

Juveniles & Jail Removal

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**what the
new law means**

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Juvenile Justice Advisory Council
Division of Children, Youth and Families
Lucas State Office Building
Des Moines, Iowa 50319
(515) 281-3241

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TABLE OF CONTENTS

Introduction 1

Juvenile Justice and Delinquency Prevention Act 1

Overview of State Law 2

Responsibility for Federal and State Compliance 4

Questions and Answers 5

Checklist for the Detention of Juveniles 9

Definitions of Law Enforcement Procedures 10

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ACQUISITIONS

INTRODUCTION

The jailing of juveniles poses special problems for sheriffs and jailers. Children must be constantly supervised and kept separate from adults. Their age makes them especially at risk for suicide and inappropriate behavior in jail facilities. The federal and state laws were passed in response to growing concerns about the use of adult jails and lockups for predispositional holding of juveniles.

This fact sheet offers an overview of the federal Juvenile Justice and Delinquency Prevention Act, Iowa's Jail Removal Law (HF 2278) and their impact on juvenile detention practices. Additionally, this booklet highlights options local officials may use to respond to the requirements of the federal and state laws.

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

The federal Juvenile Justice and Delinquency Prevention Act was enacted by Congress in 1974 to address difficulties in juvenile justice, including a growing concern about the appropriateness of adult jails and lockups for the detention of juveniles.

The JJDP Act of 1974 provides formula grant funds to assist states in meeting the mandates of the Act. Iowa began participation in the Act in 1975 and receives approximately \$500,000 per year to fund juvenile justice related programs including alternatives to jail projects. The Act requires adherence to three mandates:

1. Deinstitutionalization of Status Offenders (DSO) - The DSO mandate specifies that juveniles who are charged with, or who have committed offenses that would not be criminal if committed by an adult (truancy, running away, possession of alcohol) or non-offenders such as dependent or neglected children shall not be placed in secure detention facilities or secure correctional facilities;
2. Sight and Sound Separation - The sight and sound mandate states that juveniles alleged to be or found to be delinquent shall not be detained or confined in any institution in which they have regular contact with adult prisoners. Sight and sound separation applies not only to the detention area, but also to the booking, dining, recreation, education, vocation/work, visiting, transportation and medical/dental areas;

3. Jail Removal - The jail removal mandate stipulates that after December 8, 1988, no juvenile shall be detained or confined in any jail or lockup for adults. The Act grants non-metropolitan areas (Non-MSA's or rural areas) a 24 hour statutory exception for the processing, identification and transportation of juveniles accused of delinquent acts.

The statutory exception for Non-MSA's excludes weekends and holidays. Thus, if a juvenile is arrested at 6:30 p.m. Friday evening and released at 11:00 a.m. Monday morning, for monitoring purposes, the juvenile has only been held for 3 hours. The statutory exception for Non-MSA's is scheduled to expire in December 1989.

Additionally, the Federal Register allows for the following reporting exceptions:

- a. Accused delinquents in metropolitan statistical areas (MSA's) may be held for up to six hours for processing, identification and transportation purposes. Weekends and holidays are not excluded. In no case may the juvenile be held overnight in a metropolitan area.
- b. Juveniles waived to adult court on felony charges may be held in adult jails.
- c. Accused status offenders held in jail for any period of time are violative of the jail removal mandate.
- d. Adjudicated delinquents may not be held in adult jails. The 24 hour statutory exception and 6 hour reporting exception for processing, identification and transportation do not apply to adjudicated delinquents.

OVERVIEW OF STATE LAW

The federal Act served as a stimulus for many states to initiate legislation limiting or prohibiting the use of adult jails and lockups for the detention of juveniles. At this time, more than 30 states have enacted such legislation. The Act also provided impetus for litigation in states where legislation has not been passed.

The State of Iowa and Webster County are currently defending a lawsuit in U.S. District Court regarding the use of the county jail for the detention of a juvenile. The federal court ordered the state to remove juveniles from adult jails before December 1987.

Partly in response to the court order, the Iowa Legislature passed SF 522, Iowa's Jail Removal Law, during the 71st General Assembly. SF 522 prohibited the use of adult jails and lockups except for juveniles age 16 or older and accused of felony level offenses. As this law was more restrictive than the federal law, the 72nd General Assembly amended the provisions of Iowa's Jail Removal Law during the 1988 session to respond to practical concerns regarding the implementation of SF 522.

The following overview highlights the provisions of Iowa's amended jail removal statute (HF 2278). These changes will take effect July 1, 1988.

ELIGIBILITY CRITERIA FOR HOLDING A JUVENILE IN AN ADULT JAIL OR LOCKUP:

A juvenile may not be detained in an adult jail or lockup unless all of the following occur:

- a. The child is age 14 or older;
- b. There is probable cause to believe that the juvenile has committed a delinquent act which if committed by an adult would be a felony, an aggravated assault, an aggravated sexual assault, 1st or 2nd offense operating while intoxicated (OWI), or public intoxication (Code Sections 708.2, 709.11, 321J.2 or 123.46);
- c. There is substantial probability the child will run away or be otherwise unavailable for a court appearance;
- d. The child poses a serious risk to others or the property of others;
- e. The facility has adequate staff to supervise and monitor the child's activities at all times;
- f. The adult jail has been certified as able to confine a child in a manner which prohibits communication and contact with detained adults;
- g. A juvenile detention facility or other suitable place is not available.

If a child is to be detained under sections 321J.2 or 123.46, (OWI or public intoxication) placement in a jail or adult lockup may occur only under the following conditions:

- a. An attempt must first be made to notify the parents or guardians and to release the child to the parents' custody;
- b. If the parents or guardian cannot be reached or will not take custody of the child an attempt must be made to place the child in another suitable facility, including but not limited to the local hospital or shelter care facility;
- c. If a child is detained in an adult jail or lockup, the facility must have adequate staff to provide continuous visual supervision of the child.

In addition to the above criteria, the Iowa law places geographical restrictions on the use of adult jails as follows:

- a. If the juvenile is held in an adult jail which serves a "metropolitan statistical area" (MSA), he or she may be held in that facility no longer than 6 hours under any circumstances.

The following counties are defined as MSA's: Black Hawk, Bremer, Dallas, Dubuque, Linn, Johnson, Polk, Pottawattamie, Scott, Warren and Woodbury.

- b. If the juvenile is held in a jail which does not serve a MSA, he or she may be held in the facility for up to 24 hours, excluding weekends and holidays, provided that a court order is received after 6 hours of detention.

RESPONSIBILITY FOR FEDERAL AND STATE COMPLIANCE

The Juvenile Justice Advisory Council/Division of Children, Youth and Families (JJAC/DCYF) is the designated administrator for the Juvenile Justice and Delinquency Prevention Act.

As the designated State Agency, the JJAC/DCYF administers the formula grant funds dispersed through the federal Act. Iowa receives approximately \$500,000 per year to assist in planning, establishing, coordinating and evaluating projects directly or through grants and contracts with public and private agencies for the development of diversion, treatment, prevention and rehabilitation programs in the area of juvenile delinquency. During FY '86, the JJAC awarded grant funds to fourteen such programs.

Additionally, the JJAC/DCYF is responsible for compiling quarterly monitoring surveys to determine the number of juveniles detained in Iowa's adult jails and lockups. An annual analysis is then completed and sent to the federal Office of Juvenile Justice and Delinquency Prevention. The state's monitoring report is used to determine continued eligibility for federal assistance.

As part of the monitoring responsibility, the JJAC/DCYF is required to complete on-site verification of the data submitted on the quarterly monitoring reports. Approximately one third of the facilities are to be visited annually for verification.

When instances of federal or state non-compliance are noted, the Department of Corrections, Jail Inspection Unit, is to be notified. The Code of Iowa charges the Jail Inspection Unit with oversight of jail standards, including certification of sight and sound separation as mandated by Chapters 356 and 232.22 of the Code of Iowa.

QUESTIONS AND ANSWERS

“WHAT ABOUT THE KID WHO . . . ?”

ANSWER: There are any number of circumstances which will be more difficult to deal with as a result of the change in the law. Three efforts are currently underway in Iowa to assist in finding alternative placements for difficult juveniles and to achieve compliance with the Jail Removal Mandate.

The first is Iowa's Jail Alternative Guide which was developed by the Department of Human Services in November 1987 and summarized by the JJAC/DCYF in June 1988. Copies of the Guide are available upon request from the Division of Children, Youth and Families.

Secondly, the Juvenile Justice and Delinquency Prevention grant monies are available through the JJAC/DCYF for the development of alternatives to jail and aftercare services.

Finally, Iowa is participating in the federally sponsored Jail Removal Initiative (JRI). As part of the JRI, Iowa received a \$50,000 discretionary grant to assist in the state's jail removal efforts. Those efforts include the formation of a Jail Removal Committee, public education, regional planning and the provision of technical assistance. If you are interested in receiving more information on Iowa's Jail Removal Plan or participation in the JRI, you may contact the JJAC/DCYF.

“CAN A JUVENILE WHO IS WAIVED TO ADULT COURT BE HELD IN AN ADULT JAIL?”

ANSWER: The federal and state laws do allow juveniles who have been waived to adult court on felony level offenses to be held in an adult jail. However, a juvenile may not be held in an adult jail pending waiver to adult court except under the provisions of the state and federal laws.

“DO THE FEDERAL AND STATE JAIL REMOVAL LAWS PROHIBIT LAW ENFORCEMENT FROM ARRESTING JUVENILES?”

ANSWER: The federal and state laws do not prohibit law enforcement from arresting or referring juveniles to juvenile court for alleged delinquent acts. The laws merely restrict the use of adult jails and lockups for the predispositional handling of accused delinquents.

“DO THE LAWS RESTRICT THE USE OF JUVENILE DETENTION CENTERS?”

ANSWER: The restrictions on the use of adult jails and lockups for accused delinquents do not apply to the use of juvenile detention facilities. The federal and state laws do require that a detention hearing be held within 24 hours, excluding weekends and holidays.

The Deinstitutionalization of Status Offenders Mandate still prohibits the use of secure detention for status offenders and non-offenders. Any use of secure detention, whether an adult jail or lockup or juvenile detention center, for status offenders violates the Jail Removal Mandate.

“CAN A JUVENILE WHO HAS VIOLATED A PROBATION OR PAROLE AGREEMENT BE HELD IN AN ADULT JAIL?”

ANSWER: Under the regulations of the federal Act, adjudicated delinquents can not be held in adult jails or lockups unless they have been charged with a new offense which meets the criteria for jailing (i.e. felony level offense, aggravated assault, aggravated sexual assault, OWI or public intoxication).

“CAN A JUVENILE WHO HAS ESCAPED FROM ELDORA BE HELD IN AN ADULT JAIL OR LOCKUP?”

ANSWER: The federal and state laws consider escapees to be adjudicated delinquents, therefore, the above provisions apply. Adjudicated juveniles may be held if they are charged with a new offense which meets the eligibility criteria.

"IF JUVENILES DO NOT COOPERATE WITH THE PROVISIONS OF THE 'CITATION IN LIEU OF ARREST' SECTION, WHAT CAN WE DO?"

ANSWER: HF 2278 clarifies that if "a person under the age of eighteen who refuses to sign the citation without qualification, who persists in engaging in the conduct for which the citation was issued, who refuses to provide proper identification or to identify the person's self, or who constitutes an immediate threat to the person's own safety or the safety of the public may be arrested" in a specified manner.

Specifically, the person can be arrested for the limited purpose of holding them in a non-secure area while awaiting transfer or for designated administrative purposes. This is limited to 6 hours without a court order, with the possibility of extending the non-secure hold for an additional 6 hours upon the order of the court.

"HOW DOES A JAIL BECOME CERTIFIED FOR SIGHT AND SOUND SEPARATION?"

ANSWER: The Jail Inspection Unit of The Department of Corrections performs all sight and sound certifications. After a certification inspection has been completed, the Inspector will provide the jail and the Division of Children, Youth and Families with an inspection report which specifies whether or not the facility is capable of providing adequate sight and sound separation.

"WILL WE HAVE TO BUILD A JUVENILE DETENTION CENTER BECAUSE OF THIS LAW?"

ANSWER: Probably not. Only one out of every seven juveniles held in an adult jail during 1986 was held for more than one day. Local juvenile justice officials should work with state and private agencies to determine the actual need for detention and alternative programs.

Technical assistance is available through the JJAC/DCYF.

"CAN A JUVENILE FROM A 'METROPOLITAN STATISTICAL AREA' BE SENT TO AN ADULT JAIL OUTSIDE OF THE AREA AND BE HELD FOR 24 HOURS, RATHER THAN 6?"

ANSWER: No. Any facility which serves a metropolitan area is subject to the six hour limit. If the facility accepts a referral from a metropolitan area, it is servicing it.

“IF WE CAN'T PUT JUVENILES IN JAIL, WHAT CAN WE DO WITH THEM?”

ANSWER: There are many alternatives already available in the state. Shelter care or emergency foster care are often appropriate alternatives to jails for certain juveniles.

In-Home Detention is also an effective way to monitor and restrict the activities of juveniles awaiting juvenile court disposition.

Additionally, law enforcement facilities may hold juveniles non-securely (in an unlocked conference room, lounge, etc.) for processing, identification, or awaiting transportation or transfer of the juvenile. The JJAC/DCYF will offer technical assistance to assist in the development of non-secure holdovers. Federal grant funds are also available to assist in the development of such alternatives.

For information on alternatives available in your area, contact the JJAC/DCYF for a copy of the Iowa Alternatives to Jail Guide.

HAVE OTHER QUESTIONS?

Contact the JJAC/DCYF for technical assistance. You may also contact the local juvenile court officer or Department of Human Services district administrator for information about appropriate alternative resources, and the Department of Corrections, Jail Inspection Unit, for information regarding sight and sound separation certification.

CHECKLIST FOR THE DETENTION OF JUVENILES IN ADULT JAILS OR LOCKUPS

If the answer to all of the following questions is "YES", a juvenile may be detained in an adult jail or lockup:

- | | YES | NO |
|--|-------|-------|
| 1. Is the child 14 years of age or older? | _____ | _____ |
| 2. Is the child charged with a felony or aggravated assault, aggravated sexual assault, OWI, or public intoxication? | _____ | _____ |
| 3. Will the child abscond or is the child dangerous to others or the property of others? | _____ | _____ |
| 4. Have other "acceptable alternatives" been exhausted? | _____ | _____ |
| 5. Is the facility to be used certified by the Department of Corrections as capable of sight and sound separation of juveniles from adults as mandated by Chapters 356 and 232.22 of the Code of Iowa? | _____ | _____ |
| 6. Can the facility provide constant supervision and monitoring of the child? | _____ | _____ |

If the answer to all of the following questions is "YES", a juvenile may be detained in an adult jail or lockup for up to 24 hours, excluding weekends and holidays.

- | | | |
|---|-------|-------|
| 1. Does this facility serve a county other than one of the following: Black Hawk, Bremer, Dallas, Dubuque, Linn, Johnson, Polk, Pottawattamie, Scott, Warren or Woodbury? | _____ | _____ |
| 2. Has an oral or written court order been obtained which authorizes detention in excess of 6 hours, but less than 24? | _____ | _____ |
| 3. Does the court intend to hold a juvenile detention hearing pursuant to Chapter 232.44 of the Code of Iowa? | _____ | _____ |

Definitions of Law Enforcement Procedures in Handling Juveniles

"TAKING INTO CUSTODY": "An act which would be governed by the laws of arrest under the criminal code if the subject of the act were an adult. The taking into custody of a child is subject to all constitutional and statutory protections which are afforded an adult upon arrest." Section 232.2 (50) Code of Iowa.

BOOKING: The administrative process of recording the offense and identifying data when the child is taken into custody.

DETENTION: The temporary care of a child in a physically restrictive facility designed to ensure the continued custody of the child "between initial contact and final disposition". Section 232.2(14) Code of Iowa. This definition would include jails, lockups, juvenile detention centers or any other secure facility used to hold a child prior to disposition.

NON-SECURE CUSTODY: "Custody in an unlocked multipurpose area, such as a lobby, office or interrogation room which is not designed, set aside or used as a secure detention area, and the person is not physically secured during the period of custody in the area". Section 805.16 (3) 1988 Code of Iowa. Non-secure custody can also be provided in a shelter care facility or other unrestricted designated area.

INTAKE: The juvenile court function of preliminary screening to determine if action should be taken and if so, what action. Violations by a child of the provisions of Chapters 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321 or 321G, which would be simple misdemeanors if committed by an adult and county or municipal curfew or traffic ordinances, and violations of 123.47 are excluded from the jurisdiction of the juvenile court. Violations of 123.47 may be referred to juvenile court if there is reason to believe that "the child regularly abuses alcohol and may be in need of treatment". Section 232.8 (1)

ACCUSED: Alleged to have committed a delinquent act.

ADJUDICATED: The allegations of delinquency, "Child in Need of Assistance" or a "Family in Need of Assistance" are found to be true in a juvenile court setting.

DISPOSITION: The final judgement of the court after a juvenile has been adjudicated delinquent, CINA or FINA.

DELINQUENT ACT: The violation of any law that would also apply to adults, except for offenses exempted in 232.8 (1) of the Iowa Code.

STATUS OFFENSE: An act that is illegal for a juvenile, but not for an adult. Examples of status offenses are: running away, truancy, incorrigible behavior and promiscuity. The 63rd General Assembly removed all status offenses from the Iowa Code, except for possession of alcohol (Section 123.47).

“CHILD IN NEED OF ASSISTANCE” (CINA): An unmarried child who is found to be abused or neglected or in imminent danger of abuse or neglect; found to abandoned; who is in need of medical, mental health or chemical dependency treatment which parents or guardians can't or won't provide; who has been sexually abused by a parent, guardian or other member of the household; or if the parent, guardian, or custodian desires to be relieved of the care and custody of the child for good cause. Section 232.2 (6) of the Code of Iowa delineates the specific criteria.

“FAMILY IN NEED OF ASSISTANCE” (FINA): “A family in which there has been a breakdown in the relationship between a child and the child's parent, guardian or custodian”. Section 232.2 (18) of the Code of Iowa specifies the criteria for a finding of FINA. The criteria specify that the family must have previously sought services. The petitioner must be the child, parent, guardian, or custodian.

CIVIL COMMITMENT: A non-criminal commitment to a facility for treatment of substance abuse or mental illness, as specified by Chapters 125 and 229 of the Code of Iowa, respectively.