEMENT OF MARK I. SOLER

Mr. Chairman and members of the subcommittee:

My name is Mark Soler and I am the Executive Director of the Youth Law Center, a non-profit public interest law firm located in San Francisco, California. The Center was funded by the Office of Juvenile Justice and Delinquency Prevention until last month, when our grant was completed and not renewed. We have now reduced our staff, and are supported largely by a grant from the Edna McConnell Clark Foundation and other private sources.

I appear before you today as an attorney who has spent a large part of the past four and one-half years at the Youth Law Center investigating the problems of children in jails throughout the country. Perhaps I can best convey to you a sense of the problems of those children by briefly describing what happened to children who were put in jails in three different states.

In February, 1981, a fifteen-year-old girl who we later called Deborah Doe, to protect her privacy, ran away from home in Ironton, Ohio, with a girlfriend. The girls were soon tired and out of money, and called their parents, asking to get picked up and taken home. After they were safe at home with their parents, the local juvenile court judge decided to "teach them a lesson" by ordering them into the county jail for five days. On the fourth night Deborah was in the jail, she was sexually assaulted by a 21-year-old male deputy jailer.

In May, 1982, in Boise, Idaho, 17-year-old Ricky Yellen was arrested for possession of smoking tobacco. He was put in the juvenile cell in the Ada County jail in Boise. Also in the cell were four other juveniles who had been charged with a total of fifty criminal acts, including thirty-two felonies. Several had long histories of violence. Although the jail officials were supposed to check the cell at least hourly, they were nowhere to be seen when, on May 18, over a three-hour period, the other

juveniles brutally beat Ricky Yellen in his head, stomach and back, and forced his head down the toilet bowl in the cell.

On May 28, in Boise, 17-year-old Christopher Peterman was arrested for failing to pay $73 in traffic tickets. He was put in the same cell in which Ricky Yellen had been incarcerated with the same other inmates. With jail officials unaware of any problems in the cell, over a fourteen-hour period, from late Sunday night on May 30 until Monday afternoon May 31, the other inmates tortured Chris Peterman and burned him with flaming pieces of toilet paper, and ultimately beat him to death.

In December last year, in LaGrange, Kentucky, 15-year-old Robert Lee Horn was ordered held in the Oldham County jail for truancy. He spent part of each day at the jail, under order of the juvenile court, from December 12 until December 16. On December 16, at approximately 11:00 p.m., after a dispute with his mother, Robbie was again confined in the juvenile cell on the second floor at the jail. Between 11:00 p.m. and 11:30, the boy committed suicide by tying one sleeve of his shirt around his neck and the other sleeve to the bars of his cell, and jumping from the top of the shower stall. The deputy jailer on duty was in his office on the first floor of the jail.

These incidents are examples of the dangers facing children in adult jails: from jail staff, from other inmates, and from themselves. With me today are some people who know of these dangers firsthand. Daytona Stapleton of Ironton, Ohio, is here with her mother, Shirley Stapleton, and Greg Horn of LaGrange, Kentucky, and his mother, Rita Horn. Daytona was locked up for truancy in the same jail cell where Deborah Doe was sexually assaulted by the deputy jailer. Greg has been incarcerated for truancy and minor misbehavior in the LaGrange jail, where his brother, Robbie, committed suicide.

Before these children and their mothers tell you what they have been through, I would like to put their testimony in some context by saying a few words about my experience and the

experiences of my associates at the Youth Law Center in investigating the incarceration of children in jails.

During the past four and one-half years, the Youth Law Center has received complaints or requests for assistance to stop the incarceration of children in jail in nineteen states: Washington, Oregon, California, Idaho, Utah, Arizona, Montana, Wyoming, Colorado, New Mexico, Texas, Arkansas, Ohio, Kentucky, Tennessee, Alabama, Maine, North Carolina, and Florida. With our limited resources, we can only respond to a small number of the requests we receive. Yet, as one of the few programs in the country able to investigate and actually litigate over this issue, we find that we are receiving more requests for assistance now than in the past.

I have personally inspected jails where children have been held in seven of the states I mentioned. I have brought photographs of juvenile cells in four jails to give you some sense of the abominable conditions children experience. Toilets are filthy, showers are encrusted with mold and mildew, the light is often dim and the air is often foul-smelling. Children rarely have access to recreation or exercise areas, or to an educational program, or to staff who are trained in helping children to deal with their problems. Medical care is often inadequate, and basic screening of incoming children for medical or psychological problems is usually non-existent. In some places children are unable to have visits or telephone calls from their parents and friends. In misguided efforts to "safely" separate children from adults, the children are often kept locked away in isolation cells, thus heightening their depression rather than relieving their anxiety.

Some of the conditions are truly horrifying. In one jail I visited, noisy or disruptive children were placed in the drunk tank - a room with no bed, a concrete floor, padded walls, and a hole in the floor instead of a toilet. In another jail the girls were taken to a second floor room and locked in a cage, similar to a zoo cage for wild animals, which was in the center

of the room. On one Indian reservation I saw a child in jail who had cut his wrists in a suicide attempt, and had been waiting two weeks for psychiatric treatment. He was in a cell directly next to an adult male alcoholic who was moaning in delirium tremens during my entire hour-long visit.

Who are the children locked up in these jails? They are not murderers and rapists and armed robbers. On the contrary, in our experience the vast majority are charged with minor crimes such as petty theft or possession of alcohol or drugs, or with status offenses such as truancy and being "beyond the control of their parents." Yet the numbers are enormous: more than 470,000 children a year are held in adult jails and lockups, according to the Community Research Center of the University of Illinois, more than 100.000 a year in California according to the reports of the California Youth Authority. The Youth Authority's last full and comprehensive report, covering 1979 data, indicates that 10,000 children under the age of 13 were held in jails that year, 1,000 of them under the age of 9.

In our work at the Youth Law Center we have tried to deal with this problem in several ways: by providing information and training to local officials, community groups, and children's advocates; by providing on-site technical assistance, particularly in identifying community-based alternative placements; by advising local officials of their potential legal liabilities; and, when other methods are unsuccessful, by litigating on behalf of children who are injured or abused while incarcerated.

The problem is not easily solved, nor will it be solved in the very near future. Although some local officials and juvenile court judges are truly out to punish children for their perceived misdeeds, there are few real villains in most circumstances. Instead, the local officials are decent, sincere people who are caught in a web of long-established policies and practices, endemic bureaucratic inertia, tightly-stretched

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financial resources, and ignorance about available alternatives in the community.

This last point is the ultimate tragedy. In our experience at the Youth Law Center, virtually all jailing of children is unnecessary. Few of the children locked in the jail of any county in which we have worked really need to be detained. Alternatives exist within the community, no matter how small, rural or poor, in the form of foster care, children's shelters, group homes, mental health facilities, public and private hospitals, and other local agencies.

To say that the jailing of children is not a major problem in this country is to ignore the reality of the numbers of children jailed, and the tragedies that occur while jailing continues. The issue is not whether the jailing of children in this country has somehow reached an "acceptable" level; under current conditions, no incarceration of children in jails is acceptable. Indeed, I would ask each of you to look at the conditions in the jails and the dangers which they pose, and then think what you would do to keep your children out of such places. The issue, instead, is what new efforts we can make to stop this senseless cruelty.

Minors Held in California Jails and Lockups During 1979*

(Youth and Adult Correctional Agency)

CHAPTER ONE: INTRODUCTION

Factors Leading to this Study

A comprehensive study on the detention of minors in California's jails and lockups has been long overdue. The last major study to include such information was only part of a total system review--the 1960 Governor's Special Study Commission on Juvenile Justice. Findings from that study became the basis of the 1961 revision of the juvenile court law, known as the Arnold-Kennick Juvenile Court Law. The 1961 revision also mandated the Youth Authority to inspect jails and lockups used for the confinement of any minor for more than 24 hours.

Since that time, major changes have evolved in the juvenile court law. The law is now more explicit in relation to the:

- protection of the public from criminal conduct by minors
- process by which minors may be certified to criminal court
- distinction between dependents, status offenders, and offenders (Sections 300, 601, and 602, Welfare and Institutions Code).
- segregation of dependents and delinquents
- separation of adults and minors in jails
- imposition of due process procedures in the juvenile court.

Statistics annually reported to the Department of the Youth Authority showed that large numbers of minors continued to be detained in California's local jails and lockups. Consider the following 1979 statistics reported to the Youth Authority:

- 114,166 minors were detained for some period of time in California's jails and lockups.
- Of the 114,166 minors, 2,160 were detained in 50 jails in excess of 24 hours.

A growing interest in minors in jail was also evident at both the federal and state levels. Several national organizations adopted policy positions that advocated the total removal of minors from all jails. The organizations include the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention, the National Institute of Corrections, and the 28-member National Coalition for Jail Reform (of which the National Jail Managers Association and the National Sheriffs' Association are members). Several legislative bills on juvenile confinement were introduced in California during recent years. Some of these bills would have modified the existing code to permit the commingling of minors and adults in jails. Legislative interest is expected to continue in this area.

For these reasons, the Department of the Youth Authority and the Board of Corrections, the state agencies responsible for inspecting local jails and lockups, recognized that an exhaustive examination was essential to address the many issues mentioned above. Policy makers and the public needed to be better informed about these issues before taking any action.

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*This attachment is incomplete.

Scope of the Study: Purpose and Objectives

This study is intended to provide a picture of the detention of minors in California jails and lockups. Statewide statistics analyzed were limited to calendar year 1979. The study included a 15-member Study Advisory Committee consisting of key professional associations, organizations, and departments concerned with the detention of minors. The committee provided advice, input, and anlysis of the study data and recommendations.

Study objectives were as follows:

- to determine the circumstances and conditions of confinement for minors in California jails and lockups
- to determine the number and characteristics of minors securely* detained in California jails and lockups
- to determine the frequency and extent to which detention in jails and lockups is used for:
  - --minors who have been certified to criminal court because they have been found not to be fit and proper subjects under juvenile court law (Section 707, Welfare and Institutions Code)
  - --dependent children (Section 300, Welfare and Institutions Code) and status offenders (Section 601, Welfare and Institutions Code)
  - --counties not operating juvenile halls
- to review pertinent laws, literature, guidelines and standards at the state and federal level
- to analyze data, draw conclusions and make recommendations to California's justice system policy makers and citizens.

Planning and Preparation

The original study design was drafted by Youth Authority staff at the request of the Board of Corrections. The study design was approved by the Board of Corrections at their meeting on January 9, 1980.

The first step in March, 1980 was to convene a small working task force. This group was comprised primarily of Youth Authority staff and was augmented by representatives of the Board of Corrections and the Office of Criminal Justice Planning.

*Secure detention is defined in Section 4209(c), Title 15, California Administrative Code"...Any situation in which a minor is booked, admitted, entered, or held in a secure facility behind a locked door, gate or fence..."

Survey Instruments

Early planning and implementation included the design of data gathering instruments and strategy discussions to achieve study objectives. These instruments were initially viewed as the primary means of collecting statistical information. They were also to serve as the basis for discussion in the assessment of local attitudes on detention practices.

The study effort was expanded in June, 1980. To verify and resolve data inconsistencies and to respond to requests from the study's Advisory Group for additional information on selected topics. Study methods shifted to include field observations, telephone interviews, and manual searches of local detention and court records. Field visits were made to 26 counties; interviews were conducted with over 100 local and state officials; and 90 minors were interviewed concerning their detention in jail.

Survey instruments were sent to all counties as part of the study process. They served to augment the routinely reported information contained in the Youth Authority's Annual and Monthly Jail Surveys. Following is a list of the surveys that were made. Survey information will be highlighted throughout this report.

Survey of Chiefs of Police and County Sheriffs.

Detailed questionnaires were sent to administrators of jails and lockups. They focused on such issues as:

- most frequent reasons for detaining minors
- number of minors detained pursuant to Sections 300, 601, and 602, Welfare and Institutions Code
- degree of separation between minors and adult prisoners
- whether the facility was originally designed to provide for the detention of minors
- whether the facility was remodeled or modified to detain minors
- management problems faced by jail managers when they detain minors in jail
- suggested changes and/or alternatives considered relevant to the general issue of detaining minors in jail.

Survey of Chief Probation Officers.

Probation departments have principal responsibility for providing services and programs to minors under the jurisdiction of the juvenile court. Their responsibilities include screening detention requests, preparing for detention hearings, operating juvenile halls and placing juvenile court wards. Due to probation's key role, questionnaires were sent to Chief Probation Officers to obtain information regarding the:

- number of minors transferred to jail
- number of minors found unfit for juvenile court processing and thereby certified to criminal court
- most frequent reasons for transferring minors to jail
- specific court or departmental policy concerning the transfer of minors to jail
- detention practices in counties without juvenile halls
- suggested changes and/or alternatives considered relevant to the general issue of detaining minors in jails and lockups.

Field Survey of Counties Not Operating Juvenile Halls.

Nine of the 17 counties not operating juvenile halls were selected for special study and field interview. The goal of the survey was to obtain a profile of detention practices that is unique to counties not operating juvenile halls. Data from the Bureau of Criminal Statistics and Youth Authority surveys and special study questionnaires were reviewed for pertinent information. Chief probation officers and jail managers were interviewed in nine of the counties and eight jails were visited.

Survey of Chairpersons of Juvenile Justice Commissions.

Juvenile Justice Commissions are mandated in each county or region to inquire into the administration of juvenile court law (Article 2, Welfare and Institutions Code). As such, they are required to inspect any jail or lockup used for the confinement of any minor for more than 24 hours. Inspection results and recommendations must be reported to the Department of the Youth Authority and the respective juvenile court. Therefore, questionnaires were sent to chairpersons of all commissions concerning:

- how jail and lockup inspections are conducted
- suggested alternatives and comments.

Field Survey of Jailed Minors.

Structured interviews were conducted statewide with 90 minors who either had been or were actually jailed at the time of interview. A total of 24 counties were involved and all minors were asked questions about:

- their detention
- the use of jails for minors
- separation of adults and minors in jails
- suggested changes.

Field Review of Police, Court, and Probation Detention Records to Obtain Profile of Minors Certified to Criminal Court.

Twelve counties were selected to obtain a profile of minors certified to criminal court. The sample was based on Bureau of Criminal Statistics data on the largest number of minors certified to criminal court from 58 counties and on counties selected by the Board of Corrections as representative of the State in terms of size, population, economic base, and location. A 25% sample of cases was obtained from 11 counties and a 50% sample from Los Angeles County to determine:

- age at certification to criminal court
- ethnicity
- most serious offense at time of certification to criminal court
- prior history of arrests for violence
- prior history of adjudications for violence
- length of detention prior to certification to criminal court and from criminal court certification to final disposition
- whether the minor was released on his own recognizance
- whether the minor was allowed bail when certified to criminal court
- criminal court disposition (i.e., sentence to county jail, sentence to the Department of Corrections, commitment to the Department of the Youth Authority, and sentence to probation).

Field Survey of Presiding Judges of the Juvenile Court.

The judge of the juvenile court must approve the confinement of minors in jail (Section 207, Welfare and Institutions Code). The Department of the Youth Authority and the judge of the juvenile court must annually inspect jails, juvenile halls and lockups used for the confinement of any minor for more than 24 hours (Section 209, Welfare and Institutions Code). Given this mandate, structured interviews were conducted throughout the state with 14 presiding judges of the juvenile court in order to determine their:

- opinions, attitudes, and suggestions regarding minors in jails and lockups.

Judges interviewed represent counties that are large and small, rural and urban, those with and without juvenile halls, and those where jails have been approved as well as disapproved by the Youth Authority.

Selection of Special Study Counties.

Surveys and questionnaires were sent to all counties as part of the study process. In addition, 26 counties were selected for field visits as part of several in-depth substudies conducted on special topics such as minors certified to criminal court and dependent children.

Counties selected for field visits and follow ups were chosen to serve as a reasonable substitute for all counties in the state. Criteria for selection included: large and small counties, rural and urban counties, geographic differences in detention rates, and county willingness to participate. The limits of staff resources and time were also considered in the selection process.

Local officials and individuals interviewed are seen as generally representative of most personnel in the counties studied. The aim was to obtain the viewpoints of key, local administrators who make crucial decisions. Minors interviewed were selected randomly and are not necessarily representative of all minors in jails. The objective was to provide insight into the perceptions of young people detained in jail.

Background.

The following information is provided as a brief background to California's laws, studies, and Youth Authority mandates to conduct inspections of jails and lockups.

With statehood in 1850, California inherited the legacy of English poor laws and detained delinquent minors in almshouses, workhouses, and jails. Laws have subsequently evolved providing legal safeguards and expressing concern for youth in detention. These laws span 130 years and are highlighted in Table 1 as detention milestones.

TABLE 1

DETENTION MILESTONES

1850: With statehood, California inherits the legacy of English poor laws and detains delinquent minors, in almshouses, workhouses, and jails.	1945: California legislators remove the absolute prohibition on jailing minors. Although they raised to 18 the age under which no minor can be detained in jail, juvenile court judges can commit the minor to the care of a sheriff or constable if no other proper facilities are available.
1858: California legislators establish the San Francisco Industrial School to reform those children under 18 who lead "an idle and immoral life."	1961: California legislators revised the Juvenile Court Law with the enactment of the Arnold-Kennick Juvenile Court Law. They also asked the California Youth Authority to annually inspect for compliance all such jails which during the preceding year had held minors over 24 hours.
1883: The State's first child welfare law, the Juvenile Probation Law of 1883, allows courts to place wayward minors in the care of non-sectarian societies organized to effect their reformation.	1969: California legislators ask the Youth Authority to annually inspect all juvenile halls which during the preceding year held minors over 24 hours.
1889: The State establishes both the Preston School of Industry and the Whittier State School to detain delinquent minors.	1976: Assembly Bill 3121 prohibits the jailing of status offenders. Jails, juvenile halls, county camps, ranches and schools were reserved exclusively for criminal law violators - those youth defined under 602, Welfare and Institutions Code.
1903: With "An Act Defining and Providing for the Control, Protection and Treatment of Dependent Children," California legislators establish the juvenile court law. The law prohibits the detention of children under 12 in jails.	1978: California legislators passed AB 958 to allow for the secure detention of status offenders for short time periods in facilities where adults are not held in secure custody. 1.5 million dollars was made available to the Youth Authority for allocation and disbursement to local agencies for capital construction associated with the development of secure bed space in juvenile halls. This included construction of or remodeling of existing structures.
1909: An amended Juvenile Court Act forbids the jailing of minors under 16 and requires counties to provide a detention home for dependent and delinquent children separate from any jail or prison in a place "as nearly like home as possible."	1980: A California Attorney General's Opinion reiterates that State law requires each county to operate a juvenile hall.
1941: California legislators enact the Youth Corrections Authority Act that creates the California Youth Authority.	

Special Studies.
While this is the first specific study of minors in California jails and lockups, some partial information concerning the subject is available from three previous special studies. These studies either examined the total juvenile justice system or general detention practices. Because their specific focus was not minors in jails, the information available is not extensive, and, for the most part, is limited to minors jailed for more than 24 hours. The first study, Juvenile Detention in California, was completed in 1945 by Ruth Tolman and Ralph Wales. At that time, only 29 counties operated juvenile halls, and local jails in 45 counties reported detaining 11,000 minors over 24 hours. The number of minors detained in jails and lockups over 24 hours has decreased substantially to 2,160 in 1979. The following depicts some of the information reported:

> Children in jail...are crowded together indiscriminately in... tanks, frequently within hearing or sight of adult offenders. Cells for boys are often close to those for women, and girls are frequently detained with older women. Custody...is given by men and women accustomed to handling adult criminals...Jails seldom provide children...medical care. No one observes children detained. No one provides activities to occupy them.

Juvenile Detention in California, by Ruth Tolman and Ralph Wales; Sacramento: Governor's Advisory Commission on Detention Homes and Practices; 1946.

By 1951, six years later, the number of jailed minors had decreased. Thirty-seven counties now operated juvenile halls. City and county jails of 51 counties held 9,000 minors over 24 hours. Investigators reported the following:

> Every effort is made to provide separate quarters for minors in county jails, but most jails are not designed to make this possible. Consequently, juvenile cells are usually located in or near the same cell blocks as adults. In the smaller jails, individual cells away from adult prisoners and out of sight of guards result in solitary confinement if only one child is detained. Supervision by staff was either non-existent or impossible and wards were frequently overcrowded. The minors were seldom released from their cells and spent many days with only access to a corridor or day room.

California Children in Detention and Shelter Care, by National Probation and Parole Association; Sacramento: Governor's Advisory Committee on Children and Youth; 1954.

The NPPA study California Children in Detention and Shelter Care recommended that the state forbid the jailing of minors and that the Youth Authority set standards for the operation of juvenile halls. Elective juvenile hall standards were published in 1955. No law required counties to adopt them. The standards were revised several times by 1969 when the Legislature gave the Youth Authority specific responsibility for adopting minimum juvenile hall standards which were issued in 1970.

By 1960, 39 counties operated juvenile halls. City and county jails in 23 counties held approximately 4,500 minors over 24 hours. A Governor's Special Study Commission on Juvenile Justice reported that California had made "excellent progress" in reducing the number of minors jailed by its cities and counties.

Youth Authority Inspection of Jails and Lockups.

Acting on advice given by the special commission, California legislators in 1961 passed the Arnold-Kennick Juvenile Court Law. In its present-day form, the law appears as Sections 200-945 of the California Welfare and Institutions Code. The law mandated the Youth Authority to inspect jails and lockups. It provided that jails and lockups found unsuitable for minors were to be placed on a 60-day notice to correct deficiencies or minors could no longer be detained unless subsequently inspected and approved.

Standards and Inspections.
Who sets standards for jails? Who is responsible for inspecting or monitoring jails and lockups? The following section describes the various local and state authorities charged with these responsibilities.

Standards.
Standards for jails and lockups holding minors for more than 24 hours are set by the Youth Authority. These standards are mandatory but do not apply to jail facilities which detain minors for less than 24 hours. They may serve as guidelines but no actual standards cover such short-term detention of minors.

Youth Authority jail standard-setting responsibilities are not specified in the Welfare and Institutions Code. However, to complete mandated inspections of such facilities, a reasonable standard must serve as the basis for the inspection. Therefore, such standards have become administrative law. They are contained in the California Administrative Code, Title 15, Division 4, Subchapter 7 and are based on the provisions of Sections 208 and 209, Welfare and Institutions Code. Youth Authority standards are contained in Appendix A. Key provisions of the standards include:

- A prohibition on physical, audio, or visual contact on the part of the minor with adult prisoners.
- A requirement that continuous, around-the-clock supervision be provided by staff with at least one visual observation of the minor every hours.
- Physical requirements for heating, lighting, toilets, health and fire safety.
- An established capacity for designated space within which minors are detained.

Inspections.
Primary responsibility for inspecting jails rests with the following local and state authorities.

Local Authorities.

Judges.
Under Welfare and Institutions Code Section 209, the judge of the juvenile court must annually inspect jails and lockups used to detain any minor for more than 24 hours during the preceding calendar year. The judge must note in the court minutes whether the jail or lockup is a suitable place to confine minors. If the inspection reveals the facility is not operated or maintained as a suitable place for minors, either the judge or the Youth Authority must give notice to all persons having authority to confine minors to correct the deficiencies. The facility may not be used to confine minors unless the judge or the Youth Authority, based on a reinspection, concludes that the violations have been remedied and that the facilities are suitable places for the confinement of minors.

Juvenile Justice Commission.
Under Welfare and Institutions Code Section 225, the superior court judge appoints seven to fifteen people to serve four-year terms on a county juvenile justice commission. Under Code Section 229, these commissions every year must inspect those county jails and police lockups which during the past twelve months have confined any minor for more than 24 hours. Each commission may recommend to anyone who administers juvenile court law such changes as the commission feels will improve the application of that law. Each commission may publish these recommendations. Each must report them, together with findings, to both the juvenile court and the Youth Authority.

Lay inspections such as those conducted by the juvenile justice commissions are intended to keep citizenry in touch with the conditions and operations of their local detention facilities.

Juvenile Justice Commissions operate in each California county except Los Angeles county which has a probation committee established under Welfare and Institutions Code Sections 240-243. The committees must have at least seven members. Members serve four-year terms. They receive their appointments from the county official who appoints the probation officer. They exist to advise that officer.

Health Department and Fire District.
Under Sections 459 and 13146.1, Health and Safety Code, each jail or lockup is subject to annual subsidiary inspections for fire safety and health and sanitary conditions. Reports of these inspections must be submitted to the Board of Corrections by either an authorized local fire district or the State Fire Marshal, and the County Health Department. In order to prevent duplication, the Youth Authority reviews the Board of Corrections reports to assure suitability of the facility to detain minors over 24 hours.

State Responsibility
Youth Authority.
The Youth Authority is required to annually inspect each jail or lockup which detains any minor for more than 24 hours during the preceding calendar year. If the inspection reveals the facility is not operated or maintained as a suitable place for minors, either the judge or the Youth Authority must give 60 days notice to all per sons having authority to confine minors to correct the deficiency. The facility may not be used for the continement of minors unless the judge or the Youth Authority, based on a reinspection, concludes that the violations have been remedied and that such facilities are suitable places for the confinement of minors.

Reports of each Youth Authority inspection are furnished in writing to the presiding judge of the juvenile court, the administrator of the facility (i.e. Sheriff or Chief of Police), the Chairman of the Board of Supervisors, the Juvenile Justice Commission, the Board of Corrections, the Chief Probation Officer, and the Jail Commander.

Office of Criminal Justice
Planning.
The Office of Criminal Justice Planning is established pursuant to Penal Code Section 13820 et. seq. The Office is required by the Federal Juvenile Justice and Delinquency Prevention Act of 1974 to report annually on the placement of dependent children and status offenders in juvenile detention and correctional facilities and on the detention or post-adjudication confinement of minors in facilities which house incarcerated adults. The office relies on data provided by other public and private agencies. On-site monitoring is limited. With the anticipated demise of the Federal Law Enforcement Assistance Administration and the Office of Juvenile Justice and Delinquency Prevention, the continuance of this function is questionable.

Board of Corrections.
The Board of Corrections establishes minimum standards for local adult detention facilities and inspects each facility biennially. The Board does not inspect the juvenile section of the jail. Reports of each inspection must be furnished to the official in charge of the facility, the local governing body, the grand jury or the presiding or sole judge of the superior court in the county where the facility is located. The reports set forth areas of compliance to the standards (Section 6030, Penal Code). Reports are prepared for the Legislature in each even-numbered year of those facilities inspected and those that have not complied with minimum standards.

SUMMARY AND CONCLUSION

1. Secure Detention.

Law enforcement reported those minors held in secure detention in accordance with California Administrative Code Section 4209(c)"...any situation in which a minor is booked, admitted, entered or held in a secure facility behind a locked door, gate, or fence..." As stated on page 12, the definition encompasses minors in such confinement as a jail cell, a holding room, or a locked interrogation room. In some jurisdictions the facility may not be officially considered a jail.

2. Characteristics of the Minor Detained, 1979:

- 114,174 minors were reported by law enforcement as detained in jails and lockups during 1979.
- 2,160 or 2% were reported detained for periods in excess of 24 hours.
- One out of every three juvenile arrests result in a minor being placed in a jail or lockup for some period of time.
- Approximately 8 out of 10 minors detained for any period of time are male.
- The majority of detained minors are 16 years of age and older.

3. Characteristics of the Detention Process. For minors detained in jails and lockups over 24 hours:

- The mean length of stay is 9 days.
- Nine out of 10 are male.
- 13% were reported held for two weeks.
- 15% were reported held for other reasons such as protective custody, transfer to other jurisdictions or status offense type offenses.
- 85% were reported held for law violations (Section 602, Welfare and Institutions Code). Of these, 55% were felony offenses.

4. Mandated Separation of Minors from Adults Not Achieved.

Few jail facilities report the required sight and sound separation of minors from adults. For many providing separation is most difficult at intake and while moving minors within the jail. For some, the very structure of the jail makes separation impossible.

5. Data.
Record collection systems are often established locally to meet internal record-keeping needs and concerns (e.g., bookings. property, warrants, releases). Agencies often lack the time and resources to adequately respond to gross number data requests from external services and state agencies. Therefore, data reported are often conservative estimates rather than actual counts.

6. Need for Data Improvement.
Data reporting is legislatively mandated and requisite to provide citizens and decision-makers an up-to-date picture of detention practices. Therefore, the Youth Authority should work closely with the Bureau of Criminal Statistics to consolidate forms presently used to collect data. Such an effort would eliminate duplicate reporting and would be less taxing to meager law enforcement resources. Special attention should be devoted to the use of definitive terms so that data reporting is as accurate as possible. The Youth Authority should further explore data retrieval that will distinguish between those minors in jail cells vs. those in locked holding rooms, interrogation rooms, squad offices, etc.

The Board of Corrections jail classification system for Type II, I, and holding facilities may be one means of gathering such data.

7. Jailed Youth Interviews.
Based on interviews conducted with 90 minors occupying jail cells in 29 different city and county jails in 24 counties the following was found:

- 70% reported they had come in or remained in contact with adults (sight or sound) despite the provisions of Sections 208 and 707.1, Welfare and Institutions Code and Section 4502, California Administrative Code.
- While most minors found jail more restrictive and frightening than other detention facilities, 20% preferred jail to juvenile hall citing added privileges and peer status; 10% preferred commingling with the adult population rather than isolation in the jail complex.

8. Law Enforcement.
Based on the study's Jail Questionnaire, 125 police and sheriffs responded to questions on detention and jail management:

- 27% opposed jailing minors.
- 33% urged that juvenile halls add maximum security sections for the more serious offender or that juvenile halls be constructed in those counties without such facilities.
- 22% supported the commingling with adults those minors found unfit for juvenile court.
- 19% called for more discretion in the detention of status offenders and their detention in secure facilities.
- 12% urged fewer state restrictions on the confinement of minors.

9. Presiding Juvenile Court Judges. Fourteen presiding juvenile court judges were interviewed. They represent large and small counties, rural and urban, counties with and without juvenile halls, and counties whose jails have been approved as well as those disapproved by the Youth Authority. Judges expressed varied opinions on most topics. However, there was general consensus that:

   - Minors should not be detained in jails except dangerous youth declared unfit for juvenile court. Even then, such minors should be held separate from adult prisoners until they have been found guilty.
   - The availability and adequacy of juvenile halls materially impacts how many and which minors a judge will place in jail.
   - If minors are treated as adults, equal protection afforded to adults should be provided to minors -- e.g., bail, jail programs, due process, etc.

10. Juvenile Justice Commissions. Thirty six juvenile justice commission chairpersons and the Los Angeles Probation committee responded to a special study questionnaire:

   - 40% were opposed to jailing minors.
   - 28% were in favor of jail detention but only when minors are segregated from adults.
   - 10% were in favor of jail detention for the more serious, threatening minor.

CHAPTER THREE: MINORS CERTIFIED TO CRIMINAL COURT

Each year approximately 900 minors are certified to criminal courts in California. While little has been known about the 900 as a group, they generally have been viewed as older, more violent and sophisticated offenders with lengthy delinquent records and thereby minors unfit to be handled by the juvenile court process.

They are also a group subject to growing controversy. Legislation has been recently introduced that would lower below 16 the age of eligibility for trial in criminal court. Debate continues over the most appropriate place for their confinement. Should it be a juvenile hall or a jail? Do practices and policies concerning these minors vary from county to county?

The study's advisory group asked that special information be gathered about these 900. What are their ages? What are their offense patterns? How long are they detained? This information was desired to enable informed decision-making concerning the most appropriate disposition and confinement of these minors.

In examining this subject, it is important to keep in mind the philosophical differences between the juvenile justice system and the criminal justice system. Unique to the juvenile justice system is the philosophy that minors should be protected and rehabilitated rather than subjected to the harshness of the adult or criminal justice system. Pursuant to Section 202, Welfare and Institutions Code, the expressed purposes for establishing a separate process for minors include serving the spiritual, emotional, mental, and physical welfare of the minor as well as protecting the public from the consequences of criminal activity.

Background on "Unfitness" for Juvenile Court. Section 707, Welfare and Institutions Code, determines a minor's eligibility to be tried in criminal court. Since 1977, expanded legal guidelines have given adult courts jurisdiction over greater numbers of minors.

Prior to the enactment of Assembly Bill 3121 on January 1, 1977, a minor could be found unfit and certified to criminal court if the juvenile court concluded, based upon a fitness hearing* initiated by probation that the minor was not amenable to the care, treatment, and training available through the juvenile court. The fitness hearing was based on the following criteria (now specified in Section 707(a)) designed to provide juvenile practitioners and society an appropriate disposition for the more violent, sophisticated offender:

1. Degree of criminal sophistication of the minor.
2. Whether the minor could be rehabilitated prior to the expiration of juvenile court jurisdiction.
3. Minor's previous delinquent history.
4. Success of previous attempts by the juvenile court to rehabilitate the minor.
5. Circumstances and gravity of the offense alleged to have been committed by the minor.

*This hearing has been given many names including waiver, transfer, remand, removal, and certification.

With the enactment of Assembly Bill 3121 and subsequent legislation since 1977, subdivision 707(b) and 707(c) were added to 707(a), Welfare and Institutions Code. These amendments significantly expanded the courts ability to certify minors to criminal court.

Initiation of fitness hearings rests with the district attorney. The burden of proof is shifted to the minor who must demonstrate that he is amenable to treatment in the juvenile system. A focus on the burden of proof, however, may be misleading. In all such cases, the juvenile probation officer must prepare a social history report covering the minor's behavioral patterns. Often, the evidence contained in the report becomes the burden which must be overcome. Therefore, unless the minor or the district attorney can produce sufficient evidence to counter probation's recommendations, the social report generally prevails.

AB 3121 added Section 707(b) and provided that a minor is presumed unfit for juvenile court (unless found fit in accordance with criteria established under Section 707(a)) if he is alleged to have committed certain offenses, such as:

1) murder,
2) arson of an inhabitated dwelling,
3) robbery while armed with a dangerous or deadly weapon,
4) rape with force or violence,
5) kidnapping for ransom,
6) kidnapping for the purpose of robbery,
7) kidnapping with bodily harm,
8) assault with intent to murder or attempted murder,
9) assault by any means of force likely to produce great bodily injury,
10) assault with intent to murder or attempted murder,
11) discharge of a firearm into an inhabited or occupied building,
12) any offense described in Section 1203.09, Penal Code (offenses against the aged).*

*added by SB 390 in 1977

Four more offenses were added to Section 707(g) effective January 1, 1980, after the enactment of SB 840 in 1979:

1) Sodomy by force, violence, duress, menace or threat of great bodily harm,
2) oral copulation by force, violence, duress, menace or threat of great bodily harm,
3) lewd or lascivious act as provided in Subdivision (b) of Section 288 of the Penal Code,
4) or any offense specified in Section 289 of the Penal Code (sex offenses).

SB 840 also added Section 707c to the Welfare and Institutions Code. Section 707c reaffirms that a minor is not a fit and proper subject for juvenile court under Section 707(b). It states that when a minor is accused of one or more of the offenses listed under 707(b), the juvenile court must determine fitness based on each of the criteria in 707(a) to retain the minor in juvenile court.

* * *

Twelve-County Study.

The Youth Authority gathered data to provide a profile of minors certified to criminal court. The twelve counties selected were: Alameda, Fresno, Kings, Los Angeles, Mendocino, Orange, Riverside, San Diego, San Mateo, Solano, Sonoma, and Tulare. As stated in Chapter 1, the counties were selected because they offered a large number of certified minors and because they were viewed representative of the state in size, population, economic base, and location.

Methodology.

As in other areas of this study, problems were encountered in obtaining the necessary data. Youth Authority staff found far more minors certified to criminal court in 1979 than were reported by the Bureau of Criminal Statistics. For example, Bureau data identified 78 minors certified in Los Angeles County; staff found 169. In Fresno County where 6 certified minors were reported to the Bureau, staff identified 15. Statewide, a total of 597 certified minors were reported to the Bureau of Criminal Statistics. However, based on staff experience on this profile, the actual number more closely approximates 900. (See Appendix C).

The Youth Authority examined in detail 174 cases. From 11 counties, data were obtained on 97 delinquents, approximately 25% of those involved. From the twelfth and largest county, Los Angeles, staff examined detailed data on 77 delinquents approximately 50% of the 169 delinquents involved.

Supplemental data were gathered on certified minors from records of juvenile halls, county jails, and district attorneys' offices. Staff also consulted probation department records (both juvenile and adult) as well as county clerk records of municipal and superior courts. In some counties, staff, by necessity, contacted five different agencies to detain data on a single case.

Profile of Certified Youth.

Table 10 is a description of the sample population. The table reports data of the eleven counties separate from Los Angeles because of frequency differences.

Statewide the average youth certified to criminal court during 1979 was male, 17 years of age, and a member of a minority race. Certified youth in Los Angeles County were more likely to be minority members (86% compared to 66% for the 11 other counties). Approximately one in five was a Youth Authority ward at the time of his arrest.

Not all minors certified to criminal court had serious or violent histories. Statewide, over 53% had no prior record or adjudication for violent offenses such as armed robbery, assault, forcible rape, murder, or other crimes against persons. One in four were charged with property offenses. In Los Angeles, 70% had no prior record of violence. Statewide, 19% of certified minors had been charged with misdemeanors. In two smaller counties, however, up to two-thirds (67%) of the certified minors were misdemeanants. An exception to this was Los Angeles.

The reasons for these differences are not clear. The difference may be related to the size of the justice system and the differences in social values and awareness. For instance, the sheer number of cases in Los Angeles may influence district attorneys to prosecute only the more serious offenders when there is strong evidence to support their prosecution and probable conviction. In smaller counties were community awareness and values are more clearly defined, local judicial philosophy may be a greater factor in determining which cases will be certified. For instance, one judge from a smaller county commented he believed that once a person was 16 years old, "he is old enough to know better" and should be handled as an adult. It was also in this county that the study found one minor certified to criminal court for throwing eggs at an automobile.

Detention Before Certification.
Where did the counties hold minors between the day of their arrest and the day a juvenile court judge certified them to criminal court?

The answer, "mostly in juvenile hall" is true of all 12 counties, but most accurate in Los Angeles County.

Los Angeles County detained nearly all delinquents, 92% of them in its juvenile hall. The 11 other counties used their halls for 65% of the delinquents. In the 11 counties, 16% were not detained. They were released on bail or their own recognizance. In Los Angeles, all cases were detained.

Charges at Certification.
Certified minors were charged with more serious crimes in Los Angeles than elsewhere. There, 84% of the charges at certification were crimes against persons compared to 54% elsewhere. In Los Angeles, misdemeanor charges comprised 1% of the cases compared with 19% elsewhere. Felonies were charged in 95% of the cases compared to 78% in the other 11 counties.

Detention After Certification.
Statewide, approximately one-third of certified minors were held in juvenile hall after conviction. Jail, however, was used much more frequently in Los Angeles than in the other 11 counties. In Los Angeles, a certified minor was placed in jail, sometimes transferred from juvenile hall, in 67% of the cases compared to 32% elsewhere. Records in the 11 counties other than Los Angeles show 35% of the certified minors were not detained in either a jail or a juvenile hall; this is contrasted with 4% in Los Angeles.

Code Section Cited.
In Los Angeles County, 84% of the minors were certified to criminal court under Welfare and Institutions Code Section 707(b) (the more recent subsection treating specific crimes of violence) compared with 36% in the other 11 counties. 16% were certified under 707(a) in Los Angeles compared to 64% in the other 11 counties.

Disposition.
Most certified minors are not sentenced to state institutions. Los Angeles committed or sentenced over 50% of its delinquents to state institutions; the other 11 counties 25%. This means in two out of three cases statewide, the minor received other sentencing options such as jail, probation, fines, or a combination of the three. Fifteen percent of certified cases resulted in dismissal or non-conviction.

Detention Time.
The length of detention for minors varies considerably statewide (Table 11). In the 11 counties, the median length of time spent in juvenile hall before certification is 15.4 days and 9.5 days in jail. This compares with 24.5 in the hall and 24 days in the jail for Los Angeles.

After certification, the differences are even greater. In the 11 counties, the median length of stay in juvenile halls was 74 days compared to 40 days in jail. This contrasted sharply with Los Angeles county where minors spent 17.5 days in the hall but 135 days in jail.

The reasons for the above reported differences are not known. One could assume the duration of the jail stay in Los Angeles reflects the longer adult court process. But then, why does this phenomenon not hold true for the 11 counties as well?

The median length of stay does not tell the whole story, however. It is important to also examine the range of stay, for the range in many cases was extensive. For instance, staff found that while awaiting certification, one minor spent 103 days in juvenile hall while another was jailed for 84 days. After certification, one minor awaited disposition in juvenile hall for 331 days while another spent 469 days in jail awaiting sentencing and still was not sentenced.

County Certification and Detention Practices and Policies Differ.
The 11-county statewide sample appeared to certify delinquents to criminal court earlier than Los Angeles for offenses that were not as severe. In Los Angeles, 71% of the minors had two or more charges at point of certification; 95% had at least one felony charge -- most likely a crime against person (84%). In the 11 other counties, 64% had two or more charges; 78% had at least one felony offense. Only 54% were for crimes against persons.
(For additional information on this topic, please refer to this chapter's "Profile of Certified Youth," page 33).

The 12 counties sampled apparently had no common policy for detaining minors during the time between their certification to and disposition in criminal court. For example, when offenders had their 18th birthday during this period, some counties transferred them to jail while others released them on their own recognizance. In other counties, they were confined in juvenile hall despite their being adults. Some were granted bail or release on their own recognizance from juvenile hall.

Conflicting Opinions. The real issue appears to be the divergent opinions of law enforcement, probation and the judiciary on the most suitable placement for minors. Such conflicting policies were not confined to the 12 counties. Similar conflicts appeared throughout California. Therefore, it is important to review responses on this topic.

The Jail Questionnaire asked, "With respect to the general issue of detention of minors in jail what changes would you like to see implemented?" When discussing minors certified to criminal court, law enforcement and judges expressed varying opinions. Law enforcement urged the construction of maximum security sections in juvenile halls to handle the more violent, sophisticated offender. If maximum security juvenile ahlls are not possible, then law enforcement stressed exercising discretion in the commingling of certified minors with the adult population in jail.

Of the forty (64%) Chief Probation Officers (32 from counties with halls and 8 from counties not operating halls) responding to this question, half said that serious offenders, particularly minors certified to criminal court, should be held in jail and commingled with the adult population. Nineteen of 32 Chief Probation Officers in counties with halls said certified minors and other highly delinquent or violent minors should not be in juvenile halls in contact with less mature or less delinquent juveniles. Instead they urged detention in jails, preferably commingled with the adult population. Four of these Chief Probation Officers stated that minors should not be detained in jails. Four commented that the present situation was satisfactory.

In counties not operating juvenile halls, the general feeling expressed by Chief Probation Officers was that it is too costly to construct or maintain separate facilities for minors and that there is no feasible alternative to jail detention for some minors.

There was general consensus among the interviewed presiding juvenile court judges that jails should be used to house only the dangerous, more sophisticated minor certified to criminal court. Even then, the judges urged separating minors from adults until the minor had been found guilty.

Probation or Juvenile Court Transfer Policy to Jail. The Probation Survey also asked, "Does your probation department or juvenile court have a specific policy covering transfer of minors to jail?" Fifty percent or 29 of the probation departments responded (Table 12). A probation department transfer policy was reported by 23 departments (39%). Eight of these policies were written and 15 unwritten. A juvenile court policy on the transfer of minors to jail was reported in 14 counties (4 written, 10 unwritten). Six probation departments reported that neither they nor their juvenile court had either written or unwritten policies.

The Probation Survey also asked, "What are the three most frequent reasons for transferring minors from juvenile hall to jail? Twenty-five chief probation officers (41%) responded. Of these: 64% reported assault on staff or other court wards; 56% certification to criminal court; and 40% threats to others. Other reasons given were escape risk (28%) and destruction of property (8%).

SUMMARY AND CONCLUSIONS

1. Characteristics of Minors Certified to Criminal Court.
Based on a 12-county profile of minors certified to criminal court:

- the typical youth was male, 17 years of age, a member of a minority race, and had no prior record of violence
- approximately one in five was a Youth Authority ward at the time of his arrest
- most counties detained minors in juvenile hall between date of arrest and certification
- crimes against persons comprised over 50% of the charges at certification and over 78% of the charges were felonies
- after certification to criminal court, approximately one-third of certified minors were held in juvenile hall
- most certified minors are not sentenced to State prison. Two out of three cases received other sentencing options -- jail, probation, fines, or a combination of the three.

2. Divergent Opinion is Expressed on the Detention of Minors Certified to Criminal Court.
The more serious, violent certified minors are management problems. They are not wanted either in juvenile halls or jails. In juvenile halls, they are perceived as a disruptive influence and sometimes a threat to staff and/or other minors. In jail, they require special supervision and segregation which are difficult from a jail management standpoint. Adults often lose valuable bed space since minors must be segregated in facilities and cannot be commingled with the adult population.

Yet, with this divergence in opinion, some common themes are present:

- Certified minors should be held in jail.
- Minors certified to criminal court should be commingled with adult prisoners but only after conviction.

3. Detention Practices Vary by County.
The 12 counties sampled apparently have no common policy for detaining minors during the time between their certification to and disposition in criminal court. For example, when the offenders became 18 years of age during this period, some counties transferred them to jail. In others, offenders were released on their own recognizance. In some counties, they were confined in juvenile halls despite being 18 years of age. Some were granted bail or release on their own recognizance from juvenile hall.

4. Data Improvement Needed.
Data on minors certified to criminal court is not available in any organized manner. Case-by-case review was often necessary of as many as five separate data sources. Reported data often provide conservative estimates. Under-reporting of minors certified to criminal court by 50% was encountered. Rather than the 597 cases reported to the Bureau of Criminal Statistics, the number more closely approximated 900.

5. Additional County-by-County Information is Required of Minors Certified to Criminal Court and Minors in California Jails and Lockups.

To learn more about minor's certified to criminal court, questions answered in this 12-county chapter need to be asked in the other 46 counties. The inquiry should include additional questions such as:

Is the juvenile hall able to handle minors certified to criminal court?
Is the county jail adequately able to segregate adults/minors?
Have there been any suicides or injuries of certified minors in jail or in juvenile hall?
Has the presence of certified minors in juvenile hall caused any management problems?
What is the ratio of certifications to the reported number of juvenile arrests?

CHAPTER FOUR:

DEPENDENT CHILDREN AND STATUS OFFENDERS

Preliminary data showed dependent children and status offenders securely detained in some jail and lockup facilities. Concern about these detentions prompted the advisory group to suggest a more thorough study of this topic. This chapter, therefore, explores the issues peculiar to dependent children and status offenders who are sometimes securely detained in jail and lockup facilities.

As stated in Chapters 1 and 2, the Youth Authority studied secure detention which is defined in California Administrative Code Section 4209c:

> "...any situation in which a minor is booked, admitted, entered or held in a secure facility behind a locked door, gate, or fence..."

The definition includes minors placed in a jail cell, in a holding room or other portion of a city or county-operated jail. Many were held in lockup. This means minors were held behind a locked door at a law enforcement agency in a section of a facility not part of a jail (e.g., interrogation rooms, detective offices, holding cells). In some jurisdictions, the facility may not be officially considered a jail.

For dependent children, issues center primarily around the lack of proper 24-hour emergency care rather than jail detention per se. Some dependent children are briefly detained in jail or lockup facilities because other alternatives are not available locally.

Status offender policies continue to be a source of controversy. As discussed in Chapter Two, secure detention of status offenders is an on-going concern for law enforcement. Many call for more realistic or mandatory sanctions that would grant them more discretion in holding status offenders for brief time periods in jail facilities. The law, as presently written, is open to varying interpretations. Some feel they are in violation of the law for holding status offenders in jails or lockups. Yet others feel they are acting in the best interest of the minor, parents, and society by holding the youth for brief time periods in a jail cell or locked interrogation room when there are no other alternatives.

Dependent Children.

The legal authority for juvenile court jurisdiction over dependent children is essentially contained in Articles 6 through 13 (Sections 300-395), Welfare and Institutions Code.

WELFARE AND INSTITUTIONS AND PENAL CODE LAWS RELATING TO DEPENDENT CHILDREN

Jail Detention
Section 207, Welfare and Institutions Code:

No person under the age of 18 years is to be detained in any jail or lockup unless a judge of the juvenile court determines that there are no other proper and adequate facilities for the care and detention of such persons.

Temporary Custody and Detention
Section 305, Welfare and Institutions Code:

Peace officers are authorized to take into custody, without a warrant, a minor who is believed to be a person described in Section 300.

Segregation of Dependents and Delinquents
Section 205, Welfare and Institutions Code:

Any person described in Section 300 shall not be brought into contact or personal association with any person taken into custody who is a person described in Sections 601 or 602, Welfare and Institutions Code, or who has been made a ward of the juvenile court. Segregated facilities must be provided for dependent children by county boards of supervisors. Such facilities may be provided in juvenile hall or elsewhere. Children described in Section 300, (a), (b), and (d), are to be placed in non-secure facilities. Children described in Section 300(c) (those children who are physically dangerous to the public because of a mental or physical deficiency, disorder, or abnormality), are to be placed in secure facilities.

No record of detention of such persons is to be kep by any law enforcement agency as a record of arrest.

Child Abuse Reporting
Section 11166, of the Penal Code:

Medical, counseling, education, social work, child care, or peace officer personnel are required to report child abuse cases by telephone and in writing within 36 hours. Such cases must be reported to the a) local police authority having jurisdiction, b) juvenile probation department, or c) county department of social services or health. The reporting incidents are a) physical injuries to the minor which appear to have been inflicted on him by other than accidental means, b) whether the minor has been sexually molested, and c) any injury prohibited by Section 273(a) of the Penal Code inflicted upon the minor.

Authority for Temporary Custody and Detention
Section 305, Welfare and Institutions Code:

Peace officers are authorized to take into custody, without a warrant, a minor who is believed to be a person described in Section 300.

Duties of Welfare Departments
Section 306, Welfare and Institutions Code:

A social worker is allowed to a) receive and maintain, pending court hearing, temporary custody of a minor described in Section 300 who has been delivered by the probation officer, and b) take into temporary custody and maintain temporary custody, without a warrant, a person described in Section 300 who is in need of such care.

Delegation of Duties of Welfare Departments
Section 272, Welfare and Institutions Code:

Boards of Supervisors are allowed to delegate to county welfare departments all or part of the duties of a probation officer including those specified in Section 306 concerning dependent children.

defined in Section 300, Welfare
id Institutions Code, the
ivenile court may adjudge any
:rson under age 18 as a dependent
nild of the court:

a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control...
(b) Who is destitute, or who is not provided with the necessities of life or who is not provided with a home or suitable place of abode.
(c) Who is physically dangerous to the public because of a mental or physical deficiency, disorder, or abnormality.
(d) Whose home is an unfit place for him by reason of neglect, cruelty, depravity, or physical abuse of either of his parents, or of his guardian or other person in whose custody or care he is.

The conditions under which a dependent child may be detained and the nature of that detention are also contained in the Welfare and Institutions Code. Other laws contained in either California's Penal Code or Welfare and Institutions Code set the conditions for the removal and temporary care of dependent children. They are contained on the facing page.

Jailed Dependents

In the Jail Questionnaire, the Youth Authority asked how many dependent children law enforcement held in secure detention. During 1979, six children were reported in such confinement.

A much larger number, some 950 dependent children detentions was reported in error by 14 of California's other law enforcement agencies. The question was apparently misinterpreted as "how many dependent children did you process?" rather than "did you securely detain?"

As a result, staff concluded that while the number of dependent children detained securely in California is small, the number of dependent children processed by law enforcement is large -- much larger than anticipated.

Based on follow-up site visits and telephone calls, law enforcement typically held dependent children apart from adult prisoners, delinquent juveniles and status offenders. Although a female clerk working in a records section might care for an infant, law enforcement routinely held the children in detective bureaus, in squad or conference rooms, or in other open areas near an officer's desk. In a few cases, they converted offices into nurseries or playrooms.

Law enforcement is often confronted with a difficult situation. Often with little, if any, advance warning, they are "in custody" of young children, lost or abandoned or removed from their homes because they are often reported victims of child abuse and neglect. While law enforcement attempts to reduce the dependent children's contact with delinquents or adults brought into custody, the probability remains that these youngsters are exposed to individuals and events they should never see or hear.

California Department of Social Services data show:

- Over 50% of all dependent children are taken into custody between the hours of 5:00 p.m. and 8:00 a.m. and weekends.
- Most after-hours complaints/referrals were handled by law enforcement agencies whose after-hours staff consist almost exclusively of patrol officers.

Emergency Care

Since 1969, California has required counties to provide 24-hour emergency care for dependent children (Penal Code Sections 16500-501). The California Department of Social Services administers the program. In 1976, both Social Services and the Assembly Committee on Human Resources found that such care as was provided failed to meet the minimum Social Services requirements listed in Manual of Policy and Procedures 30-113.1. In 1978, during hearings on child abuse, the California Health and Welfare Agency echoed similar findings.

Money for 24-hour emergency care has been available but has not always been used. In Fiscal Years 1979-1980 and 1980-1981, California set aside $5 million and $8 million respectively for counties to provide such services. Not all counties spent or applied for funds because they lacked programs or there were program start-up and implementation delays.

Despite setbacks, however, the program for 24-hour emergency care of dependent children is working well in some counties. For example: Alameda County has established such a program. The program includes the police of 15 cities, various private agencies, and the county Department of Social Services. The program is basically as follows:

A patrol officer responds to a complaint or referral such as child abuse and goes to the location of the incident. If a child warrants removal from the home or location, then the patrol officer calls the juvenile investigation section or other specified personnel at the police station. The patrol officer gives the circumstances for believing the child must be removed -- age and condition of the child, and a call back number where he can be reached. The officer reciving the information at the police station calls the Alameda County Receiving Home where social workers are available on a 24-hour-a-day basis to assist in emergency placement needs. The officer relays the information provided to him by the patrol officer. The social worker gives the officer calling from the police station an address of an emergency foster home or states that there is a vacancy at the receiving home facility. The officer at the police station then calls the patrol officer, and the child is immediately transported to the emergency foster home or receiving home.

In summary, there are detentions of dependent children in jail or lockup facilities because other alternatives are not available. This can be attributed to the lack of proper 24-hour emergency care in the counties.

Status Offenders

California's detention policy for status offenders was changed with the enactment of Assembly Bill 3121 (Chapter 1071, Statutes of 1976) on January 1, 1977. The bill made it illegal to place any minor in a jail, juvenile hall, county camp, ranch, school, or the Youth Authority solely on the basis of the minor being a status offender as defined by Section 601, Welfare and Institutions Code. Section 601 generally refers to a child who (a) is beyond the control of a parent or guardian, (b) truants, or (c) has violated a curfew. Jails, juvenile halls, county camps, ranches, and schools were reserved exclusively for law violators--those youth defined under Section 602, Welfare and Institutions Code.

Deinstitutionalization of status offenders was not the only provision of AB 3121. The bill also provided for the establishment of non-secure probation and community service programs to resolve the problems of runaways, incorrigibles, and those in conflict with their parents. Local non-secure programs generally consist of sheltered-care, crisis resolution homes, or counseling and educational centers.

By 1978, a prohibition on the detention of status offenders was perceived as a barrier to society's responsibility for aiding and protecting the public and youth. Status offender behavior was viewed as that which would subject the minor and society to harm unless the minor could be protected and held in temporary custody (a) until arrangements could be made to return the minor to a parent or guardian, or (b) until the minor could be placed in a suitable non-secure facility.

Concern among California's citizenry and the criminal justice community prompted the passage of Assembly Bill 958, effective September 23, 1978 (Chapter 1061, Statutes of 1978) to allow for the secure detention of status offenders for short time periods. Under Section 207, Welfare and Institutions Code, a minor may be detained under certain circumstances in a "secure facility other than a facility in which adults are held in secure custody."

Temporary detention of status offenders is allowed for prescribed time limits:

- up to 12 hours to determine if there are any outstanding wants, warrants, or holds against the minor,
- up to 24 hours to locate the minor's parent or guardian and to arrange the minor's return to a parent or guardian within the state,
- up to 72 hours if the minor's return cannot be accomplished within the 24-hour period because of the distance or difficulty in locating the parent or guardian who is out of state.

Assembly Bill 958 also added Welfare and Institutions Code Section 207(d) to the law. This subsection states that the status offender, while in juvenile hall, must remain totally apart from delinquent minors (those defined under Section 602, Welfare and Institutions Code). Approximately $1.5 million was made available to the Youth Authority in 1978 for allocation and disbursement to local agencies for capital construction to provide secure, separate bed space in juvenile halls. Secure bed space may be made available through either construction or modification of existing structures. Nine counties shared in the funding: Kern, Lake, Los Angeles, Marin, Merced, San Luis Obispo, San Francisco, Sonoma and Ventura.

AB 958 also requires each California county to provide a monthly status offender detention report (Section 207(f), Welfare and Institutions Code). In this report, each county must provide the Youth Authority with data on those status offenders which the county detained either in jail or in juvenile hall.

Secure Detention of Status Offenders -- Data Problems.

Information routinely collected on status offender detentions is poor. The problem is twofold. First, the problem is a definitional one. Does the law prohibit law enforcement agencies from securely detaining status offenders in jails or lockups? Or does it permit such detention.

Section 207(c) of the Welfare and Institutions Code states: "A minor taken into custody upon the ground that he is a person described in Section 601, or adjudged to be a ward of the juvenile court solely upon that ground, may be held in a secure facility, other than a facility in which adults are held in secure custody..." The uncertainty is in the phrase "other than a facility in which adults are held in secure custody." Does this mean a cell? a jail? a police building? Can this be interpreted to mean that a minor can be held in an "approved jail facility" as long as adults are not also detained there at the same time? This question needs resolution and may require an Attorney General's Opinion for interpretation.

Secondly, AB 958 requires counties to report status offender detentions. Yet, most status offender detentions occur at the city level. There is no requirement for city police to report to a county entity. Added to this, there is little incentive for counties to collect and report status offender detention data. To do so requires extra effort and recordkeeping. No state funds are available to offset the additional costs. Finally, no enforcement authority was provided to the Youth Authority to assure that data are reported. As a result, many counties do not report this data or they do so on an infrequent or incomplete basis.

According to the Jail Questionnaire, 87 jails or lockups detained 2,987 status offenders during 1979. During follow-up phone calls to 20% of the respondents, law enforcement said detention in locked interrogation rooms, offices, and cells lasted from 15 minutes to seven days. Status offenders are not to be securely detained more than 72 hours.

The detention of status offenders in excess of 24 hours was not reported in the 1979 Annual Survey of Jails because the survey did not specifically ask that question. It was omitted on the assumption that status offenders would not be detained in jails. (This has been corrected on the Youth Authority's 1980 survey.)

Detention of status offenders for more than 24 hours was reported, however, on the Monthly Survey of Jails in 12 counties and two cities. They reported holding 62 minors for more than 24 hours. A single county accounted for 25% of these reported detentions (refer to Chapter 2, Table 3). How many, if any, minors were held longer than the law allows is not known. From other data, there is reason to believe the number may be substantial (refer to Detention Reporting Varies, page 47).

Why Held and Numbers Held

For what reasons did the jails hold status offenders?

According to the Jail Questionnaire, for the 2,987 status offenders held in 29 counties (77 city jails and 10 county jails):

- 1,870 (63%) were held until law enforcement could transport them to their homes, to the juvenile hall, or to crisis resolution homes, sheltered care or other non-secure facilities.

- 1,075 (36%) were held as runaways and incorrigibles whom parents could not control.

- 42 (1%) were held primarily because there was no suitable placement, or because parents refused to pick them up or had asked law enforcement to detain them.

Where Held

Where -- in terms of jail types* classified by the California Board of Corrections -- did law enforcement hold status offenders? Law enforcement held:

- 90 (3%) in Type II jails. Such jails may hold prisoners before and after arraignment, during trial and up to one year after sentencing.

- 747 (25%) in Type I jails. Such jails may hold prisoners no longer than two days plus holidays and weekends.

- 2,150 (72%) in temporary holding facilities. Such facilities may hold prisoners no longer than one day. (Since these facilities may hold minors no longer than 24 hours, they are not subject to Youth Authority inspection.)

Detention Reporting Varies

As the foregoing figures have shown, the Jail Questionnaire located 2,987 status offenders in 1979.

Another Youth Authority report, however, located only 1,850 detained status offenders for the final four months of 1978 and all of 1979. That study is the "Status Offender Detention Report" dated April, 1980. The number reported includes not only jailed status offenders, but also those in juvenile halls. The apparent reasons for underreporting were stated earlier. Most status offender detentions occur at the city level but the legislative reporting requirement is on the county.

*Chapter Two defines jail types.

Allowing for reporting discrepancies, an analysis of the Status Offender Detention Report data is interesting:

- 21 counties reported holding 1,850 status offenders in locked interrogation rooms, offices, or cells in 32 secure facilities (17 juvenile halls, 10 city jails and 2 social service agencies).

- The average age of the detained status offender was 15; 40 were under the age of 12.

- Sixty-two percent (1,141) were females.

- Eighty-six percent (1,594) were runaways.

- The average length of stay was 21 hours.

- 122 cases of time violations were noted. Counties apparently held minors longer than the law allows. Seventy-six of these cases occurred when the county had to return the minor to a parent or guardian in another county, state or country.

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SUMMARY AND CONCLUSIONS

Concerning dependent children, this chapter highlights that:

1. There are few reported cases of secure detention of dependent children in California. The few cases which did occur in 1979 were more the exception than the rule. There is considerable evidence to show, however, that dependent children are processed routinely by law enforcement in situations which, while not secure, are unsuitable. This happens because they often have no alternative placement for these children while awaiting social services or probation's location of a temporary placement. Law enforcement frequently uses offices, squad rooms, and bureaus to process dependent children. They would rather hold youngsters than release them to the street without proper supervision or contact with their parents.

2. There is a dearth of alternative placements for detained dependent children. Counties have not always used available state dollars to plan and implement 24-hour emergency care for dependent children.

3. 24-hour emergency response systems are integral to removal of dependent children from jails or lockups. It is probable that law enforcement will continue to detain dependent children until such time as counties implement 24-hour social service response programs. Therefore, California counties should explore the implementation of such programs. County departments of social service should continue to work closely with law enforcement and other responsible entities to improve the delivery of emergency placement care services to dependent children.

Concerning status offenders, the following was learned:

1. The requirements of state law for the detention of status offenders are ambiguous. The purpose of this study was not to determine whether secure detention of status offenders in jails or lockups was in violation of state statute (Section 207(c), Welfare and Institutions Code). However, an ambiguity in the statute was noted that may require a formal Attorney General's Opinion. Does the law prohibit law enforcement from detaining status offenders in jails or lockups? Or, does it permit such detention.

2. Several status offender detention reporting discrepancies were noted. The reporting discrepancies are summarized below. The extent of these practices cannot be accurately determined from available data.

   (a) Some jail facilities hold status offenders for more than 24 hours but do not report this to the Youth Authority. The facilities are, therefore, not inspected annually as required by law.

   (b) Status offenders were reported held by law enforcement longer than allowed under the law. Counties are required to report detailed information to the Youth Authority. However, most status offender detentions occur at the city level. There is no requirement or statewide process for city police to report to a county entity.

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CHAPTER 5:

COUNTIES NOT OPERATING JUVENILE HALLS

The study's advisory group asked that special attention be paid to detention practices in counties not operating juvenile halls in California. This chapter reports what was learned.

Seventeen counties in California do not operate juvenile halls. These counties are primarily smaller, less populated and located in the northern part of the state. Some are in valleys but most in the eastern foothills and the Sierras. Counties and data gathered are contained in Table 13.

Methodology

Two approaches were used to learn more about these counties. First, data from the Bureau of Criminal Statistics and from various study surveys and study questionnaires were reviewed for pertinent information. Next, jail commanders and chief probation officers from nine of the counties without juvenile halls were interviewed and eight jails in those counties were visited as well.

Detention Practices Vary

Wide variations in detention practices were found to exist in these 17 counties. For instance, the average detention rate of jailing minors for any length of time is 20% less for these counties than is the statewide average rate for counties with juvenile halls. For jailings in excess of 24 hours, however, the rate in these counties is 19% higher.

Stated another way, the counties not operating juvenile halls detain approximately 1% of the minors jailed statewide for any length of time but 33% of minors jailed for more than 24 hours. (See Table 14 for county-by-county detention rates.)

Wide variations in detention practices occur among these counties as well. For instance, in six of these counties, 301 minors were arrested for felonies and 407 minors were jailed for more than 24 hours. In six other counties, 323 minors were arrested for felonies and no minors were jailed for more than 24 hours.

The reasons for these differences are not clear. Factors such as population, arrest rates, available jail beds or distance to the nearest juvenile hall (in an adjacent county) seem to have no direct relationship to the numbers jailed -- especially for more than 24 hours. The lack of a juvenile hall in and of itself does not necessarily make the difference either.

A number of counties not operating halls have detention rates for jailed minors less, sometimes significantly so, than counties with halls.

It is clear, however, that detention practices, attitudes, and perhaps philosophies in these counties differ from those in counties with juvenile halls. A more intensive study is needed, however, to understand these critical factors.

Applicable Welfare & Institutions Code
Sections for Counties Not Operating Juvenile Halls

Section 850-Welfare and Institutions Code.

Establishment.
Every county shall...maintain at the expense of the county in a location approved by...the juvenile court, a suitable...place for the detention...of persons...within the jurisdiction of the juvenile court. Such a...place shall be known as the juvenile hall.

Section 851-Welfare and Institutions Code.

Separate Facility.
The juvenile hall shall not be... connected with any jail or prison, and shall not be...treated as a penal institution. It shall be conducted..as nearly like a home as possible.

Section 852-Welfare and Institutions Code.

Management.
[It] shall be under the management ...of the probation officer.

Section 870-Welfare and Institutions Code.

Joint Operations.
Two or more counties may...establish and operate a joint juvenile hall... under the management and control of the probation officers of the participating counties, acting jointly, or of one of such probation officers, as provided by the agreement among the counties....A county participating in the maintenance of a joint juvenile hall pursuant to this section need not maintain a separate juvenile hall.

Section 872-Welfare and Institutions Code.

Detention in a County other Than County of Residence.
"Where there is no juvenile hall in the county of residence of minors, or when the juvenile hall becomes unfit or unsafe for detention of minors, the presiding or sole juvenile court judge may, with the recommendation of the probation officer of the sending county and the consent of the probation officer of the receiving county, by written order filed with the county clerk, designate the juvenile hall of any county in the state for the detention of an individual minor for not to exceed 60 days..."

No Juvenile Halls
The reasons counties do not operate juvenile halls are related to a "lack of need" and a "lack of resources", according to officials interviewed. One chief probation officer said: "We just don't have enough youngsters to warrant building a hall." A judge provided additional insight: "Even if the state would give us a county or regional facility for detaining minors, small counties like this cannot afford to staff and maintain it." He, too, pointed out that they do not detain enough minors annually to justify the costs. A juvenile justice commissioner said "We don't like detaining minors in jail but have not alternative facilities or staff resources."

Yet, despite these reasons, the law appears to require every county to operate a juvenile hall. Pertinent Welfare and Institutions Code Sections are contained on the facing page.

The law is not explicit. Despite a 1980 Attorney General's Opinion which stated "Each California county is required to operate its own juvenile hall, either solely or jointly with another county," the provisions of Section 872 allow the detention of minors in another county's juvenile hall for up to 60 days for counties "where there is no juvenile hall". (See Appendix D).

Based on the provisions of Section 872, fourteen of the 17 counties maintain contracts with one or more adjacent juvenile halls. Three counties, Inyo, Mono and Mariposa, however, neither operate a hall nor maintain contracts.

Contracting for juvenile hall space in adjacent counties is not necessarily an easy or inexpensive alternative to operating a juvenile hall. The transporation costs for personnel and equipment are high. Bed space is a problem. Often these out-of-county halls are distant from the contracting county and lack available bed space. For example, the closest halls to Modoc, Lassen, and Plumas counties are located in Butte and Yuba counties. To reach them, Modoc, Lassen, and Plumas county personnel must traverse the Cascade Range by way of the Feather River Canyon. Winter traveling conditions can be particularly dangerous. For Modoc county personnel, the round trip requires 10 hours.

In Inyo County, the Board of Supervisors has been considering building a 20-bed juvenile hall while the probation department negotiates to contract for beds with Tulare county. If the latter is selected, minors will be flown back and forth rather than driven the 600-mile round trip.

Contracting for beds does not necessarily solve the frequent jailing of minors. Several of the 14 contracting counties still have jailing rates substantially higher than the state average or the rate of other contracting counties.

Alternatives to Jails

Few public or private alternatives to jailing seem to exist in these counties.

The foster-care homes, group homes, crisis intervention centers and other possible community-based alternatives to juvenile halls or jails are used primarily for status offenders and low risk delinquents. Probation officers must often reassure the facility that the delinquent is not going to be disruptive. This is often a difficult task with acting-out minors who usually are well known in a smaller community.

SUMMARY AND CONCLUSIONS

In conclusion, data support the following conclusions:

1. The detention practices of counties not operating juvenile halls differ significantly from counties with juvenile halls. A disproportionately high percentage of minors are jailed for more than 24 hours. Although these counties detained approximately 1% of minors jailed statewide for any length of time, they jailed 33% of minors held for more than 24 hours.

2. The law is not clear. The law appears to require that each county operate a juvenile hall either solely or jointly with another county. Seventeen counties, however, do not operate juvenile halls. Fourteen of these contract with other counties for juvenile hall bed space and may, therefore, meet the letter of the law. Three counties neither operate juvenile halls nor contract with adjacent counties for bed space.

3. Few Alternatives to jail in counties not operating juvenile halls. Few public or private alternatives to jail detention exist in these counties. When operational, the program target population generally consists of low risk offenders or "at risk" minors.

4. A more intensive study is required of detention practices in all 17 counties not operating juvenile halls. Many factors affect detention practices and the need for detention facilities. Among them are the number of juveniles committing delinquent acts, operating policies, law procedures, availability of alternative placement and other services. A number of variations between communities must be taken into account, e.g., variations in law enforcement practices, nature of offenses and degree of family disorganization. A complete study allows for an examination of the entire county juvenile system rather than dealing with juvenile detention as a separate issue.

CHAPTER SIX: NATIONAL TRENDS

National trends and issues often result in legislation and regulations that impact state and local practices. Therefore, this chapter focuses on such topics as the federal Juvenile Justice and Delinquency Prevention Act, policies of national organizations, state laws and practices, landmark court cases, and the inherent problems of separation and isolation of minors from adult inmates.

Juvenile Justice & Delinquency Prevention Act.

In 1974, Congress recognized the problem of children in jails by enacting the Juvenile Justice and Delinquency Prevention Act. Emphasizing the widespread abuses of minors in jails and lockups, the Act aimed at eventual removal of all minors from jails, but mandated "sight and sound" separation of juvenile and adult offenders in states which participated in the legislative funding program. The Act also required that status offenders be removed from juvenile detention and correctional facilities.

Federal authorities recognized that separation is not only impractically expensive but often architecturally impossible. It sometimes "compounds an already overcrowded jail situation by requiring the designation of an entire residential unit regardless of the numbers held." Those county jails which have separated minors from adults often have done so, the Office says, by creating "living conditions tantamount to isolation in the...drunk tank." The Office concludes, "Adequate separation as intended by the Act is virtually impossible within the confines of most county jails and city lockups."

In view of these and other problems, it is not surprising that many states still do not require the degree of separation urged by the Office. According to national studies, most states simply do not provide such separation. Perhaps as a result, Congress reauthorized the 1974 Act in 1980, calling for the total removal of minors from jails by 1985.

The reauthorization followed closely former Deputy Attorney General Charles Renfew's testimony before Congress:

"I propose to you that...Congress absolutely prohibit the detention or confinement of juveniles in any institution in which adults, whether convicted or awaiting trial, are confined....I would suggest that... within an additional five years participating jurisdictions remove all juveniles from adult jails."

In July 1980, Judge Carl E. Guernsey of the National Council of Juvenile and Family Court Judges testified before the Senate Judiciary Committee Constitution Subcommittee. He said, "New attention should be given to the prehearing removal of juveniles from adult jails and to better programs for the habitual and violent offenders."

Policy of National Organizations. Stances of various national organizations are quoted below. The most outspoken has been the National Coalition for Jail Reform. Their broad membership gives special credence to their position on barring all children from jails.

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."

Agencies Seeking Removal of Minors from Jail

American Correctional Association:

"[Our Commission on Accreditation for Corrections finds that] adult and juvenile offenders should be maintained separately at all times. Juvenile offenders should not be housed in adult facilities, nor should adult offenders be housed in juvenile facilities. Juveniles whose cases have been waived to adult courts should be retained in juvenile detention facilities pending the outcome of their trials."

National Institute of Corrections:

Director Allen Breed states, "No thinking judge who has ever closely inspected a jail or prison could bring himself to deliberately assign a child to an experience that emphasizes brutality, abuse and sadism....Jails and prisons are places in which children will be assaulted, molested, and emotionally damaged. There has never been a jail in which experience demonstrated that juveniles and adults could be separated. The adult felon will find some way to make contact with juveniles placed in jail and for nefarious reasons."

National Sheriff's Association:

"When jail detention cannot possibly be avoided, [the jail must] 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."

U.S. Bureau of Prisons:

"Juveniles do not belong in jail.... 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....However, when detaining a juvenile in a jail is unavoidable,...the juvenile must always be separated as completely as possible from adults."

National Coalition for Jail Reform:*

"No child should be held in adult jail."

*Members of the Coalition are:

American Civil Liberties Union, National Prison Project
American Correctional Association
American Public Health Association
Benedict Center for Criminal Justice
Committee for Public Justice
Institute for Economic and Policy Studies, Inc.
Joint Centre Association
National Association of Clerks in Criminal Justice
National Association of Counties
National Association of Criminal Justice Planners
National Center for State Courts
National Clearinghouse for Criminal Justice Planning & Architecture
National Council on Crime and Delinquency
National Criminal Justice Association
National Institute of Corrections
National Interreligious Task Force on Criminal Justice
National Jail Association, Inc.
National Jail Managers Association
National League of Cities
National Legal Aid and Defender Association
National Moratorium on Prison Construction
National Sheriffs' Association
National Urban Law Institute
National Urban League
Offender Aid and Restoration of the United States, Inc.
Pretrial Services Resource Center
Southern Coalition on Jails and Prisons
Unitarian Universalist Service Committee

State Laws and Practices

Many states, recognizing both the Juvenile Justice and Delinquency Prevention Act and the "parens patriae" or wise parent philosophy behind the juvenile justice system, have adopted legislation to limit the conditions under which minors can be detained in adult facilities. Many states have also enacted legislation that defines the limitation on contact between adult inmates and minors in terms of "sight and sound" separation. Researchers analyzing state legislation on juvenile detention often found, however, that statutes are vague and unclear.

In Removing Children from Adult Jails (1979), the University of Illinois Community Research Forum noted "Many of the states' statutes are ambiguous." When you read the state law, the Forum explains, you really cannot tell whether it prohibits the state from jailing the minor at all or whether it allows the state to jail the minor so long as it separates that minor from adult inmates.

The following citations were noted as a few examples of such statutory language:

- Florida: "Separate accomodations for juveniles....Special staff to supervise juveniles at all times."
- Ohio: "A room separate and removed from adults so that the child cannot come into contact or communication with any adult convicted of a crime."
- New Jersey: "...to be held apart from adults."
- Texas: "The separation of juveniles...from sight and sound of adult inmates."
- Virginia: "Juveniles shall be housed...in a separate section from adults....If that is not possible, [they] shall be housed in separate cells from adults."

In Children in Jails (1979), the National Juvenile Law Center reports that 15 states and the District of Columbia clearly forbid jailing of status offenders. Three states forbid the pre-trial jailing of all minors: Arizona, Mississippi and Rhode Island. This, however, is not the case. Only two states, Maryland and Pennsylvania have recently enacted laws forbiding the pre and post-trial jailing of all minors. Both of these states however, permit jailing minors certified to criminal court.

Initially, the Pennsylvania law prohibited detaining minors in jails or penal institutions under any circumstances. However a 1978 addition to Pennsylvania law permits jails to hold delinquents if this proves necessary for public safety and if Pennsylvania's Department of Public Welfare has approved the jail as suitable to hold minors.

In summary, most states have legislation limiting the conditions under which juveniles can be incarcerated. These conditions may limit jail detention by criterion of age, offense, juvenile facility availability, court order, or danger to the juvenile or others. However, the great majority of states still allows detention in jail for all or most classes of juveniles.

Nevertheless, true separation is not achieved in many cases. Vague and unclear language leads to misinterpretation of requirements. Jail managers are often caught in a dilemma between the separation mandates and the realities of managing a jail for adult inmates. Often, the design and structure of the jail itself does not allow separation to occur. An overriding consideration for many is cost -- certainly not an insignificant factor especially at a national level.

* * * * * * *

In its national survey of state law, the University of Illinois Community Research Forum agreed in Removing Children from Adult Jails. Should the Supreme Court ever prohibit the jailing of minors, the Forum said, or should cities and counties vigorously work to separate minors and adults within their jails, the cumulative cost could reach "hundreds of millions" of dollars.

Critical National Issues

Several critical issues are recurring themes in national research papers on the detention of minors in jails. Separation of juveniles from adults is the most central. Other commonly-cited issues are isolation of minors and treatment of minors certified to adult court jurisdiction. Each of these issues has been reviewed in some detail in current research. Excerpts from these researches and opinions from recognized authorities are offered here to give the reader an overview of the major issues from a national perspective.

Separation from Adult Inmates

In their 1979 study, Children in Adult Jails, the Children's Defense Fund surveyed nine states that required separation of adults and minors in jails. Of the 139 jails surveyed for separation, only 40% could provide partial separation and 22% provided no separation at all. Children regularly came into total, visual, or auditory contact with adult inmates. Frequently, the physical layout and size limitations of the jail precluded the possibility of separation. Also discovered in these jails were inmate trustees placed in control of detained minors, minors placed in cells with the mentally ill or retarded, and minors placed in cells with violent adult offenders.

In Removing Children From Adult Jails (1979), the Community Research Forum provided an analysis of state codes on separation. For most states, they found that the statutes were unclear. Some seemed at first view to prohibit juvenile jailing altogether, while later specifying the separation requirements to be followed when jailing minors. In those instances where specific separation statutes existed, they were not followed. It was noted that an acceptable level of separation within adult jails would be virtually impossible in the majority of existing facilities.

Also noted were the probable cost repercussions if a Supreme Court decision prohibiting the detention of minors in jails was ever made. The estimate was that the result would be a "cumulative dollar effect in the hundreds of millions if a policy of separation within the facility was vigorously pursued."

According to an OJJDP policy memorandum:

"The separation of juvenile and adult offenders is an enormous problem for law enforcement officials at county and municipal levels. The required separation 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."

The problems evolving out of the inability to operationally, economically and architecturally separate minors in jails have led to the consideration of two basic alternative paths. Either juveniles should be removed from jails or the legislation unrealistically requiring separation in jails should be amended. At this point in time "tough on crime" advocates seem to be arguing for the latter, while national researchers and juvenile corrections administrators are recommending that minors be removed from jails altogether.

Isolation

Many national studies point out that the separation requirements, established for the protection of minors in jails, have resulted in their inadvertent isolation. The effect of such isolation has been viewed by experts as severely detrimental.

In case studies such as those reported by Thomas Cottle (1978) and Kenneth Wooden (1976), minors reported both terrifying experiences of abuse by adult inmates and of isolation in remote sections of the jails. Surprisingly, some of those minors exposed to both isolation and abuse chose to live with the abuse rather than be put in solitary again.

The court testimony of experts in juvenile corrections and child psychiatry emphasize the devastating effects of isolation on children, and strongly protest the practice of isolating minors in jails. As reported by Dr. Joseph R. Noshpitz, past president of the American Association for Children's Residential Centers and Secretary of the American Academy of Child Psychiatry:

"In my opinion, extended isolation of a youngster 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 youth 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 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."

Although the effects of isolation in children can be severe, it is doubtful that legislatures are as aware of its negative effects as they are of the abusive potential of failure to separate. According to the state legislative analysis provided in Removing Children From Adult Jails, few state statutes provide any protection against isolation of minors. Isolation of minors is easier to ignore but no less harmful than the overt abuse which has been so pointedly protected against. Isolation in jails does not often show itself as dramatically and obviously as an active assault by an adult does. Only when the long solitary hours lead to depresssion and suicide does it become an obvious problem.

The suicide rate for minors in jails is roughly seven times that of minors held in secure juvenile detention facilities. (An Assessment of the National Incidence of Juvenile Suicide in Adult Jails, Lockups, and Juvenile Detention Centers. Community Research Forum, University of Illinois, August, 1980.)

Minors Certified to Criminal Court

Minors are normally adjudicated under the jurisdiction of the juvenile court. When the juvenile court waives its jurisdiction over a serious or sophisticated youth, the minor is identified as being "remanded" or "certified" to the adult justice system.

Several issues have arisen recently around the types of minors certified and their treatment in jails. First, there has been a major increase in the number of minors certified. Second, there is some question as to whether certified minors can be commingled with adults in jails and justifiably treated as adults. Finally, it appears that it is not necessarily the violent or serious offenders that are being certified.

Under the juvenile system, minors are to be detained for the purpose of treatment and rehabilitation rather than punishment. Court decisions have established this in "quid pro quo" exchange for the lack of judicial due process in juvenile court proceedings. Therefore, when a minor is certified from the juvenile court to adult court jurisdiction, the juvenile privileges are often revoked. According to former LEAA Attorney Thomas J. Madden (1978), the federal requirement for separation of minors in jails does not apply to those juveniles that are certified to the adult court.

The FBI's Uniform Crime Reports indicate that there were nearly 19,000 minors certified to criminal court in 1973, a number which increased to over 69,000 in 1977. The increase has been attributed to public concern about the increase in violent juvenile crime in the late 1970's. However, an examination of the Children's Defense Fund data cited earlier, shows that not only violent juveniles are being certified. Only 11.7% of the sample of minors in jails had committed serious offenses against the person,* while 57% were certified.

*FBI Index of Violent Crimes: Murder, Robbery, Rape

In the 1978 Ford Foundation report, Violent Delinquents, similar statistics on the occurrence of juvenile violence were given:

"...violent acts by juveniles account for 10-11 percent of all juvenile arrests...repeated violence by juveniles is not a common phenomenon...simple assault is the most common violent crime committed by juveniles."

The National Council on Crime and Delinquency, not dismissing the occurrence of juvenile violence, relates it to the practice of certifying minors to criminal court:

"The final myth concerning the jailing of children is that it is 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', states the Children's Rights Project. More than that, they will legally subject juveniles, including less serious offenders, to the risks and harms of commingling with adult criminals.

The Children's Rights Project went on to say:

"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.

"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 Alternatives: Varied, Humane, Cheaper, and Effective.

To many, the practice of holding juveniles in jails is contrary to developments over the past 79 years in juvenile law and the juvenile justice system. It is against the concept of using "the least restrictive environment" in handling juveniles -- an idea especially applicable to the minor offenders and non-offenders who constitute the large majority of youths in contact with the juvenile justice system. Frequently, it is in violation of the juvenile's civil rights.

Many of the myths underlying the practice of jailing juveniles have been dispelled. Research conducted by the University of Illinois Community Research Center indicates a nationwide trend toward detaining up to twice as many juveniles as is necessary for the preservation of public safety and protection of the court process; a juvenile suicide rate in jails far in excess of that in juvenile detention centers or the general population; and citizen attitudes which favor prohibition on jailing for the vast majority of juveniles who come in contact with police. As to attitudes, these findings reveal a public which prefers that the juvenile justice system revolve around supervision, care, rehabilitation, and appropriate restitution rather than retribution. Certainly, care, support, and guidance can be achieved more readily in a home or other community setting than in a jail.

Concern has been expressed about the economic costs of closing adult jails to juveniles. These concerns generally focus on the costs of remodeling facilities, building juvenile detention centers, and funding alternative programs. One reason for this concern is the lack of information about the range of alternatives communities can develop, many of which are less expensive than institutional care. 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 group homes ($17) are less costly alternatives that provide services. Secure detention with full services would cost on the average $61 per day per child. The State of Maryland has found that, "The cost of placing a youngster in a state correctional institution is between a reported

$12,000 and $14,000 (per year), 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."

Communities have a responsibility to assist the juvenile justice system develop options by helping youth in trouble; and they should be made aware that funding secure facilities is not the only solution. Many and various alternative ways of handling troubled young people have been developed in communities of all sizes around the country.

In their careful analysis of alternatives to secure detention which focused on home detention, attention homes, runaway programs, and private residential homes, University of Chicago researchers Thomas Young and Donnell Pappenfort found that upwards of ninety percent of juveniles in these programs neither committed new offenses nor ran away.

Following are brief descriptions of successful, effective programs providing alternatives to secure detention:

Attention homes - short-term group homes in residential neighborhoods for six to twelve juveniles. Live-in group home parents are assisted by social service workers.

Receiving homes - for youths in need of care. They operate like group homes and accept youngsters who may have been held in detention.

Runaway programs - short-term care for juveniles who need a place to go and for those brought in by police and court officials as runaways.

Home detention programs - youths live with their families and meet daily with court staff for supervision and services.

Evening report centers - juveniles live in their own homes and report every evening for three or four hours to a counseling, recreation and tutoring center with professional staff. They work on peer and family problems, and their constructive use of leisure time, while awaiting court appearance.

Family court community aide programs - youths remain at home and receive daily intensive counseling services from a community aide who coordinates their use of community resources, acts as a companion, provides support to the family, advocates for and accompanies the youth to court.

Family crisis counseling - to encourage the entire family to address a youth's problem, counselors visit the youngster and family in their own home for intensive counseling within the first hour or two after the youth's behavior comes to the attention of authorities, 24 hours a day, seven days a week. Up to 10 sessions may be held.

Proctor programs - youths live with a proctor in the proctor's home. The proctor's only assignment is to work with the youth in an orderly, disciplined way and demonstrate the constructive use of time, 24 hours a day.

The Community Research Center states juvenile detention centers should be used as a last resort for the small percentage of juveniles who pose a significant threat to the public safety or court process, and therefore require secure custody. Good detention centers are staffed with persons trained in counseling and can provide badly needed crisis intervention assistance. Detention centers also have educational programs,

recreation and activity areas, and medical services to insure humane and perhaps beneficial care for juveniles who must be securely detained. Where necessary, several small counties pool detention needs and financial resources to develop a regional detention center. In rural counties where populations do not warrant a full-service detention center, holdover facilities which provide temporary residential services for up to 48-hours may be used. The holdover facility gives the court time to dispose of cases, transfer youths to a detention center, or make other arrangements. Usually, local law enforcement officers transport juveniles to and from holdover facilities and detention centers.

APPENDIX A

SUBCHAPTER 7. MINIMUM STANDARDS FOR THE DETENTION OF MINORS IN JAILS OR LOCKUPS FOR PERIODS IN EXCESS OF 24 HOURS

Article 1. General Provisions

4500. Introduction.

(a) This subchapter establishes minimum standards for the detention of minors in jails or lockups used for periods in excess of 24 hours. These regulations pertain to planning, physical accommodations, custody, supervision, and general care of minors confined in such facilities. Although these regulations do not apply to facilities used for the detention of minors for periods of less than 24 hours, they may be considered as appropriate guidelines for such situations.

(b) To the extent possible, consistent with the law and the special needs of minors, these regulations are based on, or coincide with, the "Minimum Standards for Local Detention Facilities" adopted by the State Board of Corrections (Title 15, Division 1, Subchapter 4, California Administrative Code).

NOTE: Authority cited: Sections 209, 1712, and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

HISTORY:

1. New subchapter (Sections 4500–4549, not consecutive) filed 6-28-79 as an emergency; designated effective 6-29-79 (Register 79, No. 26). Certificate of Compliance included.
2. Amendment of subsection (a) filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).

4501. Definitions.

For the purposes of this chapter, the following definitions apply:

Facility. "Facility" means jail or lockup.

Minimum Standards for Local Detention Facilities. "Minimum standards for local detention facilities" means Subchapter 4, Division 1, Title 15 of the California Administrative Code as adopted by the Board of Corrections.

Minor. "Minor" means any person under the age of 18 years.

Segregation. "Segregation" means preventing any person under 18 years of age detained from having sight or sound contact with adult prisoners.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Sections 208 and 209, Welfare and Institutions Code.

4502. No Contact With Adults.

Section 208 of the Welfare and Institutions Code requires segregation of minors and adults in jails and lockups, and reads in pertinent part as follows:

"(a) When any person under 18 years of age is detained in or sentenced to any institution in which adults are confined, it shall be unlawful to permit such person to come or remain in contact with such adults."

"(c) As used in this section, 'contact' does not include participation in supervised group therapy or other supervised treatment activities, participation in work furlough programs, or participation in hospital recreational activities which are directly supervised by employees of the hospital, so long as living arrangements are strictly segregated and all precautions are taken to prevent unauthorized associations."

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 208, Welfare and Institutions Code.

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4503. Statutory Authority.

The standards and requirements contained in this subchapter are based upon Section 209 of the Welfare and Institutions Code. This law requires the Department of the Youth Authority to annually inspect each jail or lockup which, during the preceding calendar year, was used for confinement for more than 24 hours, of any minor. Section 209 reads as follows:

"The judge of the juvenile court of a county, or, if there is more than one such judge, any of the judges of the juvenile court shall, at least annually, inspect any jail, juvenile hall, or lockup which, in the preceding calendar year was used for confinement for more than 24 hours of any minor. Such judge shall note in the minutes of the court whether the jail, juvenile hall, or lockup is a suitable place for confinement of minors.

"The Department of the Youth Authority shall likewise conduct an annual inspection of each jail, juvenile hall, or lockup situated in this state which during the preceding calendar year, was used for confinement for more than 24 hours of any minor.

"If either such judge of the juvenile court or the department, after inspection of a jail, juvenile hall, or lockup, finds that it is not being operated and maintained as a suitable place for confinement of minors, the juvenile court or the department shall give notice of its finding to all persons having authority to confine such minors pursuant to this chapter and commencing 60 days thereafter such jail, juvenile hall, or lockup shall not be used for confinement of such minors until such time as the judge or department, as the case may be, finds, after reinspection of the jail, juvenile hall, or lockup, that the conditions which rendered the facility unsuitable have been remedied, and such facility is a suitable place for confinement of such minors.

"The custodian of each jail, juvenile hall, and lockup shall make such reports as may be required by the department or the juvenile court to effectuate the purposes of this section."

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4504. Annual Inspection.

(a) Any duly authorized representative of the Department may, upon proper identification, inspect a jail or lockup used for the detention of minors over 24 hours at any time, with or without advance notice. Upon request, provisions shall be made for private interviews with staff, minors, and for examination of records relating to the standards and requirements set forth in these regulations.

(b) Evaluation of each jail or lockup used for the detention of minors over 24 hours shall be performed by the Department at least once a year. The Department shall notify the following in writing at least once per year whether or nor the jail or lockup is suitable for the detention of minors: the presiding judge of the juvenile court; the administrator of the facility (i.e., sheriff or chief of police); and chairman of the board of supervisors. The Department shall notify the above named county officials whether:

(1) The jail or lockup is in compliance with standards and is a suitable place for the detention of minors.

(2) The jail or lockup is not being maintained in compliance with the law or the provisions of this subchapter. Where such a situation exists, the Department shall immediately give formal notice of its findings, and commencing 60 days thereafter shall declare the jail or lockup unsuitable for the detention of minors, unless the Department has concluded, based on reinspection, that the violations have been remedied.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4505. Appeal.

The administrator of a jail or lockup shall have the right to bring to the attention of the Department any alleged misapplication or capricious enforcement of regulations by any departmental representative, or any substantial difference of opinion, as may occur between the administrator of the facility and departmental representative concerning the proper application of these standards and related regulations as provided in Section 4200 et seq. of Division 4, Title 15 of the California Administrative Code

NOTE: Authority cited: Section 1751, Welfare and Institutions Code. Reference: Section 1751, Welfare and Institutions Code

4506. Submittal of Plans and Specifications.

Penal Code Section 6029 sets forth the requirement for submission of plans and specifications to the Board of Corrections for construction, reconstruction, remodeling, or repairs of jails or lockups in an aggregate in excess of $1,500 Article 8 of the "Minimum Standards for Local Detention Facilities" sets forth detailed requirements for initial planning. The Department shall cooperate with the Board of Corrections in the review of plans and specifications for areas used for the detention of minors.

NOTE: Authority cited: Section 1751, Welfare and Institutions Code. Reference: Section 6029, Penal Code

Article 2. Records and Statistics

4510. Annual Reporting Requirements.

Each jail or lockup shall submit an annual report to the Department, in a manner prescribed by the Department, on whether any minor was detained in the facility for more than 24 hours in the preceding year.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code

4511. Monthly Population Report.

Each jail or lockup approved for the detention of minors for more than 24 hours shall submit monthly population reports within 10 calendar days after the end of such month, in a format to be provided by the Department, to the Department. Information to be reported shall include, but not be limited to, the following:

(a) Actual number and status of minor males and females detained during the reporting month, if any.

(b) Reasons for detention of minors.

(c) Number of minors released and length of stay in detention.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code

4512. Report of Death of a Minor While Detained.

In any case in which a minor dies while detained in a jail or lockup:

(a) The administrator of the facility shall report the facts in writing to the Department. A copy of the report submitted to the Attorney General under Government Code Section 12525 will suffice. The report shall be submitted within 10 days after the death and shall include but not necessarily be limited to the following:

(1) Name

(2) Date of birth

(3) Sex

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(4) Race
(5) Date and time of admission to the jail or lock up
(6) Reason for admission
(7) Facts relating to death, including but not necessarily limited to, the following:
(A) Date and time of death
(B) Cause of death
(C) Name of physician in attendance
(8) Name and address of parents, guardian, or person standing in loco parentis
(9) Name of the facility
(10) Name and title of employee making report.
(b) Upon receipt of a report of death of a minor from the administrator, the Department shall within 30 days inspect and evaluate the jail or lockup pursuant to the provisions of this subchapter. Any inquiry made by the Department shall be limited to the standards and requirements set forth in these regulations.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

Article 3. Planning and Design

4516.
Living areas for minors shall be segregated from all adult prisoners and by sex.

NOTE: Authority cited: Section 1751, Welfare and Institutions Code. Reference: Sections 208 and 209, Welfare and Institutions Code.

4517. Single Occupancy Cells.
(a) Single occupancy cells shall provide a minimum of 60 square feet of floor area.
(b) Minimum ceiling height in single occupancy cells shall be eight feet.
(c) All single occupancy cells shall house only one minor.

NOTE: Authority cited: Sections 208 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code

4518. Multiple Occupancy Cells.
(a) A multiple occupancy cell shall provide a minimum of 35 square feet of floor space per minor, except that no multiple occupancy cell shall be less than 100 square feet.
(b) Minimum ceiling height in multiple occupancy cells shall be eight feet.
(c) A multiple occupancy cell shall have a maximum rated capacity of six minors.
(d) The maximum rated capacity for a multiple occupancy cell shall not exceed three minors, unless observation of the minors is maintained in accordance with Section 4534(c) of this subchapter.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference Section 209, Welfare and Institutions Code.

4519. Bed and Mattress.
Each minor shall have an individual bed and mattress no less than 30 inches wide and 76 inches long constructed of non-allergenic and fire retardant materials. Beds shall be spaced no less than 36 inches apart and be at least 12 inches off the floor

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference Section 209, Welfare and Institutions Code

4520. Dayroom.
There shall be a dayroom area containing 25 square feet of floor space per minor. Such a dayroom area may be a part of a single or multiple occupancy cell or it may be separate and distinct from the sleeping area.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4521. Toilets/Urinals, Wash Basin and Showers.
(a) Toilets/Urinals. Toilets shall be available to all minors on a ratio of at least one toilet to every eight minors or fraction thereof and in no case shall there be less than one toilet in any single or multiple occupancy cell and accessible to the occupants of dayrooms.
(b) Wash Basins. There shall be one wash basin required for every eight minors or fraction thereof and in no case shall there be less than one wash basin in any single or multiple occupancy cell.
(c) Showers. There shall be a sufficient number of showers and at a location in the area approved for the detention of minors which shall allow every minor to bathe daily.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4522. Drinking Fountains.
There shall be a minimum of one drinking fountain in every single or multiple occupancy cell.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4523. Lighting.
Lighting in living units, day rooms and activity areas shall be sufficient to permit easy reading by a person with normal vision. Night lighting in these areas shall be sufficient to give good visibility for purposes of supervision, but not so bright that restful sleep is hindered.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4524. Heating and Cooling.
Provision shall be made to maintain a comfortable living environment in accordance with Title 24, California Administrative Code, including the regulations for energy conservation.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4525. Maximum Capacity.
The Department shall establish a maximum capacity for each living area designated for the detention of minors within a jail or lockup in accordance with the provisions of this subchapter.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4526. Existing Jail or Lockup.
An existing jail or lockup built in accordance with construction standards in effect at the time of construction and approved for the detention of minors by the Department shall be considered as being in compliance with the provisions of this article unless the condition of the structure is determined by the Department to be dangerous to life, health and welfare of minors.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4527. Subsidiary Inspection.

(a) Each facility is subject to annual inspections for fire safety and health and sanitary conditions under the provisions of Sections 13146.1 and 459 of the Health and Safety Code respectively. Reports of such inspections are to be submitted to the State Board of Corrections by the inspecting authorities. Such reports shall be reviewed by the Department of the Youth Authority to assure suitability of the facility for the detention of minors in excess of 24 hours.

(b) The Department of the Youth Authority may request additional inspections upon indication of need or changed circumstances.

NOTE: Authority cited: Sections 209 and 1712, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code; Section 6031.1, Penal Code.

HISTORY:

1. New section filed 2-28-80; effective thirtieth day thereafter (Register 80, No. 9).

Article 4. Intake and Release

4530. Admittance Procedures.

Each jail or lockup shall provide and/or allow any minor detained the following:

(a) Medical attention in accordance with Section 4538 of this subchapter and state law.

(b) At least two telephone calls no later than three hours from time of admission, if appropriate (refer to 627b of the Welfare and Institutions Code), which shall be documented.

(c) A shower or bath

(d) A clean towel

(e) Clean clothing

(f) Clean bedding and linens

(g) Necessary toilet articles

(h) Secure storage and a receipt for personal clothing and valuables.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4531. Release Procedures.

The minor's personal clothing and valuables shall be returned to the minor, or to his or her parents or guardian, upon the minor's release from the jail or lockup.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

Article 5. Supervision of Minors

4534. Supervision of Minors.

Each jail or lockup shall provide:

(a) Continuous around-the-clock supervision of minors by staff located adjacent to living areas to assure staff can hear and respond.

(b) Visual observation of minors at least every 60 minutes, but also on an irregular schedule. This supervision should be supplemented by an audio-visual electronic surveillance system designed to detect overt, aggressive, or assaultive behavior and to summon aid in emergencies.

(c) Visual observation of minors in multiple occupancy cells with four or more minors actually in detention at least every 30 minutes, but also on an irregular schedule. This supervision should be supplemented by an audio-visual electronic surveillance system designed to detect overt, aggressive, or assaultive behavior and to summon aid in emergencies.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4535. Handling of Special Needs of Minors.

At least one staff member shall be available to minors to discuss and/or help minors with personal problems or needs that may arise. If it is impractical to provide a trained staff member, the facility administrator may make arrangements for such service by another agency, e.g., probation department.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

Article 6. Health and Welfare

4538. Medical Services.

Each jail or lockup shall provide emergency and basic health care services to all minors.

(a) Initial Screening: At the time of admission, each minor shall have an assessment for state of consciousness, injuries, drug abuse, signs of illness, and psychiatric disorder requiring further evaluation and/or referral (this can be done by the admitting officer and/or nurse). If there is any question of severe or emergency medical disorder, a nurse or physician shall evaluate the minor.

(b) There shall be a daily sick call conducted for all minors or provision made that any minors requesting medical attention be given such attention. Procedures to carry out this requirement shall be developed by the facility administrator in cooperation with the facility physician and/or the county medical officer.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4539. Medical Procedures.

Every administrator of a jail or lockup, in cooperation with medical staff, shall develop a written plan for providing medical, and dental care to detained minors. Such plan shall include, but not necessarily be limited to:

(a) Screening criteria and instructions for screening to be used by the non-medical and medical staff at the time of admission and at any other time to determine the need for emergency medical attention.

(b) Procedures for obtaining informed consent from parents, guardian or person standing in loco parentis to provide medical, surgical, or dental care.

(c) Procedures for obtainjng authorization for medical, surgical or dental treatment from the court when there is no parent, guardian or person standing in loco parentis.

(d) Policies and procedures in regard to provisions that allow parents, guardian or person standing in loco parentis to authorize and arrange for medical, surgical, dental or other remedial treatment recognized or permitted under the laws of this state.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4540. Food and Nutrition.

Each jail or lockup shall provide:

(a) A minimum of three meals per day.

(b) Not more than 14 hours elapse between the evening meal and breakfast of the following day, except when nutritious snacks are offered in the evening.

(c) Food be served under the immediate supervision of a staff member.

(d) A minimum of 15 minutes be allowed to eat each meal.

(e) A written plan for the handling of diabetics, pregnant teenagers, and other minors needing modified diets. If the facility is unable to provide the necessary diet in the facility, alternate plans should be made for housing and/or providing the special foods from a vendor or other outside source.

(f) A minimum diet in every 24-hour period consisting of the full number of servings which meets provisions of Section 1131 of the "Minimum Standards for Local Detention Facilities."

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4541. Clothing and Personal Hygiene.

Clothing and personal hygiene provided each minor shall include, but not be limited to:

(a) A standard institutional issue of clothing including the following:

(1) Clean socks
(2) Clean undergarments
(3) Clean outergarments
(4) Footwear

The minor's personal undergarments and footwear may be substituted for the institutional undergarments specified in this regulation.

(b) A standard issue of clothing issued to all minors held over 48 hours, excluding weekends and holidays, and, excepting footwear, outergarments shall be exchanged at least once each week unless work, climatic conditions, or illness necessitates more frequent exchange. Undergarments and socks shall be exchanged at least twice each week.

(c) Minors held over 24 hours who are unable to supply themselves with personal care items, because of indigency shall be issued the following:

(1) Toothbrush
(2) Dentifrice
(3) Soap
(4) Comb
(5) Shaving implements (shaving implements which will be used by minors in areas of higher than minimum-security should be of the appropriate security type and be supplied by the facility).
(6) Tampons and/or sanitary napkins for females.

(d) Each minor shall be given the opportunity to shower daily.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4542. Bedding and Linen.

(a) A standard issue of bedding and linens shall include but not be limited to the following:

(1) One clean serviceable mattress
(2) One mattress cover or one sheet
(3) One towel
(4) One blanket or more depending upon climatic conditions

(b) A standard issue of bedding and linens, freshly laundered and sanitized, shall be issued to each minor at booking and washable items such as sheets, mattress covers, and towels, shall be exchanged for clean replacement at least once each week. Blankets shall be laundered or dry cleaned at least every three months or more often, if necessary. If a top sheet is not issued, blankets shall be laundered or dry cleaned at least once a month or more often if necessary.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

Article 7. Program and Activities

4545. Recreation Programs.

Recreation programs shall provide for exercise and constructive leisure time activity for at least one hour each day, not including unsupervised periods spent in such activities as watching television for each minor detained for more than 24 hours. Exercise and constructive leisure time activity means an activity in an area designated for recreation and includes sports, games, and physical exercise.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4546. Visiting.

(a) Each minor shall have the opportunity of visiting with parents or guardians as soon as possible after admission.

(b) The schedule of the jail or lockup shall allow each minor weekly visits totaling at least one hour by parents, guardian, person standing in loco parentis, or other relatives.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4547. Correspondence.

(a) Each minor shall be given the opportunity to write and receive an unlimited number of letters.

(b) Mail sent to or received from public officials, judges, and attorneys shall be uncensored and unread by staff.

(c) Outgoing mail, other than to public officials, judges, and attorneys, and all incoming mail may be opened and inspected for contraband.

(d) Those minors who are without funds shall be permitted at least two postage-free letters each week to permit correspondence with family members and friends but without limitation on the number of postage-free letters to his or her attorney and to the court.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4548. Disciplinary Procedure.

Minors requiring disciplinary isolation shall be housed in only living areas designated for the detention of minors.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

4549. Religious Program.

Each minor shall have access to religious services and/or religious counseling of his faith at least once each week in the facility, but attendance shall be voluntary and not required.

NOTE: Authority cited: Sections 209 and 1751, Welfare and Institutions Code. Reference: Section 209, Welfare and Institutions Code.

APPENDIX C

BCS Data

Minors Certified to Criminal Court: 1977-1979

County	1977	1978	1979	County	1977	1978	1979
Alameda	100	90	56	Orange	15	41	12
Alpine	0	0	0	Placer	1	0	1
Amador	0	0	0	Plumas	1	1	0
Butte	3	2	2	Riverside	42	23	31
Calaveras	0	0	0	Sacramento	16	10	6
Colusa	1	1	0	San Benito	0	0	2
Contra Costa	0	0	1	San Bernardino	11	5	4
Del Norte	0	0	1	San Diego	282	295	163
El Dorado	3	4	1	San Francisco	0	0	4
Fresno	15	12	6	San Joaquin	4	5	2
Glenn	0	0	0	San Luis Obispo	11	6	9
Humboldt	4	3	1	San Mateo	11	17	16
Imperial	7	11	6	Santa Barbara	10	11	10
Inyo	1	2	2	Santa Clara	75	67	48
Kern	4	4	5	Santa Cruz	14	12	9
Kings	30	38	19	Shasta	17	6	1
Lake	3	1	1	Sierra	0	0	0
Lassen	0	1	0	Siskiyou	2	0	0
Los Angeles	*	*	78	Solano	7	11	13
Madera	16	5	6	Sonoma	3	21	6
Marin	2	10	2	Stanislaus	11	1	2
Mariposa	3	0	0	Sutter	2	1	2
Mendocino	12	21	37	Tehama	0	0	1
Merced	9	13	7	Trinity	0	0	0
Modoc	2	1	1	Tulare	15	21	7
Mono	0	0	0	Tuolumne	6	3	0
Monterey	1	3	1	Ventura	5	4	13
Napa	0	4	1	Yolo	0	3	1
Nevada	0	0	0	Yuba	2	1	0
TOTAL					779*	791*	597**

*Los Angeles data not available for this year.
NOTE: Certification pursuant to Section 707, Welfare and Institutions Code.
SOURCE: California Bureau of Criminal Statistics
**For the reasons stated in Chapter Three, this number more closely approximates 900.

APPENDIX B

TO BE PUBLISHED IN THE OFFICIAL REPORTS
OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION
of
GEORGE DEUKMEJIAN
Attorney General

ANTHONY S. DaVIGO
Deputy Attorney General

No. 80-208
MAY 8, 1980

THE HONORABLE PEARL S. WEST, DIRECTOR, DEPARTMENT OF THE YOUTH AUTHORITY, has requested an opinion on the following questions:

1. Is each California county required to operate its own juvenile hall, either solely or jointly with another county, or may a county contract with another county for the use of its county jail for the secure detention of minors?

2. May a California county place minors described in section 602 of the Welfare and Institutions Code in out-of-state juvenile halls pending adjudication and disposition hearings in California?

CONCLUSIONS

1. Each California county is required to operate its own juvenile hall, either solely or jointly with another county. A county may not contract with another county for the use of its county jail for the secure detention of minors.

2. A California county may not place minors described in section 602 of the Welfare and Institutions Code in out-of-state juvenile halls pending adjudication and disposition hearings in California.

section need not maintain a separate juvenile hall."

Sections 850 and 870 were added in their present form by the Statutes of 1961, chapter 1616, section 2, as part of the Juvenile Court Law. These two sections provide unequivocally that every county shall provide and maintain, either separately or jointly under the provisions commencing with section 6500 of the Government Code, a juvenile hall. Section 872, added as an urgency statute by the Statutes of 1976, chapter 399, section 1, does not provide to the contrary:

> "Where there is no juvenile hall in the county of residence of minors, or when the juvenile hall becomes unfit or unsafe for detention of minors, the presiding or sole juvenile court judge may, with the recommendation of the probation officer of the sending county and the consent of the probation officer of the receiving county, by written order filed with the county clerk, designate the juvenile hall of any county in the state for the detention of an individual minor for not to exceed 60 days. The court may at any time modify or vacate such order and shall require notice of the transfer to be given to the parent or guardian. The county of residence of a minor so transferred shall reimburse the receiving county for costs and liability as agreed upon by the two counties in connection with such order.
>
> "The Department of the Youth Authority shall establish a maximum population limit for each juvenile hall in this state.
>
> "As used in this section, the terms 'unfit' and 'unsafe' shall include a condition in which a juvenile hall is considered by the juvenile court judge, the probation officer of that county, or the Department of the Youth Authority to be too crowded for the proper and safe detention of minors."

While the latter provision contemplates the possibility that

there may not be a juvenile hall 2/ "in the county of residence" of a minor, 3/ it does not, either expressly or by implication, contraindicate the mandate of sections 850 and 870 that every county shall provide and maintain such a facility. It cannot be determined that a later statute has repealed by implication a former one unless they are irreconcilable, clearly repugnant, and so inconsistent that they cannot have concurrent operation. (Orange County Air Pollution Control District v. Public Utilities Commission (1971) 4 Cal.3d 945, 954; 61 Cps.Cal.Atty.Gen. 424, 433 (1978).) The mere recognition by the Legislature that one or more counties, due to fiscal or other intervening constraints, do not have a juvenile hall, is not inherently or logically inconsistent with the underlying statutory mandate.

We next consider whether a county may contract with another county for the use of its county jail for the secure detention of minors. Section 207, subdivision (a) provides:

> "No court, judge, referee, or peace officer shall knowingly detain in any jail or lockup any person under the age of 18 years, unless a judge of the juvenile court shall determine that there are no other proper and adequate facilities for the care and detention of such person, or unless such person has been transferred by the juvenile court to another court for proceedings not under the Juvenile Court Law and has been charged with or convicted of a felony. If any person under the age of 18 years is transferred by the juvenile court to another court and is charged with or convicted of a felony as herein provided and is not released pending hearing, such person may be committed to the care and custody of a sheriff,

---

2. We are advised that at least two counties do not provide and maintain, either separately or jointly with another county, a juvenile hall.

3. Section 850 does not require that a juvenile hall separately maintained by a county be located within the county. We express no opinion regarding the application of section 872 where the juvenile hall, whether separately or jointly maintained, is not located "in the county of residence" of a minor.

> constable, or other peace officer who shall keep such person in the juvenile hall or in such other suitable place as such latter court may direct, provided that no such person shall be detained in or committed to any hospital except for medical or other remedial care and treatment or observation."

While the prohibition is not absolute, it is clear that the detention of a minor in a jail is contrary to the legislative purpose underlying both sections 207 and 850 that minors be housed apart from adult offenders. (Cf. 6 Ops.Cal.Atty.Gen. 253 (1945).) This purpose is consistent with the principle that a proceeding in the juvenile court shall not be deemed a criminal proceeding. (§ 203.) In furtherance of this policy, section 850 requires that every county provide and maintain a juvenile hall for the detention of minors. In this regard, section 851 further provides:

> "The juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be nor be treated as a penal institution. It shall be conducted in all respects as nearly like a home as possible."

Moreover, a juvenile hall must be managed and controlled by the probation officer who is responsible for the appointment of a superintendent to have charge thereof, and of such other employees as may be needed for its efficient operation. (§§ 852, 853, 854.)

In view of the legislative purpose indicated by the cited provisions, section 636 providing that a court may, in certain cases, order that a minor be detained in the juvenile hall or "other suitable place designated by the juvenile court" may not be interpreted as authority to designate a county jail except as provided under section 207. Nor does section 207 constitute authority for the detention of minors generally in a county jail. In our view, the use of a county jail for such purposes is inconsistent with the requirement that a county provide and maintain a juvenile hall which shall be neither in nor connected with any jail, and managed and controlled by others than the sheriff and his deputies, and with section 872 authorizing the court to designate, in the absence of a juvenile hall in the county of residence or when the juvenile hall becomes unfit or unsafe for detention of minors, a juvenile hall of any county of the state. It is concluded that a county may not contract with another county for the use of its county jail for the secure detention of minors.

The second inquiry is whether a county may place minors described in section 602 4/ in out-of-state juvenile halls pending adjudication and disposition hearings in California. As previously set forth, section 850 requires that every county provide and maintain a juvenile hall. In the alternative, section 870 provides that two or more counties may establish and operate a joint juvenile hall. Section 872 provides that in the absence of a juvenile hall or when a juvenile hall becomes unfit or unsafe for the detention of minors, the court may designate the juvenile hall of any county in the state for the detention of an individual minor.

Moreover, section 209 provides:

> "The judge of the juvenile court of a county, or, if there is more than one such judge, any of the judges of the juvenile court shall, at least annually, inspect any jail, juvenile hall, or lockup which in the preceding calendar year was used for confinement for more than 24 hours of any minor. Such judge shall note in the minutes of the court whether the jail, juvenile hall, or lockup is a suitable place for confinement of minors.
>
> "The Department of the Youth Authority shall likewise conduct an annual inspection of each jail, juvenile hall, or lockup situated in this state which, during the preceding calendar year, was used for confinement for more than 24 hours of any minor.
>
> "If either such judge of the juvenile court or the department, after inspection of

---

4. Section 602 provides:

> "Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court."

> a jail, juvenile hall, or lockup, finds that it is not being operated and maintained as a suitable place for confinement of minors, the juvenile court or the department shall give notice of its finding to all persons having authority to confine such minors pursuant to this chapter and commencing 60 days thereafter such jail, juvenile hall, or lockup shall not be used for confinement of such minors until such time as the judge or department, as the case may be, finds, after reinspection of the jail, juvenile hall, or lockup, that the conditions which rendered the facility unsuitable have been remedied, and such facility is a suitable place for confinement of such minors.
>
> "The custodian of each jail, juvenile hall, and lockup shall make such reports as may be required by the department or the juvenile court to effectuate the purposes of this section."

Section 210 provides that the Youth Authority shall adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors. Section 209 prescribes certain official duties of a judge of a county in which a minor was detained for a specified period, and of a custodian of any such detention facility. Sections 209 and 210 are based on the assumption that a juvenile hall in which a minor was detained pursuant to the laws and authority of this state is subject to the jurisdiction of the Department of the Youth Authority. Neither an officer of another state nor a public facility located without this state is subject to the statutory prerequisites of this state. Nothing in the Juvenile Court Law indicates an intention by the Legislature to authorize the detention of minors in out-of-state juvenile halls pending adjudication and disposition hearings or otherwise.

* * * *

Minors Detained in California Jails in 1980 *

(Department of the Youth Authority)

"How many minors are detained each year in California's local jails and lockup facilities?" This question is of interest to many in the field of juvenile justice. However, information on this matter has been sorely lacking. For instance, the only figures previously available have been those published by the State's Bureau of Criminal Statistics (BCS). Each year BCS has conducted a one-day survey of all local jails to obtain a "head count" of the number of minors in jail detention on that particular day. On one day in 1980 (the fourth Thursday in September), BCS reports that there were 155 minors in custody in county and city jails. This figure is of little use when trying to answer the question posed at the beginning of this report. In 1976, the California Youth Authority decided to try to collect data that would provide more comprehensive information on the number of minors in jails.

Data Collection System

In 1976, the CYA developed two forms to serve as the basis of a system that would collect data on the number of minors detained in jails. These forms are the Annual Survey of Minors in Jails and Lockups and the Monthly Report of Juvenile Confinements in Jails or Lockups.

Annual Survey. The first of the forms is an annual survey which is sent once a year to all city and county law enforcement agencies by the CYA's Prevention and Community Corrections Branch (P & CC). The survey primarily asks two questions: how many minors were securely detained for any length of time during the year, and were any minors detained for more than 24 hours. When a facility indicates that detentions in excess of 24 hours occurred, P & CC schedules a jail inspection, as mandated by the Welfare and Institutions Code, to determine whether the facility meets

---

*This attachment is incomplete.

TABLE 1

Distribution of 1980 Annual Survey Showing Number of Agencies that Did and Did Not Detain One or More Minors in 1980

	Total	Sheriff	Police
Surveys Distributed	525	157	368
Agencies Reporting No Detentions	233	82	151
Above Agencies Reporting No Existing Holding Facility	51	8	43
Agencies Reporting One or More Detentions	292	75	217
Agencies That Detained But Could Not Provide Numbers	15	0	15

TABLE 2

Number of Juvenile Detentions Reported on the 1980 Annual Survey

130,346	Total Detentions (of any length of time)
99,099	Males[a] - 82.9%
20,498	Females - 17.1%
29,921	Detention in Sheriff Facilities (n = 75) - 23.0%
100,425	Detentions in Police Facilities (n = 202)[b] - 77.0%

[a]Number of males and females do not equal total because number of detentions by sex was not provided by some facilities.

[b]Figure does not include 15 police agencies that were unable to provide number of detentions.

Type I. These can hold persons for up to 48 hours excluding weekends and holidays, usually pending arraignment. Such facilities can hold sentenced prisoners for longer terms if special conditions are met. Most city jails and sheriff substations are Type I facilities.

Temporary Holding Facilities. Persons are held for less than 24 hours, usually much less, pending questioning, arraignment if it will occur soon, or transportation to a Type I facility.

Table 3 shows the number of minors detained in these three types of facilities. The largest percentage of minors were detained in Type I facilities (55.8%). The next largest group of detentions occurred in temporary holding facilities (38%), with 6.2% of the detentions being in Type II facilities.

In 1980, there were a reported 1,560 minors held over 24 hours. Table 4 presents the basic data on these cases, showing that 88.2% were males, over three-quarters were 16 or 17-years-old, and two-thirds were detained on felony charges, as adult court remands, or as CYA detainees. There were 35 youths held over 24 hours whose charge was a 601 W & I status offense.

TABLE 4

Minors Detained in Excess of 24 Hours in 1980

(No. of Reporting Facilities = 42)

		No.	%
Total Detentions[a]		1,560	100.0
Sex:	Male	1,376	88.2
	Female	173	11.1
Age:	17	795	51.0
	16	423	27.1
	15	182	11.7
	14	86	5.5
	13	35	2.2
	12 or under	36	2.3
Reason for Detention:			
	Felony	960	61.5
	Adult Court Remand	66	4.2
	CYA Detainee	37	2.4
	Misdemeanor	373	23.9
	601 W & I	35	2.2
	Other	90	5.8

[a]Numbers may not add to total of 1,560 because of some incomplete reporting by the agencies.

TABLE 5

Minors Detained in Excess of 24 Hours:
Length of Stay and Type of Release

		No.	%
Total Releases[a]		1,414	100.0
Length of Stay:			
	24 to 48 hours	626	44.3
	49 to 72 hours	195	13.8
	73 to 96 hours	93	6.6
	97 to 120 hours	71	5.0
	6 to 8 days	93	6.6
	9 to 11 days	53	3.7
	12 to 14 days	56	4.0
	15 or more days	227	16.1
Average Length of stay		12.2 days	
Median length of stay		2.6 days	
Type of Release:			
	To Juvenile Hall	511	36.1
	To Other Jurisdiction	246	17.4
	To Parents or Probation	361	25.5
	Released, No charge	51	3.6
	Released, Served Sentence	34	2.4
	Other Releases	172	12.2

[a]Numbers may not add to 1,414 because of some incomplete reporting by the agencies.

TABLE 7

Juvenile Detentions By County: Total Detentions, Detention Rates, and Detentions Over 24 Hours- 1980

County	Total Detentions			Detentions Over 24 Hours	
	No. of Facilities	Total	Rate[a]	No. of Facilities	Total
Alameda	12	8,225	78	1	;
Alpine	1	5	57	0	0
Amador	2	39	26	0	0
Butte	0	0	-	0	0
Calaveras	1	98	61	1	28
Colusa	1	109	81	1	55
Contra Costa	9	3,685	53	0	0
Del Norte	1	141	85	0	0
El Dorado	2	279	35	1	36
Fresno	9	3,149	58	0	0
Glenn	1	106	47	1	63
Humboldt	4	197	19	0	0
Imperial	5	558	44	0	0
Inyo	2	202	124	1	53
Kern	8	745	18	1	10
Kings	3	236	28	1	64
Lake	0	0	-	0	0
Lassen	1	67	38	1	70
Los Angeles	83	74,612	106	19	607
Madera	0	0	-	0	0
Marin	5	639	29	0	0
Mariposa	1	107	118	1	25
Mendocino	2	172	25	0	0
Merced	3	249	18	1	32
Modoc	1	32	40	1	12
Mono	2	85	129	0	0
Monterey	6	664	25	0	0
Napa	2	86	9	0	0
Nevada	2	59	14	1	35
Orange	20	9,440	48	1	54
Placer	2	272	22	0	0
Plumas	1	54	37	0	0
Riverside	9	2,900	48	2	273
Sacramento	3	62	1	0	0
San Benito	1	161	67	0	0
San Bernardino	14	4,567	55	2	40
San Diego	7	4,243	25	1	2
San Francisco	0	0	-	0	0
San Joaquin	4	946	28	1	21
San Luis Obispo	6	565	50	1	3
San Mateo	10	938	16	0	0
Santa Barbara	3	1,175	43	1	7
Santa Clara	8	3,084	22	2	32
Santa Cruz	1	442	28	0	0
Shasta	1	5	0.5	1	1
Sierra	2	19	68	0	0
Siskiyou	0	0	-	0	0
Solano	4	736	33	0	0
Sonoma	9	2,928	107	1	1
Stanislaus	2	364	13	1	4
Sutter	0	0	-	0	0
Tehama	1	3	1	1	2
Trinity	1	161	137	1	4
Tulare	5	985	37	1	14
Tuolumne	1	194	63	1	10
Ventura	5	1,529	25	1	1
Yolo	2	24	2	0	0
Yuba	1	12	2	0	0

[a]Rate of detentions (of any length) per 1,000 juvenile population ages 12 to 17.

TABLE 8

Total Detentions of Any Length of Time Reported 1976-1980

Year	No. of Facilities	Detentions
1976	286	166,224[a]
1977	284	144,316[b]
1978	253	89,114[c]
1979	282	114,174[d]
1980	292	130,346[e]

[a]In this first annual survey, secure detention was not defined in the instructions. As a result, many agencies reported total arrests rather than detentions.

[b]Note [a] also applies to the 1977 survey data. Many agencies reported arrests. The above decrease from 1976 to 1977 is parallel to a general statewide decrease in arrests.

[c]The 1978 survey instructions were revised to include the words confinement and secure detention. The numbers reported probably more accurately reflect detentions. However, the term "secure detentions" caused some holding facilities to fail to report their detentions. Note the decrease in the number of reporting facilities, from 284 to 253.

[d]A complete definition of secure detention was included on the 1979 survey. The reported figures are more accurate than in either 1976 or 1977. The increase in detentions from 1978 to 1979 is nearly entirely attributable to an increase in the number of facilities that reported.

[e]In 1980, the definition of secure detention was again revised. The increase in detentions is due to the fact that the 19 precincts of the Los Angeles Police Department reported detentions in 1980 whereas they did not in 1979.

Definitions of Facility and Secure Detention

Since its inception, the reporting system has encountered difficulties with the definition of a jail or lockup, and with the definition of "secure detention." To some extent, this lack of understanding or agreement on the part of over 500 law enforcement agencies has hampered the task of collecting complete and accurate data.

Facility. A jail or a lockup has been defined as any police or sheriff station or substation, holding room, or comparable facility. This definition has not allayed all confusion, especially among city police departments. The annual surveys have been addressed to "such-and-such city jail." The use of the word jail has resulted in many police departments commenting in writing on the survey that they are not a jail and have no detention facilities. The confusion that exists is exemplified by such comments as "We detained no juveniles. We have no jail, only a temporary holding cell." In 1979, instructions on the form were revised to include a requirement for reporting detentions in holding cells.

Secure Detention. In 1976 and 1977, the annual surveys did not include a definition of secure detention. The surveys asked "What was the total number of minors detained (booked), regardless of length of stay, in your facility?" Because the terms "detained" and "booked" were not precise, the numbers reported were in many cases in error. It became apparent that many facilities had reported the number of arrests or bookings rather than the number of minors actually placed in secure detention. As a result, the detentions reported in 1976 and 1977 were probably too high.

Other Problems Encountered re Annual Su vey

Many law enforcement agencies, esp cially those in small towns and cities, have difficulty reporting an ac urate number of juvenile detentions. Some do not maintain records on how man youths that were booked were also temporarily placed in detention. Some gencies record detention information on individual reports but do not h ve the capability of summarizing this information, other than going thro gh the records by hand. This is a difficult task, and is often not done especially when the files contain several hundred or several thousand boo ing reports.

Those agencies unable or unwilling due to shortage of staff, to search their records by hand usually do one of three things: 1) they report that they detained minors but th numbers are not available; 2) they report zero detentions; or 3) t ey report the total number of booked minors, even though not all were placed in detention.

Problems Encountered re Monthly Report f 24-Hour Detentions

For the monthly report, there are o problems with the definition of a facility or secure detention: if the minor is held over 24 hours, the minor is to be included on the report. However, some problems do exist. The form contains several sections in w ich data on the minors are to be reported (see Appendix B): the number f minors, their ages, and the reasons for detention. While the total numbers in each section should be equal, this was not always the case. M scounts often occurred. For instance, it may have been reported that six mino s were detained but ages were only provided for 5 (through clerical e ror).

The problem is compounded by several factors. Due to staff shortages, etc., the completion of the report is given low priority by some of the law enforcement agencies. The task is often assigned to a dispatcher or a night jailor. The CYA has great difficulty in contacting the appropriate person at an agency who has knowledge of or responsibility for the form. The CYA may finally resolve a problem and correctly train the agency staff person, only to find that person quits his or her job or is reassigned and the new person knows nothing about the form. And at this end, the CYA has not been able to assign a clear priority to the collection of detention data, nor is sufficient staff time always available to correctly carry out the task.

With these problems and qualifications, it is recognized that the data on the number of minors detained in jails cannot be totally accurate. Nevertheless, these data are more useful than a one-day count of minors in jails. The data identify those facilities (for the most part) that do detain minors. In addition, the statewide total number provides a "better-than-ballpark" estimate of the number of minors being held in detention in local jails and lockups.

The CYA is continuously working on resolving the problems associated with the data collection system. The monthly report form is again being revised in an attempt to make the instructions more comprehensible. Correspondence, both written and telephonic, is used to identify and correct errors. CYA staff may find it necessary to visit some facilities and provide on-site technical assistance. With the assistance and cooperation of local law enforcement agencies, the reporting system can be made to provide a reliable and accurate count of the number of minors detained in jails and lockups.

California
...OF THE YOUTH AUTHORITY
...7/81)

APPENDIX A
1980
ANNUAL SURVEY OF MINORS IN JAILS, LOCKUPS,
AND HOLDING FACILITIES

(COLS. 1-7)

AGENCY

ADDRESS

PLEASE SEE REVERSE FOR DEFINITIONS AND INSTRUCTIONS

STATEMENT REGARDING DETENTION OF MINORS 17 YEARS OR YOUNGER.
(See definition of "detention" on reverse side.)

DURING 1980, IN THIS FACILITY: (Check one box)

☐ No minors were detained.

☐ Minors were temporarily detained, but never for more than 24 hours.

☐ Minors were detained, and one or more minors were detained over 24 hours.
(8)

I. NUMBER OF MINORS DETAINED, FOR ANY LENGTH OF TIME, DURING 1980:

_____ (9-12) Total minors detained

_____ (13-16) Males

_____ (17-20) Females

III. SPECIAL SURVEY QUESTION:

1. ☐ YES — One or more minors described under W & I Code Section 601 (Status Offenders) were temporarily detained under the provisions of W & I Code Section 207c.

2. ☐ NO
(21)

COMMENTS

NAME | DATE

TITLE | AREA CODE & TELEPHONE NUMBER

<50/11

STATE OF CALIFORNIA
DEPARTMENT OF THE YOUTH AUTHORITY

APPENDIX B (Cont'd)

MONTHLY REPORT OF JUVENILE CONFINEMENTS IN JAILS OR LOCKUP

YA 16.402 (4/80)

CODING REFERENCE (1-5) | MONTH (6-7) | YEAR (8-9)

BEFORE MARKING FORM, SEE INSTRUCTIONS ON REVERSE SIDE.

NAME OF DEPARTMENT

NAME OF FACILITY

FACILITY ADDRESS — ZIP CODE

(CARD 1) Report Only Detentions Exceeding 24 Hours. (CARD 2)

MINORS BOOKED IN DETENTION THIS MONTH

1. Minors detained in excess of 24 hours. Do not include minors booked and held over from a previous month. (10-12)

   OF THESE (13-15) were males

   (16-18) were females

2. On (19-20) days during the month this facility exceeded its authorized male juvenile detention capacity

3. On (21-22) days during the month this facility exceeded its authorized female juvenile detention capacity.

4. Age of minors specified in Item 1 at time of detention. How many were:

   a. (23-25) 12 years or under
   b. (26-28) 13 years
   c. (29-31) 14 years
   d. (32-34) 15 years
   e. (35-37) 16 years
   f. (38-40) 17 years

5. Reason for detention of minors booked into detention this month and held over 24 hours. For multiple violations, use most serious offense, or court order or remand (use only one reason per minor).

   a. (41-43) Felony, Section 707(b) W&I Code (see instructions)
   b. (44-46) Other felony, not included above
   c. (47-49) Misdemeanor violation
   d. (50-52) 601 W&I Code violation
   e. (53-55) Certification to adult court
   f. (56-58) CYA detainee
   g. (59-61) Other reason

D.P. USE 1 COL. 80

MINORS RELEASED FROM FACILITY THIS MONTH

6. Of those minors released during this month, how long were they detained (from the first day of detention)? Include minors held over from previous month(s).

   a. (10-12) 24 - 48 hours (2nd Day)
   b. (13-15) 48 - 72 hours (3rd Day)
   c. (16-18) 72 - 96 hours (4th Day)
   d. (19-21) 96 - 120 hours (5th Day)
   e. (22-24) 6 - 8 Days
   f. (25-27) 9 - 11 Days
   g. (28-30) 12 - 14 Days
   h. (31-33) 15 or more Days

   (1) (34-36) List number of days for all minors in Line h (example: 3 detentions at 20 days each equals 60 days)

7. Release dispositions of minors identified in Question 6.

   a. Of those involving continued detention, how many were:

   (1) (37-39) Transfers to juvenile hall
   (2) (40-42) Transfers to other jurisdictions (Commitments to state, county camps, other law enforcement agencies, etc.)

   b. Of those involving release from detention, how many were:

   (1) (43-45) Released – no charge or no further proceedings
   (2) (46-48) Released to probation or parents/ guardians for further non-custody proceedings.
   (3) (49-51) Released – served sentence
   (4) (52-54) Other releases

D.P. USE 2 COL. 80

I hereby certify to the best of my knowledge and belief, in compliance with Section 209 of the Welfare & Institutions Code, that the above is a true and accurate accounting of all persons under 18 years confined in this jail or lockup for a period exceeding 24 hours during the month for which I am reporting.

SIGNATURE OF REPORTING PERSON | TITLE | TELEPHONE NUMBER ( )

APPENDIX C

1980 Annual Jail Survey

Number of Juvenile Detentions for Any Length of Time, by County and Facility

County and Facility	Total Detentions	Males	Females	24-Hr. Detentions	W & I 601 Detentions
Alameda Co. - Total	8,225*	3,464	514		
Sheriff's Dept.					
County Jail	55	53	2		
Santa Rita	3	2	1	Yes[a]	
Police Depts.					
Alameda	0	0	0		
Albany	316	280	31		
Berkeley	0	0	0		
Emeryville	50	43	7		Yes
Fremont	2,215	2,025	190		Yes
Hayward	665	n/a	n/a		
Livermore	0	0	0		
Newark	729	562	167		Yes
Oakland	3,577	n/a	n/a		Yes
Piedmont	n/a	n/a	n/a		
Pleasanton	615	499	116		
San Leandro	n/a	n/a	n/a		
Union City	n/a	n/a	n/a		
Alpine Co. - Total	5	4	1		
Sheriff's Dept.					
County Jail***	0	0	0		
Bear Valley Substation	5	4	1		
Amador Co. - Total	39	37	2		
Sheriff's Dept.	32	30	2		
Police Depts.					
Ione	0	0	0		
Jackson	7	7	0		Yes
Plymouth	0	0	0		
Sutter Creek	0	0	0		
Butte Co. - Total	0	0	0		
Sheriff's Dept.	0	0	0		
Police Depts.					
Biggs***	0	0	0		
Chico	0	0	0		
Gridley	0	0	0		
Oroville	0	0	0		

County and Facility	Total Detentions	Males	Females	24-Hr. Detentions	W & I 601 Detentions
Fresno Co. - Total	3,149	2,327	822		
Sheriff's Dept. (2 facilities)	0	0	0		
Police Depts.					
Coalinga	51	44	7		
Clovis	411	289	122		Yes
Firebaugh***	0	0	0		
Fowler City	0	0	0		
Fresno	2,189	1,550	639		
Huron	4	4	0		
Kerman	131	110	21		
Kingsburg	30	24	6		
Mendota	109	107	2		Yes
Orange Cove***	0	0	0		
Parlier***	0	0	0		
Reedley	184	159	25		Yes
Sanger	40	40	0		
Selma	0	0	0		
Glenn Co. - Total	106	87	19		
Sheriff's Dept.	106	87	19	Yes	Yes
Police Depts.					
Orland***	0	0	0		
Willows***	0	0	0		
Humboldt Co. - Total	197	159	38		
Sheriffs Dept.					
County Jail - Eureka	133	107	26		
Garberville Substation	14	11	3		
Hoopa Substation	30	26	4		
Police Depts.					
Arcata	20	15	5		Yes
Eureka***	0	0	0		
Ferndale***	0	0	0		
Fortuna	0	0	0		
Rio Dell	0	0	0		
Imperial Co. - Total	558	485	73		
Sherrif's Dept.					
County Jail - El Centro	0	0	0		
Honor Camp	0	0	0		
Winterhaven Substation	37	31	6		Yes
Police Depts.					
Brawley	212	184	28		
Calexico	201	173	28		Yes

County and Facility	Total Detentions	Males	Females	24-Hr. Detentions	W & I 601 Detentions
Lassen Co. - Total	67	58	9		
Sheriff's Dept.	67	58	9	Yes	Yes
Police Dept.					
Susanville	0	0	0		
Sierra Army Depot	0	0	0		
Los Angeles Co. - Total	74,612*	60,001	14,213		
Sheriff's Dept.					
Altadena	508	429	79		Yes
Antelope Valley	1,357*	1,066	271		Yes
Avalon	11	9	2		
Carson	1,595	1,319	276		Yes
Central Jail	411	411	0	Yes	
City of Industry	2,327*	1,968	358		Yes
Crescenta Valley	417	339	78		
East Los Angeles	1,256	1,052	204		Yes
Firestone Park	1,263	1,162	101		
Hall of Justice	**				
Lakewood	3,044	2,387	657		Yes
Lennox	2,170	1,915	255		
Lomita	549	472	77		Yes
Lynwood	1,698	1,516	182		
Malibu	1,132	906	226		Yes
Mira Loma Rehab. Facility	**				
Norwalk	2,240	1,910	330		
Pico Rivera	778	730	48		Yes
San Dimas	694	583	111		Yes
Santa Clarita Valley	848	675	173		
Sybil Brand Women's Facility	50	0	50	Yes	
Temple City	1,834	1,522	312		Yes
Wayside-Minimum	0	0	0		
Wayside-Maximum	0	0	0		
West Hollywood	543	428	115		
USC Medical Station	126	116	10	Yes	Yes
Police Depts.					
Alhambra	n/a	n/a	n/a		Yes
Arcadia	31	22	9		
Azusa	367	324	43		Yes
Baldwin Park	632	521	111		Yes
Bell-Cudahy	1,030	727	303		
Bell Gardens	282	248	34		
Beverly Hills	312	282	30		
Burbank	625	491	134		Yes
Claremont	95	86	9		Yes

County and Facility	Total Detentions	Males	Females	24-Hr. Detentions	W & I 601 Detentions
Los Angeles Co. - (Cont'd)					
Police Depts. (Cont'd)					
Pomona	882	742	140		Yes
Redondo Beach	930	745	185	Yes	Yes
San Fernando	303	275	28		
San Gabriel	525	329	196		Yes
San Marino	40	35	5		
Santa Monica	40	35	5		Yes
Sierra Madre	122	104	18		
Signal Hill	75	60	15		Yes
South Gate	1,608	1,330	278		
South Pasadena	82	78	4		
Torrance	1,555	1,169	386		Yes
Vernon	40	n/a	n/a		
West Covina	1,192	876	316		Yes
Whittier	884	729	155		
Madera Co. - Total	0	0	0		
Sheriff's Dept.	0	0	0		
Police Depts.					
Chowchilla	0	0	0		
Madera	0	0	0		
Marin Co. - Total	639	513	126		
Sheriff's Dept.					
County Jail	1	1	0	Yes	Yes
Corr. Facility/ Honor Camp	0	0	0		
Police Depts.					
Belvedere***	0	0	0		
Corte Madera	0	0	0		
Fairfax	25	15	10		
Larkspur***	0	0	0		
Mill Valley	0	0	0		
Novato	514	427	87		
Ross***	0	0	0		
San Anselmo	0	0	0		
San Rafael	75	50	25		
Sausalito	24	20	4		Yes
Tiburon	0	0	0		
Mariposa Co. - Total	107	84	23		
Sheriff's Dept.	107	84	23	Yes	Yes

County and Facility	Total Detentions	Males	Females	24-Hr. Detentions	W & I 601 Detentions
Napa Co. - Total	86	61	25		
Sheriff's Dept.	0	0	0		
Police Depts.					
Calistoga	0	0	0		
Napa	72	48	24		
St. Helena	14	13	1		
Nevada Co. - Total	59	53	6		
Sheriff's Dept.					
County Jail	20	18	2		Yes
Truckee Substation	39	35	4		Yes
Police Depts.					
Grass Valley	0	0	0		
Nevada City***	0	0	0		
Orange Co. - Total	9,440*	6,647	2,613		
Sheriff's Dept.					
Men's Jail	56	56	0	Yes	
Women's Jail	15	0	15	Yes	
Industrial Farm	0	0	0		
Theo Lacy	0	0	0		
Police Depts.					
Anaheim	635	564	71		Yes
Brea	0	0	0		
Buena Park	1,173	943	230		Yes
Costa Mesa	0	0	0		
Cypress	0	0	0		
Fountain Valley	n/a	n/a	n/a		
Fullerton	180	n/a	n/a		
Garden Grove	n/a	n/a	n/a		
Huntington Beach	2,071	1,697	374		
Irvine	0	0	0		
Laguna Beach	250	212	38		
La Habra	282	237	45		
La Palma	147	129	18		
Los Alamitos	n/a	n/a	n/a		
Newport Beach	2,838	1,341	1,497		Yes
Orange	20	20	0		
Placentia	380	336	44		Yes
San Clemente	147	122	25		Yes
Santa Ana	0	0	0		
Seal Beach	220	183	37		Yes
Stanton	226	187	39		
Tustin	20	20	0		
Westminster	780	600	180		Yes

County and Facility	Total Detentions	Males	Females	24-Hr. Detentions	W & I 601 Detentions
San Benito Co. - Total	161	155	6		
Sheriff's Dept.	161	155	6		
Police Depts.					
Hollister***	0	0	0		
San Juan Bautista***	0	0	0		
San Bernardino Co. - Total	4,567	3,716	851		
Sheriff's Dept.					
Barstow Substation	337	305	32	Yes	Yes
Big Beal Lake	257	219	38		
Glen Helen Rehab.	2	2	0	Yes	
Needles Substation	26	24	2		
29 Palms	27	23	4		Yes
Victorville	175	115	60		Yes
2 Other Facilities	0	0	0		
Police Depts.					
Adelanto***	0	0	0		
Barstow	305	241	64		
Chino	297	264	33		
Colton***	0	0	0		
Fontana	n/a	n/a	n/a		Yes
Montclair	331	274	57		Yes
Needles	0	0	0		
Ontario	1,094	915	179		
Redlands	476	388	88		Yes
Rialto	643	548	95		Yes
San Bernardino	0	0	0		
Upland	597	398	199		
San Diego Co. - Total	4,243*	3,171	747		
Sheriff's Dept.	0	0	0		
Police Depts.					
Carlsbad	0	0	0		
Chula Vista	1,152	1,007	145		Yes
Coronado	165	113	52		
El Cajon	0	0	0		
Escondido	480	416	64		Yes
Imperial Beach	325	n/a	n/a		Yes
La Mesa	523	380	143		Yes
National City	1,256	1,005	251		Yes
Oceanside	342	250	92		
San Diego	0	0	0		

County and Facility	Total Detentions	Male	Female	24-Hr. Detentions	W & I 601 Detentions
San Mateo County (Cont'd)					
Police Depts. (Cont'd)					
Pacifica	195	185	10		
Redwood City	0	0	0		
San Bruno	424	385	139		Yes
San Carlos	n/a	n/a	n/a		
San Mateo	66	62	4		
South San Francisco	n/a	n/a	n/a		Yes
Santa Barbara Co. - Total	1,175*	882	257		
Sheriff's Dept.					
County Jail	10	7	3	Yes	
3 Other Facilities	0	0	0		
Police Depts.					
Carpinteria	36	n/a	n/a		Yes
Guadalupe***	0	0	0		
Lompoc	0	0	0		
Santa Barbara	0	0	0		
Santa Maria	1,129	875	254		
Santa Clara Co. - Total	3,084*	2,249	503		
Sheriff's Dept.					
County Jail	24	24	0	Yes	
Women's Facility	6	0	6	Yes	
2 Other Facilities	0	0	0		
Police Depts.					
Campbell	0	0	0		
Gilroy	946	772	174		
Los Altos	0	0	0		
Los Gatos	0	0	0		
Milpitas	0	0	0		
Morgan Hill	332	n/a	n/a		
Mountain View	n/a	n/a	n/a		Yes
Palo Alto	120	85	35		Yes
San Jose	n/a	n/a	n/a		Yes
Santa Clara	1,656	1,368	288		
Sunnyvale	0	0	0		
Santa Cruz Co. - Total	442	322	120		
Sheriff's Dept. (3 Facilities)	0	0	0		
Police Depts.					
Capitola	0	0	0		
Santa Cruz***	0	0	0		
Scotts Valley	0	0	0		
Watsonville	442	322	120		

County and Facility	Total Detentions	Males	Females	24-Hr. Detentions	W & I 601 Detentions
Police Depts.					
Cloverdale	9	4	5		
Cotati	91	73	18		
Healdsburg	100	75	25		
Petaluma	612	572	40		
Rohnert Park	55	55	0		
Santa Rosa	1,769	495	1,274		
Sebastopol	176	149	27		Yes
Sonoma	0	0	0		
Stanislaus Co. - Total	364	307	57		
Sheriff's Dept. (2 Facilities)	0	0	0		
Police Depts.					
Ceres	0	0	0		
Hughson	0	0	0		
Modesto	0	0	0		
Newman***	0	0	0		
Oakdale	12	10	2		Yes
Patterson	0	0	0		
Riverbank***	0	0	0		
Turlock	352	297	55		Yes
Waterford***	0	0	0		
Sutter Co. - Total	0	0	0		
Sheriff's Dept. (2 Facilities)	0	0	0		
Police Dept.					
Yuba City	0	0	0		
Tehama Co. - Total	3	2	1		
Sheriff's Dept.	3	2	1	Yes	Yes
Corning	0	0	0		
Red Bluff	0	0	0		
Trinity Co. - Total	161	149	12		
Sheriff's Dept.	161	149	12	Yes	Yes
Tulare Co. - Total	985*	311	135		
Sheriff's Dept.					
County Jail	10	9	1	Yes	
2 Other Facilities	0	0	0		

County and Facility	Total Detentions	Males	Females	24-Hr. Detention	W & I 601 Detention
Yuba Co. - Total	12	9	3		
Sheriff's Dept.	0	0	0		
Police Depts.					
Marysville	12	9	3		Yes
Wheatland	0	0	0		

*Total does not equal sum of males and females due to an error in reporting (or missing data for detentions by sex).

**Facility reported closed in 1980.

***On survey, agency staff stated that they had no jail or holding facility of any kind.

[a]Detained due to false identification/birthdate.

n/a -This notation means that minors were detained, but records are not maintained and an actual count is unavailable.

APPENDIX D (Cont'd)

Juveniles Confined in Jails or Lockups for More than 24 Hours During 1980

Reporting Facility	Juveniles Detained									Juveniles Released								
	Total Detentions	Sex		Age Under 15 Yrs.	Reason for Detention					Total Releases	Release Dispositions						Mean Length of Stay (Days)	No. With Stay of 14 Days or More
		M	F		602 Off.	601 Off.	Adult Court	CYA Detainee	Other		Further Detention		No Further Detention					
											Trans. J.H.	Trans. Other Juris.	Rel. Outright	Prob./ Parents	Served Sent.	Other		
Los Angeles Co. Santa Monica P.D.	1	0	1	0	0	0	0	0	0	1	0	0	0	1	0	0	1.5	0
Los Angeles Co. Torrance P.D.	1	1	0	0	1	0	0	0	0	1	1	0	0	0	0	0	1.5	0
Los Angeles Co. El Monte P.D.	1	1	0	0	0	0	0	0	0	1	0	1	0	0	0	0	1.5	0
Los Angeles Co. Inglewood P.D.	25	22	3	4	25	0	0	0	0	25	4	4	5	6	0	6	1.6	0
Mariposa Co. Jail	25	21	4	2	7	8	0	8	2	24	3	9	0	4	6	0	6.0	2
Merced Co. Jail	32	32	0	0	11	0	6	0	14	31	15	2	0	1	1	1	18.9	13
Modoc Co. Jail	12	11	1	0	11	0	0	0	0	11	1	3	1	6	0	0	5.4	1
Nevada Co. Jail	35	35	0	0	21	0	0	10	4	30	2	20	0	3	1	0	11.9	10
Orange Co. Jail	54	50	4	0	49	0	0	0	5	54	6	38	1	5	2	1	52.1	40
Riverside Co. Jail - Indio	157	146	11	24	157	0	0	0	0	157	97	7	0	53	0	1	1.6	0
Riverside Co. Jail - Blythe	116	93	23	18	111	0	0	0	5	116	56	3	0	53	0	0	1.9	0
San Bernardino Co. Jail - Glen Helen	1	1	0	0	1	0	0	0	0	1	0	1	0	0	0	0	28.0	1
San Bernardino Co. Jail - Barstow	39	33	6	7	39	0	0	0	0	39	33	1	0	3	0	2	1.6	0

Minors Detained in California Jails and Lockups in 1981*
(Department of the Youth Authority)

This report is one of a series of annual reports presenting data on the number of minors detained in California's local jails and lockups. Since 1976, these data have been collected by the Department's Prevention and Community Corrections Branch, and annual reports have been prepared by the Program Review and Research Division (formerly the Division of Research). The purpose of these reports has been to provide the best available data on the number of minors detained in jails. Other sources of these data are quite limited. The State Board of Corrections biannually publishes data on adult detentions, with no count of minors. The Bureau of Criminal Statistics annually publishes a one-day count of the number of juveniles held in local facilities.

Data Collection System

In 1976, the Youth Authority developed two forms to serve as the basis of a system for collecting data on the number of minors detained in jails.

Annual Survey. The annual survey is distributed to all city and county law enforcement agencies that may have a detention capability. The survey asks two basic questions: 1) how many minors were securely detained for any length of time during the year; and 2) were any minors detained for more than 24 hours. When a facility indicates that detentions in excess of 24 hours occurred, P&CC schedules a jail inspection, as mandated by the Welfare and Institutions Code, to determine whether the facility meets the legal standards required for this type of detention. See Appendix A for the 1981 Annual Survey Form.

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*This attachment is incomplete.

TABLE 1

1981 Survey: Distribution and Response

	Total	Sheriff	Police
Surveys distributed	530	163	367
Agencies with no facilities (deleted from survey)	50	14	36
Agencies reporting no detentions	184	74	110
Agencies reporting one or more detentions	296	75	221
Agencies that detained but could not provide numbers (included in above)	24	2	22

Reported detentions. During 1981, there were 121,317 reported detentions of minors, with 78% of the detentions being in police facilities and 22% in sheriff's facilities. This number represents a 7% decrease from the number of detentions reported on the 1980 survey (130,164).

TABLE 2

Number of Juvenile Detentions
Reported on the 1981 Annual Survey

	n	%
Total Detentions	121,317	100.0
Males[a]	65,764	80.7
Females	15,774	19.3
In Sheriff's facilities	26,641	22.0
In Police facilities	94,676	78.0

[a]Number of males and females do not equal total because some facilities did not provide data on detentions by sex.

in their count of "secure detentions" the total number of youths arrested. In some cases, the number of reported detentions equaled or even exceeded the number of juvenile arrests reported by the agencies to BCS. This fact has inflated the figures on secure detentions. While it is a fact that the reported figure represents the number of minors taken into custody and perhaps even represents the number taken to the station, it probably does not reflect the true number of secure detentions as defined above.

The remedy to this problem is unclear. Many agencies do not even keep records of how many minors they place in cells or holding rooms. As a result, these agencies either estimate the number of secure detentions, or report total arrests. Therefore, because the definition of secure detention is not universally understood, and because many law enforcement agencies do not maintain precise data, it is probably not possible to obtain a totally accurate count of all minors detained in jails or lockups.

Trends in temporary detentions. Table 3 contains the results of the annual surveys from 1976 to 1981. In comparing the number of detentions reported annually, close attention should be paid to the table footnotes. The fact that the number of temporary detentions have fluctuated over time is probably inherent in the various inconsistencies in the reporting. It is probably safe to say that around 100,000 minors have been temporarily detained in jails and lockups each year since 1976, and that there has been no apparent significant increase or decrease in the number of detentions.

Appendix C contains 1976 to 1981 Annual Survey results for each individual agency, grouped by county. An effort has been made to identify those instances when an agency may have reported arrests rather than secure detentions, resulting in an inflated number of reported detentions.

Detentions of status offenders. The 1981 survey asked whether the agency had detained status offenders under the provisions of the Welfare and Institutions Code Section 207c and, if so, how many. There were 104 agencies that reported that they had held a total of 2,978 status offenders in secure detention for some period of time.

Detentions in Excess of 24 Hours.

This section summarizes the data reported on YA Form 10.402, "Monthly Report of Juvenile Confinements in Jails or Lockups." There were 27 agencies that submitted monthly reports on 1,419 minors held over 24 hours. An additional eight agencies submitted forms during 1981, but none of these held a minor over 24 hours and in each case reported zero detentions. Table 4 does not include data on 554 detentions by the Los Angeles County Sheriff's Department. Because of problems with their computer, they were unable to report detailed data. The data in Table 4 are for 24 agencies.

Males were detained more often than females by a ratio of 9 to 1. Two-thirds of the detainees were either 16 or 17 years-old, and 7.8% were under 14 years of age. While a felony offense was shown as the reason for detention in 54.1% of the cases, 28.0% of the minors were held over 24 hours on a misdemeanor charge. Only seven minors were indicated to be an adult court remand. It is believed that this figure should be much higher, and a number of remanded cases were probably listed as being held on felony charges.

TABLE 5

Minors Detained in Excess of 24 Hours in 1981:
Length of Stay and Type of Release

	No.	%
Total Releases[a]	870	100.0
Length of Stay:		
24 to 48 hours	474	54.5
49 to 72 hours	109	12.5
73 to 96 hours	64	7.4
97 to 120 hours	37	4.2
6 to 8 days	51	5.9
9 to 11 days	20	2.3
12 to 14 days	15	1.7
15 or more days	100	11.5
Average LOS = 8.9 days		
Median LOS = 1.9 days		
Type of Release[b]		
To Juvenile Hall	226	26.0
To other jurisdiction	176	20.2
To parents or probation	315	36.2
Released, served sentence	33	3.8
Released, no charges	57	6.5
Other releases	59	6.8

[a]Does not include information on minors released from Los Angeles County Sheriff's facilities.

[b]Numbers in release categories do not add to total releases due to errors on some forms.

Trends in detentions in excess of 24 hours. Table 6 presents data on 24-hour-plus detentions for the years 1976 to 1981. There were 1,419 detentions in excess of 24 hours reported in 1981. This number is somewhat lower (9%) than the 1,560 reported in 1980. The 1981 total represents a 59% decrease from the number of detentions in 1976. It is not possible to determine how much of this decrease is factual. During the earlier reporting years, errors were made in completing monthly reports which resulted in an overcount of detentions.

Nevertheless, the decreasing trend in numbers of detentions seems to indicate that few minors are being held in jails for periods exceeding 24 hours.

Note also that the number of reporting agencies decreased from 42 in 1980 to 27 in 1981. Although 27 agencies submitted monthly reports on 24-hour detentions, responses to the 1981 Annual Survey showed that a total of 39 agencies detained one or more minors in excess of 24 hours. These 39 agencies are listed below, with a notation of whether or not they submitted information via monthly reports.

Agencies Reporting Detention of Minors Over 24 Hours on the 1981 Annual Survey	Submitted Data Via the Monthly Report Form
Calaveras County Jail	Yes
Colusa County Jail	Yes
Contra Costa County Jail	No (n = 2)
Del Norte County Jail	No (n = 1)
El Dorado County Jail - Placerville	Yes
Coalinga Police Department	No (n = 2)
Glenn County Jail	Yes
Inyo County Jail	Yes
Kings County Jail	Yes
Lassen County Jail	Yes
Los Angeles Sheriff - Central Jail	Yes
Los Angeles Sheriff - Sybil Brand	Yes
Los Angeles Sheriff - USC Med.	Yes
Long Beach Police Department	Yes
Santa Monica Police Department	No (n = unknown)
Torrance Police Department	No (n = unknown)
Inglewood Police Department	Yes
Mariposa County Jail	Yes
Mendocino County Jail	Yes
Mendocino County Rehab. Center	Yes
Modoc County Jail	Yes
Mono County Jail	No (n = unknown)
Orange County Jail	Yes
Riverside County Jail - Indio	Yes
Riverside County Jail - Blythe	Yes
San Bernardino - Glen Helen	Yes
San Bernardino - Barstow Station	Yes
San Bernardino - Victorville Station	No (n = unknown)

TABLE 7

Summary of Juvenile Detentions in 1981 By County

Counties	Detentions of Any Length		Detentions Over 24 Hours	
	No. of Facilities	Total Detentions	No. of Facilities	Total Detentions
Alameda	13	11,194	0	0
Alpine	0	0	0	0
Amador	2	3	0	0
Butte	1	133	0	0
Calaveras	1	88	1	52
Colusa	1	78	1	78
Contra Costa	11	2,193	0	0
Del Norte	1	1	0	0
El Dorado	3	210	1	1
Fresno	7	511	0	0
Glenn	1	108	1	108
Humboldt	3	256	0	0
Imperial	4	492	0	0
Inyo	2	220	1	44
Kern	6	557	0	0
Kings	2	232	1	15
Lake	1	93	0	0
Lassen	1	71	1	70
Los Angeles	83	71,042	5	624
Madera	1	5	0	0
Marin	7	40	0	0
Mariposa	1	85	1	25
Mendocino	4	112	2	2
Merced	3	103	0	0
Modoc	1	40	1	21
Mono	2	79	0	0
Monterey	6	842	0	0
Napa	2	53	0	0
Nevada	1	91	0	0
Orange	21	10,579	1	48
Placer	2	207	0	0
Plumas	1	N/A	0	0
Riverside	9	1,861	2	228
Sacramento	3	59	0	0
San Benito	1	138	0	0
San Bernardino	14	4,223	2	36
San Diego	7	4,386	0	0
San Francisco	1	10	0	0
San Joaquin	5	671	1	9
San Luis Obispo	5	359	0	0
San Mateo	9	622	0	0
Santa Barbara	5	458	0	0
Santa Clara	10	4,141	2	21
Santa Cruz	1	221	0	0
Shasta	1	50	0	0
Sierra	1	12	0	0
Siskiyou	2	2	0	0
Solano	2	179	0	0
Sonoma	8	1,459	0	0
Stanislaus	3	353	0	0
Sutter	1	1	0	0
Tehama	1	1	0	0
Trinity	1	31	1	6
Tulare	5	899	1	5
Tuolumne	1	136	1	26
Ventura	3	1,293	0	0
Yolo	1	24	0	0
Yuba	1	10	0	0
Grand Total	296	121,317	27	1,419

APPENDIX D

Juveniles Confined in Jails or Lockups
For More Than 24 Hours - 1981 Calendar Year

Reporting Facility	JUVENILES DETAINED THIS PERIOD									JUVENILES RELEASED THIS PERIOD									
	Total Detentions	Sex		Under 15 yrs. of age	Reason for Detention					Total Releases	Release Dispositions						Mean Length of stay (Days)	No. with Stay of 15 dys or more	Monthly Reports Received
		M	F		602 Off.	601 Off.	Adult Court	CYA Detainee	Other		Further Detention		No Further Detention			Other			
											Transfer to Juv. H.	Transfer to Other Juris.	Released outright	Prob./ Parents	Served Sent.				
Calaveras Co. Jail	52	50	2	4	52	0	0	0	0	53	7	12	1	29	3	1	7.0	5	12
Colusa Co. Jail	78	64	14	7	38	13	0	0	27	75	11	20	5	37	0	2	2.6	0	12
El Dorado Co. Jail-Placerville	1	1	0	0	1	0	0	0	0	1	0	0	0	0	0	1	16.0	1	12
Glenn Co. Jail	108	105	3	30	71	0	0	1	36	107	13	19	0	33	3	39	6.1	11	12
Inyo Co. Jail	44	44	0	12	36	0	0	0	8	49	0	18	2	26	2	1	6.8	6	12
Kings Co. Jail	15	15	0	0	14	0	0	0	1	16	10	4	0	2	0	0	7.0	2	5
Lassen Co. Jail	70	64	6	11	69	0	0	1	0	65	1	8	5	40	8	3	5.0	5	12
L.A. Sheriff - Central Jail	479	479	0	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
L.A. Sheriff - USC Med. Ctr.	58	55	3	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
L.A. Sheriff - Sybil Brand	17	0	17	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*

APPENDIX D (cont'd.)

Juveniles Confined in Jails or Lockups
For More Than 24 Hours - 1981 Calendar Year

Reporting Facility	JUVENILES DETAINED THIS PERIOD									JUVENILES RELEASED THIS PERIOD									
		Sex			Reason for Detention						Release Dispositions								
											Further Detention		No Further Detention						
	Total Detentions	M	F	Under 15 yrs. of age	602 Off.	601 Off.	Adult Court	CYA Detainee	Other	Total Releases	Transfer to Juv. H.	Transfer to Other Juris.	Released outright	Prob./ Parents	Served Sent.	Other	Mean Length of stay (Days)	No.with Stay of 15 dys or more	Monthly Reports Received
San Bernardino Sher. Barstow Jail	34	30	3	8	31	0	0	0	3	34	32	1	1	0	0	0	1.8	0	12
San Joaquin Co. Jail	9	9	0	0	9	0	0	0	0	8	2	4	0	0	2	0	24.2	6	12
Santa Clara Co. Jail	16	16	0	0	3	0	4	0	0	19	3	13	0	0	2	1	46.4	15	12
Santa Clara Co. Women's Jail	5	0	5	0	2	1	1	0	1	7	0	3	1	1	0	2	38.7	5	12
Trinity Co. Jail	6	5	1	0	5	0	0	0	1	6	4	0	0	2	0	0	1.5	0	12
Tulare Co. Jail	5	5	0	0	4	0	1	0	0	6	3	3	0	0	0	0	47.9	3	12
Tuolumne Co. Jail	26	26	0	5	21	5	0	0	0	27	2	11	1	10	0	0	4.5	0	7

* Data not available.
** The same minor was confined in both of Mendocino County's detention facilities.

Stubborn and Rebellious Children: Liability of Public Officials for Detention of Children in Jails†

Mark Soler
Michael J. Dale
*Kathleen Flake**

† Stubborn children, runaways, common night walkers, both male and female, common railers and brawlers, persons who with offensive and disorderly act or language accost or annoy persons of the opposite sex, lewd, wanton and lascivious persons in speech or behavior, idle and disorderly persons, prostitutes, disturbers of the peace, keepers of noisy and disorderly houses and persons guilty of indecent exposure may be punished by imprisonment in a house of correction for not more than six months or by a fine of not more than two hundred dollars, or by both such fine and imprisonment.

MASS. GEN. LAWS ANN. ch. 272, § 53 (West 1970) (amended 1973).

If a man have a stubborn and rebellious son, which will not obey the voice of his father, or the voice of his mother, and that, when they have chastened him, will not hearken unto them; then shall his father and his mother lay hold on him, and bring him out unto the elders of his city, and unto the gate of his place; and they shall say unto the elders of his city, This our son is stubborn and rebellious, he will not obey our voice; he is a glutton, and a drunkard. And all the men of his city shall stone him with stones, that he die; so shalt thou put evil away from among you; and all Isreal shall hear, and fear.

Deuteronomy 21:18-21 (King James).

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The Juvenile Justice Legal Advocacy Project is a public interest law project operating under a grant from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the Law Enforcement Assistance Administration of the United States Department of Justice. The project provides a comprehensive range of legal advocacy services to national and local advocate organizations working to implement the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §§ 5601-5751 (1976). The project also provides back-up support to local attorneys who are engaged in youth advocacy work, and provides direct legal assistance in the form of legislative, administrative and litigant advocacy.

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I. INTRODUCTION

Each year thousands of children are confined in adult jails throughout the United States. Although the exact number of children confined is difficult to determine, some authorities place the figure as high as 500,000 per year.[1] In 1970, a limited survey by the National Jail Census reported that on March 15, 1970, some 7,800 children were confined in adult jails in the United States.[2]

The massive confinement of children in adult jails is a long-standing practice. In 1869, for example, investigators for the Illinois Board of State Commissioners of Public Charities inspected seventy-eight jails in Illinois. They found 511 inmates, ninety-eight of whom were children under the age of sixteen.[3] They described the Cook County jail as follows:

> The jail is so dark that is is necessary to keep the gas burning in the corridors both day and night. The cells are filthy and full of vermin . . . this effort of promiscuous herding together of old and young, innocent and guilty, convicts, suspected persons and witnesses, male and female, is to make the county prison a school of vice. In such an atmosphere purity itself could not escape contamination.[4]

More than 100 years later, a federal judge made similar observations concerning the conditions in the jail in Lucas County, Ohio:

> [W]hen the total picture of confinement in the Lucas County Jail is examined, what appears is confinement in cramped and overcrowded 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, confine-

1. R. SARRI, UNDER LOCK AND KEY, JUVENILES IN JAILS AND DETENTION 5 (1974).

2. The survey was limited to locally administered jails with authority to confine persons for 48 hours or more. The survey did not include federal and state prisons or other correctional institutions; jails in Connecticut, Delaware, and Rhode Island (where jails are administered by state, not local, authorities); and drunk tanks and lockups that detain individuals for fewer than 48 hours. NATIONAL CRIMINAL JUSTICE INFORMATION AND STATISTICS SERVICE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, U.S. DEP'T OF JUSTICE, 1970 NATIONAL JAIL CENSUS, A REPORT ON THE NATION'S LOCAL JAILS AND TYPES OF INMATES 1 (1971).

3. A. PLATT, THE CHILD SAVERS 118 (2d ed. 1977).

4. *Id.* at 119.

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ment, stripped of clothing and every last vestige of humanity, in a sort of oubliette.[5]

As in other states,[6] detention of juveniles in adult jails is illegal in Utah. State law generally requires that juveniles be detained in facilities separate and distinct from adult jails.[7]

In addition, the federal Juvenile Justice and Delinquency Prevention Act[8] requires states to develop state plans for implementation of the Act which will ensure that juveniles who are

5. Baker v. Hamilton, 345 F. Supp. 345, 352 (W.D. Ky. 1972) (quoting Jones v. Wittenberg, 323 F. Supp. 93, 99 (N.D. Ohio 1971).

6. Attorneys for the Juvenile Justice Legal Advocacy Project focus their work primarily on six states: Colorado, New Mexico, North Carolina, Oregon, Utah, and Washington. The laws in these six states differ somewhat in terms of statutory liability and immunity of public officials. These differences are representative of those among other states. In this Article, the text will focus on Utah law, with references to the laws of the other states for comparative purposes.

7. The Utah Juvenile Court Act, UTAH CODE ANN. § 78-3a-30(3) (1953), specifically provides:

> No child under the age of 16 may be confined in a jail, lockup or other place for adult detention. The provisions of section 55-10-49 remain in full force and effect. . . .

Section 55-11a-1 provides:

> Children under the age of sixteen years, who are apprehended by any officer or are brought before any court for examination under any of the provisions of this chapter, shall not be confined in the jails, lockups or police cells used for ordinary criminals or persons charged with crime nor shall they be confined in the state youth development center.

UTAH CODE ANN. § 55-11a-1 (Supp. 1979) (previously designated § 55-10-49).

The State of Washington prohibits the detention of *any* child under 16 years of age in a jail, lockup, or police station. The child may be held in a detention facility separate from a jail. WASH. REV. CODE ANN. § 13.04.115 (1962).

The basic rule in Colorado is that children under the age of 14 may not be held in jails used for the confinement of adults. Children over the age of 14 may not be held in jails used for adults except pursuant to court order. The exception may be invoked only where "no other suitable place of confinement is available." COLO. REV. STAT. § 19-2-103(6)(a) (1978).

In New Mexico, the Children's Code states that no child alleged to be in need of supervision or neglected may be held in jail. N.M. STAT. ANN. § 32-1-25 (E) (1978). Alleged juvenile delinquents may only be held in jail "in a room totally separate and removed from incarcerated adults." *Id.* § 32-1-25(C).

North Carolina's current statute provides that, until 1983, alleged status offenders and delinquents may be held in jails with holdover facilities for juveniles as long as there is both sight and sound separation from adults. N.C. GEN. STAT. § 7A-576 (Supp. 1979). After this date no children can be held in detention in jails. *Id.* § 7A-576(c).

Unlike the other states cited, Oregon allows all classes of juveniles—dependent, status offenders, and delinquents—14 years of age or over to be placed in an adult detention facility in a separate room screened from sight and sound of adult detainees under circumstances where a suitable juvenile detention facility is not available. OR. REV. STAT. § 419.575 (1977).

8. 42 U.S.C. §§ 5601-5751 (1976).

charged with or have committed offenses that would not be criminal if committed by an adult (status offenders), and such nonoffenders as dependent and neglected children, are not placed in secure facilities at all.[9] These plans must also provide that juveniles alleged or found to be delinquent, status offenders, or nonoffenders may not be detained in any institution or facility where they have regular contact with adults charged with or convicted of crimes.[10]

Despite these clear mandates, substantial numbers of juveniles are regularly detained in adult jails in Utah. In July, 1976, the John Howard Association estimated that more than 1,100 juveniles had been detained in Utah adult jails during the previous year.[11] A thirty day survey by the Community Research Forum in 1979 confirmed that, at least in rural areas, juveniles continue to be detained in adult jails on a regular basis.[12]

This Article will discuss the nature and extent of the legal liability local and state officials in Utah may incur for detaining juveniles in adult jails. For purposes of comparison, reference will be made to five other states.[13] This Article will specifically

9. *Id.* § 5633(a)(12).

10. *Id.* § 5633(a)(13). In addition, the Federal Juvenile Delinquency Act, 18 U.S.C. §§ 5031-5037 (1976), which applies to juveniles prosecuted in federal courts, provides:

> A juvenile alleged to be delinquent may be detained only in a juvenile facility or such other suitable place as the Attorney General may designate. Whenever possible, detention shall be in a foster home or cummunity based facility located in or near his home community. *The Attorney General shall not cause any juvenile alleged to be delinquent to be detained or confined in any institution in which the juvenile has regular contact with adult persons convicted of a crime or waiting trial on criminal charges.* Insofar as possible, alleged delinquents shall be kept separate from adjudicated delinquents. 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, or other care and treatment.

Id. § 5035 (emphasis added).

11. JOHN HOWARD ASSOCIATION, UNIFIED CORRECTIONS STUDY OF STATE OF UTAH: FINAL REPORT. A STUDY FOR THE SOCIAL SERVICES STUDY COMMITTEE OF THE LEGISLATURE OF THE STATE OF UTAH 88 (1976). In 1977 in Colorado, 4,541 juveniles were held in jails. Of this number, 3,318 were held in jails lacking adequate separation from adults. DIVISION OF CRIMINAL JUSTICE, STATE OF COLORADO, 1980 JUVENILE JUSTICE AND DELINQUENCY PREVENTION PLAN 383 (1979). In 1977 in North Carolina, 2,644 juveniles were held in adult jails. An additional 4,002 were held in juvenile detention facilities. JUVENILE CODE REVISION COMMITTEE, 1979 REPORT, 374-75 (1979).

12. COMMUNITY RESEARCH FORUM, PRELIMINARY REPORT TO THE UTAH STATE JUVENILE JUSTICE ADVISORY GROUP: REMOVAL OF JUVENILES FROM ADULT JAILS IN RURAL UTAH (1979).

13. These states are Colorado, New Mexico, North Carolina, Oregon, and Washington. *See* note 6 *supra*.

discuss the injuries suffered by children detained in adult jails, the bases for liability under state and federal law of local and state officials who have legal responsibility for juveniles detained in jails, and the immunity and indemnification provisions applicable to such local and state officials. Finally, this Article will summarize the relevant public policy considerations and draw conclusions as to the liability of local and state officials who illegally detain juveniles in adult jails.

II. Injuries Suffered by Children in Adult Jails

Virtually every national organization concerned with law enforcement and the judicial system—including the American Bar Association, the Institute for Judicial Administration, the National Advisory Commission on Law Enforcement, the National Council on Crime and Delinquency, and the National Sheriffs' Association— has recommended standards that prohibit the jailing of children. This near unanimous censure of the jailing of children stems from the conclusion that such a practice harms the very persons the juvenile justice system is designed to protect and assist. A Senate subcommittee concluded that "[r]egardless 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 [it]."[14]

Incarcerating children harms them in several ways. The most widely recognized harm is the physical and sexual abuse such children suffer at the hands of adults in the same facility. The cases of assault and rape of jailed juveniles are too numerous to list and too common to be denied. Even short term or pretrial detention in an adult jail exposes male and female juveniles not only to sexual assault and exploitation but to physical injury as well. One authority describes the plight of juveniles in some jails in the following terms:

> 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.[15]

14. *Detention and Jailing of Juveniles: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 93d Cong., 1st Sess. (1973).

Often local officials isolate the child from contact with others in an attempt to protect him from attack by adult detainees. However, such well-meaning measures may themselves be harmful to the child. Dr. Joseph R. Noshpitz, past president of the American Association for Children's Residential Centers and Secretary of the American Academy of Child Psychiatry, has noted that placing juveniles in jail often causes serious emotional distress and even illness:

> [E]xtended isolation of a youngster 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 phychic stress; the resultant impact on the mental health of the individual exposed to such stress will always be serious, and can occasionally be disastrous.[16]

Jails that were constructed to accommodate adults who have committed criminal acts cannot provide an environment suitable for the care and detention of delinquents or status offenders. Adult detention facilities do not take into account the child's perception of time and space or his naivete regarding the purpose and duration of his stay in a locked facility. The lack of sensory stimuli, extended periods of absolute silence or outbreaks of hostility, foul odors and public commodes, as well as inactivity and empty time constitute an intolerable environment for a child.

The juvenile offender confined with adults is exposed to a society that encourages his delinquent behavior, schools him in sophisticated criminal techniques, and provides him with criminal contacts. High recidivism rates belie the widespread belief

15. Bartollas & Miller, The Juvenile Offender: Control, Correction and Treatment 212 (1978).

16. .Lollis v. New York State Dep't of Social Servs., 322 F. Supp. 473, 481 (S.D.N.Y. 1970).

that the unpleasant experience of incarceration will have a deterrant effect on the child's future delinquent acts. To the contrary, "[i]f 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."[17]

Being treated like a prisoner also reinforces the delinquent or truant child's negative self-image. It confirms what many delinquent children already suspect about their 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.[18]

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

The juvenile justice system was expressly created to remove children from the punitive forces of the criminal justice system. The practice of jailing juveniles, however, directly contravenes this purpose. Exposing a boy or girl to the punitive conditions of jail may jeopardize his or her emotional and physical well-being and may handicap future rehabilitation efforts.

17. Komisaruk, *Psychiatric Issues in the Incarceration of Juveniles,* 21 JUV. COURT J. 117, 118 (1971).

18. NATIONAL COUNCIL ON CRIME AND DELINQUENCY, STANDARDS AND GUIDES FOR THE DETENTION OF CHILDREN AND YOUTH 13 (2d ed. 1961).

III. LIABILITY OF LOCAL AND STATE OFFICIALS FOR DETENTION OF JUVENILES IN ADULT JAILS

Local and state officials who detain juveniles in adult jails may incur liability in two ways. First, officials who authorize or allow such detention in derogation of statute, or who fail to prevent or terminate such detention when under a legal duty to do so, may incur liability from the very fact that the detention occurs. Second, such officials may incur liability for the physical or mental injuries sustained by juveniles as a result of their being jailed with adults. Such liability may be incurred under both federal and state law. However, before discussing the legal theories under which state and local officials can be held liable for detaining juveniles in adult jails, a discussion regarding which state and local officials are legally responsible for such detentions is essential.

A. Statutory Obligations of Local and State Officials

1. County commissioners

In Utah, the primary responsibility for providing for juveniles detained prior to legal proceedings rests upon the county commissioners.[19] This obligation includes the development of detention homes or other facilities in compliance with the department of social services' minimum detention standards. If the county commissioners develop their own detention facilities, they must provide "suitable premises entirely distinct and separate from the ordinary jails, lockups or police cells."[20]

Like Utah, most of the other states reviewed here place the

19. UTAH CODE ANN. § 55-11a-1 (Supp. 1979) provides:

> It shall be the duty of counties, with the assistance of the state department of public welfare, to make provision for the custody and detention of such children and other children under the age of eighteen years who shall be in need of detention care prior to their trial or examination or while awaiting assignment to a home or facility in such places as shall meet minimum standards of detention care to be established by the state department of public welfare either by arrangement with some person or society willing to undertake the responsibility of such temporary custody or detention on such terms as may be agreed upon, or by providing suitable premises entirely distinct and separate from the ordinary jails, lockups or police cells.

Furthermore, the next section specifically designates the county commissioners as the individuals responsible for detention facilities. UTAH CODE ANN. § 55-11a-2 (Supp. 1979).

20. UTAH CODE ANN. § 55-11a-2 (Supp. 1979). UTAH CODE ANN. § 55-11a-3 (Supp. 1979) provides that county commissioners may also contract with other counties for detention services.

primary responsibility for providing juvenile detention facilities on the county.[21] Two exceptions are Colorado, which places the entire responsibility on the Department of Institutions,[22] and Oregon, which places ultimate responsibility for facilities' personnel on the juvenile court judge.[23] The responsibility to provide juvenile detention facilities includes the construction, maintenance, and staffing of the facilities.[24] In New Mexico and North Carolina the facilities must comply with minimum standards set by a state agency.[25]

2. Sheriffs

Juveniles brought to adult jails generally fall within the custody of the local sheriffs, who therefore have immediate responsibility for their welfare and the conditions of their detention.[26]

21. *See* N.M. STAT. ANN. § 33-6-1 (1978) (county commissioners obligated to establish and equip "juvenile detention homes"); N.C. GEN. STAT. § 153A-217(5) (1978) (county commissioners responsible to construct, maintain, and operate "local confinement facilities," which include "juvenile detention home[s]"); WASH. REV. CODE ANN. §§ 13.04.135, 13.16.030 (1962)(construction and maintenance of separate detention facilities for juveniles a mandatory county function). Occasionally counties are assisted by other agencies. Under recent legislation in North Carolina, for example, the Department of Human Resources has developed regional detention facilities to augment those operated by counties. N.C. GEN. STAT. § 134A-37 (Supp. 1979).

22. COLO. REV. STAT. §§ 19-8-117 to 120 (1978). The county commissioners do have responsibility, however, for those juveniles held in adult jails when "no other suitable place of confinement is available." *Id.* § 19-2-103(6).

23. OR. REV. STAT. § 419.612(1) (1977). Counties are authorized, however, to construct and operate detention facilities for dependent children as well as delinquents. The board of county commissioners is also empowered to build local correctional facilities that may house pre-trial detainees including juveniles. *Id.* §§ 169.010, .150, .220, 419.575.

24. New Mexico, for example, makes counties responsible for obtaining federal funds for juvenile detention facilities, contracting to build the facilities, maintaining the facilities, making rules for the administration of the facilities, and appointing and training the staff. N.M. STAT. ANN. § 32-1-6 (1978). In Washington, the duty of maintaining such facilities includes the hiring of an adequate staff and "furnishing suitable food, clothing and recreational facilities for dependent, delinquent and wayward children." WASH. REV. CODE. ANN. §§ 13.16.040, .050 (1962).

25. Juvenile detention facility standards in New Mexico are set by the New Mexico Criminal Justice Department. N.M. STAT. ANN. §§ 33-6-3, -4, -5, -6, -10. In North Carolina, they are set by the Department of Human Resources. N.C. GEN. STAT. § 7A-576(b) (Supp. 1979). Should a child be detained in an adult jail, the jail must be one containing a juvenile holdover facility and must also be approved by the Department of Human Resources. *Id.* § 7A-576(b).

26. *See* UTAH CODE ANN. §§ 78-3a-29 to 30 (1953). *See also* COLO. REV. STAT. §§ 30-10-501, -511, -514 (1977); N.M. STAT. ANN. § 33-3-1 (1978); OR. REV. STAT. §§ 169.140, .220, .320 (1977). The county sheriff in North Carolina may appoint someone besides himself to operate or "keep" the jail, if he so desires. Alternatively, he may request the county commissioners to appoint some other person to operate the jail. N.C. GEN. STAT. § 162-22 (1978). In Washington, however, where juveniles may not be held in jails or other adult detention facilities, sheriffs have no responsibility for them. WASH. REV. CODE ANN. §§ 70.48.020(1), (2), (4), .090 (Supp. 1978).

Utah law prohibits a sheriff taking a juvenile into custody from detaining him any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or custodian. After the sheriff has obtained such information, he must either release the juvenile or take him without unnecessary delay to the court or to a place of detention designated by the court.[27] In all instances when the youth is not released, the sheriff must notify the parents or guardian of the right to a prompt hearing to determine the justification for any further detention.[28]

3. Departments of social services

The Division of Family Services, as part of the Utah Department of Social Services, has overall responsibility for individual and family services in the state, including services for delinquent children.[29] The division also has authority to develop and operate community centers for services, such as group home care, and to rent, purchase, or build facilities to carry out the functions of such centers.[30]

The Department of Social Services, acting through the Division of Family Services, is specifically authorized to assist counties in establishing detention centers[31] and is directed to develop detention facilities where the counties have not provided adequate facilities. To enable the department to carry out this mandate, the legislature has authorized it to approve payment by the

27. Specifically, Utah law states:

> A sheriff, warden, or other official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime, shall immediately notify the juvenile court when a child who is or appears to be under eighteen years of age is received at the facility, and shall make arrangements for the transfer of the child to a detention facility, unless otherwise ordered by the juvenile court. . . .

UTAH CODE ANN. 78-3a-31 (1953).

A similar responsibility exists under New Mexico law, which, through its Children's Code, specifically charges sheriffs to inform the court within four working days (or 48 consecutive hours, if shorter) whenever an individual who appears to be under eighteen is received at the jail. N.M. STAT. ANN. § 32-1-25(F) (1978).

28. UTAH CODE ANN. 78-3a-30 (1953).

29. The basic responsibilities of the Division are set forth in UTAH CODE ANN. § 55-15b-6 (1953 & Supp. 1979).

30. *Id.* § 55-15b-14.

31. *Id.* § 55-11a-4 (Supp. 1979).

state of up to fifty percent of the total net expenditure for capital inprovements and operation and maintenance of detention facilities by the counties, and to assist the counties in developing plans to provide suitable housing and other physical facilities to meet their detention requirements.[32]

The legislative response in New Mexico has been entirely different. In 1978, the legislature created the detention facility grant fund, under which the state criminal justice department was given the authority to approve applications for grants to counties and municipalities for the purpose of constructing new facilities or modifying existing facilities to create sight and sound separation of juveniles from adults.[33]

The Department of Human Resources, its Secretary, and the Social Services Commission in North Carolina have substantial responsibilities regarding local confinement facilities. The department provides technical assistance, develops minimum standards for construction and operation, visits and inspects the facilities semi-annually, and makes written reports.[34] All standards for the operation of the facilities must be approved by the commission and the Governor.[35] The secretary is responsible for corrective action in the event an inspection discloses that a facility fails to meet minimum standards.[36] The department also approves holdover facilities for juveniles located in adult jails and sets standards for the operation of juvenile detention homes.[37] Most importantly, however, the North Carolina Department of Human Services is responsible for the development and operation of regional juvenile detention facilities, and the development of a subsidy program for county juvenile detention homes.[38]

4. Juvenile court judges

In most states juvenile court judges exercise exclusive original jurisdiction over all juveniles who violate federal, state, or

32. *Id.* §§ 55-11a-4 to -6.

33. N.M. STAT. ANN. § 32-2B-1 to 5 (Supp. 1978). The department of social services (Human Services Dep't) has no responsibility for detention care in New Mexico.

34. N.C. GEN. STAT. § 153A-220 (1978). Local confinement facilities include juvenile detention homes. *Id.* § 153A-217(5).

35. *Id.* § 153A-221(c).

36. *Id.* § 153A-223.

37. *Id.* § 7A-576(b) (Supp. 1979).

38. *Id.* § 134A-36 to 37.

local law.[39] In Utah, the Board of Juvenile Court Judges, comprised of all the state's juvenile court judges, is statutorily directed to consider and deal with problems that arise in connection with the operation of the juvenile courts in any district.[40] In some other states, the judiciary actually manages the juvenile detention facilities. In Washington, for instance, the superior court judges in the larger counties either appoint a board of managers to administer detention services for those youth under juvenile court jurisdiction or transfer this responsibility to the county executive.[41] In Oregon, the juvenile court judges hire counselors for the county juvenile department as well as a director of the department to administer the juvenile detention facilities.[42]

B. Liability Under Federal Law

1. Juvenile Justice and Delinquency Prevention Act

The Juvenile Justice and Delinquency Prevention Act[43] is primarily a funding statute. States receive federal funds to implement the goals of the Act, but become ineligible for continued funding if they fail to comply within a specified time period.[44] The Act does not specifically provide for private lawsuits by aggrieved individuals, *e.g.*, individual status offenders detained in secure facilities, or individual juveniles incarcerated in adult jails.

Recent case law, however, indicates that individual juveniles may be able to maintain private causes of action under the Act. In *Cannon v. University of Chicago*,[45] the United States Supreme Court considered the question of whether an aggrieved individual can maintain a private cause of action under section 901(a) of Title IX of the Education Amendments of 1972.[46] Section 901 provides that no person shall be subjected to discrimi-

39. *See, e.g.*, COLO. REV. STAT. § 19-1-104 (1978); N.M. STAT. ANN. § 32-1-9 (1978); OR. REV. STAT. § 419.476(1) (1977); UTAH CODE ANN. § 78-3a-16 (1973); WASH. REV. CODE ANN. § 13.04.030 (1962).

40. UTAH CODE ANN. § 78-3a-10 (1973).

41. WASH. REV. CODE ANN. §§ 13.20.010-.50 (1962).

42. OR. REV. STAT. §§ 419.604-.616 (1977).

43. 42 U.S.C. §§ 5601-5751 (1976). *See* notes 8-10 and accompanying text *supra*.

44. 42 U.S.C. § 5633(a), (c). The states of Colorado, New Mexico, North Carolina, Oregon, Utah, and Washington receive funding under the Act.

45. 441 U.S. 677 (1979).

46. 20 U.S.C. § 1681 (1976).

nation on the basis of sex under any education program or activity receiving federal financial assistance. Plaintiff Geraldine Cannon claimed that she had been denied admission to two medical schools receiving federal assistance because of her sex and filed suit against the schools for violation of section 901.

Like the Juvenile Justice and Delinquency Prevention Act, Title IX is primarily designed as a funding statute and contains no express authorization of private lawsuits for violations of the law. Nevertheless, the Supreme Court ruled that a statute may be construed to provide a private remedy if four specific factors are satisfied:

> "In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. *First, is the plaintiff 'one of the class for whose especial benefit the statute was enacted,'—that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?*"[47]

The Supreme Court concluded that because these four factors were satisfied, Title IX should be construed to allow private lawsuits.

The Court's use of these four factors and its discussion in the *Cannon* opinion strongly indicate that aggrieved individuals can maintain private causes of action under the Juvenile Justice and Delinquency Prevention Act. In terms of these four factors, it is evident, first, that juveniles confined in adult jails are "of the class for whose especial benefit the statute was enacted." One of the primary provisions of the Act[48] specifically prohibits the incarceration of juveniles in jails with adults. The second and third factors require an analysis of the legislative history of the Act. The legislative history is replete with references concerning the importance of prohibiting the detention of juveniles in adult jails. Indeed, much of the legislative history describes

47. 441 U.S. at 688 n.9 (emphasis added)(quoting Cort v. Ash, 422 U.S. 66, 78 (1975)) (citations omitted).

48. 42 U.S.C. § 5633(a)(13) (1976).

the operative provisions of the Act in terms of enforceable civil rights. Thus, in introducing S. 3146 (the predecessor of S. 821, which became the Juvenile Justice and Delinquency Prevention Act), Senator Bayh declared that the bill contained "an *absolute prohibition*" against detention or confinement of children in institutions with adults.[49] During floor debate on the Act in 1974, Senator Bayh declared that Congress was "establishing a national standard for *due process* in the system of juvenile justice" through the legislation.[50] In urging enactment of the provisions of the Federal Juvenile Delinquency Act that were passed as amendments to the Juvenile Justice and Delinquency Prevention Act and which prohibit confinement of juveniles in jails with adults, Senator Kennedy stated that the legislation enacted "the guarantee of *basic rights* to detained juveniles."[51]

With respect to the fourth factor, it may be argued that the welfare and protection of juveniles is traditionally a matter for state law, and thus it may be inappropriate to infer a cause of action under federal law. Nevertheless, the welfare of juveniles is not solely a matter of state concern. Indeed, federal legislation has operated in this area for more than sixty years, including the Children's Bureau Act of 1912,[52] the Social Security Act of 1935,[53] The Child Health Act of 1967,[54] the Child Nutrition Act of 1966,[55] the Crippled Children Services Act,[56] the Juvenile Delinquency Prevention and Control Act of 1968,[57] the Juvenile Delinquency and Youth Offenses Control Act of 1961,[58] and the Child Abuse Prevention and Treatment Act of 1974.[59]

In addition, the Supreme Court's decision in *Cannon* notes two other reasons why a federal remedy is appropriate. First, "[s]ince the Civil War, the Federal Government and the federal courts have been the '*primary* and powerful reliances' in protecting citizens against" violations of civil rights.[60] Second, "it is

49. 118 Cong. Rec. 3049 (1972) (emphasis added).

50. 120 Cong. Rec. 25165 (1974) (emphasis added).

51. 120 Cong. Rec. 25184 (1974) (emphasis added).

52. 42 U.S.C. §§ 191-194 (1976).

53. *Id.* §§ 301-306.

54. *Id.* §§ 701-715, 729.

55. *Id.* §§ 1771-1786.

56. *Id.* §§ 701-716.

57. *Id.* § 3801.

58. *Id.* §§ 2541-2548.

59. *Id.* § 5101.

60. 441 U.S. at 708 (emphasis in original).

the expenditure of *federal* funds that provides the justification for this particular statutory prohibition. There can be no question but that this . . . analysis supports the implication of a private federal remedy."[61] Like Title IX, the Juvenile Justice and Delinquency Prevention Act provides federal funds to the states in order to foster and protect the civil rights of individuals. Accordingly, it appears likely that a private right of action also exists under the Juvenile Justice and Delinquency Prevention Act, thereby enabling a juvenile confined in an adult jail to sue those responsible in federal court.[62]

2. The right to treatment and section 1983

a. Origins and development of the right to treatment. In recent years there has been a growing recognition by courts and commentators that individuals involuntarily committed to institutions for treatment have a "right" to such treatment, and that those who do not in fact receive treatment suffer a violation of that right. The first discussion of a so-called right to treatment is generally credited to Dr. Morton Birnbaum.[63] Dr. Birnbaum was particularly concerned about the unavailability of psychotherapy for mental patients committed to state hospitals for the ostensible purpose of treatment. He proposed

> that the courts under their traditional powers to protect the constitutional rights of our citizens begin to consider the problem of whether or not a person who has been institutionalized solely because he is sufficiently mentally ill to require institutionalization for care and treatment actually does receive adequate medical treatment so that he may regain his health, and therefore his liberty, as soon as possible; that the courts do this by means of recognizing and enforcing the right to treatment; and that the courts do this, independent of any action by any legislature, as a necessary and overdue development of our present concept of due process of law.[64]

Dr. Birnbaum did not rigorously explore the constitutional bases for the right to treatment or the limits of the substantive right. Instead, he argued generally that "substantive due process of law does not allow a mentally ill person who has committed no crime to be deprived of his liberty by indefinitely institutionalizing him in a mental prison."[65] He concluded that a writ of habeas corpus should be available to test the adequacy of treatment received in an individual case.[66]

In 1966 in *Rouse v. Cameron,*[67] 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. Charles Rouse, tried on charges of carrying a dangerous weapon, was found not guilty by reason of insanity and was committed to Saint Elizabeth's Hospital. He challenged his confinement in a habeas corpus proceeding, claiming that his right to treatment was being violated because he had received no psychiatric treatment.[68] Chief Judge Bazelon, writing for a divided court, found that Congress had "established a *statutory* 'right to treatment' in the 1964 Hospitalization of the Mentally Ill Act,"[69] and remanded the case for further proceedings to determine whether Rouse had, in fact, received adequate treatment during his confinement.

More noteworthy than the statutory holding in *Rouse* was the court's discussion in dictum regarding the potential constitutional issues. The court stated that "[a]bsence of treatment 'might draw into question "the constitutionality of [this] mandatory commitment section" ' as applied."[70] The court listed

61. *Id.* at 708-09 (emphasis added). *See* Cort v. Ash, 422 U.S. 66 (1975).

62. *See also* Coleman v. Darden, 595 F.2d 533 (10th Cir. 1979), holding that handicapped persons may *not* bring private lawsuits against *federal* agencies for alleged violations of the Rehabilitation Act of 1973, although, as the court noted, "[e]very Circuit Court of Appeals which has addressed the issue has held that a private cause of action can be implied from the statute against the proper defendants." *Id.* at 538. *See, e.g.,* Leary v. Crapsey, 566 F.2d 863, 865 (2d Cir. 1977); United Handicapped Fed'n v. Andre, 558 F.2d 413, 415 (8th Cir. 1977); Lloyd v. Regional Transp. Auth., 548 F.2d 1277 (7th Cir. 1977). *See also* Boxall v. Sequoia Union High School Dist., 464 F. Supp. 1104, 1109 (N.D. Cal. 1979); Doe v. Marshall, 459 F. Supp. 1190, 1192 (S.D. Tex. 1978); Lora v. Board of Educ. 456 F. Supp. 1211, 1228-30 (E.D.N.Y. 1978); Davis v. Bucher, 451 F. Supp. 791, 797-98 (E.D. Pa. 1978); Bartels v. Biernat, 427 F. Supp. 226, 229-30 (E.D. Wis. 1977); Sites v. McKenzie, 423 F. Supp. 1190 (N.D.W. Va. 1976); Hairston v. Drosick, 423 F. Supp. 180 (S.D.W. Va. 1976); Cherry v. Matthews, 419 F. Supp. 922 (D.D.C. 1976); Gurmankin v. Costanza, 411 F. Supp. 982 (E.D. Pa. 1976), *aff'd,* 556 F.2d 184 (3d Cir. 1977). Arguably, juveniles may now sue under 42 U.S.C. § 1983 for violations of the statutory rights afforded them by the Juvenile Justice and Delinquency Prevention Act. *See* Maine v. Thiboutot, 100 S. Ct. 2502, 2520 (1980) (Powell, J., concurring).

63. Birnbaum, *The Right to Treatment,* 46 A.B.A.J. 499 (1960).

64. *Id.* at 503.

65. *Id.*

66. *Id.*

67. 373 F.2d 451 (D.C. Cir. 1966).

68. *Id.* at 452.

69. *Id.* at 453 (emphasis in original).

70. *Id.* The court quoted Darnell v. Carmeron, 348 F.2d 64, 68 (D.C. Cir. 1965), in which it had earlier noted that the absence of treatment might raise constitutional ques-

several ways in which confinement without treatment might violate constitutional standards. For example, where commitment is summary, without procedural safeguards, such commitment may violate the individual's right to procedural due process.[71] In addition, the court noted that if Rouse had been convicted of the crime charged he could have been confined for a maximum of one year. At the time of the decision, however, he had been confined for four years, with no end in sight. This differential in periods of confinement raises not only obvious equal protection questions, but also issues under due process of law since it depends solely on the need for treatment that allegedly was not met.[72] Finally, confinement for an indefinite period without treatment of one found not criminally responsible may be so inhumane as to constitute "cruel and unusual punishment."[73]

In 1971 in *Wyatt v. Stickney*,[74] the court went one step further than *Rouse* and held that patients involuntarily confined in a hospital did have a constitutional right to treatment:

> The patients in Bryce Hospital, for the most part, were involuntarily committed through noncriminal procedures and without the constitutional protections that are afforded defendants in criminal proceedings. When patients are so committed for treatment purposes they unquestionably have a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or to improve his or her mental condition. . . . Adequate and effective treatment is constitutionally required because, absent treatment, the hospital is transformed "into a penitentiary where one could be held indefinitely for no convicted offense."[75]

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tions. It also cited Dr. Birnbaum's article in the American Bar Association Journal. 373 F.2d at 453 n.6.

71. 373 F.2d at 453; *see* Ragsdale v. Overholser, 281 F.2d 943, 950 (D.C. Cir. 1960) (Fahy, J., concurring).

72. 373 F.2d at 453; *see* Sas v. Maryland, 334 F.2d 506, 509 (4th Cir. 1964).

73. 373 F.2d at 453. *See also* Robinson v. California, 370 U.S. 660 (1962); Easter v. District of Columbia, 361 F.2d 50 (1966). The *Rouse* decision provoked a considerable amount of discussion by legal commentators. *See, e.g.*, Bazelon, *Implementing the Right to Treatment*, 36 U. CHI. L. REV. 742 (1969); *Symposium—The Right to Treatment*, 57 GEO. L.J. 673 (1969); Note, *The Nascent Right to Treatment*, 53 VA. L. REV. 1134 (1967); Note, *Civil Restraint, Mental Illness and the Right to Treatment*, 77 YALE L.J. 87 (1967).

74. 325 F. Supp. 781 (M.D. Ala. 1971), *aff'd sub nom.* Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

75. *Id.* at 784 (citations omitted) (quoting Ragsdale v. Overholser, 281 F.2d 943, 950 (D.C. Cir. 1960)). In contrast to Charles Rouse, who sought his release through habeas corpus, the inmates in *Wyatt* brought suit under the Federal Civil Rights Act, 42 U.S.C.

The court's decision in *Wyatt*, which was affirmed by the Fifth Circuit,[76] generated a great deal of discussion among legal scholars,[77] and was followed by a number of other courts.[78]

While *Wyatt v. Stickney* was being litigated, Kenneth Donaldson, a patient in the Florida State Hospital, sued his attending physicians and the superintendent of the facility on the grounds that he had been involuntarily confined for fifteen years without treatment. At trial the jury awarded Donaldson $48,000. On appeal the Fifth Circuit used the lower court's language in *Wyatt* in holding that a patient has a "constitutional right to

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§ 1983, for deprivation of constitutional rights.

76. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

77. *See, e.g.*, Bailey & Pyfer, *Deprivation of Liberty and the Right to Treatment*, 7 CLEARINGHOUSE REV. 519 (1974); Birnbaum, *Some Remarks on the Right to Treatment*, 23 ALA. L. REV. 623 (1971); Drake, *Enforcing the Right to Treatment:* Wyatt v. Stickney, 10 AM. CRIM. L. REV. 587 (1972); Gough, *The Beyond-Control Child and the Right to Treatment: An Exercise in the Synthesis of Paradox*, 16 ST. LOUIS U.L.J. 182 (1971); Hoffman & Dunn, *Beyond* Rouse *and* Wyatt: *An Administrative-Law Model for Expanding and Implementing the Mental Patient's Right to Treatment*, 61 VA. L. REV. 297 (1975); Schwitzgebel, *Right to Treatment for the Mentally Disabled: The Need for Realistic Standards and Objective Criteria*, 8 HARV. C.R.-C.L.L. REV. 513 (1973); *Symposium-Observations on the Right to Treatment*, 10 DUQ. L. REV. 553 (1972); *Developments in the Law—Civil Commitment of the Mentally Ill*, 87 HARV. L. REV. 1190 (1974) [hereinafter cited as *Developments*]; Comment, *Adequate Psychiatric Treatment—A Constitutional Right?*, 19 CATH. LAW. 322 (1973); Comment, Wyatt v. Stickney *and the Right of Civilly Committed Mental Patients to Adequate Treatment*, 86 HARV. L. REV. 1282 (1973); Note, *Guaranteeing Treatment for the Committed Mental Patient: The Troubled Enforcement of an Elusive Right*, 32 MD. L. REV. 42 (1972); Comment, *Reflections on the Right to Treatment*, 8 NEW ENG. L. REV. 231 (1973); Note, Wyatt v. Stickney—*A Constitutional Right to Treatment for the Mentally Ill*, 34 U. PITT. L. REV. 79 (1972); 27 OKLA. L. REV. 238 (1974).

78. *See, e.g., In re* Ballay, 482 F.2d 648, 659 (D.C. Cir. 1973); Davis v. Watkins, 384 F. Supp. 1196 (N.D. Ohio 1974); Welsch v. Likins, 373 F. Supp. 487 (D. Minn. 1974), *aff'd*, 550 F.2d 1122 (8th Cir. 1977); Kesselbrenner v. Anonymous, 33 N.Y. 2d 161, 305 N.E.2d 903, 350 N.Y.S.2d 889 (1973); Renelli v. Department of Mental Hygiene, 73 Misc. 2d 261, 340 N.Y.S.2d 498 (Sup. Ct. 1973). *See also* Saville v. Treadway, 404 F. Supp. 430 (M.D. Tenn. 1974); Smith v. Wendell, 390 F. Supp. 260 (E.D. Pa. 1975); Lynch v. Baxley, 386 F. Supp. 378 (M.D. Ala. 1974); Weidenfeller v. Kidulis, 380 F. Supp. 445, 451-52 (E.D. Wis. 1974); Stachulak v. Coughlin, 364 F. Supp. 686, 687 (N.D. Ill. 1973); *In re* Jones, 338 F. Supp. 428 (D.D.C. 1972); *In re* D.D., 118 N.J. Super. 1, 6, 285 A.2d 283, 286 (App. Div. 1971).

The court in New York State Ass'n for Retarded Children, Inc. v. Rockefeller, 357 F. Supp. 752 (E.D.N.Y. 1973), initially rejected the concept of a constitutional right to treatment in favor of an eighth amendment right for patients to be free from harm. The court ultimately recognized in a later opinion that "there is no bright line" separating the right to treatment, the right to care, and the right to be free from harm. New York State Ass'n for Retarded Children, Inc. v. Carey, 393 F. Supp. 715, 719 (E.D.N.Y. 1975). *See also* Scott v. Plante, 532 F.2d 939 (3d Cir. 1976); Eubanks v. Clarke, 434 F. Supp. 1022 (E.D. Pa. 1977); Woe v. Matthews, 408 F. Supp. 419 (E.D.N.Y. 1976), *aff'd sub nom.* Woe v. Weinberger, 562 F.2d 40 (2d Cir. 1977).

such individual treatment as will give him a reasonable opportunity to be cured or to improve his mental condition."[79] When the Supreme Court heard the case, it did not reach the broad issue of the right to treatment, rather it unanimously ruled on a single narrower issue in the case. The Court held that "[a] State cannot constitutionally confine [on the basis of mental illness alone] a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends."[80]

The United States Supreme Court has never decided whether a constitutionally-based right to treatment exists. However, in *Kent v. United States,*[81] the Court commented on the plight of children in the juvenile justice system, noting that "[t]here 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."[82] And later, in *In re Gault,*[83] the Court "reiterate[d] 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."[84]

In the absence of definitive guidance by the Supreme Court, the lower courts have adopted a variety of approaches in finding a constitutional basis for the right to treatment.[85] Following

79. Donaldson v. O'Connor, 493 F.2d 507, 520 (5th Cir. 1974), *vacated on other grounds and remanded,* 422 U.S. 563 (1975).

80. O'Connor v. Donaldson, 422 U.S. 563, 576 (1975). In a concurring opinion, Chief Justice Burger argued against the existence of a constitutional right to treatment. *Id.* at 578 (Burger, C.J., concurring). The narrow holding of the case, and Burger's concurring opinion have been the subject of extensive comment and criticism. *See, e.g.,* Baldwin, O'Connor v. Donaldson: *Involuntary Civil Commitment and the Right to Treatment,* 7 COLUM. HUMAN RIGHTS L. REV. 573 (1975); Schoenfeld, *Recent Developments in the Law Concerning the Mentally Ill—"A Corner-Stone of Legal Structure Laid in Mud,"* 9 U. TOL. L. REV. 1 (1977); Comment, Donaldson, *Dangerousness and the Right to Treatment,* 3 HASTINGS CONST. L.Q. 599 (1976); Note, *"Without More": A Constitutional Right to Treatment?,* 22 LOY. L. REV. 373 (1976); Note, Donaldson v. O'Connor: *Constitutional Right to Treatment for the Involuntarily Civilly Committed,* 7 N.C. CENT. L.J. 174 (1975); Note, *The Supreme Court Sidesteps the Right to Treatment Question*—O'Connor v. Donaldson, 47 U. COLO. L. REV. 299 (1976); Note, *The Right to Treatment Case—That Wasn't,* 30 U. MIAMI L. REV. 486 (1976); 9 AKRON L. REV. 374 (1975).

81. 383 U.S. 541 (1966).

82. *Id.* at 556.

83. 387 U.S. 1 (1967).

84. *Id.* at 30. *See also* Breed v. Jones, 421 U.S. 519 (1975); McKeiver v. Pennsylvania, 403 U.S. 528 (1971); *In re* Winship, 397 U.S. 358 (1970).

85. It should be remembered that constitutional challenges to the detention of children in jails are not dependent upon a ritual incantation of the phrase "right to treatment," or upon a "right to treatment" analysis of the issues. Such detention may be challenged directly as violations of constitutional guarantees such as due process and freedom from cruel and unusual punishment.

Judge Bazelon's lead in *Rouse v. Cameron,*[86] some courts have based the right to treatment on a procedural due process and "quid pro quo" rationale: if the state involuntarily commits mentally ill or otherwise incompetent individuals to its custody without the procedural safeguards to which they are entitled in criminal prosecutions, it must correspondingly provide treatment that will rehabilitate the individual from his illness or disability. Thus, while the individual loses constitutional procedural protections, he gains rehabilitative treatment.[87]

Other courts have adopted Judge Bazelon's invocation of the due process clause.[88] *Wyatt v. Stickney* was the first case to hold that the failure to provide adequate treatment is a violation of the constitutional right to due process: "To deprive any citizen of his or her liberty upon the altruistic theory that the confinement is for humane therapeutic reasons and then fail to provide adequate treatment violates the very fundamentals of due process."[89] This argument is grounded on the rule articulated by the Supreme Court in *Jackson v. Indiana*[90] that "due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed."[91]

Several courts have found a constitutional basis for the right to treatment in the eighth amendment's prohibition against cruel and unusual punishment.[92] The reasoning of these

86. 373 F.2d 451 (D.C. Cir. 1966). *See* text accompanying note 71 *supra.*

87. *See* text accompanying notes 102-13 *infra.* One commentator has found three variations of the "quid pro quo" rationale as used by the courts: "paradigm" quid pro quo, "procedural" quid pro quo, and "pseudo" quid pro quo. Spece, *Preserving the Right to Treatment: A Critical Assessment and Constructive Development of Constitutional Right to Treatment Theories,* 20 ARIZ. L. REV. 1, 4 (1978).

88. *See* text accompanying note 72 *supra.*

89. 325 F. Supp. 781, 785 (M.D. Ala. 1971).

90. 406 U.S. 715 (1972).

91. *Id.* at 738. In an even broader sense, the argument is based upon the principle that legislative means must be rationally related to legislative ends. *See Developments, supra* note 77, at 1326. *See also* Nebbia v. New York, 291 U.S. 502, 525 (1934); Meyer v. Nebraska, 262 U.S. 390 (1923).

92. *See, e.g.,* Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966); Halderman v. Pennhurst State School and Hosp., 446 F. Supp. 1295, 1315 (E.D. Pa. 1977); United States v. Johnston, 317 F. Supp. 66, 68 (S.D.N.Y. 1970); People v. Feagley, 14 Cal. 3d 338, 535 P.2d 373, 121 Cal. Rptr. 509 (1975); People v. Wilkins, 23 App. Div. 178, 259 N.Y.S.2d 462 (1965). *See also* Spece, *supra* note 87, at 17.

courts rests on the principle established by the Supreme Court in *Robinson v. California*[93] that punishment of certain "statuses," such as drug addiction, constitutes cruel and unusual punishment. Under this rationale, mental illness or other incompetency is considered a status, and the drastic curtailment of liberty accompanying confinement without treatment is considered cruel and unusual punishment.[94]

Some courts have found that the state has a constitutional duty to protect involuntarily confined inmates from harm. At least one court has expanded this principle to include a right to at least a minimum level of psychological treatment;[95] other courts have registered approval of the basic rationale.[96]

Still other courts have based the right to treatment on the principle that the curtailment of fundamental liberties through involuntary confinement must follow the "least restrictive alternative" available. This principle was presented by the Supreme Court in *Shelton v. Tucker:*[97]

> [E]ven though the governmental 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 legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.[98]

According to this rationale, the state violates an individual's constitutional rights when it confines him and fails to provide minimally adequate treatment and habitation in the least restrictive setting possible.[99]

Finally, a number of courts have followed *Rouse v. Cameron*

93. 370 U.S. 660 (1962). *See* Comment, *The Eighth Amendment Right to Treatment for Involuntarily Committed Mental Patients*, 61 IOWA L. REV. 1057 (1976).

94. *See* text accompanying notes 118-25 *infra*.

95. New York Ass'n for Retarded Children, Inc. v. Rockefeller, 357 F. Supp. 752 (E.D.N.Y. 1973), *consent decree approved*, New York Ass'n for Retarded Children, Inc. v. Carey, 393 F. Supp. 715 (E.D.N.Y. 1975).

96. *See, e.g.*, Halderman v. Pennhurst State School and Hosp., 446 F. Supp. at 1318; Woe v. Mathews, 408 F. Supp. 419 (E.D.N.Y. 1976). *Cf.* Bowring v. Godwin, 551 F.2d 44 (4th Cir. 1977); Laaman v. Helgemoe, 437 F. Supp. 269 (D.N.H. 1977) ("protection from harm" rationale applied in prison context). *See* Spece, *supra* note 87, at 28.

97. 364 U.S. 479 (1960).

98. *Id.* at 488 (footnotes omitted).

99. *See* Halderman v. Pennhurst State School and Hosp., 446 F. Supp. at 1318; Woe v. Mathews, 408 F. Supp. 419 (E.D.N.Y. 1976); Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971).

directly[100] and have found a basis for the right to treatment in *state* statutory and constitutional provisions.[101]

b. Confinement of children in jails. The right to treatment doctrine, developed in cases involving persons involuntarily confined for mental illness, applies with equal force to the confinement of children in jails.[102] 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.[103]

The courts have recognized this principle. In one of the earliest cases considering the right to treatment, *White v. Reid,*[104] the petitioner was a juvenile being held in a District of Columbia jail as a result of an alleged parole violation. Although the decision was based on statutory grounds, the court noted that the commitment of the child to an adult jail rather than to a nonpunitive educational facility "cannot withstand an assault for violation of fundamental Constitutional safeguards."[105]

The constitutional bases adopted by courts in applying the right to treatment doctrine to juveniles have been as diverse as those invoked in the cases involving mental illness. The procedural due process/quid pro quo reasoning has been invoked by several courts. In *Morgan v. Sproat,*[106] the court concluded that juveniles who have been involuntarily committed have a constitutional right to treatment that emanates from two concepts. First, juveniles are incarcerated for the purpose of care and re-

100. *See* text accompanying note 69 *supra*.

101. *See* notes 131-34 and accompanying text *infra*.

102. *See, e.g.*, Renn, *The Right to Treatment and the Juvenile*, 19 CRIME & DELINQUENCY 477 (1973); Note, *The Right to Treatment for Mentally Ill Juveniles in California*, 27 HASTINGS L.J. 865 (1976); Note, *A Right to Treatment for Juveniles?*, 1973 WASH. U.L.Q. 157.

103. *See generally* F. FAUST & P. BRANTINGTON, JUVENILE JUSTICE PHILOSOPHY (1974); A. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY (1969); Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1970); Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909); Paulsen, *Kent v. United States: The Constitutional Context of Juvenile Cases*, 1966 SUP. CT. REV. 167; Piersma, Ganousis & Kramer, *The Juvenile Court: Current Problems, Legislative Proposals, and a Model Act*, 20 ST. LOUIS U.L.J. 1 (1975).

104. 125 F. Supp. 647 (D.D.C. 1954).

105. *Id.* at 650.

106. 432 F. Supp. 1130 (S.D. Miss. 1977).

habilitation. The reasoning of *Jackson v. Indiana*[107] requires that the program at the facility be reasonably related to that purpose. Second, juveniles are incarcerated without being provided all the due process protections afforded adults in criminal cases. "This denial of due process safeguards would be constitutionally impermissible unless the incarceration of juveniles serves beneficent, rather than punitive, purposes. . . . For these reasons, the courts have held that due process requires that the incarceration of juveniles be for rehabilitation and treatment."[108]

In *Gary W. v. Louisiana*,[109] the court based its decision on the theory that the state may curtail a person's liberty in a noncriminal context only if there is rehabilitative treatment exchanged for the equivalent denial of liberty. In defining this trade-off, the court concluded "[t]hat *quid pro quo* is care or treatment of the kind required to achieve the purpose of confinement."[110] The court found that there is a constitutional right to treatment; however, what constitutes proper treatment must be decided on an individual basis:

> The constitutional right to treatment is a right to a program of treatment that affords the individual a reasonable chance to acquire and maintain those life skills that enable him to cope as effectively as his own capacities permit with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency.
>
> . . . What the constitution requires as the state's due to the individual it confines is a program that is proper for that individual.[111]

Another federal court adopting the quid pro quo theory[112] concluded that juvenile adjudications do not contain all of the due process safeguards found in adult adjudications because the goals of the juvenile justice system differ from those of the criminal justice system. The purposes of the criminal justice system are punishment, deterrence, and retribution while the primary goal of the juvenile justice system is rehabilitation. "Thus due process in the juvenile justice system requires that the post-adjudicative stage of institutionalization further this goal of

107. 406 U.S. 715 (1972).
108. 432 F. Supp. at 1136 (citation omitted).
109. 437 F. Supp. 1209 (E.D. La. 1976).
110. *Id.* at 1216.
111. *Id.* at 1219.
112. Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. 1972).

rehabilitation."[113]

The procedural due process/quid pro quo rationale has been employed to declare that the confinement of children in jails violates the children's constitutional rights. In *Baker v. Hamilton*,[114] the parents of two boys confined in a county jail for four days and four weeks respectively, brought a class action against the sheriff, the jail warden, and four juvenile court judges. The class action was commenced on behalf of the two boys and fifty-eight other boys who had been confined in the jail during 1971. After hearing expert testimony concerning the effects on juveniles of detention in the jail, and after personally visiting the jail, the judge ruled that the system of selective pre- and post-dispositional placement of juveniles in the jail constituted punishment of the juveniles as adults without the due process protections afforded adults. The court concluded that regardless of how well-intentioned the juvenile court judges may have been, their acts constituted violations of the fourteenth amendment.[115]

Other courts have found a more general basis for the right to treatment in the due process clause. In *Pena v. New York State Division for Youth*,[116] the court held that the absence of rehabilitative treatment of youth confined in the juvenile justice system constitutes a violation of due process rights guaranteed under the fourteenth amendment.[117]

Several courts have found the basis for juveniles' right to treatment in the eighth amendment prohibition against cruel and unusual punishment. In *Cox v. Turley*,[118] the court specifi-

113. *Id.* at 1364.
114. 345 F. Supp. 345 (W.D. Ky. 1972).
115. *Id.* at 352. *See also* Fulwood v. Stone, 394 F.2d 939 (D.C. Cir. 1967); Creek v. Stone, 379 F.2d 106 (D.C. Cir. 1967); Nelson v. Heyne, 355 F. Supp. 451 (N.D. Ind. 1972), *aff'd*, 491 F.2d 352 (7th Cir.), *cert. denied*, 417 U.S. 976 (1974); Kautter v. Reid, 183 F. Supp. 352 (D.D.C. 1960). In *Kautter*, the district court held that since children have not been protected by the full mantle of constitutional safeguards, "[t]o put such a child in 'a place for [the] punishment of crimes' whose 'customary occupants are persons convicted of crime or awaiting trial for crime' would, therefore, raise a serious constitutional question." 183 F. Supp. at 354 (quoting Benton v. Reid, 231 F.2d 780, 782 (D.C. Cir. 1956)) (footnote omitted). Other courts have not hesitated to find that governments must provide something to a person in exchange for a loss of liberty following a procedure in which a person is denied the full panoply of due process safeguards. *See* Jackson v. Indiana, 406 U.S. 715 (1975); McNeil v. Director, Patuxent Inst., 407 U.S. 245 (1972); Humphrey v. Cady, 405 U.S. 504 (1972); Commonwealth v. Page, 339 Mass. 313, 159 N.E.2d 82 (1959).
116. 419 F. Supp. 203 (S.D.N.Y. 1976).
117. *Id.* at 206-07; *accord*, Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y. 1972).
118. 506 F.2d 1347 (6th Cir. 1974).

cally addressed the preadjudication detention of juveniles in county jails. The court held that the jailer'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. The court emphasized: "The worst and most illegal feature of all these proceedings [was] in lodging the child with the general population of the jail, without his ever seeing some official of the court."[119]

In *Swansey v. Elrod,*[120] juveniles between the ages of thirteen and sixteen, who had been confined in the Cook County jail pending prosecution, brought a civil rights action against the sheriff 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.' "[121] The expert witness concluded that "the inital 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."[122] The court observed that thirteen to sixteen year olds "are not merely smaller versions of the adults incarcerated in [the] Cook County jail."[123] Because the incarceration was devastating to the juvenile and the physical conditions were reprehensible, the court found the incarcerations violated the eighth amendment. It concluded that the evolving standards of decency required more adequate conditions.

In *Baker v. Hamilton,*[124] 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 the jail in that case are also present in the jails in rural areas of Utah and other states. The specific conditions mentioned include cramped quarters, poor illumination, poor air circulation, and broken locks; also cited were the lack of outdoor exercise or recreation and the absence of any attempt at rehabilitation.[125]

119. *Id.* at 1353.
120. 386 F. Supp. 1138 (N.D. Ill. 1975).
121. *Id.* at 1141.
122. *Id.*
123. *Id.* at 1143.
124. 345 F. Supp. 345 (W.D. Ky. 1972). *See* text accompanying notes 114-15 *supra.*

Furthermore, juveniles who are assaulted 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 that subjects those incarcerated to assaults and threats of violence constitutes cruel and unusual punishment.[126] In addition, juveniles who are separated from other inmates in order to protect them from assaults may suffer sensory deprivation and psychological damage in violation of their constitutional rights. In *Lollis v. New York State Department of Social Services,*[127] the court found that the isolation of a fourteen year-old girl in a bare room without reading materials or other forms of recreation constituted cruel and unusual punishment. The court relied on expert opinion that such isolation was "cruel and inhuman."[128]

The "protection from harm" rationale for the right to treatment[129] and the principle of the "least restrictive alternative"[130]

125. 345 F. Supp. at 353. *See also* Welsch v. Likins, 373 F. Supp. 487 (D. Minn. 1974); Nelson v. Heyne, 355 F. Supp. 451 (N.D. Ind. 1972), *aff'd,* 491 F.2d 352 (7th Cir.), *cert. denied,* 417 U.S. 976 (1974); State v. Wilt, 252 S.E.2d 168 (W. Va. 1979); State v. Strickler, 251 S.E.2d 222 (W. Va. 1979).

126. *See, e.g.,* Cox v. Turley, 506 F.2d 1347 (6th Cir. 1974); Woodhous v. Virginia, 487 F.2d 889 (4th Cir. 1973); Brown v. United States, 486 F.2d 284 (8th Cir. 1973); Roberts v. Williams, 456 F.2d 819 (5th Cir.), *cert. denied,* 404 U.S. 866 (1971); Bethea v. Crouse, 417 F.2d 504 (10th Cir. 1969); Penn v. Oliver, 351 F. Supp. 1292 (E.D. Va. 1972); Gates v. Collier, 340 F. Supp. 881 (N.D. Miss. 1972); Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd,* 442 F.2d 304 (8th Cir. 1971); Kish v. Milwaukee, 48 F.R.D. 102 (E.D. Wis. 1969), *aff'd,* 441 F.2d 901 (7th Cir. 1971).

127. 322 F. Supp. 473 (S.D.N.Y. 1970).

128. *Id.* at 480. *See* 16 ST. LOUIS U.L.J. 340 (1971). There has been considerable discussion whether the eighth amendment ban against cruel and unusual punishment is limited to punishment imposed as a result of conviction for crime, and thus does not apply to confinements such as civil commitments or detention of juveniles in jails. *See* Clark, *Civil and Criminal Penalties and Forfeitures: A Framework for Constitutional Analysis,* 60 MINN. L. REV. 379, 489 (1976); Spece, *supra* note 87, at 17-28; *Developments, supra* note 77, at 1259-64. In Ingraham v. Wright, 430 U.S. 651 (1977), the Supreme Court held that the eighth amendment does not apply to corporal punishment in public schools and indicated that it applys only to criminal punishments. *Id.* at 664-68. However, the Court explicitly did *not* consider "whether or under what circumstances persons involuntarily confined in mental or juvenile institutions can claim the protection of the Eighth Amendment." *Id.* at 669 n.37. Since detention of children in jails is closely analogous to criminal punishment, the constitutional protection should apply. In addition, the Court noted that public school children have little need for eighth amendment protection, in view of the "openness" of the institution, *id.* at 670, a consideration that cuts the opposite way in dealing with the detention of children in jails. *See generally* Roberts, *Right to Treatment for the Civilly Committed: A New Eighth Amendment Basis,* 45 U. CHI. L. REV. 731 (1978).

129. *See* notes 95-96 and accompanying text *supra.*

130. *See* notes 97-99 and accompanying text *supra. See also* Gary W. v. Louisiana,

have also been applied by several courts in the juvenile context.

Finally, a number of courts have found the right to treatment for juveniles grounded in *state* statutory or constitutional law. In *Creek v. Stone,*[131] a juvenile placed in a detention home prior to adjudication alleged that the home did not have facilities for the psychiatric care he needed. After analyzing the language of the District of Columbia Juvenile Court Act, the United States Court of Appeals for the District of Columbia Circuit concluded that the Act "establishe[d] not only an important policy objective, but, in an appropriate case, a legal right to a custody that is not inconsistent with the parens patriae premise of the law."[132] Similarly, in *Nelson v. Heyne,*[133] the Seventh Circuit ruled that the Indiana Juvenile Court Act provided a statutory basis for the right to rehabilitative treatment.[134]

c. Enforcing the right to treatment—section 1983. A juvenile's right to treatment may be enforced in a number of ways. The most commonly used vehicle for protecting civil rights is 42 U.S.C. § 1983.[135] Along with its jurisdictional counterpart, 28

437 F. Supp. 1209 (E.D. La. 1976); Morales v. Turman, 383 F. Supp. 53, 124 (E.D. Tex. 1974), *rev'd and remanded,* 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded,* 430 U.S. 322 (1977), *remanded,* 562 F.2d 993 (5th Cir. 1977); Welsch v. Likins, 373 F. Supp. 387 (D. Minn. 1974).

131. 379 F.2d 106 (D.C. Cir. 1967).

132. *Id.* at 111.

133. 491 F.2d 352 (7th Cir.), *cert. denied,* 417 U.S. 976 (1974).

134. *Id.* at 360 n.12. *See* McRedmond v. Wilson, 533 F.2d 757 (2d Cir. 1976); Lavette M. v. Corporation Counsel of N.Y., 35 N.Y.2d 136, 316 N.E.2d 314, 359 N.Y.S.2d 20 (1974); Ellery C. v. Redlich, 32 N.Y.2d 588, 300 N.E.2d 424, 347 N.Y.S.2d 51 (1973). *See also* Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y. 1972); Lollis v. New York State Dep't of Social Servs., 322 F. Supp. 473 (S.D.N.Y. 1970).

A right to rehabilitative treatment is implicit in Utah law. The purpose of the Utah Juvenile Court Act of 1965 is stated in UTAH CODE ANN. § 78-3a-1 (1953):

> It is the purpose of this act to secure for each child coming before the juvenile court such care, guidance, and control, preferably in his own home, as will serve his welfare and best interests of the state; to preserve and strengthen family ties whenever possible; to secure for any child who is removed from his home the care, guidance, and discipline required to assist him to develop into a responsible citizen, to improve the conditions and home environment responsible for his delinquency; and, at the same time, to protect the community and its individual citizens against juvenile violence and juvenile lawbreaking. To this end this act shall be liberally construed.

The doctrinal and practical difficulties inherent in the "right to treatment" principle have been debated at length. *See, e.g.,* Gartas, *The Constitutional Right to Treatment for Involuntarily Committed Mental Patients—What Limitations?,* 14 WASHBURN L.J. 291 (1975); Spece, *supra* note 87; *Developments, supra* note 77, at 1316.

135. 42 U.S.C. § 1983 (1976). Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen

U.S.C. § 1343,[136] section 1983 authorizes lawsuits to be brought in federal courts for violations of "rights, privileges, or immunities secured by the Constitution and laws."[137] Since the right to treatment is one of the rights "secured by the Constitution and laws," it is enforceable under section 1983.

Juveniles confined in jails, however, need not invoke the conceptual framework of the right to treatment cases in order to maintain a lawsuit for violation of their civil rights. They may file lawsuits in federal courts under section 1983 alleging violations of their eighth amendment right of freedom from cruel and unusual punishment and their fourteenth amendment right of due process of law. The federal courts have jurisdiction to hear such claims, just as they have jurisdiction to entertain lawsuits for alleged violations of the right to treatment.

Under the doctrine of pendent jurisdiction,[138] lawsuits filed under section 1983 in federal courts may also include claims under *state* law when such claims arise out of a common set of operative facts and form the basis for separate but parallel grounds for relief. Thus, civil rights violations brought under section 1983 may be joined with claims under state tort laws.

Juveniles confined in jails may also bring lawsuits in *state* courts. Such lawsuits can include claims under section 1983 as well as claims under state law.[139] Hence, juveniles may bring

> of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

136. 28 U.S.C. § 1343 (1976). Section 1343 provides:

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> . . . .
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.
>
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

137. 42 U.S.C. § 1983 (1976).

138. *See* United Mine Workers v. Gibbs, 383 U.S. 715 (1966).

139. *See* Maine v. Thiboutot, 100 S. Ct. 2502 (1980); Long v. District of Columbia, 469 F.2d 927, 937 (D.C. Cir. 1972); International Prisoners' Union v. Rizzo, 356 F. Supp. 806, 810 (E.D. Pa. 1973); Luker v. Nelson, 341 F. Supp. 111, 116 (N.D. Ill. 1972); New Times, Inc. v. Arizona Bd. of Regents, 110 Ariz. 367, 519 P.2d 169 (1974); Williams v. Horvath, 16 Cal. 3d 834, 548 P.2d 1125, 129 Cal. Rptr. 453 (1976); Brown v. Pitchess, 13

lawsuits to protect their civil rights in either state or federal courts. The choice of forum will depend upon the nature of the claims involved, the applicable state or federal law, the experience of state or federal judges with juvenile civil rights litigation, and the relative delays in state or federal courts in bringing cases to trial.

3. 42 U.S.C. § 1988

Section 1988[140] is intended to provide an adequate federal remedy, where existing federal law is inadequate, by incorporating the law of the state in which the federal court sits into federal law.[141] It does not confer any substantive rights on individuals; rather, it is a hollow vessel that is "filled" by state substantive law. The sole function of section 1988 is to provide access to federal courts for persons whose civil rights are recognized by state law but not federal law. In *Brazier v. Cherry*,[142] the court described the function of section 1988 as follows:

> Thus § 1988 declares a simple, direct, abbreviated test: what is needed in the particular case under scrutiny to make the civil rights statutes fully effective? The answer to that inquiry is then matched against (a) federal law and if it is found wanting the court must look to (b) state law currently in effect. To whatever extent (b) helps, it is automatically available, not because it is procedure rather than substance, but because Congress says so.[143]

A substantial number of courts have utilized section 1988, often in conjunction with section 1983, to fashion remedies for civil rights inadequately protected by federal law but adequately protected by state law.[144] Thus, even if the Juvenile Justice and

Cal. 3d 518, 531 P.2d 772, 119 Cal. Rptr. 204 (1975); Gabaldon v. United Farm Workers Organizing Comm., 35 Cal. App. 3d 757, 762 n.4, 111 Cal. Rptr. 203, 206 n.4 (1973); Dudley v. Bell, 50 Mich. App. 678, 213 N.W.2d 805 (1973); Clark v. Bond Stores, Inc., 41 App. Div. 2d 620, 340 N.Y.S.2d 847 (1973).

140. 42 U.S.C. § 1988 (1976).

141. Moor v. County of Alameda, 411 U.S. 693 (1973).

142. 293 F.2d 401 (5th Cir. 1961).

143. *Id.* at 409.

144. *See, e.g.*, Hall v. Wooten, 506 F.2d 564 (6th Cir. 1974) (state law applied to allow maintenance of lawsuit against county jail officials for death of county prisoner who was brutally murdered by drunken fellow inmates); Johnson v. Greer, 477 F.2d 101 (5th Cir. 1973) (state law applied to hold administrator of psychiatric diagnostic clinic liable for false imprisonment of plaintiff); Scott v. Vandiver, 476 F.2d 238 (4th Cir. 1973) (state law applied to hold sheriff liable for assaults committed by temporary law enforcement officers acting under his supervision); Jenkins v. Averett, 424 F.2d 1228 (4th Cir. 1970) (federal court may resort to the state law of torts to supply the elements of § 1983 claim).

Delinquency Prevention Act does not create a private right of action against local and state officials, a child detained in an adult jail in Utah could still sue local and state officials in federal court under section 1988 by adopting and incorporating Utah tort law and the substantive provisions of sections 55-11a-1 and 78-3a-30 of the Utah Code,[145] which prohibit confinement of juveniles in adult jails.

C. Liability Under State Tort Law

As indicated earlier, local and state officials may incur liability under state tort law for injuries received by juveniles confined in adult jails, whether the injuries arise from the conditions of confinement in the jail or from assaults by other inmates. The general standard for tort liability was set forth by the Utah Supreme Court in *Benally v. Robinson*.[146] In that case the widow and daughter of the deceased, a prisoner fatally injured in a fall down the stairs at the city jail, sued the arresting officer and the two officers on duty at the jail for wrongful death. The general standard of care to which the officers were held under state law was "that of using the degree of care and caution which an ordinary reasonable and prudent person would use under the circumstances."[147]

In *Benally* the court cited *Thomas v. Williams*[148] for "an excellent and accurate statement of an officer's duty to a prisoner in his custody."[149] *Thomas v. Williams* was a wrongful death action brought against the chief of police by the wife of a man arrested for drunk driving. The arresting officer had placed the partially unconscious offender in a cell, but had left him in possession of matches and cigarettes. The mattress in the cell was later set ablaze, and the prisoner died of burns and smoke inhalation. The court articulated the applicable standard of care as follows:

> "A sheriff owes to a prisoner placed in his custody a duty to keep the prisoner safely and free from harm, to render him medical aid when necessary, and to treat him humanely and

145. UTAH CODE ANN. §§ 55-11a-1, 78-3a-30 (1953 & Supp. 1979).

146. 14 Utah 2d 6, 376 P.2d 388 (1962).

147. *Id.* at 9, 376 P.2d at 390.

148. 105 Ga. App. 321, 124 S.E.2d 409 (1962).

149. 14 Utah 2d at 9 n.2, 376 P.2d at 390 n.2.

> refrain from oppressing him; and where a sheriff is negligent in his care and custody of a prisoner and as a result the prisoner receives injury or meets his death, . . . the sheriff would, in a proper case, be liable . . . to the injured prisoner or to his dependents as the case might be."[150]

The court added:

> In the performance of his duty to exercise ordinary diligence to keep his prisoner safe and free from harm, an officer having custody of a prisoner, when he has knowledge of facts from which it might be concluded that the prisoner may harm himself or others unless preclusive measures are taken, must use reasonable care to prevent such harm. In some circumstances reasonable care may require the officer to act affirmatively to fulfill his duty.[151]

In *Sheffield v. Turner*,[152] the Utah Supreme Court discussed whether an individual could be held liable under the state's sovereign immunity act and held that persons in charge of prisons or jails "could not be held liable unless they were guilty of some conduct which transcended the bounds of good faith performance of their duty by a wilful or malicious wrongful act which they know or should know would result in injury."[153] A sheriff who confines a child in an adult jail could be held liable for injuries sustained by the child as a consequence of that confinement. This result obtains for two reasons. First, confinement of a child in an adult jail "transcend[s] the bounds of good faith performance of [the sheriff's] duty," since it is directly contrary to state law. A sheriff cannot act within his duty in confining a child in an adult jail when state law specifically prohibits such confinement. Second, it is so widely acknowledged that confinement of juveniles in adult jails is seriously harmful to juveniles that the sheriff "knows or should know" that such confinement would result in injury to the child.

In order to establish liability under a common law tort theory, an injured juvenile would be required to prove that the sheriff was negligent for confining him in the jail, and that such negligence was the proximate cause of the juvenile's injuries. Since it would be reasonably foreseeable that a child confined in

150. 105 Ga. App. at 326, 124 S.E.2d at 412-13 (quoting Kendrick v. Adamson, 51 Ga. App. 402, 180 S.E. 647 (1935)).

151. *Id.* at 327, 124 S.E.2d at 413.

152. 21 Utah 2d 314, 445 P.2d 367 (1968).

153. *Id.* at 317, 445 P.2d at 369.

an adult jail would suffer emotional, psychological, or physical injuries, the sheriff's negligent act in confining the child in the adult jail would be a proximate cause of the injuries. Moreover, the sheriff's violation of the clear statutory mandate would constitute negligence per se.[154] A sheriff who confines a juvenile in an adult jail is therefore extremely vulnerable in a lawsuit for damages on behalf of a confined juvenile.

It is more difficult to determine whether other officials, such as county commissioners, could be held liable in a tort action for injuries sustained by a juvenile incarcerated in an adult jail. Since county commissioners are specifically charged by state law with the responsibility of providing adequate detention facilities,[155] their failure to provide such facilities would constitute a dereliction of their duties under state law and would therefore constitute negligence.

The establishment of the proximate cause element in an action brought against county commissioners would appear to be more difficult because they do not have direct authority over specific juveniles detained in the jails. Aside from the possibility that failure to provide adequate detention facilities could be considered negligence per se, the critical issue is whether injuries to children are a foreseeable consequence of that failure to fulfill the statutory mandate. Under Utah law the county commissioners could be considered "early wrongdoers" for having initially failed to provide adequate detention facilities, while the sheriff could be considered a "later wrongdoer" for confining juveniles in the adult jail when adequate detention facilities were not available. Since both the county commissioners and the sheriff

154. Prosser has said the following concerning per se violations of satutory mandate:

> Once the statute is determined to be applicable—which is to say, once it is interpreted as designed to protect the class of persons in which the plaintiff is included, against the risk of the type of harm which has in fact occurred as a result of its violation—the great majority of the courts hold that an unexcused violation is conclusive on the issue of negligence, and that the court must so direct the jury. The standard of conduct is taken over by the court from that fixed by the legislature, and "jurors have no dispensing power by which to relax it," except in so far as the court may recognize the possibility of a valid excuse for disobedience of the law. This usually is expressed by saying that the unexcused violation is negligence "per se," or in itself.

PROSSER, HANDBOOK OF THE LAW OF TORTS 200 (4th ed. 1971)(footnotes omitted). For a discussion of the principle of negligence per se under New Mexico law, see Castillo v. United States, 406 F. Supp. 585, 591 (D.N.M. 1975), *aff'd*, 552 F.2d 1385 (10th Cir. 1977).

155. UTAH CODE ANN. §§ 55-11a-1 to 2 (Supp. 1979).

would have violated state law, and therefore would be negligent, it appears that *both* the sheriff and the commissioners could be held liable if the injuries to juveniles are foreseeable. In the leading Utah case on proximate cause, *Hillyard v. Utah By-Products Co.*,[156] the Utah Supreme Court noted:

> "The earlier of the two wrongdoers, even though his wrong has merely set the stage on which the later wrongdoer acts to the plaintiff's injury, is in most jurisdictions no longer relieved from responsibility merely because the later act of the other wrongdoer has been a means by which his own misconduct was made harmful. The test has come to be whether the later act, which realized the harmful potentialities of the situation created by the defendant, was itself foreseeable."[157]

Holding the county commissioners liable for the sheriff's act of placing juveniles in adult jails would be "based upon the proposition that one cannot excuse himself from liability arising from his negligent acts merely because the later negligence of another concurs to cause an injury if the later act was a *legally foreseeable* event."[158] Thus, the fact that the sheriff directly places a juvenile in an adult jail does not insulate the county commissioners from liability. Since their failure to provide adequate detention facilities is contrary to state law, and since injury to juveniles is foreseeable, they may be held liable in damage actions.

As indicated earlier, under the doctrine of pendent jurisdiction, state tort claims could be joined with federal civil rights claims in lawsuits filed in federal court. Hence, sheriffs or county commissioners could be sued in federal court for violations of federal law, the Juvenile Justice and Delinquency Prevention Act, and the federal Civil Rights Act. They could also be sued in the same action for negligence under state law.[159]

IV. Immunity of State and Local Officials

The current doctrines of sovereign immunity arose from power struggles in feudal England. The ancient English tradition

156. 1 Utah 2d 143, 263 P.2d 287 (1953).

157. *Id.* at 148-49, 263 P.2d at 290-91 (quoting Bohlen, *Fifty Years of Torts*, 50 Harv. L. Rev. 1225, 1229 (1937)).

158. *Id.* at 149, 263 P.2d at 291 (footnote omitted) (emphasis in original).

159. *See* text accompanying notes 135-39 *supra*. Juveniles could also sue for false imprisonment. *See* Douthit v. Jones, 619 F.2d 527 (5th Cir. 1980).

that "the King could do no wrong," meant that he could not be sued on any grounds. Since the judges at the time were agents of the King, they too enjoyed absolute immunity. The English Parliament in 1688 conferred immunity upon itself in the Bill of Rights in order to protect its independence from the King.[160] The doctrine that the government cannot be sued took early root in the United States and is still stringently adhered to in some states.

It is important to remember that any applicable immunity usually only protects a public official from liability for *damages*; with few exceptions, public officials are not immune to lawsuits for declaratory and injunctive relief.

A. Immunity Under Federal Law for Violation of Civil Rights

1. Immunity of judges, prosecutors, and legislators

As a practical matter, judges, prosecutors, and legislators enjoy virtually absolute immunity for acts done in the performance of their official duties. Recent Supreme Court cases demonstrate the extensive breadth of this immunity. In *Stump v. Sparkman*,[161] a woman brought suit against an Indiana circuit court judge who had approved a petition by her mother to have the woman sterilized when she was only fifteen. The young girl went to the hospital ostensibly to have her appendix removed; in fact, a tubal ligation was performed. No hearing was held on the petition, and no one was appointed to represent the interests of the girl, who was never informed of the nature of the operation to be performed on her. She learned of the sterilization only after she married and attempted to have children. Nevertheless, the Supreme Court ruled that a judge enjoys absolute immunity unless the act done is "in clear absence of all jurisdiction" or is nonjudicial in nature. Since Indiana law gave circuit judges jurisdiction to act upon petitions for sterilization, the Supreme

160. *See generally* Freed, *Executive Official Immunity for Constitutional Violations: An Analysis and a Critique*, 72 Nw. U.L. Rev. 526 (1977). Clearly, the doctrine of sovereign immunity has been substantially eroded in this country. This deterioration has been caused both by statutory changes and court rulings. The first state to abrogate the doctrine statutorily was New York in 1929. N.Y. Ct. Cl. Act § 8 (McKinney 1963). The federal government followed suit in 1946. Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680 (1970).

161. 435 U.S. 349 (1978).

Court ruled that the judge could not be held liable.[162]

Similar principles apply to legislators and prosecutors. In *Tenney v. Brandhove,*[163] Brandhove had circulated a petition in the California legislature opposing the Tenney Committee on Un-American Activities. The Committee called Brandhove as a witness and prosecuted him when he refused to testify. In Brandhove's lawsuit against members of the Committee for violating his constitutional rights, the Supreme Court ruled that legislators could not be held liable for their official acts, even when they used the legislative process to punish the exercise of first amendment rights. In *Imbler v. Pachtman,*[164] the Court upheld the immunity of a prosecutor who knowingly used perjured evidence.

However, when judges, legislators, and prosecutors act outside of their official realm, they do not enjoy absolute immunity from liability. Courts have held judges liable where they issued orders not authorized by state law,[165] interfered with judicial proceedings after being disqualified,[166] assaulted a person in their courtroom,[167] or performed legislative or administrative (as opposed to judicial) functions.[168] In these situations, a qualified, "good faith" immunity applies, rather than absolute immunity.[169]

Concerning the acts of legislators, the courts have held that the following activities are not legislative in nature: distributing to the public materials gathered by a legislative committee,[170] accepting bribes in return for votes,[171] and enforcing or executing illegal legislative bills.[172] Any immunity that applies to legislators also encompasses their aides and employees performing legislative action that would be protected if performed directly

162. *See* Note, *Judicial Immunity: An Unqualified Sanction of Tyranny From the Bench?,* 30 U. FLA. L. REV. 810 (1978).

163. 341 U.S. 367 (1951).

164. 424 U.S. 409 (1976).

165. Wade v. Bethesda Hosp., 337 F. Supp. 671 (S.D. Ohio 1971).

166. Spires v. Bottorff, 317 F.2d 273 (7th Cir. 1963).

167. Gregory v. Thompson, 500 F.2d 59 (9th Cir. 1974); Lucarell v. McNair, 453 F.2d 836 (6th Cir. 1972).

168. Lynch v. Johnson, 420 F.2d 818 (6th Cir. 1970); Bauers v. Heisel, 361 F.2d 581 (3rd Cir. 1966); Robichaud v. Ronan, 351 F.2d 533 (9th Cir. 1965); Atcherson v. Siebenmann, 458 F. Supp. 526 (S.D. Iowa 1978), *modified,* 605 F.2d 1058 (8th Cir. 1979).

169. Lynch v. Johnson, 420 F.2d 818 (6th Cir. 1970).

170. Doe v. McMillan, 412 U.S. 306 (1973).

171. *See* United States v. Brewster, 408 U.S. 501 (1972).

172. Gravel v. United States, 408 U.S. 606 (1972).

by the legislator.[173] On the other hand, quasi-legislative officials like county commissioners or city council members are generally accorded only a qualified, "good faith" immunity similar to that enjoyed by executive officials.[174]

2. Immunity of executive officials

The courts have applied different types of immunity to executive officials, depending upon the nature of the wrong alleged. In *Barr v. Matteo,*[175] employees of the Federal Office of Rent Stabilization sued their superior for libelous statements contained in a press release he had issued. The Supreme Court held that a low-level federal administrative official who has been sued for defamation is absolutely immune from liability. Since *Barr,* the lower federal courts have extended the decision, conferring absolute immunity on federal executive officials for virtually *all* tort actions based on "discretionary" acts.[176]

When government officials are accused of violating the *constitutional* rights of others, however, they enjoy only a qualified or limited immunity. In *Scheuer v. Rhodes,*[177] the Governor of Ohio and other high state officials were accused of unnecessarily deploying National Guard troops at Kent State University, and thereby "intentionally, recklessly, willfully, and wantonly" violating the rights of four students who were killed in the resulting confrontation. The Supreme Court noted that there is leeway in the law for public officials to make mistakes:

> Public officials, whether governors, mayors or police, legislators or judges, who fail to make decisions when they are needed or who do not act to implement decisions when they are made do not fully and faithfully perform the duties of their offices. Implicit in the idea that officials have some immunity—absolute or qualified—for their acts, is a recognition that they may err. The concept of immunity assumes this and goes on to assume that it is better to risk some error and possible injury from

173. *Id.*

174. *See* Charlotte v. Local 660, Int'l Ass'n of Firefighters, 426 U.S. 283 (1976); Lynch v. Johnson, 420 F.2d 818 (6th Cir. 1970); Adler v. Lynch, 415 F. Supp. 705 (D. Neb. 1976); Oberhelman v. Schultze, 371 F. Supp. 1089 (D. Minn. 1974), *aff'd without opinion,* 505 F.2d 736 (8th Cir. 1974). *See also* Cobb v. City of Malden, 202 F.2d 701, 705 (1st Cir. 1953) (Magruder, C.J., concurring).

175. 360 U.S. 564 (1959).

176. *See, e.g.,* Sowders v. Damron, 457 F.2d 1182 (10th Cir. 1972); Estate of Burks v. Ross, 438 F.2d 230 (6th Cir. 1971).

177. 416 U.S. 232 (1974).

such error than not to decide or act at all.[178]

Moreover, the Court stated that high officials are granted more leeway than their subordinates: the higher the official position, the broader the range of duties and responsibilities of the official, and the greater the scope of allowable discretion.

The qualified immunity of an executive official, therefore, depends upon the particular position the official holds and the circumstances surrounding the official acts. The Supreme Court described the immunity as follows:

> These considerations suggest that, in varying scope, a qualified immunity is available to officers of the executive branch of government, the variation being dependent upon the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which liability is sought to be based. It is the existence of reasonable grounds for the belief formed at the time and in the light of all the circumstances, coupled with good-faith belief, that affords a basis for qualified immunity of executive officers for acts performed in the course of official conduct.[179]

In *Wood v. Strickland,*[180] a civil rights case brought by public high school students who claimed that they were expelled from school in violation of their constitutional rights, the Supreme Court clarified its description of limited executive immunity. Although the specific holding of the case relates to school board members, the standard for immunity should apply to other executive officials as well:

> [W]e hold that a school board member is not immune from liability for damages under § 1983 if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student. That is not to say that school board members are "charged with predicting the future course of constitutional law." . . . A compensatory award will be appropriate only if the school board member has acted with such an impermissible motivation or with such disregard of the student's clearly established constitutional rights that his action

178. *Id.* at 241-42 (footnote omitted).
179. *Id.* at 247-48.
180. 420 U.S. 308 (1975).

> cannot reasonably be characterized as being in good faith.[181]

Thus, there are two critical questions after *Wood v. Strickland:* whether the official acted with malice, and whether the official's actions were reasonable in light of the information available and the existing state of the law. If the official acted with malice toward the plaintiff, or if the official's actions were unreasonable in light of the available information and the state of the law, there is no immunity.

Good faith conduct must be proven by the official asserting the immunity.[182] The lack of malice does not in and of itself establish good faith. Neither does a refusal to do what one knows or should know is legal because of a fear of the repercussions justify the conduct.[183] In addition, failure on the part of an official to take appropriate steps to avoid the injury complained of may defeat a "good faith" defense to a damage action even if the official did not act out of malice or ill will.[184] Finally, lack of good faith may be inferred from failure to act.[185]

In view of the explicit prohibitions in state and federal statutes against the confinement of juveniles in adult jails, it is doubtful that local executive officials could assert a "good faith" defense for such illegal incarceration.[186]

181. *Id.* at 322 (citation omitted) (quoting Pierson v. Ray, 386 U.S. 547, 557 (1967)). *See also* Procunier v. Navarette, 434 U.S. 555 (1978).

182. Skehan v. Board of Trustees of Bloomsburg State College, 538 F.2d 53 (3d Cir. 1976); Zweibon v. Mitchell, 516 F.2d 594, 671 (D.C. Cir. 1975). According to the recent case of Gomez v. Toledo, 100 S. Ct. 1920 (1980), the plaintiff need not allege bad faith in his complaint.

183. *See, e.g.,* Schiff v. Williams, 519 F.2d 257 (5th Cir. 1975); Faraca v. Clements, 506 F.2d 956 (5th Cir. 1975).

184. *See, e.g.,* Bryan v. Jones, 530 F.2d 1210, 1215 (5th Cir. 1976).

185. *See, e.g.,* Sims v. Adams, 537 F.2d 829 (5th Cir. 1976); Harris v. Chanclor, 537 F.2d 203 (5th Cir. 1976); Downie v. Powers, 193 F.2d 760 (10th Cir. 1951).

186. Regarding the scope of immunity of executive officials under *Scheuer v. Rhodes* and *Wood v. Strickland,* see Anson, *Implications of* Goss v. Lopez *and* Wood v. Strickland *for Educators; Proceedings of The National Institute of Education Conference,* 4 J.L. EDUC. 565 (1975); Kattan, *Knocking on Wood: Some Thoughts on the Immunities of State Officials to Civil Rights Damage Actions,* 30 VAND. L. REV. 941 (1977); Marquardt & Plenk, *School Suspension and the Right of Due Process: The Effects of* Goss *and* Wood *in Utah Schools,* 3 J. CONTEMP. L. 85 (1976); Note, Wood v. Strickland: *Liability of School Board Members for Damages Resulting from a Deprivation of a Student's Civil Rights,* 13 CALIF. W.L. REV. 153 (1976); Note, *Immunity of Public Officials from Liability for Damages Under 52 U.S.C. § 1983,* 89 HARV. L. REV. 219 (1975); Note, Wood v. Strickland: *Issues and Implications for School Board Participation,* 15 J. FAM. L. 235 (1976); Note, *Sovereign Immunity*—Scheuer v. Rhodes: *Reconciling Section 1983 Damage Actions With Governmental Immunities,* 53 N.C.L. REV. 439 (1974); Comment, *Official Immunity from Damages in Section 1983 Suits:* Wood v. Strickland, 56 OR. L.

3. Immunity of local governmental entities

The Supreme Court initially held, in *Monroe v. Pape,*[187] that municipal bodies were not "persons" who could be held liable under section 1983 of the Civil Rights Act. However, in *Monell v. Department of Social Services of the City of New York,*[188] the Court overruled *Monroe v. Pape* and held that local government units do not enjoy an absolute immunity from liability. Thus, local governmental entities, including cities, towns, police departments, and city agencies can be sued directly under section 1983 for money damages and declaratory or injunctive relief. Such an action may be brought where the allegedly unconstitutional action implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that entity's officers, or where the action constitutes governmental "custom," even though such a custom has not received formal approval through the entity's official decision-making channels.

The Court imposed one limitation on the doctrine it announced in *Monell:* a municipality cannot be held liable under a theory of *respondeat superior* solely because it employs a person who causes harm to another. Thus, the basis for liability must be grounded upon an official act, declaration, or custom; the municipality cannot be held liable merely because one of its employees does something that injures another.[189]

4. Liability of public officials and the eleventh amendment

In 1798 Congress passed the eleventh amendment, which prohibits suits against the states by citizens or by foreign countries. In *Edelman v. Jordan,*[190] the Supreme Court held that where a lawsuit names a state official as a defendant and seeks money damages or restitution that will be paid out of the state treasury, a request for such relief is in effect a suit against the

REV. 124 (1977); Comment, *Students' Rights Versus Administrators' Immunity:* Goss v. Lopez *and* Wood v. Strickland, 50 ST. JOHN'S L. REV. 102 (1975); Note, *Civil Rights—State Executive Officials Afforded Qualified Immunity From Liability in Suits Maintained Under Section 1983,* 20 VILL. L. REV. 1057 (1974-75).

187. 365 U.S. 167 (1961).

188. 436 U.S. 658 (1978).

189. *Id.*; Baskin v. Parker, 602 F.2d 1205 (5th Cir. 1979). The Supreme Court has recently held that municipalities cannot assert the good-faith defense available to executive officials. *See* Owen v. City of Independence, 100 S. Ct. 1398 (1980).

190. 415 U.S. 651 (1974).

state itself, and is therefore barred by the eleventh amendment.

The effect of the eleventh amendment on litigation against public officials involves the consideration of several important concepts. First, injunctive relief, as opposed to money damages, is not barred by the eleventh amendment, even though it may require significant expenditure of state funds.[191] Second, the eleventh amendment only bars money awards that would be paid out of the state treasury. Restitution or damage awards that would originate from a different source are not barred.[192] Moreover, state officials are usually sued *both* in their official *and* individual capacities. A judgment against an official in his individual capacity must be paid by the individual, not the state, and is therefore not barred by the eleventh amendment.[193] Finally, counties, cities, towns, and other municipal subdivisions of the state are *not* protected by the eleventh amendment.[194]

5. State governmental immunity acts

State governmental immunity acts may bar litigation against state and local officials in state court for torts, but they do not immunize them from federal civil rights claims. In *Martinez v. California,*[195] the survivors of a fifteen year-old girl murdered by a parolee sued state officials for damages in state court. The Supreme Court held first that the California immunity statute was not unconstitutional when employed to deny a tort claim arising under state law. However, turning to the appellants' civil rights claim, the Court ruled that the state immunity statute did not control the section 1983 claim, even though that claim was being advanced in a state court proceeding.[196]

In *Hampton v. City of Chicago,*[197] the Seventh Circuit held that "[c]onduct by persons acting under color of state law which is wrongful under 42 U.S.C. § 1983 or § 1985(3) cannot be immu-

191. *Id.; Ex parte* Young, 209 U.S. 123 (1908); McAuliffe v. Carlson, 520 F.2d 1305 (2d Cir. 1975); King v. Carey, 405 F. Supp. 41 (W.D.N.Y. 1975).

192. Bowen v. Hackett, 387 F. Supp. 1212 (D.R.I. 1975); Shiff v. Williams, 519 F.2d 257 (5th Cir. 1975).

193. Scheuer v. Rhodes, 416 U.S. 232 (1974); Clegg v. Slater, 420 F. Supp. 910 (W.D. Okla. 1976).

194. *See* Wright v. Houston Independent School Dist., 393 F. Supp. 1149 (S.D. Tex. 1975), *vacated on other grounds,* 569 F.2d 1383 (2d Cir. 1978).

195. 48 U.S.L.W. 4076 (Sup. Ct. 1980).

196. *Id.* at 4077.

197. 484 F.2d 602 (7th Cir. 1973).

nized by state law."[198] Plaintiffs alleged that fourteen Chicago police officers and fifteen other public officials had engaged in a conspiracy to deny their first amendment rights as members of the Black Panther Party by illegal forced entry, unjustifiable use of excessive and deadly force, and malicious prosecution. The trial court had relied on the Illinois Tort Immunity Act to dismiss the claims against the fifteen public officials, among whom were state attorneys who had assisted in the planning and execution of the police raid. The court of appeals held that such reliance was misplaced since "[a] construction of the federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise; and the supremacy clause of the Constitution insures that the proper construction may be enforced."[199]

In *Smith v. Losee*,[200] the defendant public officials appealed from a damages award in a section 1983 civil rights action brought because of their alleged denial of plaintiff's rights to free speech and due process. While it held the defendant board of education immune from state liability for damages because of the doctrine of governmental immunity, the court of appeals affirmed the trial court's award of actual and punitive damages against three individual defendants. In applying the doctrine of official privilege, the court observed:

> [T]he rule [of official privilege] must be here recognized and applied. It is one which has been formulated and used in the federal courts; it must be a "federal" one because the federally created cause of action [§ 1983] cannot be restricted by state laws or rules relating to sovereign immunity nor to official privilege.[201]

Thus, state governmental immunity acts are not applicable to section 1983 suits for illegal detention brought by juveniles in either state or federal courts. The same reasoning applies to actions filed pursuant to section 1988 and the Juvenile Justice and Delinquency Prevention Act.

198. *Id.* at 607.

199. *Id.* Some state statutes explicitly comply with the federal court rulings. *See* WASH. REV. CODE ANN. § 4.92.170 (Supp. 1978).

200. 485 F.2d 334 (10th Cir. 1973).

201. *Id.* at 341.

B. Immunity Under State Law

Modern state laws governing the immunity of governmental officials, agencies, and units of government from suit for injury by private persons vary substantially. The Utah statute represents one response. It provides that all governmental entities are immune from suit for any injury resulting from the activities of the entity where the entity is engaged in the exercise and discharge of a governmental function, except as otherwise provided in the Governmental Immunity Act.[202] It further provides that immunity is waived where the injuries are caused by the negligent acts or omissions of employees committed within the scope of their employment, unless the injuries arise because of assault, battery, violation of civil rights, or incarceration of any person in any state prison, county or city jail, or other place of legal confinement.[203] Accordingly, the immunity of governmental entities is not waived as to injuries resulting from the illegal confinement of juveniles in adult jails.

Colorado law represents a different response. Under the Colorado Governmental Immunity Act,[204] public entities are generally immune from damage claims. However, there are six enumerated exceptions, one of which precludes the use of immunity as a defense in the operation of public hospitals, penitentiaries, reformatories or jails.[205] Thus, governmental immunity is waived as to injuries arising from the incarceration of juveniles in adult jails in Colorado.

Furthermore, the sovereign immunity defense is not available to public employees and governmental officials in Colorado. In *Kristensen v. Jones*,[206] the Colorado Supreme Court ruled that the immunity act only applies to public entities and not to employees, who may be sued individually under common law claims. The immunity act does provide, however, that the governmental entity may be liable for the costs of the defense of an employee sued for injuries sustained, provided the alleged act or omission occurred within the scope of employment and was neither willful nor wanton.[207]

The New Mexico Tort Claims Act falls somewhere in be-

202. UTAH CODE ANN. § 63-30-3 (1953).

203. *Id.* § 63-30-10.

204. COLO. REV. STAT. § 24-10-101 to 117 (1973).

205. *Id.* § 24-10-106.

206. 195 Colo. 122, 575 P.2d 854 (1978).

207. COLO. REV. STAT. § 24-10-110 (1973).

tween the Utah and Colorado acts. It provides that all governmental entities *and* public employees are immune from suit for any injury resulting from the activities of the entities or their employees while acting within the scope of their duties, except as otherwise provided in the Tort Claims Act.[208] However, immunity is waived when a claim is made against a public employee for any torts alleged to have been committed within the scope of his duty and involving any violation of property rights or any rights, privileges, or immunities secured by the Constitution and laws of the United States or the constitution and laws of New Mexico. If a tort committed by a public employee within the scope of his employment is malicious or fraudulent, the governmental entity is immune from suit but the employee is not.[209]

Thus it would appear that sheriffs in New Mexico, as law enforcement officials, may be liable for injuries arising from incarceration of juveniles in adult jails. Similarly, both sheriffs and county commissioners may be liable based upon the failure to adequately maintain and operate the jails. Even assuming for the sake of argument that sheriffs and county commissioners in New Mexico are immune for the above reasons, if they act *outside* the scope of their official duties, they may be held liable for injuries resulting from such activities.[210]

Since the incarceration of children in need of supervision and of neglected children in adult jails is prohibited by state statute, and since alleged juvenile delinquents may only be detained under precise and limited circumstances, it would appear that such incarceration does not fall within the scope of the official duties of any government official.[211] Accordingly, New Mexico government officials can be held liable for injuries resulting from illegal confinement of juveniles in adult jails.[212]

208. N.M. STAT. ANN. § 41-4-4 (1978).

209. *Id.* § 41-4-4B.

210. *See* Montoya v. City of Albuquerque, 82 N.M. 90, 476 P.2d 60 (1970) (decided under prior law); Salazar v. Town of Bernalillo, 62 N.M. 199, 307 P.2d 186 (1956) (decided under prior law).

211. N.M. STAT. ANN. § 32-1-25(c), (e) (1978).

212. The Oregon tort claims law, *Or. Rev. Stat.* §§ 30.260-300 (1953), makes every public body liable for its torts and those of its officials acting within the scope of their employment except in areas expressly limited by the act. *Id.* § 30.265(1). The Oregon law also contains a "discretionary acts exception" that restores immunity for every public body and its officers, employees, and agents acting within the scope of their employment for acts deemed discretionary. The obvious difficulty is in distinguishing discretionary acts from ministerial or operational ones. *See* Daugherty v. Oregon State Highway Comm., 270 Or. 144, 147, 526 P.2d 1005, 1006 (1974); Smith v. Cooper, 256 Or. 485, 499, 475 P.2d 78, 85 (1970). *See also* Eldredge v. Kamp Kachess Youth Servs., Inc., 90 Wash. 2d 402, 583 P.2d 626 (1978); Evangelical United Brethren Church v. State, 67 Wash. 2d 246, 407 P.2d 440 (1965). Washington also waived immunity by statute. WASH. REV. CODE ANN. §§ 4.92.010-.170 (1962 & Supp. 1978). It has maintained the discretionary acts exception through case law. Hosea v. Seattle, 64 Wash. 2d 678, 393 P.2d 967 (1964); Loger v. Washington Timber Prods., Inc., 8 Wash. App. 921, 509 P.2d 1009 (1973). North Carolina has waived sovereign immunity and has established the North Carolina Industrial Commission as a court to hear and determine tort claims against state agencies. N.C. GEN. STAT. §§ 143-291 to 300.6 (1978). Arizona extinguished sovereign immunity in Stone v. Arizona Highway Comm., 93 Ariz. 384, 381 P.2d 107 (1963). ARIZ. REV. STAT. § 12-821 (1956) provides the mechanism for filing negligence claims against the state and state entities. Grimm v. Arizona Bd. of Pardons and Paroles, 115 Ariz. 260, 564 P.2d 1227 (1977).

For a general discussion of governmental immunity of state and local officials, see 57 AM. JUR. 2d *Negligence* §§ 54, 79, 91, 243, 321, 322 (1971); Annot., 60 A.L.R.2d 11 (1958); Annot., 163 A.L.R. 1435 (1946); Annot., 120 A.L.R. 1376 (1939); Kovnat, *Torts: Sovereign and Governmental Immunity in New Mexico*, 6 N.M.L. REV. 249 (1976); Comment, *The Colorado Governmental Immunity Act: A Prescription for Regression*, 49 DEN. L.J. 567 (1973); Comment, *The Colorado Governmental Immunity Act: A Judicial Challenge and the Legislative Response*, 44 U. COLO. L. REV. 449 (1972).

C. *Indemnification of Local and State Officials*

Utah law provides that public employees who are the subject of lawsuits for activities within the scope of their employment may be defended by the public entity for which they work, and may be indemnified for money judgments against them resulting from such litigation.[213]

Local and state officials who are sued for confinement of juveniles in adult jails may not enjoy the benefits of the Utah Indemnification Act, however. These officials may be held personally liable for two reasons. First, since such activity is expressly prohibited by state law in Utah, such confinement is not within the legitimate scope of the officials' public employment. The rationale is the same in other states where alleged juvenile delinquents may be held in adult jails under circumstances where there is no sight and sound separation from adults.[214] Second, section 63-48-3 of the Utah Code expressly states that "[n]o public entity is obligated to pay any judgment based upon a claim against an officer or employee if it is established that the officer or employee acted or failed to act due to gross negligence, fraud, or malice."[215] Although "gross negligence" is not suscepti-

213. UTAH CODE ANN. §§ 63-48-1 to -7 (1953).

214. *See, e.g.*, COLO. REV. STAT. § 24-10-110 (1973); N.M. STAT. ANN. § 41-4-4 (1978); OR. REV. STAT. § 30.285 (1977); WASH. REV. CODE ANN. §§ 4.92.010-.170 (1962 & Supp. 1978).

215. UTAH CODE ANN. § 63-48-3(4) (1953). The law is similar in New Mexico in both respects. *See* N.M. STAT. ANN. §§ 32-1-25, 41-4-4 (1978).

ble of precise definition,[216] the very significant danger of substantial harm to children from incarceration in adult jails may well qualify such confinement as gross negligence on the part of the officials responsible.

V. Conclusion

Though humanitarians have warned for more than a century of its potential adverse effects, children are still incarcerated in adult jails throughout the United States. The promise of the Juvenile Justice and Delinquency Prevention Act of 1974 has been carried forward with only limited enforcement. While children sit in dark, dirty cells, the prey of nearby adult inmates, local and state officials complain about the shrinking tax base and the inconvenience of reassigning law officers for transportation duties.

In this unconscionable situation, children and their legal advocates must press for vigorous enforcement of state and federal laws prohibiting the confinement of juveniles in adult jails. From the foregoing discussion, it is evident that local and state officials, particularly sheriffs and county commissioners, are subject to lawsuits for declaratory and injunctive relief, as well as damages. The executive and legislative branches of government have contented themselves with an attitude of benign neglect. Only by bringing the flagrant abuses of children's rights to the attention of the courts will children and their advocates effect meaningful and lasting change.

216. *See* Prosser, Handbook of the Law of Torts 183-84 (4th ed. 1971).

JAIL REMOVAL COST STUDY

VOLUME I

FOREWORD

The Jail Removal Cost Study is an examination of costs, experiences and ramifications of removing children from adult jails and lockups. This study was prepared by the Office of Juvenile Justice and Delinquency Prevention on the instruction of Congress as set forth at Section 17 of the Juvenile Justice Amendments of 1980 (P.L. 96-509).

Congress, in providing for the study, placed emphasis on the development of an estimate of costs likely to be incurred by states in removing juveniles from adult jails and lockups. The origin of this interest was the addition to the provisions of the Juvenile Justice and Delinquency Prevention Act of a requirement that such action be undertaken in the states.

Generally, data collected preparatory to formulation of this report indicated that the cost of jail removal is a function of the policy decisions made by a jurisdiction in proceeding to its implementation: a decision to place all juveniles currently housed in adult jails and lockups in secure detention will result in one cost figure while a decision to place juveniles in one of several less restricting,non-institutional options will create another set of costs. A mix of secure placements and less restrictive options creates still a third cost figure. The basis for developing a precise national figure for removal of juveniles from adult jails and lockups is not available. Many jurisdictions are not in a position to provide firm cost estimates; other jurisdictions, in responding to questions concerning cost, projected removal costs for a greater number of juveniles than they reported are currently held in jails and lockups. A $118.8 million figure can be deduced by totaling the cost figures provided by respondents to the survey of states concerning jail removal. This figure is based on response to questions concerning costs from 60% of the jurisdictions surveyed.

Nonetheless, the impact of cost can be assessed from hypothetical estimations drawn on data developed in the course of the study:

-- Jurisdiction A places 100% of a caseload of 100 in secure detention for an average length of stay of 10 days. Given an average cost of $69.74 per bed per day, placement of these 100 juveniles in secure detention for 10 days will cost $69,740. (Note: excludes capital construction costs.)

-- Jurisdiction B places 100% of a caseload of 100 in a less restrictive residential option for an average length of stay of 10 days. Given an average cost of $66.68 per bed per day, placement of these 100 juveniles in a less restrictive residential option will cost $66,680.

-- Jurisdiction C returns 100% of a caseload of 100 to the community under supervision with such supervision continuing for an average of 10 days. Gives an average cost of $22.17 per juvenile per day, return of 100 juveniles to the community under supervision will cost $22,170.

Any mix of the above alternatives will have obvious consequences with respect to removal costs. A fourth hypothetical features a mix of alternatives; assumes the return of a large percentage of youth to their homes under varying degrees of supervision; and reflects a one time administrative cost associated with juveniles who are returned home after initial contact.

-- Jurisdiction D distributes a caseload of 100 juveniles among four alternatives:

- 10% of the caseload (10 juveniles) are placed in secure detention for an average length of stay of 10 days. Given an average cost of $69.74 per bed per day, placement of these 10 juveniles in secure detention will cost $6,974.

- 20% of the caseload (20 juveniles) are placed in a less restrictive residential option for an average length of stay of 10 days. Given an average cost of $66.68 per bed per day, placement of these 20 juveniles in a less restrictive residential option will cost $13,336.

- Eight percent of the caseload (8 juveniles) were returned to the community under supervision with such supervision continuing for an average of 10 days. Given an average cost of $22.17 per juvenile per day, return of 8 juveniles to the community under supervision will cost $1,174.

- 62% of the caseload (62 juveniles) are returned to the community having been the recipient of administrative services only. Given a one time cost of $71 per juvenile for such administrative services, return of 62 juveniles to the community will cost $4,402.

The total cost to Jurisdiction D of utilizing a range of alternatives in providing services to a caseload of 100 juveniles is $26,486.

The Jail Removal Cost Study provides an important perspective on the costs and other ramifications of removing juveniles from adult jails and lockups, this perspective and the considerable information gathered in the course of the study's preparation will be useful to the states and their local units of government as planning tools in their efforts to move forward in this area.

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CONTINUED

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INTRODUCTION AND OVERVIEW

The principal amendment contained in the 1980 reauthorization to the Juvenile Justice and Delinquency Prevention Act mandated that those states and territories participating in the legislation must remove juveniles from adult jails and lockups by 1985.

To provide additional insight on the costs and ramifications of this mandate, Congress instructed the Office of Juvenile Justice and Delinquency Prevention as follows:

> The Administrator of the Office of Juvenile Justice and Delinquency Prevention, not later than 18 months after the date of the enactment of this Act, shall submit a report to the Congress relating to the cost and implications of any requirement added to the Juvenile Justice and Delinquency Prevention Act of 1974 which would mandate the removal of juveniles from adults in all jails and lockups.
>
> (b) The report required in subsection (a) shall include--
>
> (1) an estimate of the costs likely to be incurred by the States in implementing the requirement specified in subsection (a);
> (2) an analysis of the experience of States which currently require the removal of juveniles from adults in all jails and lockups;
> (3) an analysis of possible adverse ramifications which may result from such requirement of removal, including an analysis of whether such requirement would lead to an expansion of the residential capacity of secure detention facilities and secure correctional facilities for juveniles, thus resulting in a net increase in the total number of juveniles detained or confined in such facilities; and
> (4) recommendations for such legislative or administrative action as the Administrator considers appropriate.*

Major tasks in the performance of the study were conducted by the Office of Juvenile Justice and Delinquency Prevention, the Community Research Center, the Institute for Economic and Policy Studies and the National Criminal Justice Association in conjunction with the State Criminal Justice Councils.

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*The Juvenile Justice and Delinquency Prevention Act of 1974 as amended through December 8, 1980, Public Law 93-415.

This approach enabled OJJDP to present findings and recommendations to Congress and incorporate significant jail removal efforts already underway at the local, state and federal level. The approach recognized that no single source was adequate to address the complex issues of jail removal in the available period of time. Each group was used to capitalize on areas of proven expertise and past experience:

-- The Community Research Center has conducted extensive research on the issues of juveniles in adult jails and lockups since 1978. This research includes inquiries regarding the rate of suicide by juveniles in various confinement facilities, the effects of national standards release/detention criteria, and advanced practices for the planning and design of juvenile residential environments. The Center has provided technical assistance on the jail removal issue to over 100 state and local agencies and currently serves as National Program Coordinator to 17 jurisdictions participating in the OJJDP Jail Removal Initiative.

-- The Institute for Economic and Policy Studies has expertise in the areas of cost analysis, program modeling and policy recommendations. During the past decade, IEPS has conducted a wide range of cost studies related to the criminal justice system at the state and local level. The cost analysis of the LEAA Corrections Standards has direct applicability to their responsibilities under the jail removal and cost study.

-- The involvement of the states in conjunction with the National Criminal Justice Association was viewed from the outset as a critical element, if the study was to be completed within the six month timeframe. The sound and long-standing relationship which NCJA maintains with the State Criminal Justice Councils provided the only realistic conduit for developing the state-by-state profiles required by Congress. Equally important was the deep knowledge concerning the varied national efforts to achieve jail removal (i.e., National Coalition for Jail Reform).

The approach used to conduct the jail removal cost study during the six-month period (December, 1981-May, 1982) combined a mailed survey questionnaire to access state level information and a detailed interview survey process to determine the cost and ramifications of jail removal efforts in selected local/regional areas, which have either eliminated the jailing of juveniles, or were implementing a plan to effect complete removal as required by Congress.

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The general flow of the study progressed through five steps each requiring careful integration and coordination of activities by the three organizations, the State Criminal Justice Councils, and the Office of Juvenile Justice and Delinquency Prevention.

1. Identify cost estimates of states to implement the Jail Removal Amendment.

   -- Survey development and pretest.
   -- Survey distribution and administration.
   -- Survey receipt.
   -- Data processing and analysis.

2. Determine cost models of currently operating alternatives to adult jails and lockups.

   -- Data collection.
   -- Analysis.

3. Determine local/regional experiences with jail removal. Information is largely based upon experiences of four jurisdictions involved in the Jail Removal Initiative (JRI) begun in 1980 by the Office of Juvenile Justice and Delinquency Prevention. The Initiative involves two phases, planning for removal (Phase I) and implementation of removal plans (Phase II). Currently, the four jurisdictions have completed Phase I and are involved in Phase II.

   -- Identify and select five jurisdictions where jail removal has been accomplished.
   -- Identify and describe range of alternative programs and services in each jurisdiction and their costs.
   -- Identify and describe obstacles in each jurisdiction.
   -- Review jurisdictional experience to give perspective to the state survey.

4. Compile adverse and positive ramifications of jail removal identified in the state and JRI jurisdiction assessments.

5. Provide a basis for legislative and administrative recommendations for future activities regarding removal.

6. Review Jail Removal Cost Study findings and recommendations with State Criminal Justice Councils and State Advisory Groups at the 1982 OJJDP Regional Workshops.

The approach to the study provided numerous benefits in terms of extracting the best available data, assuring more realistic recommendations, and familiarizing the states with the difficulty of collection of current information and planning for jail removal. The presentation of findings and recommendations at the May Workshops continued the impetus for state and local action on the Amendment.

The Jail Removal Cost Study was not without significant limitations. The short timeframe, for instance, was a serious handicap to the efforts of the states to examine the extent of the problem in their states, collect reliable data, formulate well-reasoned estimates of cost and ramifications, and determine a comprehensive plan of action. Equally constraining was the limited availability and quality of data at the state level regarding the use of adult jails and lockups. Certain of these data deficiencies will be, for the most part, eliminated by the 1982 compliance monitoring regulation requiring 12-month statewide data; it nonetheless was a serious problem in completion of the Cost Study. These areas will continue to be important state and local technical assistance needs.

Caution in uses of the data includes: state differences in terms of definitions of the juvenile justice population, methods of assembling data, time periods covered in the data, and availability of data items. Also, the various reporting mechanisms utilized by the states did not facilitate the rendering of adequate distinctions between a person placed once in an adult jail or lockup from those persons placed more than once during a reporting period. Given these limitations, particular caution should be exercised in the use of the data provided for purposes of generalizing to a larger population; references to individual state reports are preferable to relying on aggregated data (see Appendix A).

The structure of the report reflects the multiple information sources used to estimate jail removal costs and ramifications. The integrated findings and recommendations have been compiled through the use of the cost models on program operations, the 50 state surveys, and the actual experiences from the jurisdictions participating in the OJJDP Jail Removal Initiative. From these integrated sources of data will flow information on the effects of jail removal, conclusions, and recommendations for legislative and administrative action.

Sections of the report include:

Volume 1--Summary

Volume 2--Jail Removal Cost Study

- Chapter I--Introduction and Methodology
- Chapter II--Cost Models
- Chapter III--State Survey Results
- Chapter IV--Removal Experiences
- Chapter V--Potential Adverse Ramifications
- Chapter VI--Summary, Conclusions and Recommendations

Volume 3--Appendix Materials

RESULTS AND CONCLUSIONS

Below, the discussion is organized under the three major topics mandated by Congress: (1) likely costs associated with implementing removal requirements; (2) experiences of jurisdictions which currently require the removal of juveniles from adult jails and lockups; and (3) ramifications which may result from the removal requirement. Within each major topic, results are presented in terms of the source of information (e.g., whether the results are from the state surveys, the experiences of jurisdictions currently requiring removal, or the cost analysis and models of currently operating alternatives). Next, a set of conclusions drawn from the results is detailed. Finally, recommendations follow the last set of conclusions.

LIKELY COSTS ASSOCIATED WITH IMPLEMENTING THE JAIL REMOVAL REQUIREMENT

Results from the Cost Models

Chapter II, Cost Models, is the most definitive chapter regarding the costs of implementing removal. In it, a range of actual operating costs for currently existing secure and nonsecure alternatives to adult jails is presented. The cost model has four purposes:

-- to identify and describe alternative policy areas for the placement of currently jailed juveniles;

-- to provide model cost data on these various alternatives;

-- to illustrate the potential cost impact of different policy decisions;

-- to provide planning information for states and localities to use in formulating their own removal plans.

The technology used here is one developed for the Standards and Goals Project and most extensively applied with respect to community-based programs. This sample budget methodology was used to derive comprehensive program and expenditure data for halfway houses complying with NAC standards. The procedure involves analysis of the expenditures, staffing, and program operations of a selected sample of providers, and standardizing the data to provide a "picture" of a prototypical operation. The sample budget methodology is a technique which yields accurate and complete programmatic and cost information for service-providing organizations. The program structures and budgets of actual organizations provide the foundation for the analysis. While no single organization may be capable of serving as a "model" provider, detailed examination and analysis of a collective of providers permits such information to be developed. Thus, accuracy and completeness are assured because ongoing programs provide the foundation of the analysis, yet do not constrain it.

The costs of alternatives are grouped in Table EX1 under the three policy choices available to decision-makers faced with removing juveniles from jails: secure detention, community residential care, and community supervision. Within each policy choice area, various alternative programs may be grouped. The three policy areas include the following program alternatives:

1. Secure detention--secure juvenile facilities; secure holdover (state or locally operated); pre- or post-adjudication.
2. Community residential care--group homes; shelter care; attention homes; group foster care (public or privately operated, pre- or post-adjudication).
3. Community supervision--home detention (commonly used with intensive supervision); probation; individualized foster care.

The primary characteristics that distinguish each of these three alternative policy areas are as follows: secure detention emphasizes a secure setting as a major feature; community residential programs emphasize a less secure placement, typically within a group living arrangement; community supervision emphasizes individualized care for a juvenile within his/her own home or a surrogate home (e.g., foster care). From a cost perspective, secure detention offers the most costly alternative due to the facility requirements that are necessary. Community residential care will also include the cost of housing in order to provide services, whereas community supervision programs assume the housing is already in existence and, therefore, not a cost factor. Staffing, which is the second most significant cost factor after facility costs, will vary widely among, as well as between, the three alternatives delineated. The sample used to develop the cost models consisted of budget and expenditure data collected from over 100 local service providers.

The analysis of the programs in the sample involved the following generic steps:

TABLE EX1
COST RANGE OF ALTERNATIVES TO ADULT JAILS AND LOCKUPS

Policy Choices	Low Cost	High Cost
Secure Detention[a]	$17,718	$33,194
Community Residential[b]		
Group Home	11,500	20,190
Shelter	11,396	37,276
Community Supervision		
Foster Care[c]	1,786	1,974
Therapy[d]	63.59	118.88
Intensive Foster Care[d]	50.75	83.73
Home Detention[d]	13.03	31.30

[a]Based on mean annual operating costs per bed of programs below and above the median cost.

[b]Based on minimum and maximum annual operating costs per bed.

[c]Based on minimum and maximum annual operating costs per client excluding parental stipends.

[d]Based on minimum and maximum operating costs/day of supervision.

Reference: Chapter 2, Cost Models

1. Listing and evaluating data supplied by the programs;
2. Categorizing expenditure and budget data into a standard line item format;
3. Selecting a standard budget year;
4. Selecting client and program data to be used in the analysis;
5. Determining the format in which data would be presented;
6. Identifying areas of cost variation.

The costs of alternative programs and services are influenced by several factors (see Chapter II). Chief among these factors include physical security arrangements, supervision levels, services offered, capacity and client tenure, geographical location, resource availability, auspices, and program scale.

An analysis of cost allocation for each alternative was also performed. In the analysis, operating expenditures were compared for personnel and non-personnel categories. Personnel costs included wages, salaries, and fringe benefits. Non-personnel expenditures consisted of contractual, transportation, supplies, general operating, and capital operating costs. It is notable that personnel expenditures comprised 60-90 percent of total costs of providing alternatives.

Results from the State Surveys

A large portion of states estimated the costs of removal by estimating how much it would cost to build and/or operate secure juvenile detention for the number of youths currently held in jail. Overall, of the states reporting ten or more juveniles in adult jails on a single day, 58 percent selected secure detention. For some states, the only alternative chosen was secure detention. Even for most states that chose other alternatives in addition to secure detention, costs were overwhelmingly allocated for the provision of secure detention.

On the whole, approximately 88 percent of total costs estimated by states were allocated to the building and/or use of secure detention.

The ultimate costs of removal are largely determined by which policy choices (secure detention, community residential, community supervision) are implemented. States did, in fact, estimate the dollars it would cost to provide alternatives to adult jails. Unfortunately, in many cases the methodology used by respondents to estimate costs was not clear and at times appeared inconsistent with information from the cost models, and there is some evidence (from jurisdictions that have implemented removal) to suggest that states, in responding to the survey, may have over-emphasized secure detention as an alternative. For these two reasons, plus the previously discussed limitations on generalizing from the state surveys, it is inadvisable to use the sum ($118,665,000) of states' estimates and present them as likely costs to be incurred by implementing removal.* The most effective way of using this information is on a state-by-state basis.

Examination of the characteristics of the juvenile justice population is a critical undertaking in determining what alternative programs and services are needed. Below is a summary of findings from the population data (Chapter III) supplied by 35 states. Again, the reader is advised against the aggregation and generalization of the state survey responses.

Characteristics of the Juvenile Justice Population and Utilization of Current Alternatives

The total number of juvenile arrests for a six-month period (January-June of 1981) was 476,719. Of this amount, about five percent were for serious

*Cost data were supplied by 30 of 35 states reporting.

delinquent offenses as defined by the JJDP Act (criminal homicide, rape, mayhem, kidnapping, aggravated assault, robbery, larceny, felonious theft, motor vehicle theft, burglary, breaking and entering, extortion with threats of violence, and felonious arson). Nearly 80 percent were for other delinquent offenses, while the remaining arrests were primarily for status and related offenses. The number of juveniles detained in adult facilities for any given day during that period was 1,778. Of those jailed, only 242 (roughly 14 percent) were reported to be serious delinquent offenders.

The distribution for the number of juveniles currently placed in existing alternatives breaks out as follows: the most widely used placements are probation, followed by foster care, state juvenile facilities, group homes, secure detention, and shelter care. The lengths of stay reported by the states reflect that placements in foster care were of the longest term (averaging 373 days), followed in declining order by probation, group homes, state juvenile facilities, shelter care, and finally secure detention (averaging 17 days).

States also reported the number of service or bedspace vacancies in alternatives. Vacancies currently exist for each of the potential alternatives except probation. In fact, the total number of vacancies on a given day exceeds the total number of juveniles to be removed from jail. One problem is, however, that alternatives are not necessarily located near the jails holding these juveniles; therefore, new placement alternatives may be required. Another problem is that the current vacancies may exist in alternatives not appropriate to serve the juveniles in jail.

Results from Removal Experiences

Currently, Jail Removal Initiative (JRI) jurisdictions have budgeted dollar amounts for the implementation of their removal plans. In contrast to the state

surveys which indicated secure detention as the primary alternative, the majority of JRI implementation monies bought various community residential or community supervision alternatives. Nonsecure programs and services comprised over 90 percent of total removal costs of the JRI jurisdictions portrayed in Chapter IV.

Planning, startup, and implementation costs associated with removal varied across all JRI jurisdictions. As indicated in Table EX2, costs of planning for removal in one jurisdiction can be as much as four times more costly than at a comparable site. Similarly, startup costs of the removal plan are widely disbursed ($2,700-$60,900). The costs of 24-hour intake also show a wide range. Table EX2 clearly indicates that removal activities in one jurisdiction can cost many times that of similar activities at another site. Additionally, personnel and non-personnel budgets are distributed similarly to the expenditures of operating programs and services found in the cost models. Personnel costs are projected to account for 60-95 percent of total operating expenses for most alternatives. However, when volunteers are used, personnel costs can comprise only 3-19 percent of total operating costs.

For different reasons, it is inappropriate to utilize JRI budget as demonstrative of actual removal costs: (1) JRI costs are projected, not actual, expenditures, and (2) because jurisdictions participating in the JRI chose to do so, they were committed to the use of less restrictive settings. The extent to which these jurisdictions are representative of other regions across the country is undetermined.

To some degree, JRI budgets indicate the extent to which administrative arrangements can affect costs of alternative placements and services. For instance, in one jurisdiction 24-hour intake coverage is performed in a five-county region on a decentralized basis (i.e., one intake worker per county). Another jurisdiction provides round-the-clock intake in a nine-county region

TABLE EX2
PLANNING, STARTUP, AND SELECTED OPERATING COSTS:
FOUR JRI JURISDICTIONS

Jurisdiction	Total Planning Costs	Time to Plan (months)	Total Startup Costs	Time to Fully Implement (months)	Intake Operating Cost (investment per child)
Alabama (SAYS)	$29,800	6	$26,100	5	$23
Arkansas (OMARR)	21,500	8	60,900	12	120
Illinois (Bolingbrook)	33,700	5	2,700	1	58
Louisiana (16th Judicial District)	86,400	7	7,000	3	32

Reference: Chapter IV, Removal Experiences.

with a centralized approach (i.e., arresting and probation officers from outlying counties call a central intake office for release/detain decisions).

In terms of operating costs, decentralized intake is projected to be about $120 per intake, while the centralized estimates range from $23 to $58 per intake. It appears, then, that centralized administrative arrangements may be more cost-effecient than a decentralized organization. However, for reasons discussed in Chapter IV, a centralized intake operation is not necessarily preferable to the decentralized approach in all jurisdictions. Unique regional characteristics may necessitate a decentralized approach as the most viable method to accomplish removal. Clearly, knowledge of a jurisdiction and its juvenile justice system is needed to accurately estimate the most viable methods, and therefore, the costs of removal.

Also illustrated in one JRI budget is the advantage of using volunteers and other donations to help defray the costs of removal. One jurisdiction estimates a need to securely detain approximately 39 youths over the next 18 months. In lieu of building new secure juvenile detention capabilities, the jurisdiction has opted to provide secure detention by way of intensive supervision. Off-duty law enforcement officers have volunteered their time to supervise children needing secure detention in a hospital unit used to detoxify juveniles. Since the average length of stay is short (2.3 days), these volunteers can provide round-the-clock supervision. As a result, the personnel outlays for the community residential program account for nine percent of the total operating budget.

Summary of Conclusions about Costs of Removal

Several inferences about the costs of removal can be drawn from the preceding information. Below, conclusions are divided into two subsets. First,

factors of removal costs are enumerated. Second, because they are directly related to the costs of removal, conclusions about the current utilization of alternatives and characteristics of the juvenile justice population are presented.

Conclusions about Removal Costs

1. Three policy choices of alternatives to adult jails can be delineated: secure detention, community residential care, community supervision. A range of alternatives exists within each policy choice. A range of cost variation exists among the alternatives.

2. How to distribute juveniles in jail among alternative policy choices is a critical decision. The key questions are: Should the child be placed in secure setting? If the child can be placed in a less secure setting, should s/he be removed from the natural home?

3. Costs of implementing removal are a function of national, state and local policy decision. It is virtually impossible to establish a final dollar figure for the cost of removal without first delineating procedures to bring about removal and establishing the need for alternative programs and services on a jurisdiction-by-jurisdiction basis.

4. Once a needs assessment is conducted and a removal plan is established, dollars required to implement removal can be estimated. The costs of removal estimated by the state surveys reflect a heavy emphasis upon the building and use of secure detention as an alternative to adult jails and lockups. The costs of removal estimated by jurisdictions which have implemented a needs assessment and a plan for removal reflect a heavy emphasis upon the use of various nonsecure alternatives.

5. Major factors that affect total cost are facility, personnel, level of services, and administrative arrangements. There are ways to defray costs through in-kind sources, e.g., by using existing facilities or staffing with volunteers. Thus, the degree to which one draws from available community resources is critical.

Conclusions about Current Utilization of Alternatives and Characteristics of the Juvenile Justice System

1. About 14 percent of jailed juveniles are held for serious offenses.

2. There are twice as many juveniles arrested for status offenses as there are for serious delinquent charges.

3. The availability of community residential type placements, i.e., group homes and shelter care, are less than that of secure detention (based on existing capacities).

4. Across the nation as a whole, vacancies exist within all of the potential alternatives (with the exception of probation).

5. There is a great deal of interest and concern about removal on the part of the states as evidenced by the level of detail provided in individual state submissions.

6. A wide population distribution exists for juveniles in adult jails and lockups. Most juveniles in jail have not committed serious crimes as defined by the JJDP Act.

7. There is little knowledge on how to distribute the jailed population among alternatives, because the characteristics of that population commonly have not yet been identified.

8. Informed decisions (policy choices) suggest the need for improved intake screening and classification of juveniles (i.e., needs assessment).

9. The states have limited experience in projecting costs of various alternatives.

EXPERIENCES OF JURISDICTIONS WHICH CURRENTLY REQUIRE REMOVAL OF JUVENILES FROM ADULT JAILS AND LOCKUPS

For this study, information regarding removal experiences is derived from two main sources: the four JRI scenarios and the Pennsylvania summary (see Chapter IV). Topics addressed include obstacles to removal, removal plan focus, time requirements to implement the removal plan, monitoring of the removal plan, and net-widening issues.

Results from the Jail Removal Initiative and Pennsylvania

Jurisdictions encountered both similar and diverse experiences with removal. It is to be expected that many removal experiences are shared by the various JRI regions since the methods used to plan for removal were basically uniform in each jurisdiction. Yet, similarities also exist between the JRI jurisdictions and the Commonwealth of Pennsylvania.

Obstacles to Removal

Common to all jurisdictions examined in Chapter IV, a core of obstacles emerged which impeded the prohibition of juvenile placement in adult secure settings. Examples of these hindrances are: a lack of locally accessible alternative programs and services (including transportation), a lack of specific release/detain criteria (i.e., objective intake screening), physical/geographical problems such as lengthy travel times and distances between the site of custody and the nearest juvenile placement alternative, and state statutes which allow law enforcement the authority to detain youth predispositionally in adult jails. There are also economic obstacles evidenced by small tax bases and a low priority given to the issue of children in jail; political obstacles that often occur when several counties pool efforts and resources together in a cooperative removal plan; and perceptual differences regarding the type and scale of alternatives needed (for example, secure detention perceived as the single-solution alternative to adult jail).

The process of conducting a needs assessment helped overcome some obstacles such as the lack of intake criteria, and the perceptual pre-disposition toward secure detention. Other obstacles were surmounted by identifying and implementing alternatives needed by the juvenile justice population or by enlisting the support of key local leaders. Currently, JRI sites have established work-plans by which to progress toward the resolution of obstacles not yet overcome.

Time Required to Plan for Removal

JRI regions required varying amounts of time (4-8 months) to develop a plan for removal. The two most time-variant steps in plan development were data collection for the needs assessment and the establishment of policy and procedures for various components of the removal plan.

Components of the Removal Plan (Selected Alternatives)

The jurisdictions utilized a variety of alternatives as components of their removal plans. No two JRI sites implemented the same networks of alternative programs and services. However, just as a core of obstacles emerged from each of the scenarios, so did a core of alternative programs and services. Components of the removal plan which comprise the core include: (1) 24-hour intake screening; (2) some provision for secure detention (including intensive supervision); (3) at least one community residential program; (4) at least one community supervision program or service; and (5) transportation services. Specific alternatives provided by the four JRI sites, in order of their frequency of occurrence, were: 24-hour intake, transportation, various community supervision services, foster and shelter care, and secure detention or intensive supervision. Significantly, little or no need was identified for secure detention. In two jurisdictions, intensive supervision was provided in lieu of secure detention. In Pennsylvania, the funding mechanism discouraged the building of secure detention centers.

Time Required to Implement Removal Plan

Varying amounts of time were required to operationalize the components of the removal plan. Jurisdictions were able to implement some programs and services within a few weeks after funding commenced (December, 1981-February, 1982). Other alternatives are not yet operational. It is anticipated that full implementation of the removal plans will require from 3-12 months.

Pennsylvania accomplished complete removal over a five-year period. Clearly, statewide initiatives may require more time. JRI jurisdictions, which are single and multi-county regions, are smaller than states. A state's size (and

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broader jurisdiction) may make the process of removal more complex than at the regional or county level. The increased complexity for states may manifest itself by having a larger number of actors involved or a greater need for cooperation and coordination among juvenile justice practitioners. Undoubtedly, the degree of complexity of state and local juvenile justice systems has an impact upon both the process by which to plan for removal as well as the strategy, costs, and schedule by which to implement removal.

Monitoring of the Removal Plan

Each JRI jurisdiction has developed a method by which to monitor the removal plan. The monitoring function is usually performed by intake staff as a normal part of their duties. In Pennsylvania, monitoring occurs by on-site inspection and the use of a hotline through which reports of juveniles in jail can be received.

Widening the Net Issues

Pennsylvania has not experienced a net increase in the total number of juveniles detained in secure settings. In fact, the number of securely detained juveniles in the Commonwealth has been reduced 38 percent since 1974 (12,697-8,289).

JRI sites project a substantial decrease in the number of juveniles securely detained. Of juveniles held in adult jails prior to removal, only 7-25 percent will require secure detention after implementation of removal plans. This finding is consistent with past assessment efforts in Oklahoma and Louisiana.

Conversely, JRI jurisdictions project an increase in the number of juveniles entering nonsecure juvenile placements. It is estimated that approximately 3-17 percent of juvenile intakes will be placed in nonsecure settings

that previously were not available. While the nonsecure placement increases might be viewed as "widening the net," one must bear in mind that, according to specific criteria, a portion of the juvenile population showed a legitimate demand for these services. Although a lack of services sometimes results in returning a child to the natural home, these data indicate that return to home is not always an adequate response by the justice system to the needs of the youth population.

Moreover, JRI participants project that between 50-100 percent of arrested juveniles are to receive previously unoffered intake services. Of these intakes, 7-28 percent are estimated to receive various community supervision services that, heretofore, were also unavailable.

Summary of Conclusions about Experiences of Removal

The preceeding information indicates that removal was accomplished by varying means in each of the five locations reviewed (the four JRI jurisdictions and Pennsylvania). Enumerated below are inferences drawn from the experiences of removal contained in Chapter IV.

Conclusions about Removal Experiences

1. Jurisdictions experience a core of obstacles to removal including a lack of alternatives; a lack of objective intake screening; a lack of transportation services; physical/geographical problems; legal and political hindrances; and perceptual orientations which heavily emphasize the need for secure detention.

2. Jurisdictions demonstrate the need to plan for the removal of juveniles from adult jails and lockups.

3. Jurisdictions demonstrate a need for financial and technical assistance to plan for and implement alternatives.

4. Without assistance, jurisdictions indicate little knowledge regarding varying strategies to accomplish removal.

5. Jurisdictions which have implemented a plan for removal are offering nonsecure programs and services that are tailored to the entire juvenile justice population, not solely for "kids in jails".

6. Jurisdictions which have implemented removal have required varying amounts of time and money to plan for removal.

7. Jurisdictions which have implemented a plan for removal have utilized a variety of alternatives to accomplish removal.

8. Jurisdictions which have implemented a plan for removal indicate that secure detention is a small part of the desired alternatives after conducting a needs assessment.

9. Jurisdictions which have implemented removal have required varying amounts of time and money to operationalize alternative programs and services.

10. Jurisdictions which have implemented a removal plan have developed methods to monitor that plan and juveniles who continue to be placed in jail.

11. Jurisdictions which have implemented a plan for removal via assessed needs have not experienced a net increase in the number of secure detained juveniles.

12. Jurisdictions developed a core of alternatives including 24-hour intake and transportation services, secure detention, a community residential program, and a community supervision program or service.

13. To accomplish removal, jurisdictions have required changes in policies and procedures regarding law enforcement apprehension, intake screening, methods of referral, and contact with the juvenile court.

14. Jail removal plans are unique to each jurisdiction, but one common theme abounds: removal can be achieved within a large variety of action plans which develop a network of programs and services responsive to the needs of the juvenile justice population.

POSSIBLE ADVERSE RAMIFICATIONS OF REMOVAL

This part of the report (Chapter V) addresses possible ramifications resulting from removal. Data are compiled from Pennsylvania, state survey respondants, and JRI jurisdictional personnel. It is interesting that some

potential ramifications perceived by the states and the JRI sites were actually observed in Pennsylvania. However, with these data it cannot be determined if the experiences of Pennsylvania are necessarily attributable to removal. Below, experienced ramifications in Pennsylvania are presented, followed by perceptions of state survey respondants and JRI jurisdictional personnel.

Experienced Ramifications

As noted in the section on removal experiences, Pennsylvania did not experience a net increase in the number of juveniles securely detained. In fact, the rate of juvenile incarceration has decreased 38 percent since 1974. Over the past three years, there seems to be a slight increase in the number of waivers to adult court. However, four years ago there were more waivers than last year (402 in 1977, 371 in 1980). Therefore, it is inconclusive whether removal is linked to an increased number of juveniles tried as adults. Other changes observed in Pennsylvania include:

-- a decrease in the overall time spent by juveniles in the justice system;

-- an increase in the time that juveniles are held in secure settings;

-- an increase in the use of private service providers, non-system alternatives, and nonsecure alternatives.

Perceived Ramifications

Both states and JRI sites were queried about possible ramifications associated with the removal requirement. Although individual states varied in their projections of future impact of the removal requirement, most states agreed that they expected the following to be associated with removal:

-- a decrease in the rate of juvenile incarceration;

-- no change in the number of waivers to adult court;

-- an increase in overall time spent in the juvenile justice system;

-- an increase in the use of private providers;

-- an increase in the need for administrative resources;

-- an increase in the use of non-system alternatives;

-- an increase in the use of nonsecure alternatives;

-- no change or an increase in negative community perceptions about juvenile justice.

Like the states, individual JRI jurisdictions also differed in projected ramifications of the removal requirement. Those areas of impact in which JRI sites tended to concur included:

-- a 0-10 percent decrease in the rate of juvenile incarceration;

-- no change in the number of waivers to adult court;

-- a decrease in overall time spent in the juvenile justice system;

-- an increase in the use of private providers;

-- an increase in the need for administrative resources;

-- an increase in the use of non-system alternatives;

-- an increase in the use of nonsecure alternatives;

-- a decrease in negative community perceptions about juvenile justice.

Both states and JRI jurisdictions were asked to identify their primary source of information in making their projections about possible ramifications of removal. Expert opinion by juvenile justice practitioners was the main information source. Only eight states noted that their information was based upon planning studies (including master plans, impact projects, etc.).

Conclusions about Potential Ramifications

Although at the present time there is little empirical evidence concerning the ramifications of removal, the following has been deduced from this study:

1. Jurisdictions have different perspectives about the potential effects and ramifications of jail removal.

2. Jurisdictions which have implemented a plan for removal are not experiencing a net increase in secure detention for juveniles. On the other hand, states surveyed tended to select secure detention as the preferred alternative.

3. Possible adverse ramifications include an increase in the number of waivers to adult court and an increase in the length of time in juvenile detention centers (based on Pennsylvania).

4. More juveniles than those who are now placed in adult jails are likely to receive services after removal is implemented. Yet, it is likely that the number of securely detained juveniles will not increase if a needs assessment is conducted.

RECOMMENDATIONS

As mentioned previously, numerous factors bear upon the effort to remove juveniles from adult jails and lockups. Evidence accumulated during the conduct of this study makes it clear that total removal will be accomplished as a product of state and local public interest and support; recognition and identification of the difficulties and responsibilities involved at each level; the increasing dissemination of technology and information regarding alternative courses of action; and, lastly but most critically, the willingness of commitment to the long-term effort that will necessarily be required.

For these reasons, the following recommendations are presented as a means of working toward achievement of removal as a public goal.

1. State and local jurisdictions should provide for the identification of the juvenile populations served and the potential for utilizing various alternative programs and services for this population (as determined on a jurisdiction-by-jurisdiction basis).

It has been noted that many states feel that the development of secure juvenile facilities is necessary in order to close jails to juveniles, however, experience demonstrates that this need not be the case. Despite federal emphasis

on nonsecure possibilities for many years, numerous states and localities still regard juvenile detention facilities as the primary alternative. It would appear that, all efforts to the contrary, information is not getting through to all the states and that attitudes regarding alternatives and their use are changing only slowly in some areas. Current information and technology dissemination methods should ensure coverage of all constituency groups of the juvenile justice system.

In those jurisdictions which have received direct federal assistance and funding, removal efforts are characterized by a willingness to explore nonsecure community residential and community supervision programs and services. These alternatives can be less costly than secure, facility-based programs in terms of both capital and operational expenditure. The point remains that when states and localities examine juvenile justice systems,the process seems to result in a reduced reliance on secure placement options, and consequently, a potentially reduced removal cost.

2. In order to make informed policy choices, a number of questions must be asked through a conscientious planning process. This planning process will help (1) ensure the most applicable and reasonable allocation of available funds toward the removal of juveniles from adult jails; (2) minimize the costs associated with removal wherever possible to overcome potential resistance due to monetary constraints; and (3) promote the availability of a range of programs and services which meet the needs of the juvenile justice population. States and localities should pursue a plan for removal and conduct a planning process on a state-by-state basis as the foundation for necessary and definitive system change.

Given the conclusions set forth previously in this report, it is incumbent upon state and local authorities to establish a uniform process where existing conditions and needs for alternatives services in each jurisdiction can be investigated, described and analyzed. Such analysis should be performed by

each state according to some consistent format. How to distribute juveniles in jail among alternative policy choices is a critical decision. The key questions are: Should the child be placed in a secure setting? If the child can be placed in a less secure setting, should s/he be removed from the natural home?

This process should include, but not necessarily be limited to, such items as:

A. Clear, uniform guidelines regarding state and local roles and responsibilities pursuant to the planning and implementation effort;

B. Well-defined problem identification, target population, and projected goals for the planning effort;

C. Inventory of all existing programs and services available to the juvenile justice system within each state and its jurisdictions;

D. Assessment of policies and procedures which have bearing upon out-of-home placements for juveniles;

E. Procedures of information analysis, specifically in the areas of intake screening and decision-making, actual placements and programs, programmatic costs, length of time in the juvenile justice system, current availability of alternatives, and legal procedures (due process);

F. Identification of needed transportation services and new alternatives based on information discovered (including information regarding concepts of programs, policies, and procedures), and economic consequences;

G. Method of continued monitoring of juveniles held in jail.

It is anticipated that planning at this scale will only be possible by following a uniform process capable of some degree of flexibility to accommodate changing situations in each state.

Necessary to this effort will be the development of objective intake screening criteria by each jurisdiction. Information obtained during the

planning process can be weighed against these criteria to project the need for alternative services, more detailed removal costs, and the need for specific technical expertise and/or funding assistance. The specific criteria and the planning process should reduce the states' emphasis on secure juvenile detention and promote the perspective which considers secure detention as one alternative among many others.

The state and local removal effort should be aimed at providing a core of alternative programs and services to alleviate the use of adult jails and lockups. The core should include 24-hour intake screening, transportation services, secure and nonsecure residential programs, and supervised release to the home. State removal plans should include:

A. The development of a flexible network of service and placement options based upon the principle of selecting the least restrictive setting and maintaining family and community ties;

B. A planning, needs assessment, and implementation process which affords juveniles all due process requirements and involves citizen and professional participation;

C. The development and adoption of court intake criteria, consistent with nationally recommended standards for alleged juvenile offenders and non-offenders who are awaiting court appearance;

D. The development of services which resolve problems of juveniles in a non-judicial manner, including the coordination of public and private child welfare and juvenile justice services.

This planning and implementation process should distribute juveniles currently jailed into the most appropriate alternative policy choices, and consequently, provide a viable and flexible removal plan.

3. Congress should anticipate flexibility in the target date of full implementation of state plans (December 8, 1985).

The accomplishment of removal requires concentrated effort on the part of state and local agencies. The experiences of Pennsylvania and the JRI jurisdictions indicate that unique circumstances require a variety of actions, procedures and time requirements to implement removal.

Some jurisdictions are closer to removal than others. For instance, one state may currently be conducting a needs assessment while another may remain basically uninformed about the extent that jails are utilized for juveniles or the characteristics of the juvenile justice population. Therefore, it may be unrealistic to expect that all states can adequately plan for and fully implement removal in the time allotted by the Act. It should be anticipated that special circumstances may necessitate a longer period of time for some states.

FOURTH 1981 INTERIM REPORT

A COMPARATIVE STUDY OF YOUNG WOMEN AND MEN IN KENTUCKY JAILS

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PREFACE

This is the fourth interim report that Kentucky Youth Advocates (KYA) has presented in 1981 to the Juvenile Justice Commission. It is prepared as part of Kentucky's continuing participation in the federal Juvenile Justice and Delinquency Prevention Act (JJDPA).

The Kentucky Juvenile Justice Commission, (previously the Juvenile Justice Committee of the Kentucky Crime Commission) is appointed by the Governor to serve as an advisory group whose purpose is to monitor Kentucky's participation in the JJDPA. The Commission has provided grant monies to KYA to continue a policy analysis of Kentucky's efforts to:

1. remove all status offenders from secure institutions (referred to as the "deinstitutionalization" effort) by December 31, 1981,
2. remove juvenile offenders from adult jails (referred to as the "removal" effort) and,
3. separate juveniles from adults during their incarceration in county jails (referred to as the "separation effort").

Under the terms of this contract, KYA agrees to provide interim reports at each quarterly Commission meeting during 1981. KYA's fifth year report which summarizes Kentucky's participation in the JJDPA, will be presented at the March, 1982 meeting of the Juvenile Justice Commission.

Previous reports submitted to the Commission in 1981 were:

1. A Final 1980 Report: Kentucky's Fourth Year of Participation in the Juvenile Justice & Delinquency Prevention Act of 1974
2. First 1981 Interim Report: Proposed Position Statements for Consideration by the Kentucky Juvenile Justice Commission
3. Second 1981 Interim Report: Some Impressions of Kentucky Children in Jails: A Harsh Reality
4. Third 1981 Interim Report: Young Women In Kentucky's Jails: A Profile

(KYA has prepared twenty-one other reports since 1977. Anyone interested can obtain a publication list from KYA's office.

PURPOSE OF REPORT

The purpose of this report is to examine the following issues as a basis for developing a statewide jails removal plan:

1. What is the identity of juveniles placed in Kentucky's jails?
2. What are the similarities (or differences) in practices of jailing young females and males?

This fourth interim report is the second of a two part study examining the juveniles held in Kentucky jails. The third interim report established a profile of the young women held in Kentucky jails. This report compares the young women and young men in those jails on the basis of their age, charge, number of admissions, and their length of stay in the jail. The study also summarizes the capacity of jails to separate juveniles from adults. This report supplements other studies about the possible restructuring of the county jails system. It is intended to provide a more comprehensive view of jailed juveniles than has existed in the past. The report provides important information which should be considered prior to the state's embarking on any systemic reform of the current incarceration system. (KYA's fifth report will explore several models for removing juveniles unnecessarily incarcerated in county jails.)

DEFINITION OF TERMS

For purposes of this study, Kentucky Youth Advocates, (KYA) used the following terms:

1. "Incarceration" is secure confinement in an adult jail for a period of twenty-four hours or more.

2. "Juveniles" are males and females over 10 years and under 18 years of age.

3. "Profile" is a descriptive picture of the juvenile offender which includes information about incarceration, specifically: age, average charge, sight and sound separation, length of stay and most frequent charges.

4. "Removal" is the process of eliminating incarceration of juveniles from adult jails.

5. "Separation" is the incarceration of juveniles in an area of an adult facility which prevents them from being able to hear or see adult offenders.

6. "Data" is the information collected and analyzed for study purposes.

7. "Data source" is the place/document from which the data is collected. The jail logs submitted to the Department of Finance for January 1980 through June 1980, and those monitored by the Department of Justice, compose the data source for this report.

8. "Status Offender" is a juvenile who is alleged to have committed an act which is against the law for minors, but not for adults. (Examples of these offenses are truancy, running away, and incorrigibility.)

9. "Public Offender" is an individual of age who is alleged to have committed an illegal act. Public offenses are subdivided according to degree of severity. From least to most severe they are: violation, misdemeanor and felony. Within each of these categories severity is indicated in terms of "class" eg., Class A, B, or C felony, Class A, B, or C misdemeanor. The specific charge is further divided in terms of degree, eg., "first degree burglary," or "second degree assault".

INTRODUCTION

Children In Jails: A National Perspective

National studies have estimated that 500,000 juveniles a year are held in adult jails and lockups in the United States. Many experts believe this figure is grossly understated. A discussion of the national perspective of children in jails, is included in KYA's third interim report Young Women in Kentucky Jails.

Children In Jails In Kentucky

In Kentucky, the Department of Justice (DoJ), Division of Grants Management, collects data from all 118 county jails for the first six months of each year to determine the total number of juveniles held. DoJ's data includes youth alleged to have committed both status and public offenses. Recent survey findings by the DoJ indicate that the number of status offenders held in adult jails may be declining. However, the reduction of status offenders has been offset by an increased number of public offenders still being incarcerated in Kentucky's jails.

According to DoJ projections, in 1977 there were approximately 5,606 status offenders and 5,702 public offenders incarcerated in detention centers and adult jails in Kentucky. The figures in 1978 were about the same for status offenders, but doubled for public offenders. In 1979, the total number of status offenders held in jails was reduced by 50% from 1977 levels, while public offenders were being incarcerated at a higher rate than in 1977. In 1980 significant progress was apparent as 80% of the total number of status offenders were removed from state institutions, detention centers and adult jails. However, the incarceration rates continued to be alarmingly high with approximately 12,364 public offenders reported to be incarcerated in detention centers and adult jails.

The 1980 DoJ jail survey estimated that there were approximately 735 status offenders and 9,118 public offenders held in county jails. (These figures do not include the large number of juveniles held in the five detention centers around the state.)

PROBLEM STATEMENT

Introduction

This study was designed to compare the identities of young women and men under the age of 18 who are held in Kentucky's county jails. Both the Department of Justice and Kentucky Youth Advocates previously have aggregated data indicating the total number of youth detained in Kentucky's jails. Despite these preliminary data collection efforts, a comprehensive examination of who these juveniles are has not been previously undertaken.

Of particular importance to this study is Kentucky's participation in the federal Juvenile Justice and Delinquency Prevention Act. Kentucky's participation requires the Commonwealth to comply, within the designated time frame, with the mandates of the Act since 1977. Since 1980, one of the federal mandates has been the complete removal of juveniles from adult lock-ups and jails. The present deadline for complying with the removal mandate is 1985.

Significance of the Study

This study is significant for two primary reasons:

1. Pending removal efforts in Kentucky require more detailed information regarding juveniles who are being held in county jails.

2. Recent national studies of male and female juveniles indicates that females may be treated differently than males within the juvenile justice system. No such examination has previously been made of the Kentucky juvenile justice system.

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A closer look at current jailed juveniles and how they are treated will provide information invaluable in properly planning for their placement needs.

Timeliness of the Study

Appendix A provides an overview of the most significant factors which have contributed to the timeliness of assessing Kentucky's jails system.

This study is timely for several other reasons:

1. The 1981 Interim General Assembly's Committee on Counties (Subcommittee on Jails) is reviewing plans for a new jails system.

2. The 1982 General Assembly will be reviewing the revised Unified Juvenile Code which will limit the extent of incarceration of status offenders. The legislature also will be determining what level appropriations are necessary for its implementation.

3. A "Jails Consortium" has undertaken a study of the feasibility of a statewide jails system. (The Consortium consists of representatives of the Administrative Office of the Courts, the Legislative Research Commission, the Department of Justice and the Department of Corrections.)

4. The fifth KYA 1981 interim report to the Juvenile Justice Commission will focus on preliminary issues to be considered in removing juveniles from Kentucky jails.

All four of these initiatives require information about the identity of juveniles in Kentucky jails. It is timely to determine who these juveniles are and how many jailed juveniles are alleged to have committed serious offenses requiring some form of secure detention.

METHODOLOGY

Introduction

Kentucky jailers are reimbursed a "dieting fee" of $6.75 per person per day. The logs maintained by jailers reflect the alleged offender's name, age, offense(s), admission and release dates, total number of days incarcerated and law enforcement agency responsible for placing the prisoner in the jail. Juvenile admissions are interspersed with adult admissions throughout the jail records in most cases. The jail logs submitted to the Department of Finance are the most accurate account of juveniles incarcerated in jail. The logs are also the only source of data available for demographic and statistical analysis of juveniles in jail in Kentucky at the present time.

The data used in this study was taken from the jail logs prepared by jailers and forwarded to the Department of Finance for per diem fee reimbursement. (See Appendix B) Rather than sampling the jail logs, KYA elected to collect the desired information for all juveniles incarceratd during the first six months of 1980, the most recent data available at the time of this study. The initials of 1121 females and 4267 males held in Kentucky jails from January through June 1980 also were taken from the logs.

KYA obtained information about the physical condition of jails, particularily about whether jails had "sight and sound" separation from a Department of Justice publication entitled Sixty-seven Counties Which Do Not Have Adequate Sight and Sound Separation Jails.

A coding sheet was designed by which the data on the jail logs could be transferred with predetermined coded numbers. These numbers were then keypunched onto computer cards, and entered into a data record. A computer program was written which would aggregate the data and make it easier to apply the data to the study questions. The computerized results were then entered into the pre-designed tables and the findings were described and discussed by KYA staff. (See Appendix C for computerized tables for all data.)

Record Keeping Problems

Compiling the information from the jail logs was complicated by different record keeping practices used by the jailers. This inconsistency in record keeping sometimes made the charges difficult to categorize. (See Appendix D)

Some jailers record the statute number "208.020", "Juvenile Petition", or "Juvenile Delinquency" for all juveniles held, none of which refer to a specific offense. Often the records were so unclear that it could not be determined whether a child was charged with a status or a public offense.

Other jailers record public offenses by citing the Kentucky Revised Statute, (KRS) number but fail to indicate the degree of the offense. For example some jailers recorded an offense as a burglary, but did not identify whether it was a first, second, or third degree burglary charge. This made it impossible to determine if it was a misdemeanor or a felony.

The Study Questions

This study will address four questions:

1. Who are the typical young women and men incarcerated in Kentucky's county jails?
2. Is there a relationship between the alleged offense, age and length of stay for incarcerated juveniles?
3. What trends, if any, are exhibited by counties that incarcerate juveniles?
4. Is there a significant difference between the incarceration of young women and young men in Kentucky jails?

FINDINGS

oduction

For a more thorough description of the female data, readers may want to refer to KYA's third interim report, entitled Young Women In Kentucky's Jails. Because this fourth report compares males and females, the format used here to present the data differs somewhat from the last report.

Analysis of the variables and their relationships will be presented in table form followed by a narrative which briefly describes the data. As a reminder, the mean ("average") and mode ("most frequently occurring number") are identified at the bottom of some tables.

Profile of Typical Young Women and Men Held in Kentucky's County Jails

Table I: "Typical" Young Woman and Man

(January 1 - June 30, 1980)

AVERAGE AGE		AVERAGE # CHARGES		SIGHT/SOUND SEPARATION		AVERAGE LENGTH OF STAY		*MOST COMMON CHARGES	
F	M	F	M	F	M	F	M	F	M
15	16	1	1	NONE	NONE	3 DAYS	3 DAYS	Status= 22.30%	Alcohol=20.94%
								Misde-meanor=21.08%	Traffic=15.60%
								Depend-ency =17.11%	Felony =13.86%

* This data reflects the three most frequent charges assigned to the juveniles incarcerated during the study period and the percentage of times the charge occured.

F = FEMALE
M = MALE

Unlike the other categories of Table I, the "most common charges" category does not represent an average charge. There is no single average charge typifying juveniles incarcerated in Kentucky jails. The sight and sound category shows that a majority of these juveniles are held in jails without sight and sound separation.

Table I indicates that the typical young woman in Kentucky jails is 15 years old, charged with one offense, held in an adult jail for three days without being separated by sight and sound from adults and is charged with an unclassified juvenile delinquency offense, a status offense or a minor public offense. The table also indicates that the typical young man is 16 years old, charged with one offense, held in an adult jail without benefit of sight and sound separation and charged with an alcohol offense, a traffic offense, or a felony.

Ages of Young Women and Men Admitted to Kentucky's County Jails

(January 1 - June 30, 1980)

Table II: Age

AGE	NUMBER OF JUVENILES FEMALE	NUMBER OF JUVENILES MALE	PERCENTAGE OF JUVENILES FEMALE	PERCENTAGE OF JUVENILES MALE
8	0	2	--	0.0
9	0	1	--	0.0
10	2	9	0.2	0.2
11	4	23	0.3	0.5
12	16	30	1.4	0.6
13	95	128	8.0	2.6
14	156	280	13.2	5.8
15	304	688	25.1	14.2
16	321	1285	27.1	26.5
17	285	2390	24.1	49.2
*unknown	1	16	0.1	0.3
	1184	4852	100%	100%

Mean: 15.39 16.09
Mode: 16.00 17.00

* The age was not indicated in jail logs, but the youth's sex was recorded.

Table II shows all juvenile admissions according to sex and age. The age ranged from the youngest (8 years) to the oldest (17 years). The percentages show what proportion of young women and men admitted to Kentucky jails fell into each age group.

Table II also indicates that the largest age group of young women admitted to Kentucky jails during the study period was 16.00, and the average age for all young women admitted was 15.39. The table indicates that the majority of males admitted to Kentucky jails during the same period were older than the females. The largest group of young men was 17.00 years old, and the average age for all young men admitted was 16.09.

Number of Admissions

Table III: Admissions
(January 1 - June 30, 1980)

FREQUENCY OF ADMISSIONS	# OF YOUNG WOMEN AND MEN ADMITTED		CUMULATIVE FREQUENCY OF ADMISSIONS			
	FEMALE	MALE	FEMALE		MALE	
			#	%	#	%
Once	1070	3868	1070	9.37%	3868	79.71%
Twice	44	301	88	7.43%	602	12.40%
Three Times	5	58	15	1.26%	174	3.58%
Four Times	0	14	--		56	1.15%
Five Times	1	15	5	0.42%	75	1.54%
Six Times	1	6	6	0.50%	36	0.74%
Seven Times	0	2	--		14	0.28%
Eight Times	0	1	--		8	0.16%
Nine Times	0	1	--		9	0.18%
Ten Times	0	1	--		10	0.20%
TOTALS	1121	4267	1184		4852	100%

Table III is based on the tabulation of admissions documented in the county jail logs.

The frequency of admissions refers to the number of times each female and male were admitted during the six month reporting period. The number of young women and men admitted is tabulated according to the number of times they were admitted. Cumulative frequency of admissions represents the number of admissions as opposed to the number of young women and men admitted.

The findings in Table III indicate that young women were admitted 1,184 times, and that young men were admitted 4,852 times during the study period. The overwhelming majority of these juveniles were admitted only once during the six months.

Charges

Table IV: Charges

TYPE OF CHARGE	FIRST CHARGE		SECOND CHARGE		THIRD CHARGE	
	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE
Status Offense, Runaway, Truant, Incorrigible	22.63%	5.06%	13.33%	4.81%	25.00%	-
Public Offense: Misdemeanor	20.86%	8.55%	26.66%	13.88%	25.00%	14.81%
Public Offense: Felony	4.22%	14.50%	4.44%	7.96%	-	14.81%
Public Offense: Violation	1.35%	1.00%	4.44%	1.66%	25.00%	-
Public Offense: Traffic	4.81%	15.08%	11.11%	19.25%	-	25.92%
Public Offense: No Degree	5.48%	3.79%	8.88%	2.59%	-	5.55%
Theft: No Degree	0.16%	13.74%	-	7.59%	-	3.70%
Delinquency Petition, 208.020	17.56%	6.49%	6.66%	15.92%	-	1.85%
Alcohol	11.48%	22.15%	8.88%	10.92%	-	12.96%
Drugs	2.61%	4.14%	6.66%	6.66%	25.00%	12.96%
Non-Offense: Abuse, Neglect, Mentally Ill	0.03%	0.10%	-	-	-	-
All Other: Fugitive, Safekeeping, Emergency Detention, Court Order, Contempt, Unassigned, Parole Violation, Other	8.44%	5.33%	8.88%	8.70%	-	7.40%

Table IV provides an overview of juveniles admitted to jails. It shows the offense ("charge") juveniles allegedly committed during the study period. Some juveniles were admitted with more than one charge. "First, second and third charge", simply refers to the order in which the charges appeared on the jail logs. (They do not necessarily indicate the order of their severity or importance.) For example, the column "First Charge - Female" gives the percentage of times each "type of charge" occurred among all female charges that were listed first in the jail logs. (The heading "First Charge" includes those juveniles with only one charge, as well as those with more than one charge.)

Table IV reiterates the earlier finding that no single common charge typifies the young female or young male incarcerated in Kentucky's jails. It also indicates the difference between types of offenses assigned to incarcerated females and males.

Length of Stay

Table V: Number of Days Held

NUMBER OF DAYS	PERCENTAGE OF JUVENILE ADMISSIONS		NUMBER OF DAYS	PERCENTAGE OF JUVENILES ADMITTED	
	FEMALE	MALE		FEMALE	MALE
1	37.58%	64.09%	33	-	0.02%
2	28.71%	11.31%	34	-	0.02%
3	10.97%	5.68%	35	-	0.06%
4	7.09%	3.81%	36	-	0.02%
5	4.13%	2.08%	39	-	0.06%
6	2.11%	1.81%	40	-	0.06%
7	1.85%	1.62%	42	-	0.02%
8	1.01%	1.19%	44	-	0.06%
9	1.52%	1.05%	45	-	0.04%
10	0.42%	0.47%	47	-	0.02%
11	0.67%	0.68%	48	0.08%	0.02%
12	0.67%	0.51%	49	-	0.02%
13	0.50%	0.39%	50	-	0.04%
14	0.33%	0.59%	51	-	0.02%
15	0.42%	0.39%	53	-	0.02%
16	0.33%	0.28%	55	-	0.02%
17	0.08%	0.35%	58	-	0.02%
18	-	0.06%	60	-	0.04%
19	0.08%	0.26%	61	-	0.04%
20	0.16%	0.35%	71	-	0.02%
21	0.08%	0.18%	74	-	0.02%
22	-	0.16%	77	-	0.02%
23	0.16%	0.06%	83	-	0.02%
24	0.08%	0.04%	84	-	0.02%
25	0.08%	0.10%	85	-	0.02%
26	-	0.10%	90	-	0.06%
27	-	0.12%	106	-	0.02%
28	-	0.14%	133	-	0.02%
29	0.16%	0.61%	134	-	0.02%
30	0.42%	0.35%	180	-	0.02%
31	0.16%	0.10%	-	-	-
32	-	0.06%	-	-	-
MEAN	3.1 days	3.4 days			
MODE	1.0 days	1.0 days			

Table V shows the percentage of juvenile admissions as they correspond to the number of days held during the study period. The number of days extended from one day or less to 180 days.

The findings in Table V indicate that the most common length of stay for females was one day or less. This occurred in 37.58% of the admissions of females. The average length of stay for all females admitted was 3.1 days. The findings in Table V indicate that the majority of males, 64.09%, were held one day or less. The average length of stay for all males admitted was 3.4 days.

Sight and Sound Separation

Table VI: Sight and Sound Separation (SSS)

SIGHT AND SOUND PROVISION	NUMBER OF JAILS	PERCENTAGE	NUMBER OF JUVENILES ADMITTED		PERCENTAGE	
			FEMALE	MALE	FEMALE	MALE
JAILS WITH SIGHT & SOUND	51	44%	432	1719	36.5%	35.4%
JAILS WITHOUT SIGHT & SOUND	67	56%	752	3133	63.5%	64.6%
TOTAL	118	100%	1184	4852	100%	100%

Table VI represents the numbers and percentages of jails which have facilities which separate juveniles by sight and sound from adults. In addition, it provides the numbers and percentages of young females and males held in jails with and without separation. Of 118 county jails, surveyed, 51 (44%) have separation and 67 (56%) do not. Table VI indicates that 752 or 63.5% of all female admissions were to jails without adequate sight and sound separation. The table also indicates that 3133, or 64.6% of all male admissions were to jails without adequate sight and sound separation. (See Appendix E for list of 120 counties surveyed.)

Relationship Between Subgroups

Table VII: Relationship Between Subgroups

TYPE OF OFFENSE	NUMBER OF YOUNG WOMEN ADMITTED	NUMBER OF DAYS HELD		AGE		% HELD IN JAILS WITHOUT SIGHT & SOUND
		MEAN	MODE	MEAN	MODE	
Status	30.78%	2.93	2.00	14.95	15.00	64.9%
Misdemeanor	28.20%	2.70	1.00	15.52	17.00	66.7%
Felony	5.40%	6.17	1.00	15.73	17.00	63.0%
Alcohol/Drug	19.50%	2.07	1.00	16.02	17.00	74.7%
Other Public	15.62%	3.03	1.00	15.67	17.00	74.4%
Non-Offense	.35%	-	-	-	-	-

TYPE OF OFFENSE	NUMBER OF YOUNG MEN ADMITTED	NUMBER OF DAYS HELD		AGE		% HELD IN JAILS WITHOUT SIGHT & SOUND
		MEAN	MODE	MEAN	MODE	
Status	3.93%	2.76	1.00	15.21	16.00	69.7%
Misdemeanor	9.68%	3.50	1.00	16.03	17.00	66.0%
Felony	16.89%	6.66	1.00	15.95	17.00	61.1%
Alcohol/Drug	29.97%	1.782	1.00	16.408	17.00	79.3%
Other Public	39.43%	3.02	1.00	16.16	17.00	64.6%
Non-Offense	..07%	-	-	-	-	-

Table VII is designed to show the relationship between offense, number of days held, age and whether the juvenile was held within the sight and sound of adults. Only children whose offenses fit into a single category (i.e. felony, status non-offense, etc.) are shown in this table. For example, "status" refers to juveniles who were charged with one or more status offenses, and were not charged with any other type of offense.

Table VII indicates that females allegedly committing status offenses or misdemeanors were held half as long as those females allegedly committing felonies. Female status offenders were held on an average of one day longer than females charged with alcohol and drug related public offenses. For males this relationship is similar, although not identical. Alleged male status offenders were held a somewhat shorter period of time than was the same category of females. Looking at the length of stay for males only, one finds that alleged status offenders were held half as long as alleged felons. Misdemeanants were held longer than status offenders and for a shorter time than felons.

The findings also indicated that female status offenders, as a group, were younger than juveniles in the four public offenders categories shown in Table VII. This same relationship holds true for the males. Male status offenders were younger than any of the four categories of public offenders.

Of the female status offenders held, 64.9% were in jails without sight and sound separation. The findings indicate that over 50% of all females admitted for a single type of offense were held in jails without sight and sound separation. Similarly, 69.7% of the male status offenders were held in jails without separation. Over 50% of all males admitted for all single types of offenses were held in jails without sight and sound separation.

DISCUSSION

Who Are the Typical Young Women and Men Incarcerated in Kentucky Jails?

The typical young woman jailed is a year younger than her male counterpart. She is 15, whereas he is 16. Both are subject to the same general conditions of confinement because they are held in parts of the jail within sight and sound of adult inmates. Both remain in jail an average of three days. The young woman is not only younger than the young man, but she is generally less severely charged than he.

Rites of Passage

One interpretation of the comparative profile involves the concept of "rites of passage". This sociological theory suggests that some socially unacceptable behavior is part of growing-up. Some theorists explain status offenses as typically "female" charges, whereas alcohol and traffic offenses are considered "male" charges. Adolescent females and males "act out" their rebellion in different ways. This study seems to confirm that these rebellious acts usually occur only once.

However, other children in the profile may be experiencing far more significant problems. For example, studies have documented that a significant proportion of runaways ("status offenders") are victims of physical or sexual abuse in the home. While this study does not explore the reasons that status offenses occur, it is likely that the alleged status offenders in Kentucky jails reflect the national phenomenon in that they include both temporarily rebellious youth and those with serious disruption in their family lives.

Double Standards and Tolerance

A most recent interpretation of the profile comes from the growing body of literature called "women's studies". Some experts believe that the reason that most status offenders in jails are female is that running away and incorrigibility are behaviors which are less tolerated in females than in males. In the common vernacular, "boys will be boys", when it comes to such behaviors. No comparable phrase exists which expresses the same tolerance for young females.

Any statewide removal plan should take this profile of the typical female and male juveniles in jail into account. The profile raises the question of whether these youth should be incarcerated for such behaviors, particularly in adult jails.

Is There a Relationship Between the Alleged Offense, Age and Length of Stay For Incarcerated Juveniles?

For purposes of analysis, status and public offenses were addressed separately. Tables VIII and IX provide some additional information of what types of alleged offenses warranted longer periods of incarceration.

Table VIII: A Comparison of Female and Male Status Offenses

JUVENILES	PERCENTAGE OF STATUS OFFENSES	AGE		LENGTH OF STAY	
		MEAN	MODE	MEAN	MODE
Female	27.50%	14.95 years	15.00 years	2.93 days	2.00 days
Male	3.93%	15.21 years	16.00 years	2.76 days	1.00 days

*Table IX: A Comparison of Female and Male Public Offenders

PUBLIC OFFENSES	PERCENTAGE OF PUBLIC OFFENSES				MEAN AGE				MEAN LENGTH OF STAY			
	LARGEST		SMALLEST		OLDEST		YOUNGEST		LONGEST		SHORTEST	
	F	M	F	M	F	M	F	M	F	M	F	M
MISDEMEANOR	27.14%			9.68%			15.52 years					
FELONY			5.20%					15.95 years	6.17 days	6.66 days		
ALCOHOL/DRUG					16.02 years						2.07 days	1.78 days
OTHER PUBLIC		39.43%				16.16 years						

* Tables VIII and IX include only children charged with a single type of charge as defined in the Relationship between Subgroups section of this report.

Based on this data, there is a relationship between alleged offense, age and length of stay. Status offenders are treated at least as severely, and in some cases more severely than public offenders in Kentucky jails. Status offenders are held as long and generally longer, than public offenders. In planning for bed space in a statewide jails system, Kentucky should consider whether it wants to build facilities at nearly $50,000 per bed for status offenders.

Kentucky, as a participant in the Juvenile Justice and Delinquency Prevention Act, is mandated to deinstitutionalize status offenders by December, 1981. Regardless of why Kentucky continues to jail status offenders, the practice contradicts this mandate, which is based on an ongoing Congressional commitment.

What Trends, If Any, Are Exhibited By Counties That Incarcerate Juveniles?

The most obvious trend indicated by this study is that juveniles are jailed in county jails which do not separate them by sight and sound from adults. This finding implies that Kentucky would do well to determine how many juveniles could be completely removed from secure settings thereby limiting its liability should juveniles be injured. Otherwise, plans to renovate jails in order to provide separation will overestimate the numbers of juveniles requiring these facilities.

Is There A Significant Difference Between The Incarceration of Young Women and Young Men In Kentucky Jails?

The major findings of this study seem to support national studies which indicate differences between young women and men in jail. The most significant difference is that young women are jailed for generally less severe offenses than males. Furthermore, they are younger than males, and are generally held somewhat longer than males. Removal efforts in Kentucky will increase in effectiveness when the differences between the incarceration of young women and men in county jails are taken into consideration.

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RECOMMENDATIONS

Immediate Actions

This study identified 87 children ages 12 and under who were held in Kentucky's county jails during the first six months of 1980. It also identified nine cases in which children were admitted to jails for *non-offenses*. KYA firmly believes that adult jails are inappropriate holding places for children under 12 and those who have committed no crime.

KYA recommends that the Juvenile Justice Commission encourage the Court of Justice to consider rules limiting the incarceration of all juveniles under 12 and those who have committed no crime, as well as those who are dependent, neglected or abused.

KYA further recommends that the Juvenile Justice Commission make a presentation to the Health and Welfare Committee, or the Committee on Counties of the 1982 Kentucky General Assembly, documenting the problem and the need for alternatives to incarceration for these children.

Planning for the Future

A multi-agency "Jails Consortium" is currently meeting to study possible implementation of a state-wide jails system. Thus far, many issues effecting the incarceration of juveniles have not been addressed by that group.

KYA recommends that the Juvenile Justice Commission present the third interim report (on young women in jails), the fourth interim report (a comparison of young women and young men in jails); and the fifth interim report (a jails removal plan), at a regular meeting of the "Jails Consortium". Particular attention to the economic rationale for removal and the survey of model removal plans should be shared with that group.

Future Research

As always, the findings of this study raise further *questions*:

- Why are young women held longer than young males, especially when they are charged with less serious offenses?
- Who are the "undesignated" young offenders held in Kentucky jails?
- Why are their charges recorded so vaguely?
- What is the cost per charge of incarcerating juveniles in county jails?
- Why is there such a lack of uniformity in decisions to hold or release a child?

Future research in these or other areas which will contribute to the timely removal of juveniles inappropriately jailed, should be undertaken by the Juvenile Justice Commission.

While the data presented here does not definitively answer all of these questions, it does clearly document the existence of the issues. Also, it clearly establishes ground on which the Juvenile Justice Commission can stand while fulfilling its charge to remove children who are unnecessarily incarcerated in Kentucky jails.

Public Education

KYA recommends that the Juvenile Justice Commission educate the following organizations about the major findings of the third, fourth, and fifth interim reports:

- The District Court Judges Association
- Administrative Office of the Courts
- Kentucky Commission on Women
- Jailers Association
- Department of Corrections, Office of Community Services

CONCLUSION

Many forces are at work to generate a change in the Kentucky jails system. The need for this change has been comprehensively researched and well documented. This report offers an analysis of the children incarcerated in Kentucky jails. The Jails Consortium report offers an analysis of the condition of these jails. Read in combination these reports provide the baseline data required to actively change Kentucky's practice of jailing juveniles.

The most up-to-date information regarding children in Kentucky jails is currently available. Now is the time for changes which reflect this information.

APPENDICES

Appendix A: Timeliness of Study

This appendix is a summary of the factors which contribute to the current public discussion of Kentucky's jails system.

Appendix B: Jail Log

This appendix is a copy of the form submitted by jailers to the Department of Finance for per diem reimbursement. It is also the "data source".

Appendix C: Computerized Tables

This appendix includes seven computerized tables which provide data on age, sight and sound separation, month of admission, number of days held, and first, second and third charge.

Appendix D: Categories and Definitions of Charges

This appendix explains how charges were categorized and defined.

Appendix E: Counties Surveyed

This appendix lists all of the counties surveyed and indicates which counties admitted young women during the survey period.

Appendix F: Study Work Schedule

This appendix outlines the study's progression from begining to end.

NOTE: Anyone wishing complete copies of the appendices, please contact:

Kentucky Youth Advocates
2024 Woodford Place
Louisville, Kentucky 40205

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

STEVEN RAY WEATHERS, et al.,

Plaintiffs,

vs.

RAYMOND LEIDIG, et al.

Defendants.

CIVIL ACTION NO. 80-M-1238

MEMORANDUM IN OPPOSITION TO MOTIONS TO DISMISS PURSUANT TO RULE 12(b)(6) OF DEFENDANTS LEIDIG, ET AL.

I. MOTIONS TO DISMISS OF DEFENDANTS LEIDIG, MARTINEZ VALDEZ, SLADE, MARSHALL, DIAZ, HICKMAN, MENDEZ, THAYER, VALESQUEZ, VINCENT AND WOODARD FOR FAILURE TO STATE A CLAIM BASED ON LACK OF RESPONSIBILITY

A. Defendants Contentions

Defendants Leidig, Martinez, Valdez, Slade, Marshall, Diaz, Hickman, Mendez, Thayer, Velasquez, Vincent and Woodard have all moved to dismiss the amended complaint on the grounds that they have no legal responsibility for the actions or inactions of which plaintiffs complain. Relying on the statutory authority for their respective offices, defendants argue that none of the relevant statutes create the responsibilities that the amended complaint alleges.

B. Preliminary Discussion

It is plaintiffs' contentions that the detention of children in the Mesa County Jail violates four statutory and constitutional rights of the plaintiffs: their right to be free from cruel and degrading conditions of confinement (Amended Complaint, paragraphs 1, 2, 26-49, 91), their right to be kept separate from adult inmates during their period of incarceration (Amended Complaint, paragraphs 1, 3, 65-69, 89), the right of "status offenders," dependent and neglected children, and other non-dangerous children not to be kept in a locked facility at all (Amended Complaint, paragraphs 1, 3, 60-64, 88), and the

right of "status offenders," dependent and neglected children, and other non-dangerous children who are taken into custody to be placed in appropriate least restrictive, community-based settings (Amended Complaint, paragraphs 1-3, 70-73, 90).[1/] Plaintiffs do not contend that some members of the class do not require secure custody, or that others do not require non-secure custody. Under Colorado law it is the Department of Institution's responsibility to provide secure custody and the Department of Social Services' responsibility to provide non-secure custody for juveniles.

C. Defendants Leidig and Martinez

Colorado law clearly places the responsibility for both direct and indirect provision of secure detention on defendants Leidig and Martinez, and one need not go any further than their own motion to see that their arguments to the contrary are without merit. Their motion acknowledges that C.R.S. 1973, 19-8-117(1) provides that:

> "Detention service for temporary care of a child, pursuant to article 2 of this title, shall be provided by the department of institutions, which shall consult on a regular basis with the court in any district where a detention facility is located concerning the detention program at that facility.

The statute does not require the Department of Institutions to create a new facility in Mesa County, nor does it require it to operate one in Mesa County unless one is created by the county commissioners. C.R.S. 1973, 13-3-108(1), 19-8-117(2).[2/] It does require the Department to

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1/ Plaintiffs' fifth legal claim, regarding false imprisonment, derives from their four primary legal claims, and therefore is not discussed separately.

2/ Contrary to defendants' suggestions, there is nothing in C.R.S. 1973 19-8-117 to suggest that the Department of Institutions is responsible only for the operation of facilities which existed prior to January 1, 1974.

provide detention services. While detention services are not specifically defined in the statute, they would include such items as intake screening, transportation, contracting for the provision of secure detention, and providing educational and rehabilitative services among others to children who are securely confined. See, Amended Complaint, Prayer for Relief, F(4) and (5).

In addition, if it is improper or illegal to confine plaintiffs in the Mesa County Jail, it is obvious that some other means of providing secure detention is required.[3/] See, C.R.S. 1973, 19-2-102. The duty for providing those services falls on the Department of Institutions. C.R.S. 1973, 19-8-117(1).

Defendants arguments are especially surprising in light of the fact that they currently do provide intake services. See, Exhibit B annexed to the complaint. It is even more surprising in light of the fact that since the filing of this lawsuit, they have initiated the provisions of intake services in Mesa County. One must presume that they are proceeding pursuant to existing statutory authority.

Defendants Leidig and Martinez also admit that they have the responsibility to operate certain detention facilities (Motion to Dismiss, section [1][d]). They claim no responsibility for operating a detention facility in Mesa County. However, whether they have such a responsibility is not critical to plaintiffs' success. Nothing in the pleadings or Colorado law suggests that juveniles must be detained in a facility in the county in which the action is brought. There is no reason defendants Leidig and Martinez could not confine juveniles

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3/ Plaintiffs do not contend that all secure confinement of juveniles should be prohibited.

subject to the jurisdiction of the Mesa County Court in facilities they currently operate.

Furthermore, by failing to provide secure detention and intake screening, defendants Leidig and Martinez must therefore take responsibility for the conditions, and improper and illegal use of the jail. Without their inaction, many members of the class would never be subject to the conditions complained of.

> "The Legislature envisioned a sharing of authority over juveniles under the [Children's] Code. The inter-working of the courts and various executive agencies including the Department of Institutions, is provided for throughout the Code." C.C.C. v. Dist. Ct. 535 P.2d 1117, 1119, 188 Colo. 437 (1975).

It is clear that the Department of Institutions bears the responsibility for the actions and inactions alleged in the complaint.

D. Defendants Valdez, Slade, Marshall, Diaz, Hickman, Mendez, Thayer, Velasquez, Vincent, and Woodard

Defendants Valdez, Slade, Marshall, Diaz, Hickman, Mendez, Tnayer, Velasquez, Vincent, and Woodard (hereinafter Social Services defendants) have all moved to dismiss the amended complaint as to them on the grounds that the State Board of Social Services and its Executive Director have no responsibility for secure detention and are therefore not responsible for any of the injuries alleged in the amended complaint.

They are defendants because plaintiffs concede that juveniles may be taken into custody even if they can't be placed in the jail. The complaint alleges that the use of the Mesa County Jail is caused in part by the failure and refusal of the Social Services Defendants to provide and utilize community-based alternatives to the Mesa County Jail. (Amended Complaint, par. 1-3, 61, 63, 70, 73, 90).

Paragraph 73 of the amended complaint alleges that:

> "... Juveniles in Mesa County have similarly been denied access to, and placement in, appropriate community-based alternatives and other unstable places of confinement in previous years, and juveniles in Mesa County will be similarly denied such placements in the future unless plaintiffs are granted the relief requested herein."

Paragraph 70 of the amended complaint describes in general terms the types of non-secure placement that plaintiffs request.

C.R.S. 1973, 26-5-101, provides:

> "Definition.(1) 'Child welfare services' means the provision of necessary shelter, sustenance, and guidance to or for children who are or who, if such services are not provided, are likely to become delinquent, neglected or dependent, or needing oversight as defined in section 19-1-103, C.R.S. 1973."

Plaintiffs in this action clearly come within the above definition.

C.R.S. 1973, 26-5-102, provides in pertinent part:

> "Provision of child welfare services. The state department shall adopt rules and regulations to establish a program of child welfare services, administered by the state department or supervised by the state department and administered by the county departments, and, where applicable, in accordance with the conditions accompanying available federal funds for such purpose...Upon appropriate request and within available appropriations, child welfare services shall be provided for any child residing or present in the state of Colorado who is in need of such services."

And finally, C.R.S. 1973, 26-5-103, provides:

> "Coordination with other programs. The program of child welfare services established pursuant to this article shall be coordinated with other social services and assistance payments programs for children of this state and shall be rendered in complement, and not in duplication of or contrary to, legal processes provided by the 'Colorado Children's Code' and services rendered under any public assistance law or other law for the benefit of children, including aid to families with dependent children."

This statutory requirement translates in this action to the requirement to provide or to see that it is provided of foster care and group care homes for children now confined in the jail. Both short-term, i.e., shelter care, and long-term placements are required. In addition, related services, including

counseling and other rehabilitative treatment, are required. C.R.S. 1973, 26-5-101(1).

Social Services Defendants have direct statutory responsibility for the provision of non-secure placements for juveniles under Colorado law. Under C.R.S. 1973, 19-2-103, a child may be placed in a shelter facility instead of detention or jail. The complaint alleges that the Social Services Defendants have failed and refused to provide and utilize appropriate shelter care facilities (par. 73). They clearly have the statutory authority and duty to so provide. C.R.S. 1973, 26-5-101-3. Furthermore, by failing and refusing to provide alternatives to the jail and secure detention, they are also responsible for the conditions and improper and illegal use of the jail and secure detention. The complaint therefore states a claim as to them.

II. PLAINTIFFS HAVE VALID CLAIMS FOR VIOLATIONS OF THEIR RIGHTS UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

A. Defendants' Contention

Defendants contend that plaintiffs may not assert claims for violations of their rights under the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §5601 et seq. They cite Cruz v. Collazo, 84 F.R.D. 307 (D.P.R. 1979), and Pennhurst State School and Hospital v. Halderman, ___U.S.___, 101 S.Ct. 1531 (1981), in support of their position.

B. Plaintiffs May Assert Claims Under 42 U.S.C. §1983 For Violations of Their Rights Under the Juvenile Justice and Delinquency Prevention Act

42 U.S.C. §1983 provides that every person who, under color of state law, deprives another of rights, privileges or immunities secured "by the Constitution and laws," shall be liable to the injured party in an action at law or a suit in equity. In Maine v. Thiboutot, ___U.S.___, 100 S.Ct. 2502 (1980), the Supreme Court held that §1983 encompasses claims

based on purely statutory violations of federal law, as well as violations of federal constitutional rights.[4/] Thus, plaintiffs in that case were entitled to bring claims under §1983 for violations of their rights under the Social Security Act. See, also, Cuyler v. Adams, ___U.S.___, 101 S.Ct. 703, 709, 712 (1981) (interpretation of Interstate Agreement on Detainers is matter of federal law, and individual can state claim for relief under 42 U.S.C. §1983 for asserted violation by state officials of the terms of the Detainer Agreement).

The lower courts have applied Thiboutot in recognizing the validity of claims for relief under §1983 for violations of federal statutory rights. See, e.g., Bond v. Stanton, 630 F.2d 1231, 1236 n. 5 (7th Cir. 1980) (statutory rights under Social Security Act, 42 U.S.C. §1396); Kennecott Corp. v. Smith, 637 F.2d 181, 186 n. 5 (3rd Cir. 1980) (rights under the Williams Act, 15 U.S.C. §78m(d)-(e), 78 n(d)-(f)). Cf. Robinson v. Pratt, 497 F.Supp. 116, 121-122 (D. Mass. 1980). The principle has also been recognized by the Court of Appeals for the Tenth Circuit, Holmes v. Finney, 631 F.2d 150, 154 (10th Cir. 1980), and by Judge Kane of this Court, Pushkin v. Regents of the University of Colorado, 504 F.Supp. 1292, 1297 (D. Colo. 1981).

In their Amended Complaint, in paragraph 2, plaintiffs explicitly state that they "bring this action under 42 U.S.C. §1983...to redress the violation by defendants, under color of state law, of plaintiffs' rights under the Juvenile Justice and Delinquency Prevention Act of 1974..." See, also, Amended Complaint, paragraphs 5, 6, 7, 88, 89.

The Juvenile Justice and Delinquency Prevention Act

4/ Even before Thiboutot was decided, the Court of Appeals for the Fourth and Fifth Circuits had held that claims for violations of federal statutory rights could be brought under §1983. See Blue v. Craig, 505 F.2d 830 (4th Cir. 1974); Gomez v. Florida State Employment Services, 417 F.2d 569, 579 (5th Cir. 1969).

(hereinafter "Juvenile Justice Act") was enacted by Congress in 1974, and amended in 1977 and 1980, to assist the states in dealing with problems in their juvenile justice systems and to provide explicit protection for children from two widespread abuses: confinement of children in jails where they could have contact with adult offenders, and secure detention of children who had committed no crime (dependent and neglected children, children charged with "status offenses" such as truancy, runaway and being "in need of supervision"). In order to assist the states in reforming their juvenile justice systems, Congress provided funds for formula grants for education, training, research, prevention, diversion, treatment, and rehabilitation programs. 42 U.S.C. §5631. In order to provide specific protection for children from improper confinement in jail and inappropriate secure detention, Congress explicitly required the states to insure (1) that children would not be confined in any institution in which they had regular contact with adult inmates, 42 U.S.C. §5633(a)(13), and (2) that status offenders and dependent or neglected children would not be placed in secure detention or correctional facilities, 42 U.S.C. §5633(a)(12). As plaintiffs allege in their Amended Complaint, since 1977 the State of Colorado has received funds totalling $2,896,000.00 under the Juvenile Justice Act.

Plaintiffs are children who have been confined by defendants in the Mesa County Jail, where they have regular contact with adult inmates, in violation of 42 U.S.C. §5633(a)(13). Plaintiff James Neal McCown was detained in the jail when charged with a status offense, i.e., being a "runaway," in violation of 42 U.S.C. §5633(a)(12). Accordingly, plaintiffs have alleged that their rights under 42 U.S.C. §§5633(a)(12) and (13) have been violated by defendants.

Maine v. Thiboutot, supra, was an action to enforce rights

created under the Social Security Act. Specifically, it was an action to require the state of Maine to properly compute welfare benefites. Kennecott Corp. v. Smith, supra, was an action brought under a securities law. Certainly, if those statutes created remedies under §1983, then this statute which seeks to limit the use of jails for juvenile offenders and prohibit secure detention for non-offenders falls within the language that the "...§1983 remedy broadly emcompasses violations of federal statutory as well as constitutional law. Maine v. Thiboutot, supra, ___U.S. at ___, 100 S.Ct. at 2504. See, Pushkin v. Board of Regents of the University of Colorado, 504 F.Supp. 1292, 1297 (D. Colo. 1981).

C. Plaintiffs May Assert Claims Directly Under The Juvenile Justice Act

Plaintiffs also bring their claims directly under the Juvenile Justice Act. See Amended Complaint, paragraph 3. In Cannon v. University of Chicago, 441 U.S. 677, 99 S.Ct. 1946 (1979), the Supreme Court considered the question of whether an aggrieved individual can maintain a private cause of action under section 901(a) of Title IX of the Education Amendments of 1972, 20 U.S.C. §1681. Section 901 provides that no person shall be subjected to discrimination on the basis of sex under any education program or activity receiving federal financial assistance. Like the Juvenile Justice and Delinquency Prevention Act, Title IX provides federal funds to states and institutions to effectuate its purposes. Plaintiff Geraldine Cannon claimed that she had been denied admission to two medical schools receiving federal financial assistance because of her sex, and filed suit against the schools for violation of section 901.

The Supreme Court considered four factors to determine if the statute provided a private remedy:

> "In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. First, is the plaintiff 'one of the class for whose especial benefit the statute was enacted,' --that is, does the statute create a federal rights in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law."

441 U.S. at 688 n. 9 (quoting Cort v. Ash, 422 U.S. 66, 78 1975)) (citations omitted). The Court concluded that the four factors were satisfied, and that Title IX therefore allowed private lawsuits.

The Court's use of the four Cort v. Ash factors and its discussion in the Cannon opinion indicate that aggrieved individuals such as the plaintiffs herein can maintain private causes of action under the Juvenile Justice Act. In terms of the four factors, it is evident, first, that juveniles confined in adult jails are "of the class for whose especial benefit the state was enacted." The primary provisions of the Act specifically prohibit incarceration of children in jails where they may have contact with adults, 42 U.S.C. §5633(a)(13), and secure detention of status offenders, 42 U.S.C. §5633(a)(12).

The second and third Cort v. Ash factors require an analysis of the legislative history of the Act. The legislative history is replete with references concerning the importance of prihibiting the detention of juveniles in adult jails. Indeed, much of the legislative history describes the operative provisions of the Act in terms of enforceable civil rights. Thus, in introducing S.3146 (the predecessor of S.821, which became the Juvenile Justice Act), Senator Bayh declared that the bill contained "an absolute prohibition" against detention or confinement of children in institutions with adults. 118 Cong.

Rec. 3049 (1972) (emphasis added). During floor debate on the Act in 1974, Senator Bayh declared that Congress was "establishing a national standard for due process in the system of juvenile justice" through the legislation. 120 Cong. Rec. 25165 (1974) (emphasis added). In urging enactment of the provisions of the Federal Juvenile Delinquency Act that were passed as amendments to the Juvenile Justice Act and which prohibit confinement of juveniles in jails with adults; Senator Kennedy stated that the legislation enacted "the guarantee of basic rights to detained juveniles." 120 Cong. Rec. 25184 (1974) (emphasis added).

The legislative history of the Act does not specifically deal with the question of a creation of a private right. This is not surprising. The Supreme Court has correctly observed that the legislative history will be typically "...silent or ambiguous on the question." Cannon, supra, 441 U.S. at ___, 99 S.Ct. at 1956. Thus, where the first test is met it "...is not necessary to show an intention to create a private cause of action, although an explicit purpose to deny such cause of action would be controlling." Cort, supra, 422 U.S. at 82, 95 S.Ct. at 2090.5/

The third Cort v. Ash factor is likewise met. It is abundantly clear that a purpose of the act is the removal of juvenile offenders from adult jails and the removal of non-offenders from secure confinement. Clearly, an implied private remedy will make it easier to secure compliance with the act. The only other available method for securing compliance with the act is the provision providing for the cut-off of federal funds. 42 U.S.C. §5636. However, that remedy is

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5/ There is nothing in the legislative history of the Act to suggest that Congress intended to deny a private right of action. In fact, the opposite appears true. See the comments of Senators Bayh and Kennedy, supra.

severe and frequently overbroad. Cannon, supra, 441 U.S. at ___, 99 S.Ct. at 1961. An elimination of federal funds would not provide the benefits the Act seeks to create. Thus, an implication of a private right of action is "...not only sensible but is fully consistent with - and in some cases necessary to - the orderly enforcement of the statute." Cannon, supra, 441 U.S. at ___, 99 S.Ct. at 1962.

With respect to the fourth Cort v. Ash factor, the welfare of juveniles is clearly a matter of federal concern. Indeed, federal legislation has operated in this area for almost seventy years, including the Children's Bureau Act of 1912, 42 U.S.C. §191-194, the Social Security Act of 1935, 42 U.S.C. §301-306, the Child Health Act of 1967, 42 U.S.C. §701-715, 729, the Child Nutrition Act of 1966, 42 U.S.C. §1771-1786, the Crippled Children Services Act, 42 U.S.C. §701-716, the Juvenile Delinquency Prevention and Control Act of 1968, 72 U.S.C.§3801, the Juvenile Delinquency and Youth Offenses Control Act of 1961, 42 U.S.C. §2541-2548, and the Child Abuse Prevention and Treatment Act of 1974, U.S.C. §5101.

Indeed, the act itself declares, at 42 U.S.C. §5601(b), that:

> Congress finds further that the high incidence of delinquency in the United States today results in enormous annual cost and immeasurable loss of human life, personal security, and wasted human resources and that juvenile delinquency constitutes a growing threat to the national welfare requiring immediate and comprehensive action by the Federal Government to reduce and prevent delinquency.

In addition, the Supreme Court's decision in Cannon notes two other reasons why a federal remedy is appropriate. First, "[s]ince the Civil War, the Federal Government and the federal courts have been the 'primary and powerful reliances' in protecting citizens against" violations of civil rights. 441 U.S. at 708 (emphasis in original). Second, "it is the expenditure of federal funds that provides the justification for

this particular statutory prohibition. There can be no question but that this...analysis supports the implication of a private federal remedy." Id. at 708-709 (emphasis added).

D. Defendants' Authorities Are Inapposite

Cruz v. Collazo, supra, cited by defendants in support of their argument, is clearly of very limited usefulness, since it was decided a year before the Supreme Court's decision in Maine v. Thiboutot. Moreover, it is directly contradicted by Kentucky Association for Retarded Citizens v. Conn., 510 F.Supp. 1233 (W.D.Ky. 1980), which holds that placement of status offenders in secure facilities is absolutely prohibited by the Juvenile Justice and Delinquency Prevention Act. Id. at 1247.

The other case relied upon by defendants, Pennhurst State School and Hospital v. Halderman, supra, is likewise inapposite. In Halderman, the Supreme Court held that the "bill of rights" provision of the Developmentally Disabled Assitance and Bill of Rights Act of 1975, 42 U.S.C. §6010, does not create for mentally retarded substantive rights to "appropriate treatment" in the "least restrictive" environment. It is clear from the Court's opinion that the statutory provision at issue in that case is signficantly different in two respects from 42 U.S.C. §§5633(a)(12) and (13), under which plaintiffs bring claims in the instant case. First, The Court reasoned that §6010 does not create substantive rights because it does not establish any "conditions" for the receipt of federal funding. 101 S.Ct. at 1538, 1542, 1543. "Section 6010 thus stands in sharp contrast to §§6005, 6009, 6011 and 6012," id. at 1538, which do establish such conditions. A comparison of the language of the provisions of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. §563(a)(12) and (13), with 42 U.S.C. §6010, on one hand, and with 42 U.S.C. §§6005, 6009, 6011, and 6012, on the other, demonstrates that the provisions of the Juvenile Justice Act

under which plaintiffs herein bring their claims also establish "conditions" for the receipt of federal funding.[6/]

Second, the Court was reluctant to create substantive rights under 42 U.S.C. §6010 because of the potentially burdensome nature and open-ended scope of rights to "appropriate treatment" in the "least restrictive" environment. Id. at 1546. In contrast, the Court noted that it had held that substantive rights were created in cases involving "statutes which simply prohibited certain kinds of state conduct." Id. at 1539. That, of course, is precisely what 42 U.S.C. §§5633(a)(12) and (13) do: they simply prohibit public officials in states which receive Juvenile Justice Act funds from keeping status offenders in secure detention and from incarcerating children in jails where they may have contact with adult inmates.

E. Conclusion

For the foregoing reasons, plaintiffs may maintain their claims for violations of their rights under the Juvenile Justice Act both through 42 U.S.C. §1983 and directly under the Juvenile Justice Act.

III. OTHER MOTIONS TO DISMISS OF DEFENDANTS LEIDIG, MARTINEZ, VALDEZ, SLADE, MARSHALL, DIAZ, HICKMAN, MENDEZ, THAYER, VALESQUEZ, VINCENT AND WOODARD

Defendants have also moved to dismiss the complaint on the grounds that the fourth claim fails to state a claim; that the first, second, third and fifth claim should have been brought under the Habeas Corpus Act; that plaintiffs have failed to

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6/ It should be noted that because the Supreme Court concluded that §6010 confers no substantive rights, it did not reach the precise question whether there is private cause of action under that section or under 42 U.S.C. §1983 to enforce those rights. 101 S.Ct. at 1545 n. 21. On the related question of whether plaintiffs could bring suit to compel compliance with conditions which are contained in the Developmentally Disabled Assistance Act, e.g., 42 U.S.C. §§6011 and 6063(b)(5)(C), the Court remanded the matter to the Court of Appeals. 101 S.Ct. at 1546.

exhaust their state remedies under 28 U.S.C. §2254; and that these defendants have no responsibility for the conditions in the Mesa County Jail. These issues were all briefed to this court in parts II and III of plaintiffs' response to the motions to dismiss of defendants Carter, Ela, Buss, and Miller which was filed with this court on July 20, 1981. The arguments as applied to those defendants apply with equal vigor to these defendants and will not be repeated here.

IV. CONCLUSION

It is respectfully submitted that the motions to dismiss by the defendants are devoid of merit and should be denied by this court.

DATED: August 5, 1981

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

STEVEN RAY WEATHERS, et al.,

Plaintiffs,

vs.

FRANK TRAYLOR, et al.,

Defendants.

Civil Action No. 80-M-1238

PARTIAL CONSENT JUDGMENT

This is a civil rights action for declaratory judgment, permanent injunction, damages and other relief brought by juveniles confined in the Mesa County Jail in Grand Junction, Colorado. The complaint in this action was filed on September 18, 1980. The plaintiffs, on behalf of themselves and a class of juveniles similarly situated, alleged that the defendants subjected them to cruel, unconscionable and illegal conditions of confinement in the jail; illegal incarceration in the jail without adequate separation from confined adult offenders; unlawful secure detention in the jail of juveniles who are charged with or who have committed offenses which would not be criminal if committed by adults ("status offenses"); denial of adequate and appropriate placements as alternatives to the jail; and false imprisonment. The defendants answered and denied the material allegations of the complaint.

By order dated June 30, 1982, this Court certified that this action should proceed as a class action under Rule 23(b) of the Federal Rules of Civil Procedure. The certified class includes:

> All juveniles who are currently, have been during the past two years, and in the future will be confined in the Mesa County Jail, except those juveniles who have been and in the future will be certified to stand trial as adults pursuant to C.R.S. 1973, §19-1-104(4).

While neither admitting nor denying any allegations of fact

or legal liability, the parties have now agreed to the entry of a partial consent judgment resolving all of plaintiffs' claims for declaratory and injunctive relief. Therefore, based upon the stipulation and agreement of all parties to this action, by and through their respective counsel, and based upon all matters of record in this case, it is hereby ORDERED, ADJUDGED and DECREED that:

1. This Court has jurisdiction over this matter.

2. The named plaintiffs in this action are STEVEN WEATHERS, SHANNON SATRANG, and JAMES McGOWAN, suing by and through their next friend, CHERYL JACOBSON.

3. The defendants in this action are:

FRANK TRAYLOR, Executive Director of the Colorado Department of Institutions; ORLANDO MARTINEZ, Director of the Division of Youth Services of the Colorado Department of Institutions;

RUBEN A. VALDEZ, Executive Director of the Colorado Department of Social Services; GILBERT R. SLADE, THOMAS C. HICKMAN, M.D., FLORANGEL MENDEZ, NONA B. THAYER, LARRY VELASQUEZ, JAMES MARTIN, MARK NOTEST, SHARON LIVERMORE and FELIX CORDOVA, members of the Colorado State Board of Social Services;

MAXINE ALBERS, RICK ENSTROM, and GEORGE WHITE, the County Commissioners of Mesa County, Colorado, and the members of the Board of Social Services for Mesa County;

MICHAEL KELLY, former County Commissioner of Mesa County; and BOARD OF COUNTY COMMISSIONERS of Mesa County;

JOHN PATTERSON, Director of Mesa County Social Services;

BETSY CLARK, LOUIS BRACH, ROBERT HOLMES, GARY LUCERO, KARL JOHNSON, FRANK DUNN, and ARLENE HARVEY, members of the City Council of Grand Junction Colorado; and JANE QUIMBY, DALE HOLLINGSWORTH, and WILLIAM O'DWYER, former members of the City Council;

RICK ENSTROM, ROBERT GERLOFS, SAM KELLY, GENE LENDERMAN, E.E. LEWIS and FRANCIS RALEY, the members of the Board of Directors of the Mesa County Health Department;

KENNETH LAMPERT, the Executive Director of the Mesa County Health Department;

L.R. (DICK) WILLIAMS, the Sheriff of Mesa County;

RUFUS MILLER, Chief Probation Officer of the Mesa County Probation Department; and

JAMES J. CARTER, WILLIAM M. ELA, and CHARLES A. BUSS, Judges of the Twenty-First Judicial District of the State of Colorado.

4. This action is properly maintained as a class action under Rule 23(b) of the Federal Rules of Civil Procedure.

5. The plaintiff class consists of:

> All juveniles who are currently, have been during the past two years, and in the future will be confined in the Mesa County Jail, except those juveniles who have been and in the future will be certified to stand trial as adults pursuant to C.R.S. 1973, §19-1-104(4).

6. Effective upon the entry of this Partial Consent Judgment, the defendants agree to cease utilizing the Mesa County Jail cells for the confinement of any member of the class except for a period of time not to exceed six (6) hours while said member(s) await transportation to a juvenile detention facility.

7. Effective upon the entry of this Partial Consent Judgment, the defendants agree to cease utilizing the second floor of the Mesa County Jail for the confinement of any member of the class.

8. Defendants MARTINEZ, TRAYLOR and defendant BOARD OF COUNTY COMMISSIONERS agree to identify, prior to December 1, 1982, a facility separate from the Mesa County Jail suitable for remodeling or construction as the Grand Junction Youth Holding Facility.

9. Defendants agree that, prior to April 1, 1983, that facility will be remodeled or constructed for the temporary holding of juveniles in Mesa County. Said remodeling or construction will be done pursuant to previous appropriations under Chapter 1, Section 3(8), Colorado Session Laws, 1979, as amended by Chapter 14, Section 2, Colorado Session Laws, 1980.

10. Defendants agree that, effective April 1, 1983, no member of the class shall be held in the Mesa County Jail under any circumstances.

11. Defendants MARTINEZ, TRAYLOR and defendant BOARD OF COUNTY COMMISSIONERS agree that the Division of Youth Services and the Department of Institutions will contract, under mutually agreeable terms, with the BOARD for the operation of said facility until such time as a legislative appropriation for the operation of that facility or a juvenile detention facility is made, but in no event later than June 30, 1985.

12. Effective July 1, 1985, defendants MARTINEZ and TRAYLOR agree that Department of Institutions and the Division of Youth Services will provide secure juvenile detention services for all delinquents, traffic, or fish and game law violators who are securely detained from Mesa County.

13. Defendants MARTINEZ and TRAYLOR agree to request and recommend to the legislative and executive branches that a juvenile detention facility on the Western Slope of Colorado be provided for the use of members of the class in the future.

14. Defendant BOARD OF COUNTY COMMISSIONERS agree to request and encourage the Mesa County and Western Slope legislators to introduce and/or support legislation to implement the recommendations in paragraph 13.

15. Defendant WILLIAMS agrees that, until a permanent juvenile detention facility is constructed on the Western Slope of Colorado, defendant WILLIAMS will provide transportation to

the Jefferson County Youth Center or some other detention facility within forty-eight (48) hours of the placement of a juvenile in the Grand Junction Youth Holding Facility, except that a juvenile may be held an additional twenty-four (24) hours for the purpose of a detention hearing or when weather makes travel impossible.

16. At all times when a juvenile is confined, there will be one (1) wide-awake staff person on duty in the Grand Junction Youth Holding Facility.

17. Defendants agree that the Sheriff will provide backup security to the Facility as may be required.

18. Defendants agree that no juvenile will be ~~admitted to~~ placed in detention at the Facility, except by Court order.

19. Defendants agree that no juvenile will be ~~admitted to~~ placed in detention at the Facility unless he or she has been screened by the Division of Youth Services intake team.

20. Defendants agree that no juvenile will be placed in ~~detention in~~ the Grand Junction Youth Holding Facility or in the Mesa County Jail who is:

a. Under fourteen (14) years of age;

b. Placed there as a sentence or condition of probation.

21. Defendants agree that only ~~delinquents or traffic or fish and game law violators~~ alleged or adjudicated delinquents or traffic or fish and game law violators placed in detention may be held in either the Mesa County Jail, or the Grand Junction Youth Holding Facility.

22. Defendants CARTER, ELA and BUSS will enter into an agreement with defendant MARTINEZ and the Division of Youth Services for the provision of comprehensive intake services for juveniles in Mesa County.

23. The BOARD OF COUNTY COMMISSIONERS agrees to provide Sheriff WILLIAMS the necessary funds for the carrying out of his responsibilities under his agreement, consistent with Colorado

statutory authority, C.R.S. 1973, §30-25-101 et seq.

24. All parties agree that, upon the cessation of the use of the Mesa County Jail for holding all members of this class, a supplemental order may be entered as follows:

a. Dismissing defendants VALDEZ, SLADE, HICKMAN, MENDEZ, THAYER, VELASQUEZ, MARTIN, NOTEST, LIVERMORE, and CORDOVA, as defendants in this matter;

b. Dismissing plaintiffs' claims for declaratory and injunctive relief as to defendants ALBERS, ENSTROM and WHITE in their capacities as members of the Board of Social Services for Mesa County;

c. Dismissing plaintiffs' claims for declaratory and injunctive relief as to defendant PATTERSON;

d. Dismissing plaintiff's claims for declaratory and injunctive relief as to defendants ENSTROM, GERLOFS, KELLY, LENDERMAN, LEWIS, and RALEY, in their capacities as members of the Board of Directors of the Mesa County Health Department;

e. Dismissing plaintiffs' claims for declaratory and injunctive relief as to defendant LAMPERT.

25. The defendants WILLIAMS and/or MARTINEZ will furnish to counsel for plaintiffs monthly reports on all juveniles placed in either the Mesa County Jail or the Grand Junction Youth Holding Facility for a period of one (1) year from the date of entry of this judgment, setting forth the name, age, offense, and length of stay of each such juvenile.

26. ~~The~~ Defendants Board of County Commissioners, and/or Martinez and/or Williams will notify plaintiffs' counsel within one week of the following events:

a. Agreement as to the site or facility to be known as the Grand Junction Youth Holding Facility;

b. Acquisition of the site or facility to be known as the Grand Junction Youth Holding Facility;

//

c. Signing of the contracts for the remodeling or construction of the Grand Junction Youth Holding Facility; and

d. Cessation of the use of the jail for the holding of members of the class.

27. This Partial Consent Judgment does not resolve the claims of the named plaintiffs in this action for damages from the defendants.

28. No damages are being requested of any individual defendant who is being sued solely in his or her official capacity.

29. Plaintiffs reserve the right to request such attorneys' fees and costs as this Court deems appropriate, and defendants reserve the right to oppose such request.

30. No just reason exists for delay in entering this Partial Judgment as to all defendants in accordance with its terms.

31. The agreement set forth herein constitutes a fair and reasonable resolution of plaintiffs' claims for declaratory and injunctive relief, and is therefore approved by this Court.

DATED this 9th day of November, 1982.

Richard P. Matsch

/s/ Richard P. Matsch
HON. RICHARD P. MATSCH
United States District Judge

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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

DEBORAH DOE, a minor, by and through her Next Friend, John Doe; and ROBERT ROE, a minor, by and through his Next Friend, Richard Roe; on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

LLOYD W. BURWELL, Juvenile Court Judge of Lawrence County, Ohio, in his official capacity;

MARK A. MALONE, DONALD LAMBERT, and DR. CARL T. BAKER, as the County Commissioners of Lawrence County, Ohio, individually and in their official capacities;

DANIEL HIERONIMUS, Sheriff of Lawrence County, Ohio, individually and in his official capacity; and

LAWRENCE COUNTY, OHIO;

Defendants.

Civil Action No. C-1-81-415

CONSENT JUDGMENT

This is a civil rights action for declaratory judgment, permanent injunction, damages and other relief brought by juveniles confined in the Lawrence County Jail in Ironton, Ohio. The complaint in this action was filed on April 22, 1981. The plaintiffs, on behalf of themselves and a class of juveniles similarly situated, alleged that the defendants subjected them to cruel, unconscionable and illegal conditions of confinement in the jail; abuses of judicial authority, including arbitrary and capricious confinement in the jail; illegal incarceration in the jail without adequate separation from confined adult offenders; unlawful secure detention in the jail of juveniles who are charged with or who have committed offenses which would not be criminal if committed by adults ("status offenses"); denial of adequate and appropriate placements as alternatives to the jail;

and false imprisonment. The defendants duly answered and denied the material allegations of the complaint.

On January 14, 1982, a hearing was held as to the appropriateness of the certification of the plaintiff class. By order dated January 15, 1982, this court certified that this action should proceed as a class action under Rule 23(b) of the Federal Rules of Civil Procedure. The certified class includes all juveniles who have been incarcerated in the Lawrence County Jail since January 1, 1979, presently are incarcerated, or would be incarcerated there.

While neither admitting nor denying any allegations of fact or legal liability, the parties have now agreed to the entry of a consent judgment. Therefore, based upon the stipulation and agreement of all parties to this action, by and through their respective counsel, and based upon all matters of record in this case, it is hereby ORDERED, ADJUDGED and DECREED that:

1. This court has jurisdiction over this matter.

2. The named plaintiffs in this action are DEBORAH DOE, a minor, suing by and through her next friend John Doe, and ROBERT ROE, a minor, suing by and through his next friend Richard Roe. The actual identities of the named plaintiffs are known to counsel for all parties, and are subject to a protective order of this Court.

3. The defendants in this action are LLOYD W. BURWELL, the Juvenile Court Judge for Lawrence County; DANIEL HIERONIMUS, the Sheriff of Lawrence County; MARK A. MALONE, DONALD LAMBERT, and DR. CARL T. BAKER, the County Commissioners of Lawrence County; and LAWRENCE COUNTY, Ohio.

4. This action is properly maintained as a class action under Rule 23(b) of the Federal Rules of Civil Procedure.

5. The plaintiff class consists of all juveniles who have been incarcerated in the Lawrence County Jail since January 1, 1979, presently are incarcerated there, or will be incarcerated

there in the future.

6. The defendants will pay to the plaintiff DEBORAH DOE the sum of thirty seven thousand dollars ($37,000) in consideration of a full and final release from all of her claims in this matter.

7. The defendants will pay to the plaintiff Richard Roe the sum of three thousand, five hundred dollars ($3,500.00) in consideration of a full and final release from all of his claims in this matter.

8. Upon the entry of this consent judgment by the Clerk of this Court, the defendants agree to cease utilizing the Lawrence County Jail for the detention of any and all juveniles.

9. The defendants will furnish to counsel for the plaintiffs monthly reports on all juveniles appearing before the Lawrence County Juvenile Court and their place of detention and/or disposition, if any. Defendants will provide this information for a period of one year.

10. The plaintiffs reserve the right to request such attorneys' fees and costs as this Court deems appropriate and defendants reserve the right to oppose such requests.

11. The agreement set forth herein constitutes a fair and reasonable resolution of plaintiffs' claims and is therefore approved by this Court.

Dated this day of April, 1982.

_____
S. Arthur Spiegel
United States District Judge

_____
Mark I. Soler
Counsel for Plaintiffs

_____
Loren M. Warboys
Counsel for Plaintiffs

Elinor Alger
Counsel for Plaintiffs

John K. Issenmann
Counsel for Defendants LLOYD W. BURWELL, COUNTY COMMISSIONERS MARK MALONE, DONALD LAMBERT, and DR. CARL T. BAKER, and LAWRENCE COUNTY, OHIO

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Stephen A. Bailey
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STATEMENT OF RITA HORN

Senator SPECTER. Mrs. Horn, could you tell us where you are from?

Mrs. HORN. LaGrange, Ky. It's a small town about 20 miles east of Louisville.

Senator SPECTER. And how long have you lived there?

Mrs. HORN. The most recent time I've lived there, since August, but I have lived in the county since I was born except for about 2 years.

Senator SPECTER. Are you married?

Mrs. HORN. No, I am divorced.

Senator SPECTER. And where do you work?

Mrs. HORN. I work at the Kentucky Correctional Institution for Women in Pewee Valley.

Senator SPECTER. And what kind of work do you do there?

Mrs. HORN. I am a correctional officer, and I have started working on my degree in corrections.

Senator SPECTER. How many children do you have?

Mrs. HORN. I have five living, and my oldest son died December 16, 1982.

Senator SPECTER. How are you able to care for your family?

Mrs. HORN. By working, I support myself and my children; I get $40 a week child support.

Senator SPECTER. $40 a week child support from your ex-husband?

Mrs. HORN. Yes.

Senator SPECTER. I understand that two of your sons, Robbie and Greg, have been held in the Oldham County jail, is that so?

Mrs. HORN. Yes, it is.

Senator SPECTER. When was your son, Robbie, first put in the Oldham County jail?

Mrs. HORN. He was put in jail in October, around the 10th or 15th of October.

Senator SPECTER. Of what year?

Mrs. HORN. 1982.

Senator SPECTER. And how old was Robbie at that time?

Mrs. HORN. He was 15.

Senator SPECTER. Did he stay overnight?

Mrs. HORN. Yes.

Senator SPECTER. How many nights?

Mrs. HORN. About 10 or 15 times.

Senator SPECTER. Why was Robbie put in jail?

Mrs. HORN. The original time he was put in jail, he was not enrolled in school and the judge had a police officer pick him up when he was walking through LaGrange and put him in jail.

Senator SPECTER. Why wasn't he enrolled?

Mrs. HORN. Robbie had just come home, he had gone with his dad, and I had not had him home with me for about 3 years. When he came home we were having some family problems, Robbie was having some personal problems, and I was in the process of having Robbie placed for care at Bellwood Children's Home in Anchorage, where he would get psychological counseling and where, with the other children and I, we could work together on the family prob-

lems; he would be there in order to bring Robbie back into the family, where myself and all my children would be together.

Senator SPECTER. And Robbie eventually committed suicide while he was in jail?

Mrs. HORN. Yes, he did.

Senator SPECTER. What was your feeling when the judge sent Robbie to jail because he saw him walking through the town. How did you feel about that?

Mrs. HORN. I was very upset; I called the judge; I talked with him; I asked him to release Robbie to me so that I could take him to Bellwood—I had all the arrangements made at Bellwood, everything was already worked out at the time that the judge placed Robbie in jail. I talked with the psychologist at Bellwood; he called the social worker that was working with the kids that were placed in jail; he asked the social worker to ask Judge Fritz to release Robbie so that I could bring him to Bellwood. I also called the social worker and asked him to represent Robbie's welfare with the judge. The social worker stated to Mike, the psychologist, and myself, that after the judge had made up his mind that he would not be able to get him to change it, and he would not ask the judge to release my son.

Senator SPECTER. Did the judge refuse to release Robbie?

Mrs. HORN. Yes, he did.

Senator SPECTER. Do you know why the judge refused to release Robbie?

Mrs. HORN. His opinion was that to solve the problem on a local level, to keep the child in the county. His opinion was that sending the child out of the county to another place wasn't going to solve the problem, yet Oldham County has no alternative for a child except to place him in a jail cell.

Senator SPECTER. Well, did the judge explain why he placed him in jail simply because he wasn't enrolled in school?

Mrs. HORN. Yes, he did; and I explained to Judge Fritz that that was not——

Senator SPECTER. What did the judge say as to why he kept your boy in jail just because he wasn't in school?

Mrs. HORN. I don't know how to answer that.

Senator SPECTER. Did the judge say why he kept him in jail?

Mrs. HORN. Because he wasn't in school anywhere.

Senator SPECTER. There are many places in this country where you can't get judges to put repeat robbers in jail. There is a question as to why a judge would place a 15-year-old boy in jail simply because he wasn't in school.

Mrs. HORN. The only answer I have for that is that that is apparently Judge Fritz's philosophy of treating a child.

Senator SPECTER. And then what did finally happen to Robbie?

Mrs. HORN. He was placed in a jail cell alone and he hanged himself with his shirt.

Senator SPECTER. Has your other son, Greg, been put in jail since Robbie's death?

Mrs. HORN. No.

Senator SPECTER. Have your other children been placed in jail?

Mrs. HORN. No.

Senator SPECTER. I am told that you have a short statement that you want to make about Robbie, and feel free to do so at this time.

Mrs. HORN. Thank you. In going through some of Robbie's papers after his death, some of his school papers, there were some things that his teacher had noted that she thought characterized Robbie's feelings about living, and some of those things I would like to say. The first ones will be statements that I have taken directly from Robbie's school papers.

I want a lot of things, but most of all I want a better life than my parents had. God meant for everyone to have some kind of talent, but a lot of people just haven't found out what it is. You have to work hard so you can do what you have hoped for.

And these are my statements: Robbie was an intelligent 15-year-old; Robbie loved to read and he wanted to write a book. Robbie had a unique spirit for living; he was strong and he was a survivor, and had survived through many stressful situations. Robbie did not survive the cold solitude of a jail cell, and hanged himself.

Senator SPECTER. Thank you, Mrs. Horn.

Mrs. HORN. Thank you.

Senator SPECTER. Greg, I would like to ask you a few questions now.

Greg, how old are you?

STATEMENT OF GREG HORN

GREG HORN. Fifteen.

Senator SPECTER. Are you Robbie's brother?

GREG HORN. Yes.

Senator SPECTER. How much younger than Robbie?

GREG HORN. Well, I was a year younger than him.

Senator SPECTER. And what grade are you in now?

GREG HORN. Ninth.

Senator SPECTER. When were you first put in jail?

GREG HORN. November—I don't know the exact day.

Senator SPECTER. November of last year?

GREG HORN. Yes.

Senator SPECTER. And how old were you at that time, 14 or 15?

GREG HORN. Fourteen.

Senator SPECTER. Why were you put in jail at that time?

GREG HORN. First time I was put in jail I was in there for skipping a day's school.

Senator SPECTER. Skipping a day's school?

GREG HORN. Yes.

Senator SPECTER. Did anybody tell you why you were put in jail for skipping a day's school?

GREG HORN. Because it's against the law not to go. It's against the law to skip school.

Senator SPECTER. It's against the law to skip school.

GREG HORN. I guess.

Senator SPECTER. What was the jail like? Can you describe it?

GREG HORN. Well, you walk in and there's just a bunch of bars and walls. When you walk in the door, there's a cell over here and then there's an office, and then you go upstairs, and the adult women and juvenile girls' cells is over here and the juvenile boys' over here, and there is a steel door, and you can talk through it

and everything, and there's bars right here, then there is a little square cell that you get put in if you make noise or write on the walls.

Senator SPECTER. Were you held in a cell with adults?

GREG HORN. Not with adults.

Senator SPECTER. Did you have any contact with adults?

GREG HORN. You could talk to the women or you could pass notes and you could get cigarettes from the women through the—like there is a steel door and then there's bars.

Senator SPECTER. Did you get cigarettes from the women?

GREG HORN. Yes.

Senator SPECTER. Do you know if your brother had contact with adults?

GREG HORN. Yes.

Senator SPECTER. How do you know?

GREG HORN. The first time he was brought into the jail, the jailer took him where the grownup men were, the adult men, and took him through, and, you know, he asked the men if they wanted any—well, I——

Senator SPECTER. Go ahead, you can say it. You have to say it so we know what it is and it's on the record and people can read it.

GREG HORN. He said do any of you men want some of this pussy. And then there were about 10 men in this 1 cell, and they said, "throw him over here, we'll break him in for Leach," this big colored dude that was in the other cell—they said, "throw him over here, you know, and we will break him in for Leach", and this one dude said "we got a whole bottle of vaseline".

And then later on they let him out during the day, and one of the trustees told Robbie that they really wouldn't do that to him, that, you know, they were just trying to scare him.

Senator SPECTER. What is the longest time you spent in jail?

GREG HORN. From 8 o'clock in the morning until about 9 o'clock at night.

Senator SPECTER. What did you do there? Did you have any books to read?

GREG HORN. There was some magazines.

Senator SPECTER. Any books?

GREG HORN. Only magazines.

Senator SPECTER. Could you get exercise?

GREG HORN. If you walked around in the cell.

Senator SPECTER. Did you have anybody to talk to?

GREG HORN. I did twice. There was another juvenile in there with me once, and then there was another juvenile with me in there one other time, too.

Senator SPECTER. What did you do all day?

GREG HORN. I slept.

Senator SPECTER. Were you frightened?

GREG HORN. Yes.

Senator SPECTER. Why were you frightened?

GREG HORN. Because they didn't let you know when you was going to get out and it scares you when they set the bars and you couldn't tell whether it was night or if it was day.

Senator SPECTER. What do you think about being held in a jail like that? Do you think it scares you from doing any thing wrong in the future?

GREG HORN. Not really.

Senator SPECTER. Do you think it makes you more likely to do something wrong in the future?

GREG HORN. Yes.

Senator SPECTER. Why?

GREG HORN. Because when you are in there, you hear about what everybody else does and all, and then you just go out and try it.

Senator SPECTER. You heard about what other people were doing that was illegal and you would go out and try it?

GREG HORN. Well, I wouldn't, but——

Senator SPECTER. You wouldn't?

GREG HORN. I don't think so.

Senator SPECTER. OK, thank you very much, Greg.

Mrs. Stapleton, I have a few questions for you, if I may. First of all, where do you live?

STATEMENT OF SHIRLEY STAPLETON, IRONTON, OHIO

Mrs. STAPLETON. Ironton, Ohio.

Senator SPECTER. And how many children do you have?

Mrs. STAPLETON. Fourteen.

Senator SPECTER. Fourteen children?

Mrs. STAPLETON. Yes.

Senator SPECTER. Congratulations. Do you work outside your home?

Mrs. STAPLETON. No. [Laughter.]

Senator SPECTER. You work inside your home. [Laughter.]

What is the age span of your children?

Mrs. STAPLETON. Well, the oldest is 18—he'll be 19 next month.

Senator SPECTER. And how old is the youngest?

Mrs. STAPLETON. Two years old, she'll be 2 years in May.

Senator SPECTER. Have you had any legal problems with any of your children other than Daytona?

Mrs. STAPLETON. No.

Senator SPECTER. Daytona was put in jail, though?

Mrs. STAPLETON. Yes.

Senator SPECTER. And when was Daytona put in jail? How old was she?

Mrs. STAPLETON. I believe 15.

Senator SPECTER. And how many times was she held in jail?

Mrs. STAPLETON. Four.

Senator SPECTER. Did she ever stay overnight?

Mrs. STAPLETON. The longest she stayed was about 5 days.

Senator SPECTER. Five days and five nights?

Mrs. STAPLETON. Yes.

Senator SPECTER. And why was she put in jail?

Mrs. STAPLETON. Three times for runaway from school.

Senator SPECTER. And how about the other time?

Mrs. STAPLETON. Well, once she took my car.

Senator SPECTER. Were you notified when she was put in jail?

Mrs. STAPLETON. Yes.
Senator SPECTER. I understand that Daytona has epilepsy, is that so?
Mrs. STAPLETON. Yes.
Senator SPECTER. Did the judge and the jailer know about her having epilepsy?
Mrs. STAPLETON. Yes.
Senator SPECTER. Did she receive the necessary medical treatment while she was in jail?
Mrs. STAPLETON. No. I took her medication for them to give to her, but she never got it.
Senator SPECTER. Were you upset about that?
Mrs. STAPLETON. Yes, I was.
Senator SPECTER. What did you do?
Mrs. STAPLETON. Well, I asked them about it, but——
Senator SPECTER. Asked who about it?
Mrs. STAPLETON. The jailer—you know, the guy that comes out and takes the medication. And, well, he said he gave it to her. But one of her bottles, I think, had enough to do her till the next day, and she never got it. I told him, I said, "You will have to get it refilled," and it had the refill on it, which they never refilled. She was in there and they never gave it to her.
Senator SPECTER. Would you describe Judge Burwell's treatment of children? Judge Burwell was the judge who put Daytona in jail?
Mrs. STAPLETON. That's right.
Senator SPECTER. How did he treat children, as you understand it?
Mrs. STAPLETON. Well, he's cruel to them.
Senator SPECTER. Why do you say that?
Mrs. STAPLETON. Well, when we first got Daytona to a hearing that we had in his court, he had another little one in there, about 12 or 13, and he ordered his uncle to paddle him in the courtroom.
Senator SPECTER. Anything else on the specifics of the judge being unkind or acting inappropriately toward any children?
Mrs. STAPLETON. Well, he talks to them like they are not human.
Senator SPECTER. What does he say?
Mrs. STAPLETON. You name it, he says it.
Senator SPECTER. No, no, you name it—what does he say?
Mrs. STAPLETON. Well, he asks them—he says, "Why do you do things like this," and they will try to explain and he will say, "Now, I don't want to hear that, you tell me why you do things like that," which they don't really know.
Senator SPECTER. Did your daughter have a seizure while she was in jail?
Mrs. STAPLETON. She had two.
Senator SPECTER. And what happened to her?
Mrs. STAPLETON. Well, they never even checked on her about it or anything.
Senator SPECTER. How serious were her seizures?
Mrs. STAPLETON. Well, when she takes seizures, they are pretty rough; she has got a scar on her eye where she took one and hurt it really badly. And after she takes them, then she's out about 2 hours—she sleeps after she takes them.
Senator SPECTER. Daytona, how old are you?

STATEMENT OF DAYTONA STAPLETON

DAYTONA STAPLETON. I am 17 right now.
Senator SPECTER. Do you go to school?
DAYTONA STAPLETON. Yes.
Senator SPECTER. What grade are you in?
DAYTONA STAPLETON. I'm a 10th grader.
Senator SPECTER. You have heard your mother describe your going to jail. Why did you go to jail?
DAYTONA STAPLETON. Because I left the school grounds.
Senator SPECTER. Left the school grounds.
DAYTONA STAPLETON. In other words, skipped school.
Senator SPECTER. And did the judge order you to go to jail?
DAYTONA STAPLETON. Yes.
Senator SPECTER. What was the jail like? Describe it for us.
DAYTONA STAPLETON. Well, it was really dirty and everything, and it didn't smell good at all and you sleep on the bunks, and they are hard; you can't always sleep on them well.
Senator SPECTER. Were there any adults in jail at that time?
DAYTONA STAPLETON. Yes, you could see what they call the drunk tank. Where I stayed I could see right across.
Senator SPECTER. See the drunk tank?
DAYTONA STAPLETON. Yes.
Senator SPECTER. Were there men there as well as women or just women or just men?
DAYTONA STAPLETON. Just men went in there.
Senator SPECTER. Just men. Could you hear them?
DAYTONA STAPLETON. Yes.
Senator SPECTER. And what did you hear?
DAYTONA STAPLETON. Well, they cussed a lot and hollered.
Senator SPECTER. Did they see you?
DAYTONA STAPLETON. Yes.
Senator SPECTER. They could.
DAYTONA STAPLETON. They could see me because they have a little window.
Senator SPECTER. Did they make any comments about you?
DAYTONA STAPLETON. They said a couple of things. I don't pay any attention to them when they are drunk like that.
Senator SPECTER. Don't pay much attention? How often did you see the jailer?
DAYTONA STAPLETON. Only time I would see him, it was like, you know, they would bring back and unlock the window to put in the trays.
Senator SPECTER. Did you see anybody else from the jail, such as counselors or any doctors?
DAYTONA STAPLETON. No.
Senator SPECTER. Did you have any books or any form of activity to keep you busy while you were there?
DAYTONA STAPLETON. No.
Senator SPECTER. Did you have any exercise?
DAYTONA STAPLETON. Just walking in the cell.
Senator SPECTER. Was there anybody in the cell with you?
DAYTONA STAPLETON. The first time I was in there, there were two little girls, that's all.
Senator SPECTER. How old were they?
DAYTONA STAPLETON. I'd say about 13 or 14.

Senator SPECTER. Why were they there?
DAYTONA STAPLETON. They got caught with pills, I think it was.
Senator SPECTER. Got caught with pills?
DAYTONA STAPLETON. Uh-huh, at school.
Senator SPECTER. How long were they there?
DAYTONA STAPLETON. They weren't there overnight; they left the same day.
Senator SPECTER. Was anyone in the jail aware of your medical problem, to your knowledge?
DAYTONA STAPLETON. Yes, my mom and dad told them about it.
Senator SPECTER. Did you explain to the people who were in charge of the jail your need for medicine?
DAYTONA STAPLETON. Well, my mom, like I said, told them and everything.
Senator SPECTER. Your mother told them. In your presence?
DAYTONA STAPLETON. No; I wasn't there when they told them, I was already in jail.
Senator SPECTER. How long did it take for you to get any assistance after you had your seizure?
DAYTONA STAPLETON. Nobody ever did come.
Senator SPECTER. What was it like having the seizure with no medicine and no help?
DAYTONA STAPLETON. Bad. I can't hardly, you know, I can't feel them coming on. I know after I have them and everything, because I can't get up for a long time.
Senator SPECTER. Were you ever told how long you would have to stay in jail?
DAYTONA STAPLETON. No, just until he says you can get out.
Senator SPECTER. Till the judge says you can get out?
DAYTONA STAPLETON. Yes.
Senator SPECTER. Were you able to see or talk to your parents while you were in jail?
DAYTONA STAPLETON. No.
Senator SPECTER. Daytona, do you think that going to jail under these circumstances is likely to make you behave properly and go to school and do the right thing so you won't have to go to jail again?
DAYTONA STAPLETON. No, because you hear the other people, and they would like you to become a bad criminal. It's abuse, putting a juvenile in jail for not doing nothing.
Senator SPECTER. You don't think that your experience in jail would be likely to put you on the straight and narrow path to do the right thing?
DAYTONA STAPLETON. No.
Senator SPECTER. Well, why not? I don't understand why not. It was a bad experience to go to jail. Didn't that shake you up, scare you, make you want not to go back?
DAYTONA STAPLETON. Yes.
Senator SPECTER. So doesn't that make you want to behave yourself?
DAYTONA STAPLETON. Yes.
Senator SPECTER. Do you think that being in a jail situation teaches you other bad things to do?
DAYTONA STAPLETON. Yes.

Senator SPECTER. Like what? Be specific, if you can.
DAYTONA STAPLETON. Like I say, you can hear all of them, you can hear the boys and you can see the boys through the vents, or like little windows with bars on them, and you just—it ain't right, you know, to stay in jail. Like I said, you know, it's not really—you can—I don't know how to say this.
Senator SPECTER. Take your time.
DAYTONA STAPLETON. Like Judge Burwell, you can lose a lot of respect for that man; nobody likes him—and speaking personally just for myself, I never will.
Senator SPECTER. OK, thank you very much, ladies and gentlemen. I very much appreciate your being here. Thank you.
I would like to move now to panel 2, Mr. John Masters, deputy warden, Chester County Prison, Westchester, Pa., and Sheriff James Turner III, Henrico County, Va.
Warden Masters, I understand you have been in charge of the treatment of Chester County Prison, Westchester, and are prepared to tell us about the successful removal of juveniles from Pennsylvania jails. We very much appreciate your being here and look forward to your testimony.

STATEMENTS OF JOHN MASTERS, DEPUTY WARDEN, CHESTER COUNTY PRISON, WESTCHESTER, PA.; AND JAMES TURNER III, SHERIFF, HENRICO COUNTY, VA.

Mr. MASTERS. Thank you. Chester County Prison, I have worked for the institution for 11 years, and up until 8 years ago we would periodically have juveniles housed in the adult correction facility. We had numerous experiences, and in most cases because the detentioner is juvenile, it is necessary to house that juvenile in usually the most secure area in your correctional facility. In most cases, almost in every case in our instance, it was in a maximum security area, because the area was usually the area that we had to house very aggressive disciplinary type inmates, homosexual types, mentally ill or people that may be experiencing mental illness, known informants.
Senator SPECTER. Warden Masters, we appreciate your having provided us with your statement which will be made a part of the record in full. You may proceed to summarize your testimony.
Mr. MASTERS. Basically, because of the experiences we had, I think that most of the institutions in the State of Pennsylvania are forced to place their juvenile people in maximum security areas, and because of this situation I find that the juveniles are being intimidated by adult inmates verbally and, on occasion, physically.
Senator SPECTER. At one time the juveniles and the adults were kept in the same area or cells or general——
Mr. MASTERS. Yes, general population. Most of your administrators in the State of Pennsylvania will keep the juveniles separated from the maximum security area or inmates in that area. However, because the cell blocks are simply separated by bars, there is no possible way of——
Senator SPECTER. Are juveniles kept separate from adults in terms of being in the same cell?
Mr. MASTERS. Yes.

Senator SPECTER. All right, but do they eat together?
Mr. MASTERS. No.
Senator SPECTER. Do they exercise together?
Mr. MASTERS. No.
Senator SPECTER. But the juveniles can see the adults?
Mr. MASTERS. That's correct.
Senator SPECTER. And they can hear the adults?
Mr. MASTERS. That's correct.
Senator SPECTER. Your facility is a detention facility prior to trial?
Mr. MASTERS. No, our facility is a prison that will house sentenced adult offenders.
Senator SPECTER. So this is after trial and conviction.
Mr. MASTERS. That's correct.
Senator SPECTER. And is it also after trial and adjudication of the juveniles?
Mr. MASTERS. No.
Senator SPECTER. Are there other facilities for the detention of adults prior to trial?
Mr. MASTERS. No. All adults committing crimes, if they cannot post bail, will be incarcerated in Chester County Prison.
Senator SPECTER. So they are in your prison both before trial, awaiting trial, if they can't post bail, and after trial when they are sentenced.
Mr. MASTERS. Correct.
Senator SPECTER. And how about as to juveniles? Are juveniles detained there in advance of their juvenile court hearings?
Mr. MASTERS. Up until 8 years ago, juveniles were. However, Chester County went into an agreement with the neighboring county and developed a regional juvenile detention center.
Senator SPECTER. How many counties are involved in that?
Mr. MASTERS. We have two counties.
Senator SPECTER. What counties?
Mr. MASTERS. Delaware County and Chester County.
Senator SPECTER. Delaware and Chester Counties have juvenile detention facilities.
Mr. MASTERS. That's correct.
Senator SPECTER. No longer are juveniles detained awaiting their hearing, mixed with adults.
Mr. MASTERS. No; we had an incident where our warden approached the prison board which is comprised of numerous people including the president-judge of the common pleas in Chester County. He impressed upon the judge that it was not advisable, it was very poor institutional administration to house juveniles. Because of that——
Senator SPECTER. After juveniles are adjudicated delinquent, which is what they are under Pennsylvania law—they are not convictions—are they then placed in your institution if the judge decides to give them a period of confinement?
Mr. MASTERS. No; only if they are certified as adults and——
Senator SPECTER. So juveniles and adults are totally separated, both as to detention and after adjudication of delinquency, unless the juveniles are tried as adults.
Mr. MASTERS. That's correct.

Senator SPECTER. How did you achieve this status? What role did the Federal Government play?
Mr. MASTERS. Well, 8 years ago, when we had this changeover, I don't think that our county had the Federal Government in mind. However, there are incentives, financial incentives, that would impress upon counties to——
Senator SPECTER. And what are those incentives?
Mr. MASTERS. Well, if in fact you have a juvenile detention center, you receive Federal funding.
Senator SPECTER. How much Federal funds has Chester County received, if you know?
Mr. MASTERS. I could not tell you, I don't have that information.
Senator SPECTER. In your written testimony, you referred to an incident where four adult prisoners made an effort to attack a juvenile. That's a very striking circumstance. Would you tell us what happened in that situation?
Mr. MASTERS. Well, the four State prisoners tried to incite a riot in a neighboring county and while their court case was being convened, we were holding them for safekeeping in our maximum security area. The neighboring county, of course, didn't want to house them because they had quite a bit of problems with them initially. The four people, all serving life, plus other sentences running consecutively to their life, because of convictions by assaulting correctional staff, fellow inmates—three of the State prisoners created an incident in our day room; the juvenile was being housed and was locked up in his cell at the time. The fourth and remaining State prisoner remained on the tier outside the juvenile's cell. He did get ahold of a broom, he did depress the electric button that electrically controlled the gate of the juvenile's cell, and if it had not been for the response of the correctional officers because of the situation in the day room and the screams of the juvenile, I think it is quite obvious that this juvenile would have been raped. The State prisoner had exhibited aggressive sexual tendencies while he had been incarcerated in the State facility and had done so at our facility. That is one reason why we had him placed in maximum security.
Senator SPECTER. So you were able to prevent that as a result of actions taken by the correctional officers?
Mr. MASTERS. Yes.
Senator SPECTER. Warden Masters, what cause-and-effect relationship, if any, do you think there is between juveniles committing juvenile crimes and their prior association with adult offenders in prison?
Mr. MASTERS. Well, I don't feel that any juvenile, other than being certified as an adult and convicted as an adult, should be housed in an adult correctional facility.
Senator SPECTER. Well, do you think there is a causal connection between the juvenile later committing more juvenile offenses or, when he becomes an adult, committing adult crimes as a result of being incarcerated with adults?
Mr. MASTERS. I think so, yes.
Senator SPECTER. Why do you feel that way?
Mr. MASTERS. We have inmates 18 years of age or older. The difference between a 17-year-old and an 18-year-old, some people may

discuss at length. I see that an 18-year-old person at our facility can be very much impressed upon by the 25- or 26-year-old person that has been arrested and incarcerated on numerous occasions. Because prisons, the way they are designed, it enables inmates the opportunity during recreational times to mingle, to speak to each other, and, unfortunately, in many prisons throughout the country there are limitations to the rehabilitative programing available to them and it affords them a lot of free time.

Of course, juveniles are more easily impressed. Most of your people that are in adult facilities talk a good game, but in most cases aren't very successful people.

Senator SPECTER. You think if the juveniles associate with the adult criminals they learn the tricks of the trade to commit crimes when they get out?

Mr. MASTERS. Yes, I believe that.

[The prepared statement of Mr. Masters follows:]

PREPARED STATEMENT OF JOHN MASTERS

CHESTER COUNTY PRISON IS LOCATED IN THE SOUTH-EAST SECTION OF THE STATE OF PENNSYLVANIA. CHESTER COUNTY IS ONE OF FOUR COUNTIES SURROUNDING THE CITY OF PHILADELPHIA. IT IS A THIRD CLASS COUNTY WITH A POPULATION OF APPROXIMATELY 320,000 RESIDENTS. CHESTER COUNTY IS ONE OF SIXTY-SEVEN (67) COUNTIES THAT COM-PRISE THE COMMONWEALTH OF PENNSYLVANIA.

THE CHESTER COUNTY PRISON FACILITY WAS DEDICATED IN 1959 AND WAS CONSTRUCTED WITH THE INTENTION OF HOUSING UP TO 150 INMATES.

FIFTEEN YEARS AFTER THE DEDICATION, THE CORRECTIONAL FACILITY STARTED TO FEEL THE BURDEN OF OVERCROWDING AND AFTER NUMEROUS SURVEYS, AN EXPANSION OF THE EXISTING FACILITY COMMENCED IN 1981 WHICH WILL ENABLE CHESTER COUNTY PRISON TO HOUSE UP TO 500 PERSONS, AS WELL AS WITH SUITABLE TREATMENT AND RECREATIONAL AREAS. AS YOU KNOW, ONLY 3% OF JAILS NATIONALLY HOUSE 250 OR MORE INMATES.

I THINK THAT IT IS IMPORTANT TO BRIEFLY TOUCH ON THE ADMINISTRATIVE STRUCTURE THAT THE TYPICAL WARDEN OR SUPERINTENDENT OF A COUNTY FACILITY IS ANSWERABLE TO. ALL COUNTY PRISONS HAVE A BOARD OF PRISON INSPECTORS WHICH IS COMPRISED OF THE COUNTY COMMISSIONERS, PRESIDENT JUDGE OF THAT COUNTY, (COMMON PLEAS COURT), DISTRICT ATTORNEY, SHERIFF, AND THE CONTROLLER. THE WARDEN WILL, ON A MONTHLY BASIS, MEET WITH THE BOARD AND APPRISE THEM OF INSTITUTIONAL WORKINGS AND IMPRESS UPON THIS GROUP ANY IMPENDING AND FORESEEABLE PROBLEM AREAS. FROM THESE MEETINGS, ADMINISTRATIVE DIRECTION AND SUPPORT WILL RESULT.

AS I HAVE ALREADY STATED, OVERCROWDING OF CORRECTIONAL FACILITIES IN THE STATE OF PENNSYLVANIA, ON A COUNTY AND STATE LEVEL, IS EVER PRESENT. MANY OF THE FACILITIES

HAVE BEEN FORCED TO DOUBLE OR TRIPLE INMATES IN CELLS DESIGNED FOR SINGLE OCCUPANCY, AND AS YOU KNOW, THE SUPREME COURT IN 1982 RULED THAT DOUBLE CELLING DID NOT CONSTITUTE GROUNDS FOR CRUEL AND UNUSUAL PUNISHMENT.

AS FOR THE CRITERIA CONCERNING WHO IS TO BE PLACED IN AN ADULT CORRECTIONAL FACILITY, THIS PERSON MUST BE EIGHTEEN (18) YEARS OF AGE OR OLDER OR, IF UNDER EIGHTEEN, MUST BE CERTIFIED AS AN ADULT BY THE COURT OF COMMON PLEAS. THE MINIMUM STANDARDS FOR CORRECTIONAL FACILITIES AS IMPOSED BY THE PENNSYLVANIA BUREAU OF CORRECTION INDICATES THAT JUVENILES SHOULD NOT BE HOUSED IN ADULT CORRECTIONAL FACILITIES. HOWEVER, THIS DOES NOT MEAN THAT THERE ARE NO JUVENILES BEING PRESENTLY HOUSED IN COUNTY PRISONS IN THE STATE OF PENNSYLVANIA. MANY OF YOUR RURAL COUNTIES WILL HAVE REGIONAL CORRECTIONAL FACILITIES, THESE BEING QUITE SMALL IN SIZE AS WELL AS LACKING IN CUSTODIAL SUPERVISION OF THE INMATE POPULATION, AND IN MOST CASES, WHEN JUVENILES ARE CONCERNED, RESULTS IN SERIOUS PROBLEMS.

UP UNTIL EIGHT (8) YEARS AGO, JUVENILES WOULD BE PERIODICALLY HOUSED AT CHESTER COUNTY PRISON. THE EXPERIENCES WE HAD CONCERNING JUVENILES WERE NOT UNLIKE WHAT OTHER COUNTY CORRECTIONAL FACILITIES CONTENDED WITH. IN MOST CASES, BECAUSE THE DETENTIONER IS A JUVENILE, IT WAS NECESSARY TO PROVIDE THE MOST STRINGENT SECURITY AVAILABLE TO ASSURE THAT THE ADULT POPULATION DID NOT COME IN CONTACT WITH THE JUVENILE. THIS RESULTED IN THE JUVENILE BEING PLACED IN A MAXIMUM SECURITY AREA THAT WAS DESIGNED FOR THE INMATE WHO IS AN AGGRESSIVE DISCIPLINARY PROBLEM, SEXUAL DEVIANT, MENTALLY ILL, AN ESCAPE RISK, OR A KNOWN INFORMANT. THE TYPICAL MAXIMUM SECURITY AREA AFFORDS SINGLE CELLING OF THE INMATES WITH A COMMON DAYROOM OR RECREATIONAL AREA. TO ENABLE A JUVENILE THE SAME TREATMENT WOULD REQUIRE ALL ADULT

INMATES OF THAT CELL BLOCK AREA TO BE SECURED IN THEIR CELLS WHICH IN MOST CASES, CREATED A BURDEN ON THE ADMINISTRATION BECAUSE OF THE NECESSITY TO DEVELOP A NEW DAILY OPERATIONAL PROCEDURE, THEN MULTIPLY THIS FACTOR WITH MEDICAL SICK CALL, INMATE VISITATION, COUNSELLING SERVICES, LIBRARY PRIVILEGES, FEEDING, AND THE INABILITY OF THE JUVENILE TO SECURE AN INSTITUTIONAL JOB. IN GENERAL, BECAUSE THE JUVENILE WAS THE MINORITY, THEY WOULD BE LOCKED UP IN THEIR CELLS ALL BUT A FEW HOURS EACH DAY. ANOTHER FACTOR IS THAT YOU MUST REALIZE THAT IT IS IMPOSSIBLE TO ELIMINATE CONVERSATION BETWEEN INMATES CELL TO CELL OR FROM TIER BLOCK TO TIER BLOCK. BASICALLY WHAT RESULTS IS THE JUVENILE IS CONSTANTLY VERBALLY ASSAULTED, PROPOSITIONED, AND INTIMIDATED BY THE ADULT INMATES COMMON TO THE MAXIMUM SECURITY AREA.

AS I INDICATED EARLIER, THE AVERAGE CORRECTIONAL OFFICER IS TRAINED AND GEARED TO DEAL WITH THE ADULT INMATE. TO BE THRUST INTO A SITUATION THAT REQUIRES JUVENILE SUPERVISION, IS UNFAIR AND NOT ADVISABLE. THERE ARE ALWAYS SITUATIONS AT SOMETIME OR SOME DAY THAT ARE IMPOSSIBLE TO OBSERVE ALL OF THE INMATES ALL OF THE TIME, PARTICULARLY WHEN ONE IS DEALING WITH MANIPULATIVE DEVIANTS THAT WILL CONSPIRE TO CREATE DIVERSIONARY SKITS TO ENABLE ONE OR MORE OF THESE FELLOW INMATES TO "GET OVER". A SITUATION SUCH AS THIS TOOK PLACE AT CHESTER COUNTY PRISON. WE WERE REQUESTED BY A NEIGHBORING COUNTY IN CONJUNCTION WITH THE PENNSYLVANIA BUREAU OF CORRECTION TO HOLD FOUR STATE PRISONERS WHILE THEIR TRIAL FOR INCITING A PRISON RIOT CONVENED. ALL FOUR OF THESE INMATES WERE SERVING LIFE PLUS FOR HOMICIDES AND SUBSEQUENT CONVICTIONS FOR ASSAULTS ON FELLOW INMATES AND CORRECTIONAL STAFF, WHILE SERVING THEIR LIFE SENTENCES. WE WERE HOUSING A JUVENILE IN THE MAXIMUM SECURITY AREA IN A CELL CLOSEST TO THE CORRECTIONAL OFFICERS' CONTROL ROOM. IN THIS

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SAME AREA, THE FOUR STATE PRISONERS PLUS THE NORMAL CONTINGENT OF MAXIMUM SECURITY INMATES WERE HOUSED. ONE EVENING WHILE THE INMATES HAD BEEN RELEASED FROM THEIR CELLS TO GO TO THE DAYROOM FOR RECREATION, (THE JUVENILE WAS LOCKED IN HIS CELL), THREE OF THE STATE PRISONERS TOOK OVER THE DAYROOM AND CREATED A FIGHT AND BARRICADED THE DAYROOM DOOR WHILE THE FOURTH REMAINED ON THE TIER DIRECTLY OUTSIDE OF THE JUVENILE'S CELL. MEANTIME, THE CORRECTIONAL OFFICER OBSERVED THE DAYROOM PROBLEM AND PROCEEDED TO CALL FOR HELP. AT THIS SAME TIME ON THE TIER, THE FOURTH STATE PRISONER GOT A BROOM AND PUT THE HANDLE THROUGH THE CONTROL ROOM BARS AND DEPRESSED THE BUTTON THAT ACTIVATES THE ELECTRIC LOCK ON THE JUVENILE'S CELL DOOR. IF IT HAD NOT BEEN FOR THE HELP RESPONDING TO THE INITIAL CALL FOR ASSISTANCE, PLUS THE SCREAMS OF THE JUVENILE, IT IS OBVIOUS THAT THE STATE PRISONER WOULD HAVE RAPED THE JUVENILE.

SHORTLY AFTER THE ABOVE INCIDENT TOOK PLACE, WARDEN THOMAS G. FRAME IMPRESSED UPON THE PRISON BOARD THAT TO CONTINUE TO HOUSE JUVENILES AT THE PRISON WOULD JEOPARDIZE INSTITUTIONAL SECURITY AND DAILY OPERATIONS.

BECAUSE OF THIS PROPOSAL, CHESTER COUNTY DEVELOPED AN AGREEMENT WITH A NEIGHBORING COUNTY TO REGIONALIZE THEIR JUVENILE DETENTION CENTER. THE AGREEMENT REQUIRED A DRASTIC INCREASE IN EXPENDITURES FOR THE HOUSING OF JUVENILES, HOWEVER THE COUNTY'S STANCE WAS THAT IT WAS THEIR RESPONSIBILITY FOR THE SAFEKEEPING OF JUVENILES. MANY OF THE NEIGHBORING COUNTIES FOLLOWED BY APPEALING TO THEIR RESPECTIVE PRISON BOARDS TO DEVELOP A SIMILAR SYSTEM FOR THE HOUSING OF JUVENILE OFFENDERS.

I WOULD LIKE TO ADD THAT CHESTER COUNTY PRISON, EVEN THOUGH IT HAD DISCONTINUED HOUSING OF JUVENILES, STILL ACCEPTED ANY PRODUCTIVE PROGRAMS THAT WERE BENEFICIAL TO JUVENILES IN CONCURRENCE WITH THE JUVENILE

JUSTICE SYSTEM. IN 1979, CHESTER COUNTY PRISON INITIATED A YOUTH AWARENESS PROJECT. THIS PROJECT COORDINATED COUNTY POLICE DEPARTMENTS, SCHOOL DISTRICTS, AND CHESTER COUNTY JUVENILE PROBATION. REFERRALS WERE RECEIVED FROM THESE AGENCIES CONCERNING STATUS OFFENDERS AND WAYWARD YOUTHS THAT WERE JUST A BRUSH AWAY FROM ARREST. THESE APPLICATIONS WOULD BE SCREENED, PARENTAL RELEASES ACQUIRED, AND TRANSPORTATION SCHEDULED TO THE PRISON BY THE REFERRING AGENCY. UPON ARRIVAL AT THE PRISON, THE YOUTH WOULD BE GIVEN A TOUR OF THE INSTITUTION BY A SELECTED INMATE UNDER THE SUPERVISION OF A CORRECTIONAL OFFICER. FOLLOWING THE TOUR, THE INMATE WOULD TALK TO THE YOUTH FOR APPROXIMATELY ONE HOUR, GENERALLY EXPOUNDING ON JAIL LIFE AND HOW HIS LIFE LED HIM TO INCARCERATION.

THE SECOND ASPECT OF THE PROGRAM PROVIDED THE REFERRING AGENCY THE OPPORTUNITY TO TOUR THE FACILITY AND BETTER UNDERSTAND THE CORRECTIONAL STRUCTURE. EXCELLENT INTER-DEPARTMENTAL COMMUNICATION RESULTED.

AFTER EACH YOUTH WENT THROUGH THE PROGRAM, A SURVEY WOULD BE MAILED TO THE PARENTS INQUIRING ABOUT ANY ATTITUDINAL CHANGES, ETC. EVENTUALLY WE WERE GETTING REQUESTS FROM NUMEROUS COUNTY GROUP HOMES AS WELL AS OTHER COUNTY YOUTH PROGRAMS. BECAUSE OF THE SIZE AND TIME THAT WAS NEEDED TO PROPERLY RUN THE PROJECT, CHESTER COUNTY PRISON SUBMITTED A GRANT FOR L.E.A.P. FUNDS. IN THE LATTER PART OF 1980 UNFORTUNATELY, QUITE A BIT OF CONTROVERSEY WAS BEING AIRED CONCERNING A SIMILAR PROGRAM BEING RUN AT RAHWAY STATE PRISON IN NEW JERSEY. BECAUSE OF THIS, THE PENNSYLVANIA GOVERNOR'S JUSTICE COMMISSION REFUSED TO ACCEPT THE GRANT. SHORTLY THEREAFTER, WE WERE FORCED TO DISCONTINUE BECAUSE OF STAFFING SHORTAGES. EVEN TO THIS DAY WE RECEIVE CALLS FROM COUNTY

AGENCIES INQUIRING AS TO THE POSSIBILITY OF PLACING A YOUTH FOR THE AWARENESS PROJECT.

IN CLOSING, CHESTER COUNTY'S STANCE IS THAT JUVENILES SHOULD NOT BE PLACED IN ADULT CORRECTIONAL FACILITIES UNLESS CERTIFIED AS ADULTS, AND AS IMPORTANT AS COUNTY PRISONS ARE, SO SHOULD EACH COUNTY TAKE THE APPROPRIATE MEASURES TO ASSURE THEIR CITIZENS THAT JUVENILE OFFENDERS ARE NOT ARBITRARILY RELEASED TO THE COMMUNITY BECAUSE OF THE LACK OF APPROPRIATE JUVENILE DETENTION FACILITIES.

AS A MEMBER OF THE PENNSYLVANIA PRISON WARDENS ASSOCIATION, COMPRISED OF PROFESSIONAL CORRECTIONAL ADMINISTRATORS, WE WOULD ENCOURAGE LEGISLATION TO FORBID THE HOUSING OF JUVENILES IN ADULT CORRECTIONAL FACILITIES.

Senator SPECTER. Let's turn to Sheriff James Turner from Henrico County. I am advised, Mr. Turner, that since your election in 1979 you have been managing a very extensive budget—some $3 million a year—and a staff of 128 comprising the second largest county jail in Virginia. We very much appreciate your being with us today, and we appreciate your having provided us with your statement, which will be made a part of the record. Will you please summarize the highlights of your statement at this time. We ask you to summarize the highlights to leave the maximum amount of time for questions.

STATEMENT OF SHERIFF JAMES H. TURNER, III

Mr. TURNER. I think one of the most important things is that jails are primarily designed to hold adults awaiting trial and serving short sentences. Local jails nationally, not only in Virginia but I think everywhere, are traditionally underfunded and understaffed. It is bad enough with the adult prisoners to be in that situation, but juveniles because normally of their lack of judgment and foresight require more supervision than adults.

Our situation is one of the better situations in the Nation, but I consider it to be substandard. When you have 1 individual trying to guard 20 to 25 juvenile inmates, it's very difficult. I heard earlier one of the witnesses talk about classification. We have an extensive classification system for adult prisoners. For the juvenile offenders, it's very difficult. We have three housing areas. We can place them in one of the two dayroom areas or in isolation. And you cannot properly classify inmates in just three separate housing areas.

Senator SPECTER. You just have one facility in your county for holding juveniles and adults. You don't have separate facilities.

Mr. TURNER. We have a juvenile detention home which I do not run. One of the problems is that it appears that whenever they cause some type of problem, although their facility is as secure as mine, the juveniles are then ordered into the county jail.

In 1982 I housed an average daily population of 21 juveniles. I have the capacity to hold 23 juveniles.

Senator SPECTER. Twenty-three juveniles?

Mr. TURNER. Juveniles. A total of 224 inmates.

Senator SPECTER. And you have facilities which are separate for the juveniles?

Mr. TURNER. We have a separate part of the jail.

Senator SPECTER. Are they mixed with the adults at all for any purpose—eating or anything?

Mr. TURNER. No.

Senator SPECTER. Can they see or hear the adults?

Mr. TURNER. No.

Senator SPECTER. And you hold them prior to trial?

Mr. TURNER. Prior and after trial.

Senator SPECTER. So after the trial, are they then committed back to your institution, if the judge decides that is an appropriate way to handle them?

Mr. TURNER. Right. Our average stay was 58 days.

Senator SPECTER. How about the adult prisoners, are they detained prior to trial?

Mr TURNER. About 50 percent of our population is pretrial. Thirty percent of our juvenile population is for violent offenders; 70 percent were nonviolent.

Senator SPECTER. What is the average length of time that somebody spends in your jail before trial?

Mr. TURNER. It varies. Our average length of stay for the total inmate population is 12 days; the juveniles are longer.

Senator SPECTER. Well, what is the maximum sentence that a judge can impose and have the person sent to your institution?

Mr. TURNER. Supposedly it's 12 months. Anything above 12 months they should go on to the State institutions. Unfortunately, with the overcrowding situation in the State penal systems, sometimes they are backlogged and they may stay as long as 2 years. That is normally not the case with juveniles. It is with adults.

Senator SPECTER. Sheriff Turner, on the same question which I had asked Deputy Warden Masters, what is your opinion, if you have one, on the causal connection between juveniles being mixed with adult criminals and later criminal offenses by those juveniles or later offenses by those juveniles after they have become adults?

Mr. TURNER. I think there is a correlation. When you mix juveniles with adults, you then change their peer group, and juveniles are very susceptible to peer pressure. You have changed their associations—and they associate with adult inmates once they are released. Normally, most juveniles or adults, are released in a short time, and they pick up friendships with these people and they develop a different peer group than what they had originally.

Senator SPECTER. Have you ever seen any specific cases where a juvenile associated with an adult criminal and later committed a crime with that adult after the juvenile left the prison?

Mr. TURNER. I can only recall one instance where a juvenile was in the jail, he associated with a different group. After the juvenile that he met in jail became an adult, he was later arrested and placed in the adult section of the jail. He contacted this other juvenile, who had since been released, and attempted to have him smuggle a weapon into the jail to him. That's the only specific case I can recall right off the top of my head.

Senator SPECTER. What were the results of the Virginia task force report on the jailing of juveniles?

Mr. TURNER. Well, one of the things that they did find is that there is extensive criteria for the jailing of juveniles by statute in Virginia, but even with those criteria 11 Virginia jails held juveniles who were either underage or charged with a status offense.

Another part of the criteria for holding juveniles is meeting the minimum standards which are set for holding juvenile offenders. Even though it is a violation of the standard to hold juveniles in an isolation section, 14 Virginia jails routinely held juveniles in isolation. They did come out with a recommendation for a philosophical statement directed at the department of corrections, hoping it for adoption. I would read that if you want, or just put it in the record.

Senator SPECTER. How long is it?

Mr. TURNER. It's not too long, about a paragraph.

Senator SPECTER. Please read it.

Mr. TURNER [reading]:

The recommendation for a philosophical statement for the corrections system in Virginia was that no juvenile except those sentenced by a circuit court as an adult should be confined for any reason in any adult detention facility. However, in that it appears that the present resources of the Virginia juvenile justice system cannot fully and adequately accommodate all of those youths now held in jail in the Commonwealth, a goal should be established to modify and/or increase the facilities and the programs of the State's juvenile justice system whereby no juvenile would require placement in jail. The attainment of this goal would result in juveniles being handled within the system specifically designed for their needs. In the interim period, specific efforts should be focused on reducing the numbers of juveniles presently maintained in jail by modifying the policies, practices and statutes.

[The prepared statement of Mr. Turner follows:]

PREPARED STATEMENT OF JAMES H. TURNER, III

MR. CHAIRMAN:

I WANT TO THANK YOU FOR ALLOWING ME THE OPPORTUNITY TO PRESENT MY VIEWS ON THIS MOST IMPORTANT ISSUE. I WOULD LIKE TO BEGIN BY SAYING THAT I ENTHUSIASTICALLY SUPPORT THE REMOVAL OF JUVENILES FROM THE NATION'S JAILS. I WOULD ALSO LIKE TO SAY THAT THE VIRGINIA STATE SHERIFFS' ASSOCIATION HAS GONE ON RECORD AS OPPOSING THE JAILING OF JUVENILES.

AMERICA'S FUTURE DEPENDS ON THE DIRECTION WE GIVE OUR YOUTH. I DO NOT BELIEVE THAT WE CAN REDIRECT THE LIVES OF OUR YOUTH BY INCARCERATING THEM IN LOCAL JAILS WHICH ARE NEITHER STAFFED NOR EQUIPPED TO HANDLE JUVENILE OFFENDERS. JAILS ARE DESIGNED PRIMARILY TO HOLD ADULTS AWAITING TRIAL AND THOSE SERVING SHORT TERM SENTENCES. AMERICA'S JAILS ARE GREATLY OVERCROWDED IN URBAN AREAS. FORTY-SEVEN PERCENT (47%) OF THE LOCAL JAILS WERE BUILT OVER 30 YEARS AGO. HALF OF AMERICA'S JAILS HAVE NO MEDICAL FACILITIES. THREE-FOURTHS (3/4) OF AMERICA'S JAILS HAVE NO REHABILITATION OR TREATMENT SERVICES. AT LEAST 10% OF THE NATION'S JAILS ARE CURRENTLY UNDER FEDERAL COURT ORDER BECAUSE OF POOR CONDITIONS.

IN 1979, VIRGINIA RANKED TENTH NATIONALLY IN THE INCIDENCE OF SUICIDE OF TOTAL JAIL POPULATION. IN 1979, NATIONALLY THE RATE OF SUICIDE PER 100,000 YOUTHS IN JAIL IS 12.5 COMPARED WITH THE 1.6 RATE PER 100,000 OF SUICIDE IN JUVENILE DETENTION CENTERS. NATIONALLY, THE JUVENILE SUICIDE RATE IN JAIL IS FIVE (5) TIMES THE GENERAL JUVENILE POPULATION.

THERE HAVE BEEN APPROXIMATELY 4,000 JUVENILES COMMITTED TO JAILS IN VIRGINIA EACH YEAR SINCE 1978. IN VIRGINIA, JUVENILES MAY BE HELD IN JAIL UNDER THE FOLLOWING CRITERIA:

1. THE YOUTH MUST BE 15 YEARS OF AGE OR OLDER.
2. THE YOUTH MUST BE CHARGED WITH OR CONVICTED OF A DELINQUENT ACT.
3. THE YOUTH MUST BE HELD ENTIRELY SEPARATE FROM ADULTS.
4. THERE MUST BE ADEQUATE SUPERVISION OF THE YOUTH.
5. THE JAIL MUST BE CERTIFIED AND APPROVED BY THE DEPARTMENT OF CORRECTIONS.

IN ADDITION, THESE CONDITIONS ARE APPLICABLE ONLY IF:

A. SPACE IS NOT AVAILABLE IN A DETENTION CENTER, APPROVED FOSTER HOME, CHILD WELFARE FACILITY, OR
B. THE JUVENILE HAS PREVIOUSLY BEEN BEFORE THE JUVENILE COURT AND HAS BY WAIVER OR TRANSFER BEEN TREATED AS AN ADULT IN CIRCUIT COURT, OR
C. THE JUVENILE IS CHARGED WITH CLASS ONE, TWO OR THREE FELONY AND THE JUDGE OR INTAKE OFFICER DETERMINES THAT THE ABOVE MENTIONED FACILITIES ARE NOT SUITABLE OR
D. THE DETENTION HOME IS AT LEAST 25 MILES AWAY FROM THE PLACE WHERE THE JUVENILE IS TAKEN INTO CUSTODY AND IS LOCATED IN ANOTHER COUNTY, HOWEVER, THE STAY IN JAIL CANNOT EXCEED 72 HOURS.

EVEN WITH THESE EXTENSIVE CRITERIA FOR THE JAILING OF JUVENILES, IN FY 1979-80, ELEVEN (11) VIRGINIA JAILS HELD JUVENILES WHO WERE UNDER-AGE OR CHARGED WITH A STATUS OFFENSE. VIRGINIA HAS MINIMUM STANDARDS FOR LOCAL JAILS, PART OF WHICH DEALS WITH THE JAILING OF JUVENILES. STANDARD 6.04 STATES "ISOLATION CELLS OR SEGREGATION WITHIN A CELLBLOCK SHOULD BE UTILIZED ONLY AS A PROTECTIVE OR DISCIPLINARY MEASURE." THERE WERE FOURTEEN (14) VIRGINIA JAILS THAT ROUTINELY UTILIZES ISOLATION CELLS TO CONFINE JUVENILES FOR THE PURPOSE OF SEPARATION, IN VIOLATION OF THE STANDARD. VIRGINIA'S DEPARTMENT OF CORRECTIONS JAILING OF JUVENILES TASK FORCE ISSUED A PRELIMINARY REPORT IN 1982 AND MADE THE FOLLOWING RECOMMENDATIONS:

<u>RECOMMENDATION - PHILOSOPHICAL STATEMENT</u>

NO JUVENILE EXCEPT THOSE SENTENCED BY A CIRCUIT COURT AS AN ADULT SHOULD BE CONFINED FOR ANY REASON IN ANY ADULT DETENTION FACILITY. HOWEVER, IN THAT IT APPEARS THAT THE PRESENT RESOURCES OF THE VIRGINIA JUVENILE JUSTICE SYSTEM CANNOT FULLY AND ADEQUATELY ACCOMODATE ALL OF THOSE YOUTH NOW HELD IN JAIL IN THE COMMONWEALTH, A GOAL SHOULD BE ESTABLISHED TO MODIFY AND/OR INCREASE

> THE FACILITIES AND PROGRAMS OF THE STATE'S JUVENILE JUSTICE SYSTEM WHEREBY NO JUVENILE WOULD REQUIRE PLACEMENT IN JAIL. THE ATTAINMENT OF THIS GOAL WOULD RESULT IN JUVENILES BEING HANDLED WITHIN THE SYSTEM SPECIFICALLY DESIGNED FOR THEIR NEEDS. IN THE INTERIM PERIOD, SPECIFIC EFFORTS SHOULD BE FOCUSED ON REDUCING THE NUMBERS OF JUVENILES PRESENTLY MAINTAINED IN JAIL BY MODIFYING POLICY, PRACTICES AND STATUTES TO THE END OF REACHING THIS GOAL.

HENRICO COUNTY'S JAIL HOUSES AN AVERAGE DAILY POPULATION OF 224. OF THAT POPULATION, THE AVERAGE DAILY JUVENILE POPULATION IS 21, OR 9.5% OF THE TOTAL POPULATION. IN 1982 I HOUSED 133 JUVENILES WITH AN AVERAGE STAY OF 58 DAYS. OF THE 133 JUVENILES, ONLY 30% OR 39 WERE JAILED FOR VIOLENT CRIMES. SEVENTY PERCENT (70%), OR 94, WERE HOUSED FOR NON-VIOLENT CRIMES SUCH AS DRUNK IN PUBLIC, TRAFFIC OFFENSES, SHOPLIFTING, ETC. DURING 1982, THERE WERE 43 INCIDENTS OF JUVENILES INJURED FROM FIGHTS OR ASSAULTS BY OTHER JUVENILES. THERE WERE THREE INCIDENTS WHERE JUVENILES ASSAULTED A JAIL EMPLOYEE. THERE WERE 26 INCIDENTS WHERE JUVENILES REFUSED TO OBEY ORDERS BY A STAFF MEMBER AND WERE CHARGED ADMINISTRATIVELY. THERE WERE 20 INCIDENTS OF JUVENILES VERBALLY THREATENING JAIL EMPLOYEES. THERE WERE FIVE (5) INCIDENTS IN WHICH JUVENILES HAD TO BE PHYSICALLY RESTRAINED. OUR JUVENILE SECURITY STAFF CONSISTS OF ONE DEPUTY GUARDING 20-25 JUVENILE INMATES. IN

COMPARISON TO MOST JAILS, THAT'S BETTER THAN MOST. JUVENILE DETENTION HOMES AND ALTERNATIVES TO INCARCERATION ARE BETTER SUITED TO THE NEEDS OF JUVENILES. THERE ARE JUVENILES WHO MUST BE HOUSED IN A SECURE FACILITY FOR THE PROTECTION OF THE PUBLIC OR FROM THEMSELVES. BUT MOST DO NOT. MANY ARGUE THAT THERE IS NOT ENOUGH ROOM IN THESE JUVENILE FACILITIES FOR THESE YOUTHS. I DISAGREE. IF SENSIBLE SCREENING TAKES PLACE, THESE YOUTHS COULD BE PLACED IN ALTERNATIVE FACILITIES AND THERE WOULD STILL BE ROOM IN JUVENILE FACILITIES FOR THE VIOLENT OFFENDERS.

THANK YOU.

REFERENCES: * MINIMUM STANDARDS FOR LOCAL JAILS
* JAILING OF JUVENILES TASK FORCE PROGRESS REPORT/JUNE 1982
* JUVENILES IN JAIL IN VIRGINIA;
AN ASSESSMENT OF THE IMPACT OF REMOVING JUVENILES FROM LOCAL JAILS/AUGUST 1981.
* HENRICO SHERIFF'S ANNUAL REPORT - 1982.

Senator SPECTER. Sheriff Turner and Warden Masters, I want to ask each of you to comment on the proposition that I am about to state, and I am going to ask Mr. Brown and Mr. Shepherd to do the same on the next panel. My proposition concerns the possibility of success in reducing crime in this country if we would adopt an approach wherein an effort was made to identify juveniles at some critical point on the path of crime to try to apply some rehabilitative therapy to the juveniles. Beyond that point, when you are dealing with adult offenders on their first or second offenses, rehabilitation efforts would likewise be made so that we do not release men and women from jails as functional illiterates without a trade or skill; otherwise their alternatives, when back on the street, would be to go back to a life of crime. If, in the failing of these efforts to provide or meaningful rehabilitation for adult offenders on their first or second offenses, when these adults graduate into a category of career criminals—which would be three or more major felonies—robberies, burglaries—they ought to be held for very long-term periods of incarceration, up to life, under habitual offender statutes which are present in some 44 of our States. If this sort of structure could be brought into play as a result of increased resources, either at the State and/or Federal level, what impact do you think this might have on the incidence of violent crime in this country? Sheriff, would you like to take a swing at that?

Mr. TURNER. Mr. Chairman, I believe that criminals can be identified at a very young age, and I think they need to be identified at

early elementary school age, and I think that if this approach is taken it would greatly reduce violent crime in this country. Once an adult has shown the inability to integrate in our society through his habitual violent behavior, he needs to be removed from society and removed permanently.

I think that once a person reaches a certain age and he continues to show a pattern of violent behavior, then you have no alternative but to remove him from society.

But I do believe that if you begin with the youth and start at a very early age, I think you can identify that they have a potential for these problems and can prevent them.

Senator SPECTER. What clues have you seen from your own experience to identify those criminal tendencies in youngsters at an early age?

Mr. TURNER. I think school behavior is a very good indicator. I think his integration within his family life—lot of them are allowed to drop out of educational programs—they need to have programs that are adapted for the individual, in some cases; I think there are some people who are not able to—maybe through an intellectual lacking of some sort or disability, that cannot meet some of the criteria of a normal school.

Senator SPECTER. The National Commission on Criminal Justice Standards and Goals in 1972 and 1973 estimated that if there were a comprehensive program against crime on the outline that I just presented to you, then violent crime could be reduced by as much as 50 percent in this country.

Do you have an opinion on the attainment of that kind of a goal, Sheriff Turner?

Mr. TURNER. I think it's very realistic.

Senator SPECTER. Deputy Warden Masters, would you care to comment on that general approach to reduce violent crime in America?

Mr. MASTERS. I agree with Sheriff Turner concerning the juveniles. I think that education, vocational training, has a great deal to do with that. Certainly adults, in my experience, talking to administrators throughout the State of Pennsylvania, I think that we have found that 60 to 70 percent of your average persons incarcerated in an adult correction facility is a one- or two-time offender and still relatively young in age, and is still quite capable of being educated and vocationally trained to conform in the community and be productive.

I think there should be a stress made on these types of people as opposed to the person that is a continual offender and has been incarcerated for numerous occasions.

I believe that that person who has been incarcerated for numerous occasions should, of course, face a more severe sentence as opposed to the first- or second-time offender.

Senator SPECTER. Do you think that it would be possible to reduce violent crime in this country by as much as 50 percent if there were a concerted effort made at rehabilitation of juveniles or first- or second-time adult offenders, and, failing that, to use the habitual offender statutes to incarcerate for protracted periods up to life those career criminals who had committed several major felonies such as robbery or burglary?

Mr. MASTERS. Yes, I believe it's possible to reduce it by 50 percent. That's quite a bit, but I think it's possible.

Senator SPECTER. Gentlemen, thank you very much. I really appreciate your being with us here today.

I would like to call on panel 3, Jim Brown, executive director, community research center, University of Illinois, and Mr. Robert Shepherd, director, youth advocacy clinic, University of Richmond School of Law.

Gentlemen, we very much appreciate your being with us.

Mr. Shepherd, we have your statement which will be made a part of the record in full. In the interests of time, we would appreciate it if you would, after giving us your background, summarize your statement for us, leaving us the maximum amount of time for questions and answers.

STATEMENTS OF JAMES BROWN, DIRECTOR, COMMUNITY RESEARCH CENTER, UNIVERSITY OF ILLINOIS, AND ROBERT SHEPHERD, DIRECTOR, YOUTH ADVOCACY CLINIC, UNIVERSITY OF RICHMOND SCHOOL OF LAW

Mr. SHEPHERD. Thank you, Senator. As you indicated, I am professor of law at the University of Richmond in Virginia, and also serve as director of the youth advocacy clinic, which is a law school clinical program actively involved in representing young people within the juvenile justice system. I have been involved in teaching in Maryland and Virginia for the last 8 years now, and prior to that time was in private practice and in the Virginia Attorney General's office. I have been actively involved in working with the juvenile justice system, and in the effort to revise Virginia's juvenile code in 1977.

One of the major efforts that we made in that code revision in 1977 was to try to reduce significantly the placement of juveniles in adult institutions, in jails, a point that Sheriff Turner has addressed.

Senator SPECTER. How successful have you been?

Mr. SHEPHERD. Well, there has been some reduction in the numbers of juveniles placed in jail, but the efforts have not been nearly as successful as we would have liked. Any point at which you allow a great deal of discretion in the system as to whether a juvenile will be treated severely or through diversion, there is always the possibility that aberrations will arise, like some of the judges we have heard about earlier this morning.

Senator SPECTER. Do they issue judicial orders that juveniles and adults are to be commingled?

Mr. SHEPHERD. No, there is no problem with commingling, Senator. The problem is more one of taking a juvenile who perhaps could be dealt with through outreach detention or through leaving him in his own home and putting that juvenile in a juvenile detention home.

There is also the problem of the juvenile who belongs, as Sheriff Turner has indicated, appropriately in a separate juvenile detention facility instead of being placed in an adult jail.

Now, we have been pretty good in Virginia in keeping juveniles and adults separated within the system. However, it is my view

that an adult facility, which is not built for dealing with juveniles, is not the appropriate place. To me there is an obscene irony in the fact that the juvenile justice system was created 84 years ago to get juveniles out of the criminal justice system, and here we are today still talking about juveniles being placed in adult facilities.

Senator SPECTER. What's the answer?

Mr. SHEPHERD. Well, I think there are several answers. I think a lot of it goes back to the last question that you addressed to the sheriff and to the deputy warden, and that is that we need to deal—and I would go a step further than their answer—with prevention as well as with rehabilitative programs. The Federal legislation in the Juvenile Justice and Delinquency Prevention Act emphasizes both, and I think the two components are equally important.

I am concerned over the fact that there is some direction from the national office now that is reducing that emphasis on delinquency prevention, and we in Virginia have seen over the last 5 or 6 years a reduction each year in the number of juveniles arrested for delinquency in Virginia; we have seen the number of juveniles arrested for serious and violent crime reduced significantly. The number of arrests for murder in Virginia has dropped from 47 to 23 over the last 4 or 5 years.

Senator SPECTER. How do you account for that reduction?

Mr. SHEPHERD. Well, I think some of the reasons are purely demographic. There is a decrease in the number of adolescents in our society; the baby boom has bottomed out a little bit, and we have got some fewer juveniles.

But I think to a certain extent the initiative that has taken place, both at the Federal level and in Virginia, coincidental with the Federal level, and in many instances stimulated by the Federal effort, has been on developing alternative programs in the schools, dealing with things such as in school suspension rather than a juvenile being taken to court for truancy. We don't lock kids up for truancy in Virginia, and part of that is the fact that the emphasis has been placed on the fact that the schools need to deal with the problems of the kids who are truants. We are trying very hard to deal with the kid who has problems at home through counseling programs within the community and, in some instances, with the courts. We have still got a long way to go. But we have been aided to a great extent by the availability of Federal funds that can be allocated at the State level, according to the guidelines that are established in the Federal legislation, for developing imaginative alternatives for dealing with juveniles within the system, through diversion, through what I call deflection—keeping the kid out of the system in the first place.

And my concern is that when we deal with these kids within a secure juvenile institution or when we deal with them in an adult institution, they then become what Judge Liza Richette in your own State once referred to as "throwaway children."

Senator SPECTER. How do you distinguish between diversion and deflection?

Mr. SHEPHERD. Well, diversion is more an instance of taking a child and diverting him to some specific program—to counseling, to a big brother, to a volunteer probation officer. With deflection we

are talking about the fact that some of these kids are going through that normal abnormalcy that we call adolescence, and to a great extent many of these kids are simply going to outgrow it if we have a little bit of patience, and the extent to which we intervene in their lives we tend to reinforce some of their negative behaviors.

One of the concerns that I have—I participated just a week ago today with some of the members of the staff of this committee in the national conference of the Association for Children with Learning Disabilities, and studies funded in part by Federal money under the act indicate, for example, that 36.5 percent of all children within the juvenile justice system suffer from specific learning disabilities. From my own experience, I think you can add another 15 percent that are emotionally disturbed or are mentally retarded.

Now, we need to address those primary problems in the kids that penetrate into the juvenile justice system. I know, for example, that in Virginia I am not aware of a single jail that houses juveniles in Virginia that provides any of the programs for handicapped children that are mandated by Federal Public Law 94-142. And I daresay that there are very few——

Senator SPECTER. Does that law make that mandate applicable to the institutionalized juvenile population?

Mr. SHEPHERD. That law has no exception whatsoever for juveniles that are placed in a residential or institutional setting.

Senator SPECTER. Has there been any effort to enforce the provisions of that law?

Mr. SHEPHERD. The only efforts that I am aware of, Senator, is through a Federal class action suit in Massachusetts which somewhat ironically dealt with adults, adult youthful offenders between the ages of 18 and 21, who come under the purview of that law.

Senator SPECTER. Well, there is no shortage of class action suits in Virginia.

Mr. SHEPHERD. Unfortunately, most of the class action suits in Virginia, Senator, have dealt with the adult correctional system, the old story of the squeaky wheel getting the grease. I will very frankly say there has not been the same attention in Virginia—some of us were voices crying in the wilderness until the Federal initiative turned away from purely LEAA—to dealing with the problems of intervening at the point where changes can be made in people's lives. And that is while they are juveniles.

Senator SPECTER. What would you say the critical aspects are of doing just that, dealing with the juveniles at a point to try to offest a potential crime pattern?

Mr. SHEPHERD. I guess I would differ somewhat from my neighbor, Sheriff Turner, about trying to identify children that were predelinquent, because I think that is a risky business. I think we can identify children who maybe are at risk within the school system because of educational problems, but I would not like to see the juvenile justice system involved in addressing those problems. I think they ought to be dealt with within other agencies within the community.

But I think the effort has to be made at the local level.

Senator SPECTER. What is the critical point at which to identify a potential crime cycle in a juvenile?

Mr. SHEPHERD. I think sometimes when the juvenile engages in a status offense, in Virginia the child in need of services, the court can intervene. My problem is that the court most often intervenes in a punitive way rather than the court acting perhaps as a service broker for these kids—I once heard someone say that what every kid needed was an angry parent. I think there are times when the court can serve that angry-parent function as an advocate for children. When we amended the juvenile code in Virginia in 1977, we gave juvenile court judges the power to order school systems, mental health, departments of social services, to provide services to children that they were otherwise required to provide.

Senator SPECTER. Professor Shepherd, let me just shift gears a little bit. I understand that you have the factual information that some 3,750 juveniles in Virginia still spend an average of about 20 days in adult jails each year?

Mr. SHEPHERD. That's right.

Senator SPECTER. What is the statistical base for that?

Mr. SHEPHERD. It is based on reports that are made to the State department of corrections by all of the local jails.

Senator SPECTER. Is there a Virginia law which prohibits that?

Mr. SHEPHERD. No, juveniles are permitted to be housed in adult jails in Virginia under certain very restrictive circumstances.

Senator SPECTER. What are those circumstances?

Mr. SHEPHERD. They must be 15 years of age or older; they must be charged with an act that would be a crime if committed by an adult—in other words, status offenders may not be jailed in Virginia. Neither of the juveniles that we heard about so poignantly this morning could have been jailed in Virginia—not legally. As the sheriff indicates, there are exceptions where these kids slip in.

In addition, they are really not supposed to be kept in an adult jail where there is a juvenile detention facility that is available. They are to be used, really, as a last resort.

Senator SPECTER. Do you think that there ought to be total segregation of juveniles from adults?

Mr. SHEPHERD. The law does provide for total segregation of juveniles from adults.

Senator SPECTER. Even where you are 15 and charged with what would be an adult offense?

Mr. SHEPHERD. Oh, yes, absolutely.

Senator SPECTER. Do you think there is a causal connection between juveniles and adults being incarcerated together and later juvenile crime or later adult crime when the juvenile becomes an adult?

Mr. SHEPHERD. I think it's hard to directly draw that correlation, Senator. I think there is a combination of circumstances that apply. No. 1, as Sheriff Turner pointed out, I think there are juveniles who when they are placed in an adult institution necessarily develop some contacts that later result in behaviors that are more serious than what got the juvenile there in the first place.

Second——

Senator SPECTER. I take that to be a qualified yes.

Mr. SHEPHERD. It's a qualified yes. There is an additional factor, and that is when you take a juvenile and you put him in an adult facility instead of a juvenile facility, you give him a different sort of status. That juvenile views himself differently.

Senator SPECTER. How? As an adult? As a potential adult offender?

Mr. SHEPHERD. He views himself potentially as an adult, he views himself as a tough guy, he feels that the system has labeled him as a serious offender. I think there is a Pygmalion effect. There are times when he actually—it's a self-fulfilling prophecy.

Senator SPECTER. Well, that would be a causal connection between that kind of mixture, with adults and later adult offenses.

Mr. SHEPHERD. But not just mixture. In my judgement, Senator, the Federal law at this point does not go far enough in simply mandating separation.

Senator SPECTER. What should it do?

Mr. SHEPHERD. I think it ought to mandate the avoidance of an adult facility, such as a jail, certainly for the pretrial detention of any juvenile.

Senator SPECTER. So you think the law should require absolute segregation of juveniles from adults?

Mr. SHEPHERD. I believe so, Senator, not just within the same institution, but within the total juvenile justice system.

[The prepared statement of Mr. Shepherd follows:]

PREPARED STATEMENT OF ROBERT E. SHEPHERED, JR.

Mr. Chairman, I am Robert E. Shepherd, Jr., Professor of Law and Director, Youth Advocacy Clinic, T. C. Williams School of Law, of the University of Richmond in Virginia. Prior to entering teaching full-time in 1975, I spent eleven years in practice, including four years in the Virginia Attorney General's Office with special responsibilities in representing the various components of the juvenile justice. Since 1975 I have taught juvenile law and directed juvenile court clinical programs in Baltimore and Richmond, as well as writing and lecturing extensively in the field of juvenile justice. I also served as Vice-Chairman of Virginia Juvenile Code Revision Committee in the mid-1970's which resulted in an extensive revision of Virginia's juvenile law in 1977.

In the last year or so I have been focusing much of my efforts in Virginia on reducing and eliminating the use of adult jails for the detention of juveniles. Virginia has made some progress in this area with a reduction in the absolute number of children in jail each year since 1980 but more than 3750 juveniles still spend an average of about twenty days in an adult jail each year in my state. Only about 20% of those juveniles jailed are charged with crimes against the person and almost half are jailed on charges that would only be misdemeanors if committed by an adult. This continuing high level use of such a severe sanction as an adult jail is in spite of a steady reduction in the total number of juveniles arrested for delinquency and for serious offenses each year since 1977. Thus, the use of jail in Virginia is not a response to some epidemic of serious juvenile crime, despite some media reports to the contrary nationally.

Juveniles jailed in Virginia appear to be exposed to the same dangers and risks as those faced by young people placed in adult institutions elsewhere. Just as the incidence of suicide nationally is much higher in a jail than in the community and even higher in jail than in a juvenile detention home, so too jailed juveniles in Virginia are at higher risk for self-inflicted harm. Just two weeks ago a 17-year-old youth charged with murder in Richmond and placed in suburban Henrico's jail tried to commit

suicide by slashing his wrists with a razor. Likewise, jailed juveniles are highly susceptible to sexual and other physical assaults. Last May a federal court jury in Richmond awarded $36,500 to a 17-year-old charged with forgery of a $17 check who was raped by four other juveniles in the juvenile section of the Chesterfield County jail. The tragedy was compounded by the fact that the four assailants had earlier been convicted of sodomy on an earlier cellmate. A recent issue of the Federal Supplement also revealed a sexual assault in January of 1982 of a juvenile in the Roanoke City Jail by an adult and two juveniles (Dillon v. Director, Department of Corrections, 552 F. Supp. 30 (W. D. Va. 1982)). There are also numerous instances of children being placed in isolation cells or in overcrowded regular cells in violation of state regulations.

One last point I would like to emphasize is the total lack of rehabilitative programs for juveniles in adult detention facilities, including special education programs for handicapped youths. Just this last week I participated in the annual International Conference of the Association for Children with Learning Disabilities, along with members of this Subcommittee's staff. At that Conference it was repeatedly pointed out that about 36.5% of a delinquent population suffers from specific learning disabilities. Many additional children in the same population are mentally retarded and emotionally disturbed. Few of these children anywhere in the country are provided the special education they are promised by Public Law 94-142 (the Education for All Handicapped Children Act of 1975), and I am not aware of any jail in Virginia that provides these legally mandated services. A 1981 Massachusetts federal court decision reiterated this entitlement (Green v. Johnson, 513 F. Supp. 965 (D. Mass. 1981)), and a North Carolina federal court decision affirmed this right as to emotionally disturbed youths in state institutions in the same year (Willie M. v. Hunt, 657 F.2d 55 (4th Cir. 1981)).

There is an obscene irony that we are here discussing the incarceration of juveniles in adult jails some 84 years after the creation of the juvenile court in Illinois pursuant to a statute that had as one of its principal purposes the removal of children from institutions for adults. Erik Erikson

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once said that "the deadliest of all possible sins is the mutilation of a child's spirit." By allowing the children of Virginia, and America, to remain subject to the horrors of adult jails we participate in that sin. In D. B. v. Tewksbury, 545 F. Supp. 896 (D. Ore. 1982), Judge Helen Frye, herself a former juvenile court judge, ruled that "to lodge a child in an adult jail pending adjudication of criminal charges against that child is a violation of that child's due process rights under the Fourteenth Amendment to the United States Constitution." (545 F. Supp. at 907). We need to affirm the immorality and illegality of the practice of placing children in adult jails every chance we get and I urge this Subcommittee to reassert with greater force the policies expressed in the 1980 amendment to the Juvenile Justice and Delinquency Prevention Act. We do not need the sins of further mutilations of children's spirits on our consciences.

Senator SPECTER. Mr. Brown, let us turn to you at this point, if we may. We appreciate your having submitted your statement which will be made a part of the record. We also very much appreciate your having submitted to us the document "Jail Removal Cost Study," volume 1, which will also be made a part of the record. And we would now appreciate your summarizing the highlights of your findings with respect to the impact of mixing juveniles and adult offenders on juvenile or later adult crime by those juveniles.

STATEMENT OF JAMES BROWN

Mr. BROWN. Thank you. I would like to make a couple of brief statements about areas that we have seen in the country that have undertaken jail removal. I think this is probably a good way to establish some idea of what is being done in different jurisdictions to achieve complete removal as well as to show what the cost implications are.

JAIL REMOVAL IN THE UPPER PENINSULA OF MICHIGAN

A classic example of an area that we all thought a couple of years ago couldn't achieve jail removal is the Upper Peninsula of Michigan. It's a rural area with limited resources and a number of crimes that are committed that typically would require secure detention.

The scenario of the program developed in the Upper Peninsula was to eliminate jailing totally. They are on the way to achieving that. They have come from approximately 350 jailings per year down to about 70 jailings per year. In doing this, they put together a program of alternatives that includes a component for secure detention, which allows for the detention of serious juvenile offenders

and provides a system of alternatives for those nonserious offenders that were previously jailed.

When the juvenile is arrested in the Upper Peninsula, they come immediately to what they call a holdover facility. A holdover facility is a nonsecure residential program where juveniles can be held for up to 16 hours. An important ingredient within this holdover facility is the presence of a youth attendant. These are contracted part-time staff that work under the authority of the court and under the supervision of the State department of social services.

During the 16-hour period a youth attendant is there continuously, supervising the juvenile and providing for any counseling that might be necessary.

After 16 hours, there are three basic options that can occur. The first option that can happen is that the juvenile will simply be released to their parents awaiting some type of court appearance. This option can also involve release to parents under a program called home detention, which provides for continuous supervision within the youth's own home. I might mention that these also are contracted people that are available at a rate of $10 per day.

The second option is to release the juvenile to an emergency shelter care program, where juveniles are placed for up to 14 days in the home of a resident of the county. An important ingredient in this foster care program is that they have access to a youth attendant 8 hours a day, and typically the youth attendant is used to supervise during the night-time hours.

The third option that they have is, for those young people that require secure detention—and they have found that it is very, very limited—is to send that juvenile to a State run secure detention facility, which is a good distance away, but nonetheless is providing adequate secure detention services at this point.

This is a program that has been put together for less than $20,000 a year. It is a joint-agreement operation between the State of Michigan and the local juvenile court and local youth services.

SPECIFIC CRITERIA REDUCES SECURE JUVENILE DETENTION

A second example that I would like to mention about areas that have reduced juveniles in adult jails, or simply reduced the incidence of secure detention, has to do with the detention criteria that are used by the juvenile court. The time-honored criterion that we have used in the past has always been to look the juvenile in the eye and say: is this person reliable or dangerous, are they likely to commit a new act? We have found in court after court that this type of determination depends on a person's own personal biases, their own feelings about what constitutes dangerousness and unreliability. We have found that in some cases one person will look at ten juveniles and detain nine of them, based on his perceptions; others will detain only one from the same group, based on their own set of circumstances.

Where jurisdictions have become more specific about this detention decision, they have found uniformly that the detention rate will be reduced by at least 50 percent. In many cases, the reduction in detention is even greater. An example is the state of Oklahoma, which recently looked at their juvenile detention practices, looked

at their criteria, and found that in 1980 there were 7,000 juveniles detained in either county jails or in separate juvenile detention facilities. They developed a more specific criterion, went back and looked at that same 7,000 cases and found that had they used their own more specific criteria to determine eligibility for secure detention, that that rate would have been in the neighborhood of 2,000, so there would have been close to a 60- or 70-percent reduction.

A typical response to reduced detention rates is well, that's fine and dandy, but what is going to happen to public safety, what is going to happen to issues of protection of the court process—very critical elements in this whole issue of reducing detention and specifically jailing of juveniles.

Two particular communities, Arapaho County in Colorado and Jefferson County in Kentucky, had an opportunity to look at this scenario. In Kentucky, for instance, the juvenile court judge, because of a series of abuses in the detention facility, simply said that after a certain date no juvenile goes into secure detention unless they meet a specific criterion and is eligible for secure detention.

What happened over the next 6 months was that detention admissions dropped by about 60 percent. The average daily population went from about 85 juveniles per day down to 35 juveniles per day. The Kentucky Youth Advocates and the State department of social services had an opportunity to look and see what happened to re-arrest rates and to see what happened to failure-to-appear rates, the two critical ingredients in the use of secure detention. They found that the re-arrest rate was actually less in terms of percentages; the re-arrest rate prior to the detention criteria and at the high level of secure detention was 8.5 percent, following the new criterion the re-arrest rate was 8.4 percent.

Senator SPECTER. Less re-arrests without detention than with detention?

Mr. BROWN. Yes; there were less arrests when they were detaining——

Senator SPECTER. But it wasn't really statistically very significant, 8.5 to 8.4.

Mr. BROWN. No.

Senator SPECTER. Except that some of those were out of custody for a more protracted period of time.

Mr. BROWN. Yes, they were releasing approximately twice as many juveniles then they were releasing before.

Senator SPECTER. How many juveniles are now held in adult jails and lockups, Mr. Brown?

Mr. BROWN. The latest figure we have is 479,000. We will have a new figure very soon. Each of the States that are involved in the Juvenile Justice and Delinquency Prevention Act are required, as of this year, to report or at least to project how many juveniles are in their jails and lockups each year. In the past annual figures were not required.

Senator SPECTER. I understand that your study showed that the suicide rate was higher for juveniles in jail as opposed to juveniles—well, would you tell us what your statistics show?

Mr. BROWN. Yes, the suicide study showed that the rate of suicide amongst juveniles is eight times higher in county jails than it is in separate juvenile detention facilities. There are about 3,400

county jails in this country; there are about 500 juvenile detention facilities. An important ingredient there I think is the fact that——

Senator SPECTER. That is a very remarkable statistic. How big is the statistical base on that?

Mr. BROWN. We surveyed 100 percent of the jails and got a 60-percent response; we surveyed 100 percent of the separate juvenile detention centers and got a 100-percent response.

Senator SPECTER. How do you account for the eight times difference between juvenile detention as opposed to adult detention?

Mr. BROWN. It's very difficult to tell. We unfortunately weren't able to pursue the study far enough to find out which are those specific factors that have——

Senator SPECTER. What are your judgments?

Mr. BROWN. I think it simply has a lot to do with the problems that we find in adult jails. In most every instance it winds up being a situation of isolation. A jailer, in order to accommodate any type of separation, must either create a tremendous overcrowding situation in his jail, or he must place the juvenile in literally the worst part of the jail, the isolation cell.

When a juvenile enters an adult jail they are placed in the isolation cell, and often are in a very remorseful state. The other extreme is that they are blaming others and acting out. Both of those conditions are very, very volatile situations when it comes to suicide.

Senator SPECTER. Mr. Brown, what is your judgment as to the cause and effect, if any, between adults and juveniles being mingled and later crimes by those juveniles?

Mr. BROWN. Well, I would have to agree pretty much with the statements that have been made before. I think our experience in working with the States and with a number of different jails across the country is that they certainly do learn the tricks of the trades. I think there is the problem of association of a new peer group. One of the things that came out of the suicide study was that even beyond their period in jail, there is a destructive environment within the jails that will have a negative effect on the youth's future adjustment.

Senator SPECTER. Do you think it would be wise to have Federal legislation which would prohibit the States from incarcerating status offenders or children who were simply neglected or abandoned?

Mr. BROWN. In any facility?

Senator SPECTER. In any facility.

Mr. BROWN. Not just county jails.

Senator SPECTER. Correct.

Mr. BROWN. I think it is very necessary. Status offenders, when they come in, there needs to be——

Senator SPECTER. What is very necessary?

Mr. BROWN. That there be legislation to ban the secure detention of status offenders.

Senator SPECTER. How about the issue of prohibiting the mingling of juveniles and adults?

Mr. BROWN. It's just absolutely necessary. I would agree with what Professor Shepherd has said and take it to the level of com-

plete removal. There are just too many things that happen within the county jails, there are too many problems going all the way from poor conditions that are not constitutional for adults, much less juveniles, to the suicide rate. There is just generally a great potential for destruction.

[The prepared statement of Mr. Brown follows:]

REMOVAL OF JUVENILES FROM ADULT JAILS AND LOCKUPS

Prepared statement from James W. Brown, Director,
Community Research Center, University of Illinois at Urbana,
before the Senate Subcommittee on Juvenile Justice
on February 24, 1983

During the past eight years our organization has conducted research into the issue of secure detention and alternatives to its use and provided technical assistance to 31 States and Territories concerned with improving these services. Since 1978 we have concentrated on the use of adult jails and lockups and worked with State and local officials nationwide to eliminate the use of these facilities for juveniles.

At the point of the 1980 amendment mandating the elimination of juvenile jailing by 1985, we estimated that 479,908 juveniles were admitted to 3,493 county jails and 13,383 municipal lockups each year. While significant progress has been made, the problem identified by Congress in 1980 continues to exist nationwide.

1) High potential for self-destruction. The juvenile suicide rate is eight times higher in adult jails than in separate juvenile detention centers or in the youth population at risk. North Carolina has profiled jail suicides as a young male admitted in an intoxicated condition who takes his life within the first 12 hours of confinement. It is important to note that the destructive environment which leads to juvenile suicides is also present for most of the half million juveniles who are admitted each year.

2) High potential for physical and sexual assault. Young people are easy pawns for adults to use in the power and domination game of our Nation's jails. Countless examples exist of this abuse and have been documented in earlier testimony.

3) Operational inefficiencies and overcrowding in the jail. The presence of juveniles in adult jails creates operational nightmares for law enforcement officials who must separate various types of offenders, including juveniles. The construction and design of our jails simply defy adequate separation unless the isolation cell is used. Legitimate efforts to separate within the general jail population typically lead to severe overcrowding problems. For example, a new 72-bed state-of-

the-art jail houses 60 adult offenders in three units of 24. The admission of two juveniles increases the population to 62 residents, still under capacity, but creates serious overcrowding in the two adult units which are now 30 each. This situation is even worse in older jails.

4) The general condition of our jails is extremely poor with jails in virtually every State under litigation for failing to provide constitutionally adequate living conditions and basic services for adults much less juveniles. This situation deteriorates under the common practice of confining juveniles in the worst area of the jail--the isolation cell. It is important to note that those who survived the recent tragic jail fire in Mississippi were the most experienced individuals who blocked their doors with wet blankets and also placed them over their heads near toilets and showers. In the vast majority of cases, juveniles do not have the experience or sophistication to survive.

5) The cost of providing constitutionally adequate conditions and basic services to juveniles within the confines of a county jail or municipal lockup is simply prohibitive. As I will note later, far less costly options are available which provide a more constructive experience while continuing to assure the public safety and protection of the court process.

With Congressional leadership a national consensus has emerged in both the public and private sector supporting the elimination of adult jails and lockups for the detention of juveniles. We have forged beyond the myth and misunderstanding about jail removal. We know, for instance, that a night in jail will not do every arrested juvenile some good and may in fact be extremely destructive; we know that jail removal efforts will not increase the incidence of juvenile crime and, in fact, may reduce it. We know that jail removal does not mean that every county must build their own separate juvenile detention center. We know that the general public, when confronted with good clear information on juvenile jailing, will support the effort to accomplish complete removal.

Not only does this widespread support provide an excellent climate to accomplish the goal of Section 223a(14), but State and local efforts during the past three years have increasingly provided the technology to resolve the problems of juvenile jailing in an efficient and effective manner. The following examples indicate the state-of-the-art with respect to the removal of juveniles from adult jails and lockups.

1) In the 15 counties of Michigan's Upper Peninsula, local officials, in cooperation with the Michigan Office of Criminal Justice and Department of Social Services, reduced juvenile jailing from 376 to 76 per year for less than $20,000 annually. This cost is far less than the cost of providing constitutionally adequate living conditions and basic services within the county jails.

Their program provides non-secure holdover facilities for up to 16 hours for alleged juvenile offenders. The arresting officer brings the juvenile to the nearest holdover and immediately contacts a youth attendant who is on contract to supervise the juvenile in the holdover. Youth attendants are paid $5 per hour while on duty. Holdover facilities are typically located in state police posts, county mental health centers, hospitals, etc. Most juveniles are released to their parents, often under the continued supervision of a contracted home detention worker who is paid $10 per day. Those juveniles who cannot be released to parents often are placed in a contracted emergency family shelter home at a cost of $15 per day with the support of a youth attendant during nighttime hours. Placement in the home detention program or an emergency family shelter is limited to 14 days and can be extended on a case-by-case basis. All contracted staff work under the authority of the juvenile court and are supervised by the State Department of Social Services. In those limited situations which require continued secure detention, the juvenile is transported to a state-operated detention center in Flint.

2) The Boys Clubs of America has instituted a nationwide program to reduce inappropriate detention of juveniles with particular emphasis on the elimination of juvenile jailing. In addition to a nationwide public awareness program through over 1,000 Boys Clubs, they are

working with 12 localities to (1) research the problem, (2) educate the community, and (3) offer alternative programs. Among programs to be offered are:

-- Family crisis intervention which provides immediate up-front services at the point of arrest and deals with the problem as a family problem rather than a juvenile problem. Program experiences indicate that not only will this immediate intervention reduce jailing, but will have long-term cost savings through reduced probation caseloads. Noted specifically is Project Intercept in Lancaster County, Pennsylvania, which combines family crisis intervention services with an overnight shelter facility.

-- Home detention services which can be provided by Boys Clubs volunteers and staff as is the case in Omaha, Nebraska.

-- Followup and support services which are uniformly absent in county jail programs and provide constructive supervision following police contact. A Boys Club program example cited is in El Monte, California.

3) Legislative initiatives in many States are on the books or actively under consideration. The Commonwealth of Pennsylvania eliminated the detention of juveniles in adult jails in 1980 through a unique state/local partnership and continuing monitoring by the Office of the Attorney General. North Carolina law prohibits juvenile jailing after June 30, 1983. Over 20 other States are currently developing plans in anticipation of legislative prohibitions.

4) Many courts are examining their criteria for release/detention in all secure juvenile detention facilities, including adult jails and lockups. The results are dramatic and provide preliminary indications that admissions to secure detention can be decreased by as much as 50-70 percent without increased danger to the public safety or court process. Examples cited are Arapahoe County, Colorado, and Jefferson County, Kentucky.

5) The 17 sites involved in the OJJDP Jail Removal Initiative on which we are serving as National Program Coordinator have collectively

reduced juvenile jailings by 62 percent during the first six months of operation. Our continued assessment of these project sites over the next year will yield insight to the issues of secure detention, widening of the net, transportation, detention criteria, transfer to adult court, and others related to jail removal.

In summary, we are at a crossroads with an unprecedented opportunity to mend a terrible problem in our juvenile justice system. Much of the groundwork has been done, the climate is right in many areas of the country, and the state-of-the-art technology is developing rapidly. Obstacles and barriers remain, but the goal is in sight. I would like to take this opportunity to urge continued Congressional leadership and oversight, as well as continued assistance to State and local efforts.

Senator SPECTER. Mr. Brown and Professor Shepherd, let me pose the same question to you that I did to the earlier panel concerning the possibility of effecting a significant reduction in violent crime in this country. I use as the standard of reference the conclusion of the National Commission on Criminal Justice Standards and Goals that violent crime could be reduced by as much as 50 percent given a fairly massive approach comprised of some real efforts at rehabilitation of juveniles and adult offenders on their first or second offense, coupled with tough sentences, under habitual offender statutes, up to life for repeat offenders. That kind of a system would obviously require substantially more resources than are now being directed at all levels.

Yet I would be interested in your professional judgments of the attainability of such a long-term reduction in violent crime.

Mr. Brown?

Mr. BROWN. I would have to say that I am somewhat skeptical.

Senator SPECTER. You think 50 percent is too low?

Mr. BROWN. No, I think it's probably too high. I think if we are going to have any long-term effect on violent crime in this country that it needs to be done in a different mode; it can't be done by the juvenile justice system alone. The juvenile justice system for the most part can control what is going on; it can't do anything, or it can do very little to lessen the conditions that cause violent crime. Many of the things that are happening early on in the juvenile justice system I would think even have something to do with increases in violent crime. I think the way that the system operates, the use of jails, for instance, the use of some of the facilities that are used, provide the wrong signals, create hostility and bitterness in a number of young people that are going through our system; young people don't see the rationale of a system that may jail or detain a status offender for many, many months, when——

Senator SPECTER. What would your best advice be to the Senate on how to fashion a program to try to prevent crime or deflect or divert juvenile offenders from lives as habitual offenders?

Mr. BROWN. It would be two pronged. I think first of all there needs to be major attention given to the whole area of primary pre-

vention—primary prevention in the schools, having to do with providing legitimate opportunities for all young people that are growing up in this country. The other half of it is, as a juvenile gets into the juvenile justice system, penetrates the juvenile justice system to a point where they are repeat offenders, I think that we need to have a system that is efficient, a system that is effective and that can move offenders through programs of a correctional nature that are done not always within facilities—facilities drain a great amount of the resources that we have available—but that would provide for their rehabilitation in the community as well.

It's really two parts; I don't think we can go at it in one fashion and not the other.

Senator SPECTER. Professor Shepherd, what recommendation would you have for the Judiciary Committee on how to structure an overall program which would be directed at trying to significantly reduce violent crime in this country?

Mr. SHEPHERD. I think I would agree to a great extent with Jim Brown, Senator. I think that like the commercial, you can pay me now or pay me later—it's a matter of where we are going to put what resources we have. I believe the emphasis continues to need to be in the area of delinquency prevention. Any system that we have in this country that takes a kid who has trouble learning to read and won't allow him to get into a vocational education program because he hasn't done well enough in his academic subjects is dooming a lot of these kids.

And I think we need to continue to impact on prevention programs.

I think we also need to be concerned about not letting the juvenile justice system get into overreach, trying to do more than it is really capable of doing, that there are some kids who simply need to be dealt with by other agencies, and many of them are status offenders, rather than being dealt with in court.

I would like to see the major effort within the juvenile justice system focus primarily on those kids that are in fact threats to society as well as the court's ability to intervene with the abused and neglected child. I think too much of the energy in the juvenile justice system is taken on focusing on kids who have not committed crimes, who are truants, who have run away from home—and I think as long as the court continues to deal with those kids, there is going to be a misapplication of resources.

I think we can make an impact if we do concentrate our efforts on the kids that are clearly demonstrating the tendencies for being the threats to the rest of us in society.

Senator SPECTER. Thank you very much, Professor Shepherd. Thank you very much, Mr. Brown. We appreciate your statements and the materials you have submitted which we will study carefully. I very much appreciate your taking the time to be with us today.

This hearing is now adjourned.

[The hearing adjourned at 11:49 a.m.]

APPENDIX

BOARD OF CRIME CONTROL
303 NORTH ROBERTS
SCOTT HART BUILDING
HELENA, MONTANA 59601
TELEPHONE NO. 449-3604

January 10, 1983

IN REPLY REFER TO

Honorable Max Baucus
U.S. Senator
5327 Dirksen State Office Building
Washington, D.C. 20510

Dear Senator Baucus:

The reauthorization of the Juvenile Justice and Delinquency Prevention Act was discussed at the December meeting of Montana's Youth Justice Council. The Council reviewed issues identified by the National Criminal Justice Association (N.C.J.A.), and the Western Juvenile Justice Coalition. I have enclosed the N.C.J.A. working papers. The formal recommendations will be ready from that group sometime this spring.

The "Jail Removal Mandate" was singled out as the most critical issue for Montana, and the Youth Justice Council endorsed the attached resolution as our suggestion for remedying the problem. The Council expressed the following concerns.

1. The Council recognizes the problems of jailing juveniles and feels the Act should work toward removing juveniles from all jails. Based on the experiences of its' members the Council sees no advantage to censuring adult facilities which adequately separate juveniles while indirectly endorsing the use of jails exclusively reserved for juveniles.

2. The Removal mandate has negative implications for rural states like Montana. Our low population base does not justify separate facilities for juveniles Forcing counties to create separate facilities would place an undue burden on local government and could detract from resources now spent for other youth services.

3. Separate detention facilities would have to serve a large geographic area in Montana. Juveniles would have to be transported many miles from their family and community support.

4. Juveniles detained far from their home community would undoubtedly spend more time incarcerated. At the present time 50% of the juveniles detained spend less than 24 hours in jail.

5. The Council feels strongly that Congress should determine the cost of the removal mandate before reauthorizing the Act. The study conducted by OJJ & DP does not provide a dollar figure, and it seems obvious the federal government will not be providing funding adequate to achieve compliance. The financial burden will ultimately rest with county government, and the administration has a responsibility to determine the magnitude of this burden.

It is our hope that this resolution will provide a basis for discussing the reauthorization of the Act. The jail removal mandate must be altered if Montana is to continue participating in the Act and provide needed services to our young people.

Sincerely,

BOARD OF CRIME CONTROL

Carle F. O'Neil, Chairman
Youth Justice Council

END