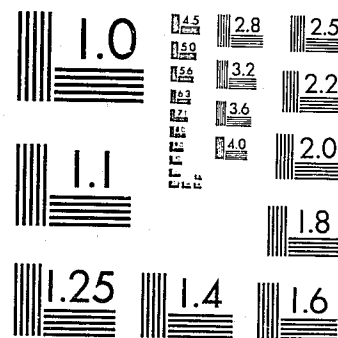


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# JUVENILE JUSTICE

# TRANSFER

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

QUESTIONS AND ANSWERS  
REGARDING THE REMOVAL  
OF JUVENILES FROM ADULT  
JAILS AND LOCKUPS

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

1. *What Is An Adult Jail Or Lockup?*

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

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

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*This Transfer contains material prepared by the Hon. Ray Kogovsek, Representative from Colorado, regarding section 223 of H.R. 6704, the Juvenile Justice Amendments of 1980, prohibiting the detention of juveniles in jails and lockups. This material is reprinted from the Congressional Record, Proceedings and Debates of the 96th Congress, July 1, 1980.*

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

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

3. *Why Are Children Jailed? With What Offenses Are They Charged?*

3. Nine percent are charged with crimes against persons; 69 percent are charged with property offenses; 18 percent are status offenders (runaways, truants); 4 percent have not been charged with any offenses. Eighty-three percent of those jailed are male, 17 percent female. Eighty-one percent of those jailed are white, 19 percent non-white. The average child's stay in jail is 4.8 days. The more serious the offense, the less frequent the involvement of juveniles. Only 6.1 percent of those arrested for violent crimes in 1976 were juveniles under age 15; only 22 percent were juveniles under age 18. Only 4 percent of the total number of juveniles arrested are charged with violent crimes. Thus, only a small number of those children now jailed actually need this level of security because they are likely to run, likely to commit a new offense, or fail to appear in court.

4. *What Happens to Children In Adult Jails and Lockups?*

4. The following injuries to children in adult jails and lockups have been documented:

— Rape, physical assault, exploitation, and other injury by adults in the same facility or staff;

— Isolation in maximum security cells or drunk tanks, with sensory deprivation;

— Emotional stress (demonstrated by a suicide rate for children in adult facilities seven times the rate for children in juvenile detention facilities);

— Failure to provide services to meet the needs of juveniles;

— Negative labeling as a result of the first placement decision;

— Negative impact on preparation of defense;

— Adverse impact on a judge's decision to release a child to a non-secure post-trial setting.

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

5. *Does Current Law Permit The Jailing Of Juveniles?*

5. Each state may establish its own criteria for incarceration of juveniles, subject to general constitutional constraints. Those states which participate in the Juvenile Justice and Delinquency Prevention Act have agreed that juveniles alleged to be delinquent, status offenders, and non-offenders shall not be detained or confined in any institution in which they have regular contact with adults convicted of a crime or awaiting trial on criminal charges. Therefore, juveniles may be placed in jails or lockups if there is no regular contact with adult inmates.

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

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

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

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

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

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

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

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

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

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

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

ACQUISITIONS

*10. What Specifically Does The Amendment Propose?*

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

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

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

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

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

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

Planning and implementation of screening criteria would reduce or eliminate the need for new facility construction. Each new bed

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

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

Jurisdictions should realize a net savings, both in economic and human costs, by removing juveniles from adult jails and lockups. These estimates do not include the savings realized from removing from jail (actually diverting) those who are now held less than 48 hours.

*13. What Alternatives To Jail Are Available?*

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

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

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

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

15. The intent of the amendment is to reduce, not increase, the overall number of children incarcerated each year. It is widely recognized that approximately 10 percent of all juveniles detained actually require secure detention. With the establishment of objective intake criteria, the need for secure beds is reduced so significantly that there is no justification for constructing a new facility. Existing appropriate settings can be used to handle the small number of juveniles requiring short term detention.

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

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

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

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

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

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

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

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

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

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

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

Contractual around-the-clock supervision can be provided for short-term holding in available facilities. In some instances, transportation costs for a limited number of trips to more distant full-service facilities will be less costly than providing full services. The use of distant, full-service detention centers for rural areas of Maine, Utah and Michigan has been operated in a cost effective manner for many years. In rural Kansas, the municipal lockup is designated as the juvenile detention

facility with the county jail used to house adult offenders only. Youths are held up to 72 hours, supported by 24 hour attendants.

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

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

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

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

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

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

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**END**