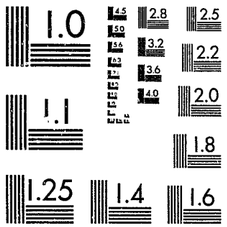

DETENTION OF JUVENILES

A REVIEW OF THE PRACTICES IN MISSOURI

MISSOURI JUVENILE JUSTICE REVIEW COMMITTEE

December 1981

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Prepared by

Missouri Juvenile Justice Review Committee

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TABLE OF CONTENTS

INTRODUCTION

The Missouri Juvenile Justice Review Committee (MJJRC) considers the detention of juveniles one of the most critical areas of concern in the administration of Missouri's juvenile justice system. While there is disagreement about specific points, few would deny the practice of detaining juveniles poses many problems that are yet to be resolved. A major problem in developing realistic resolutions to these problems is created by the absence of reliable information about the number of juveniles and the circumstances under which they are being held in detention.

The first real glimpse of the number of juveniles being held in jails from a national perspective became available with the completion of the National Jail Census in 1971. This report indicated that on March 15, 1970, 7,800 juveniles were living in 4,037 jails. This figure is more meaningful when you consider this survey excluded those facilities holding persons less than 48 hours. A comparable census for 1974 estimated that the number had grown to 12,744. Recent surveys indicate that as many as 500,000 juveniles per year are admitted to adult jails and lockups. These figures do not include those juveniles being held in juvenile detention facilities.[1]

The passage at the federal level of the Juvenile Justice and Delinquency Prevention Act (JJDP) in 1974 focused attention on detention of juveniles. The JJDP Act provided for a comprehensive and unified national approach to improving the nation's juvenile justice system. While the mandates of the Act covered a wide range of issues, the two features widely considered to have the most impact upon the juvenile justice system related to detention. These features were that participating states must agree that within three (3) years after submission of the initial state plan that:

> "1. Status offenders and non-offenders shall not be placed in juvenile detention or correctional facilities, and
>
> 2. No children, be they delinquents, status offenders or non-offenders shall be detained or confined in any institution where they have regular contact with adult criminal offenders."[2]

Subsequent amendments have provided even more stringent mandates, while the original premises that status offenders and non-offenders should not be placed in secure detention and correctional facilities and that juveniles should not be detained in any institution in which they have regular contact with adults remain.

Historically, the detention practices in Missouri reflect similar problems experienced nationwide. The monitoring surveys completed to measure compliance with the JJDP Act requirements provide an indication of the magni-

tude of these problems. The first survey, completed for the time period of January 1, 1975, to December 31, 1975, showed Missouri detained 4,786 accused status offenders and non-offenders for 24 hours or more in secure detention. For the same time period in 1978, there were 2,419 such juveniles detained during the year. For the 1975 reporting period, 3,279 of those detained were held in facilities used for secure detention of both juvenile offenders and adult criminal offenders which did not provide adequate sight and sound separation. In 1978, 1,248 juveniles were held under these circumstances.[3]

The intent of this document is to increase the awareness of how detention is used in Missouri and provide recommendations for improvement. The first step is to define what we are talking about when speaking of "detention." Later sections will identify the issues related to the purpose of detention and the critical steps which occur in the process of detaining juveniles.

A. DEFINITION OF DETENTION

Confusion exists as a result of the broad indiscriminate use of the term "detention." Supreme Court Rules define detention as the temporary taking and retention of the person of a juvenile in judicial custody in connection with proceedings under the Juvenile Code. No distinction is made between juveniles accused of a criminal offense (delinquent), a non-criminal offense (status offense), or who are dependent (non-offense).

The Supreme Court Rule's definition of "detention facility" includes "...facilities which are physically confining and those which provide care for juveniles." Under this broad use of the term "detention" the Supreme Court Rules apply equally to all juveniles detained without regard to the juvenile's offense/non-offense, the juvenile's needs, and the characteristics of a facility where they are held.

The appropriateness of this broad definition of "detention" breaks down when you consider its use from a functional standpoint. If a legitimate purpose is being met which necessitates the use of a "physically restrictive facility," this definition of detention creates little problem. This is true when it is necessary to keep a juvenile from abscounding or to insure no further offenses are committed.

If the purpose is to remove the juvenile from an endangered environment, it is not generally necessary to use a physically restrictive facility to meet this purpose. In such a situation, a more accurate term to describe the function being met is the provision of protective custody or shelter care, not detention. Correspondingly, a definition should be provided to describe facilities which can be used for protective custody or shelter care.

Different types of facilities can be classified by using various schemes. One of the important distinctions made by the JJDP Act is

between secure and non-secure facilities. The definitions used are:

> "1. Facility, Secure: one which is designed and operated so as to ensure that all entrances and exits from such facility are under the exclusive control of the staff of such facility, whether or not the person being detained has freedom of movement within the perimeters of the facility or which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents.
>
> 2. Facility, Non-secure: a facility not characterized by the use of physically restricting construction, hardware and procedures and which provides its residents access to the surrounding community with minimal supervision."[4]

To provide for Rules which are clear and can be uniformly applied depending on the category of juveniles being served and the purpose of providing detention, the MJJRC recommends provisions be made to:

1. Delete the definition of "detention facility" under Supreme Court Rule 110.05 a. (6);

2. Define "secure detention facility" as a place of temporary care for juveniles in judicial custody pending court disposition who require secure custody and includes facilities which are physically confining; and

3. Define "shelter care facility" as a place of temporary care for juveniles in judicial custody pending court disposition who are in need of care or protective custody and includes facilities which are physically unrestricting. (Related Statutes: 211.021 and 211.151 R.S.Mo.; Related Supreme Court Rules 110.05, 111.03, .04, .05, .06, .07, .09, and .10).

The Missouri Juvenile Justice Review Committee strongly supports the need for Supreme Court Rules that provide uniform detention practices and protect the rights of juveniles held in detention. The current Rules which mix all categories of juveniles and the different purposes of detention simply do not work. This arrangement actually promotes the inconsistent application of the Supreme Court Rules by various juvenile courts. Some courts try to apply the Rules to law violators, status offenders, and neglected/abused children. Other courts apply the Rules only to law violators and status offenders. Often an added workload is created for the court attempting to meet inappropriate procedural requirements. This can also result in the use of overly restrictive settings, particularly for status offenders and abused/neglected children.

The suggested changes in definition of terms will improve this situation. The MJJRC recognizes however there may be a need in the future for a more comprehensive review of needed changes in the Supreme Court Rules. Such changes should further clarify necessary distinctions in the practices and procedures as they relate to different categories of children.

Anytime it is necessary to detain a juvenile in connection with proceedings under the Juvenile Code, the impact on the juvenile is potentially very significant. However, "secure detention" clearly creates the most serious deprivation of a juvenile's freedom and access to community services, family and friends. As a result, the emphasis of this paper will be on the use of "secure detention," with other forms of detention being referred to as alternatives to "secure detention."

Another distinction in reviewing the definition of detention is whether it is pre-adjudicatory temporary detention or post-adjudicatory placement. For the purpose of this review, we will concentrate on the detention of juveniles pending court disposition or execution of a court order for placement.

B. PURPOSE OF DETENTION

In looking at the number of juveniles detained in Missouri, an appropriate question which needs to be answered is "Why are juveniles detained?" The Supreme Court's definition states that juveniles are detained in connection with the proceedings under the Juvenile Code. In view of current detention rates, it would follow that the Juvenile Code must embody a philosophy that sanctions the practice of holding juveniles in detention.

From a historical perspective, the development of the juvenile court and statutes related to children points to a very different appraoch. This philosophy and approach to detaining juveniles was first spelled out by the Missouri Legislature in the Juvenile Court Act of 1903. The original philosophy has been reinforced over the years by the use of such terminology as:

> "...that the care, custody, and discipline of the child shall approximate as nearly as may be that which should be given by the parents; and that as far as practicable any delinquent child shall be treated, not as a criminal, but as a misdirected and misguided child, and needing aid, encouragement, help and assistance."[5] [emphases ours]

To help place the issue of detention in proper perspective, the following statement of purpose of the current Juvenile Code needs to be examined.

> "The purpose of the Juvenile Code is to facilitate the care, protection, and discipline of children who

> come within the jurisdiction of the Juvenile Court. The Juvenile Code shall be liberally construed, therefore, to the end that each child coming within the jurisdiction of the Juvenile Court shall receive such care, guidance, and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the state and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should be given him by them."[6] [emphases ours]

One of the complications inherent in the purpose of the Juvenile Code is the fact it actually mandates two separate functions: 1) providing for the welfare of the child, and 2) providing for the best interests of the state. The Juvenile Code clearly states that, when possible, the preference is to accomplish its purpose by keeping the child in his own home. When this is not possible, the child's care should be as nearly as possible equivalent to that which should have been provided in the home.

The use of detention provides the most glaring example of the conflict which juvenile courts face in carrying out its dual purpose. This paradoxical circumstance has resulted in the institutionalization of a basic ideological conflict between those serving as agents of social control on one hand and those fulfilling the treatment role on the other.[7]

It is difficult to rationalize that the current practices of detaining juveniles in Missouri in many cases meet the purpose of providing care and treatment. To provide for adequate care and treatment, the decision to detain a juvenile must be based on the juvenile's individualized needs. In meeting the needs of the juvenile, the MJJRC feels the philosophy of Missouri's Juvenile Code clearly provides that the standards of least restrictive custody should guide all detention decisions. Those cases where the need for social control necessitates the use of secure detention will be limited primarily to delinquent offenders. Use of "secure detention" for status offenders should be the exception to the norm and should be conditioned on a finding that less restrictive alternatives have been tried and failed to ensure the presence of the juvenile at court or prevent further offenses being committed. The MJJRC considers the secure detention of dependent/neglected children as an inappropriate method of meeting their needs and recommends the use of secure detention of dependent/neglected children be prohibited.

To obtain a better understanding of the reasons why juveniles are detained, the following sections review the critical factors involved in the detention process. The critical factors identified in the detention process are the screening procedures used at the referral stage; the criteria for the decision to place a juvenile in detention; the time limits on the period between initial intake and the detention hearing, as well as the total length of confinement; and the designated place of detention.

C. SCREENING PROCEDURES

A thorough review of the actual screening procedures used in each circuit would involve extensive interviewing and checking of individual written and/or oral policies and procedures. Our resources simply do not allow for that type of effort. Comments from relevant literature reflect a definite lack of uniformity in the practice of screening referrals in different juvenile courts across the nation. MJJRC Members knowledgeable about Missouri's individual juvenile courts, reinforce the fact this is also true for Missouri.

The importance of screening referrals becomes particularly relevant when you consider the broad nature of the jurisdiction of the juvenile courts. There is frequent reference in the literature that almost every child at one time or another is involved in activity which could result in juvenile court involvement. As a result, a heavy burden is placed on providing a viable mechanism for screening out inappropriate referrals.

Juveniles brought before the juvenile court generally are first involved with a law enforcement agency. This involvement may be a result of personal observations of the police or through a complaint from the juvenile's parents, school officials, or some other individual or agency. When a law enforcement officer takes a juvenile into custody they have to make a decision to either release the juvenile to his/her custodian or some other suitable adult or detain them. Supreme Court Rule 111.01 identifies when a juvenile may be taken into judicial custody. To afford the child protection under the law and to promote the child's best interest, the remainder of Supreme Court Rule 111 clarifies what is to occur when the juvenile is taken into custody. The process outlined leads to the presentation of the juvenile to the juvenile officer or a detention facility if he is not released.

When the referral originates with the parents or school officials, there is a particularly heavy burden placed on the initial screening process. This burden is created because the persons making the complaint have a strong stake in having the complaint pursued. The issue is complicated by the insistence in many cases that court intervention is for the juvenile's own good.

Police respond by fulfilling their role of picking the juvenile up and presenting him to the juvenile court. Parents then often refuse to retrieve the juvenile. The juvenile court must then attempt to be responsive to its dual role of providing treatment and, at the same time, fulfill its role of providing social control that is being requested. This intervention often takes the form of what is commonly referred to in the literature as the "widespread overuse of detention in the juvenile justice system, especially for status offenders."

The original source for complaints is almost unlimited. The assessment of whether the juvenile court should intervene after a referral is made may

involve a law enforcement officer, the juvenile officer, person in charge of a juvenile detention facility, or a juvenile court judge. Unfortunately, one of the consequences possible is secure detention.

Pappenport and Young provide a good summary of the problems associated with screening of referrals to the juvenile court. Their review of the literature and on-site visit experiences tend to support the following statements regarding intake to court and detention:

> "1. Detention facilities receive a flood of inappropriate referrals from police, parents, and other adults;
>
> 2. Some courts have no detention criteria at all, merely accepting the cases referred by police;
>
> 3. Other courts have verbal standards but leave intake decisions to employees who may introduce additional criteria, which may not be the same from employee to employee;
>
> 4. Detention officials in many areas yield to the demands of police, parents, and social agencies for detention, even if criteria are violated;
>
> 5. Even when court officials screen referrals conscientiously, youths referred for status offense behavior are often detained securely and retained for extended periods because appropriate services and alternative placements in the community are not available. There are court officials who prefer doing nothing rather than detaining such offenders, but they appear to be in the minority;
>
> 6. Decisions are too infrequently monitored, so judges and court personnel often do not know what is going on;
>
> 7. Detention practice has low visibility, except during moments of publicized scandals. In general, there is little evidence of public interest in detention, except for the efforts of a few ad hoc organizations concerned with services to children and youth."[8]

In view of all the problems identified, it is apparent this step in the juvenile justice process can be crucial. The potential impact of the decision to act on a referral can be as important as later court adjudication decisions. Once a juvenile is processed through the initial screening

process, his chances of being detained are greatly increased. The emphasis should be placed on dealing with the underlying problems rather than the behavior which brought about the referral -- in other words, an emphasis on treatment of the causes rather than "social control" of the behavior.

D. CRITERIA FOR DETENTION

When the court is informed that a juvenile has been admitted to a secure detention facility, a decision must be made to either release the juvenile or order the continued temporary detention of the juvenile until a hearing is held. Supreme Court Rule 111.08 outlines the process to be followed for a detention hearing.

> "a. Prior to a detention hearing the juvenile officer shall file a petition pursuant to Rule 114.01 or a motion for modification of the judgement pursuant to Rule 121.01. The court shall examine the petition to determine whether the facts alleged would subject the juvenile to the jurisdiction of the court. If no petition is so filed, the juvenile shall be released forthwith.
>
> b. At the detention hearing the court shall determine whether the juvenile and his custodian have been informed of the right to counsel pursuant to Rule 111.07 d. If not, the court shall so inform the juvenile or his custodian of the right to counsel, and the court may continue the hearing to enable counsel to be obtained if the right to counsel is not waived. The court shall receive testimony and other evidence relevant only to the necessity for detention of the juvenile. Any written reports or social records offered to the court at the detention hearing shall be made available to all parties at or prior to the hearing. . . .
>
> d. At the conclusion of the hearing the court shall order the juvenile released from detention to his custodian or other suitable person pursuant to Rule 111.02, unless the court finds that detention is required. . . ."

The purpose of the detention hearing is to determine only whether a juvenile should be continued in detention or released to his custodian. Statutory language relating to detention criteria in Missouri is more specific than some other states. Criteria required for detention is spelled out in Supreme Court Rule 111.08 d:

> "(1) to protect the juvenile; or

> (2) to protect the person or property of others; or
>
> (3) because the juvenile may flee or be removed from from the jurisdiction of the courts; or
>
> (4) because the juvenile has no custodian or suitable adult to provide care and supervision for the juvenile and return the juvenile to the court when required; or
>
> (5) because the juvenile is a fugitive from another jurisdiction and an official of that jurisdiction has required the juvenile be detained pending return to that jurisdiction."

Examination of this criteria points to a need to further delineate what should be considered in making a decision to place a juvenile in secure detention. The following limitations should be present:

a. Protect the juvenile
   1. Danger must be evident, or
   2. Danger must be immediate, or
   3. Danger must be specifically identified.

b. Protect the person of others
   1. Must be documented evidence of past violent behavior, or
   2. Presence of violence within present referral.

c. Protect the property of others
   1. Past behavior of repeated violations, or
   2. Type of property offense must be of a serious nature.

d. Because juvenile may flee jurisdiction
   1. Documented history of flight, or
   2. Present referral involves flight.

e. Because juvenile may be removed from jurisdiction
   1. Documented history of flight, or
   2. Present referral involves flight.

f. Because juvenile has no custodian or other suitable adult to provide care and supervision for him and return him to court when required and at least one of the above criteria (a through e) exists
   1. Absence is other than temporary, or
   2. Immediate presence of custodian is essential.

E. TIME LIMITS

Even in the most humane environments, detention is a traumatic experience.

> "Detention is a waiting period. During the entire course of his confinement a child is troubled by his immediate placement and he wonders what's going to happen to him. The time lapse between admission, a quickly scheduled court hearing, and immediate disposition we may consider as short-term but to a detained adolescent this period can seem an eternity. He has not volunteered to be in his circumstances and being in unnatural surroundings he can be expected to be on edge. Resistance must be anticipated and considered to be perfectly normal."[9]

It is obvious when a juvenile is held in secure detention, time is an important factor. To protect the juvenile's rights, it is essential that procedures related to his release or continued detention are carried out as expeditiously as possible.

Generally speaking, current Missouri statutes and Supreme Court Rules which address time limits related to detention do provide for the protection of the juvenile's rights. One area of concern is created by the conflict between statutes and Supreme Court Rules. In referring to temporary detention, a portion of Supreme Court Rule 111.06 states:

> "...temporary detention of a juvenile for a period not to exceed forty-eight hours may be authorized by the juvenile officer, and if the detention is in a facility operated by the juvenile court exclusively for the detention of juveniles by the person in charge of the detention facility."

Section 211.141 R.S.Mo. as re-enacted in 1980 reduces to 24 hours the amount of time a juvenile may be detained without a court order. As a result, some courts use the 24 hour limit while others use the 48 hour limit.

Another area of concern is the guidance provided for scheduling a hearing upon a petition. Supreme Court Rule 119.01 a. states:

> "As soon as practicable after the petition is filed, the date for the hearing on the petition shall be set. If the juvenile who is the subject of the petition is in detention, the hearing shall be scheduled for the earliest possible date."

The phrase "...the hearing shall be scheduled for the earliest possible date"

in Supreme Court Rule 119.01 implies expediency but sets no actual time limit. There is no law or Supreme Court Rule for juveniles comparable to the law which requires that an accused adult be brought to trial within 180 days.

The MJJRC recommends the following restrictions to provide greater protection to juveniles awaiting a hearing upon a petition:

> Limit the amount of time between the filing of a petition and a hearing upon that petition to: a) a maximum of sixty (60) days for juveniles in physical custody unless good cause is shown and b) a maximum of ninety (90) days for juveniles not in physical custody unless good cause is shown. (Related Supreme Court Rule 111.07).

F. PLACE OF DETENTION

In considering the possible places of detention, it is apparent the level of services available throughout the state varies significantly. Some circuits don't have any secure detention facilities within their circuit which are usable for detention of juveniles. Others have very limited alternatives to secure detention for juveniles under their court's jurisdiction. Because of the lack of availability of appropriate alternatives, the decision to place a juvenile in secure detention is sometimes made out of desperation rather than as choice of preference.

In Missouri, the possible places of detention are statutorily identified in Section 211.151 and Missouri Supreme Court Rules 111.03. The Supreme Court Rules state that each juvenile court shall, by order, designate the detention facility or facilities to which juveniles shall be taken when within judicial custody. The possible places of detention include:

> "1. A detention home provided by the county;
>
> 2. A foster home, subject to the supervision of the court;
>
> 3. A suitable place of detention maintained by an association having for one of its objects the care and protection of children;
>
> 4. A jail or other facility for the detention of adults, if the child's habits or conduct are such as to constitute a menace to himself or others and then only if he is placed in a room or ward entirely separate from adults confined therein; or

5. Such other suitable custody as the court may direct."

A list of facilities used for the detention of juveniles was prepared in June, 1981, as a part of the monitoring process for Missouri's participation under the JJDP Act.

This list is based on a report of the juvenile officers from the forty-three circuits in Missouri identifying the residential facilities in Missouri which can be used to serve juveniles who come under the jurisdiction of the juvenile courts. Individual foster homes or family homes are not included in this list since they clearly do not come under the purview of the JJDP study. Public mental health hospitals and facilities are excluded from this list since there is no provision under our juvenile code for the placement of juveniles in such facilities other than for evaluation and/or treatment.

With the above exclusions, a list of the residential facilities used to serve juveniles coming under the jurisdiction of the juvenile courts in Missouri for the twelve month period of July 1, 1980, to June 30, 1981, was completed. As pointed out in the definition section of this paper, the JJDP Act emphasizes the distinction between secure and non-secure facilities.

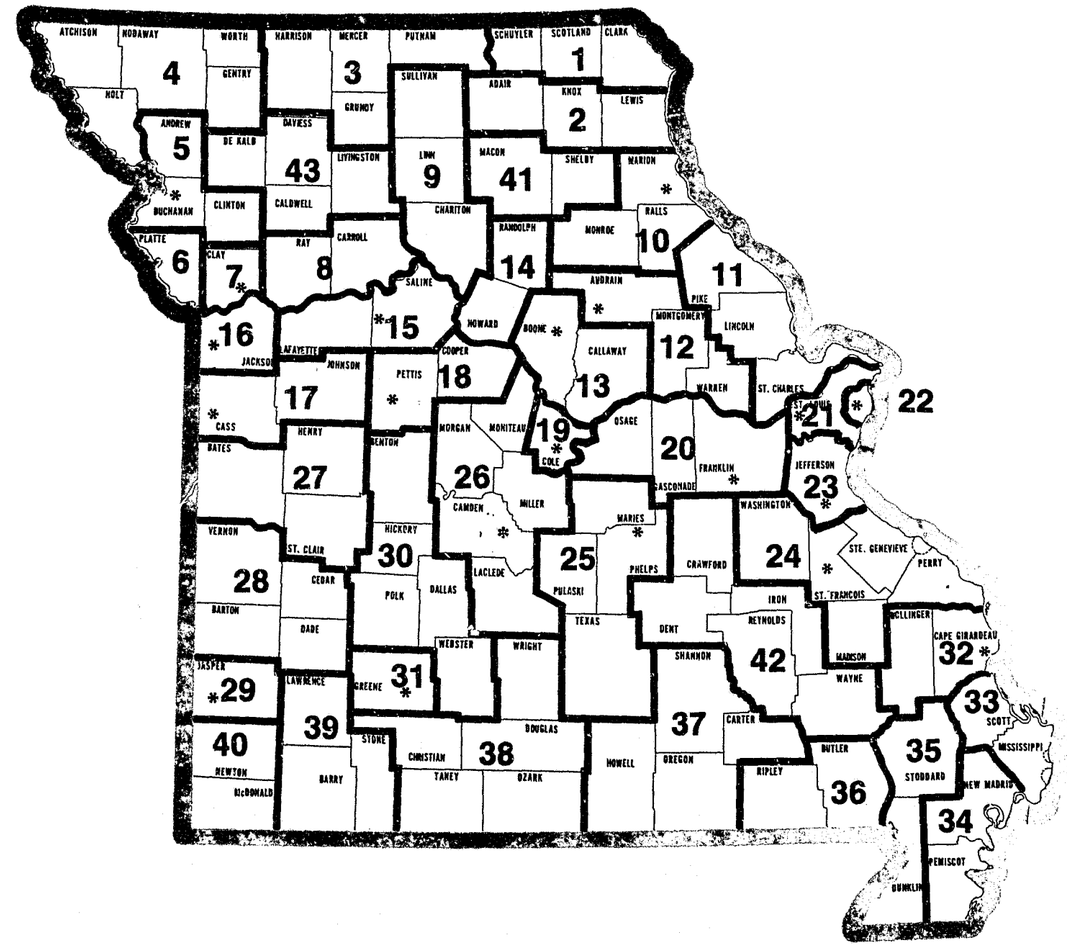
The secure facilities utilized include adult jails and lockups plus juvenile detention centers. There were a total of 102 adult jails and lockups reported as being utilized for detention of juveniles during this twelve month period. A total of 20 juvenile detention centers were reported.[10]

Of the adult jails and lockups identified, a total of 55 reported providing sight and sound separation of juveniles and adults (as per JJDP criteria). A total of 47 reported they did not meet part or all of the criteria for sight and sound separation. This fact reflects a practice which is in direct conflict with Supreme Court Rule 111.03 b. (4) and Section 211.151.1(4) R.S.Mo. which states a juvenile may be placed in an adult jail or other facility for the detention of adults if he is "...placed in a room or ward entirely separate from persons 17 years of age or older confined therein."

In those cases where it is necessary to place a juvenile in secure detention, many circuits face a dilemma. The map on page 13 shows the location of the 20 juvenile detention centers located in Missouri. These facilities hold only juveniles and provide the only alternative to adult jails and lockups for the secure detention of juveniles.

It should be noted that in some areas of the state, a juvenile officer whould have to travel over one hundred miles one way to transport a juvenile to an existing juvenile detention facility. This is compounded by the fact some of these facilities do not have adequate space or choose not to contract with other circuits to provide detention services. In those cases

Missouri's 43 Judicial Circuits



*Location of secure juvenile detention facilities

where agreements can be reached, the availability of personnel and the cost of transporting juveniles from one circuit to another circuit's facility is often cost prohibitive.

Setting aside for a moment the process which might lead a juvenile to be placed in detention, what are the existing facilities actually like? What criteria is used in the designation of "detention facility"? Since there are forty-three different juvenile courts designating the facilities, there are potentially forty-three different sets of criteria. In view of the wide range of potential places of detention in Missouri, there exists a need for at least a minimum set of criteria to be met in regard to operational procedures for such facilities.

The magnitude of this type of project should not be underestimated. Certainly the importance of the impact such requirements would have on the quality of services and treatment provided to juveniles warrants a comprehensive and meaningful approach.

Recognizing the difficulty and time involved in developing a realistic functional set of criteria, it is not reasonable for the MJJRC to attempt this task at this time. The MJJRC recommends the Office of State Courts Administrator (OSCA) be designated to accomplish this purpose. One option would be for the Supreme Court to appoint a commission for this purpose with OSCA providing staff assistance. It is recommended in a later section of this paper that OSCA be responsible for collecting data on existing detention practices and existing detention facilities. With access to this information and their connection with the courts in the 43 circuits, they would be in a unique position to assist in this process.

Some of the issues which should be covered are:

A. Facility Operation
   1. Health
   2. Fire
   3. Safety
   4. Sanitation
   5. Food
   6. Discipline
   7. Security Procedures

B. Personnel
   1. Education
   2. Training
   3. Job Descriptions

C. Programs for Detention
   1. Education
   2. Medical
   3. Counseling
   4. Recreation

The need for minimum criteria to provide acceptable levels of basic care and protection are essential and immediate. As a long range goal there is a need to develop standards for such facilities. The standards would provide ideal conditions which should exist. In other words, the standards would provide direction for continued improvement after the essential needs are met. There are currently numerous standards for the operation of juvenile detention facilities available at the national level. Two such set of standards recognized as being of high quality have been developed by the American Correctional Association and the National Advisory Committee for Juvenile Justice and Delinquency Prevention. These standards could be adopted in total or selected portions could be utilized in the process of developing operational standards for secure detention facilities in Missouri.

G. ORGANIZATIONAL CONSIDERATIONS

Throughout this paper inconsistencies have been identified between the intent of existing statutes, Supreme Court Rules and what actually occurs in the process which leads to detention of juveniles in Missouri. The availability of adequate secure detention facilities and alternatives to secure detention vary drastically throughout the state. Numerous references are made to the lack of comprehensive information about needs or the type of services which exist and the circumstances involved in the process of placing a juvenile in detention. These inconsistencies, lack of uniformity and lack of information point to some basic organizational problems which exist in Missouri's juvenile justice system.

The above issues are indications of the type of problems which result when there is a lack of planning and coordination. When you consider the juvenile courts are the core of the juvenile justice system, it becomes apparent there are inherent problems in the structure of the system. This structure actually inhabits rational planning and coordination.

The juvenile courts relate to a wide range of agencies and organizations at both the state and local level. Their basic mandates are defined by statute and the Supreme Court Rules. The juvenile courts' operations are affected by decisions of various other agencies and organizations providing services to juveniles. Financial support is given or taken away by a combination of local units of government and the state. At the same time, the juvenile court and its services continue to be a responsibility of the circuit courts. This creates a division in the line of authority for the juvenile courts and confusion with regard to accountability.

Not only are juvenile courts often functioning in essentially an autonomous fashion, other state agencies which provide alternatives to secure detention for juveniles under the jurisdiction of the juvenile courts often do likewise. Overlapping and restricting guidelines often exclude certain populations from receiving any kind of treatment.

There is not wide public knowledge of inconsistencies and gaps in service because there are very few measures for accountability provided. While the statutes and Supreme Court Rules are in most cases adequate, there is no monitoring system to, in fact, determine if actual practices comply. Clearly, sanctions are not identified and enforced. Unfortunately, isolated incidents only come to the forefront in extreme cases often as a result of court litigation.

The majority of the 20 juvenile detention facilities in Missouri have been built in the last ten years. To a large extent, combined funding from the federal level through the JJDP program along with local funding has made this possible. In addition, various new alternatives to secure detention have been developed. Unfortunately, the construction of new facilities and development of new programs has occurred in a very fragmented fashion in the absence of a body with the responsibility and authority for planning and coordination.

Throughout this paper the greatest areas of concern relate to conflicts with the philosophy of the Juvenile Code in the inappropriate use of secure detention. There is also a strong financial incentive to limit the use of secure detention to only those cases where it is absolutely necessary. Contrary to concerns often expressed about the cost of new programs, alternatives to secure detention are less expensive than incarceration.

> "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.'"[11]

Generally speaking, in order to determine the cost associated with making changes, you would compare existing costs to those required to bring about proposed changes. The fact is there is very little comprehensive statewide information about current costs of providing secure detention or alternatives to secure detention. This leaves decision makers in a dilemma. To alleviate this problem, the necessary information must first be available. This information must then be used in a coordinated effort to provide improvements in the most effective manner possible.

Regardless of the cost of providing detention services, there must be consideration given to who should administer and fund detention services.

The two questions were raised in a recent survey conducted by MJJRC of the 43 juvenile officers in Missouri. Following is the response to the question of who should administer detention services:

Juvenile Courts:	62.8%
State:	16.3%
Other:	20.9%

In response to "Who should pay for detention services?" the answers were:

State:	34.9%
Local Unit of Government:	34.9%
Combination of State & Local:	2.3%

There appears to be a preference for juvenile courts to continue to administer detention services. The question of funding seems to be split with, perhaps, some combination of state and local funding being a possible compromise.

The current practice of developing detention facilities on a local basis has created a wide disparity in what detention facilities are available and their method of operation. A possible approach which would improve this lack of uniformity is suggested in a report of the National Advisory Committee for Juvenile Justice and Delinquency Prevention. The report Standards for the Administration of Juvenile Justice, Standard 4.11, outlines an approach with a centralized body having oversight responsibility for detention. This standard places a major portion of responsibility for the provision of juvenile services on the state level and calls for centralized administration by a single state agency. This centralized approach is more workable in developing standards, accountability, and a consistent approach to providing detention services.

> "The state can fulfill its responsibility as service provider in basically two ways. Naturally, the state can directly operate supervision programs in the juvenile service system. However, these standards also recognize the desirability of utilizing local government and private sector resources. Thus the state may also provide services indirectly by subsidizing local and private programs.
>
> "Regardless of whether the programs are provided directly by the state or indirectly through subsidy, the standard requires that all programs be subject to state supervision."[12]

The MJJRC recommends the state provide services indirectly by subsidizing local and private programs. Through additional state funding, an

incentive could be provided for improvements. Along with this subsidy the state should have oversight authority. At the same time, planning and coordination of improvements could result in more uniformity in the juvenile justice system across the state.

Meeting statewide minimum criteria or standards for the operation of detention facilities could be a prerequisite for receiving funds: Iowa currently uses such a process. Counties are given the responsibility of providing for custody and detention of juveniles with assistance of the State Department of Public Welfare (SDPW). The SDPW establishes minimum standards which must be met before receiving state funds. Counties can build and operate their own facilities or contract for services. The counties are required to pay 50% of the average per capita cost with the SDPW supplementing the remaining amount. The criteria for financial assistance by the SDPW is statutorily set forth outlining the programs and facilities which are to be funded.

Pennsylvania provides state funding as an incentive for the development of alternative facilities such as foster care, group homes, shelter care, community residential care, etc., by increasing the state reimbursement for such care. At the same time, the reimbursement for institutional placements was reduced from 100% to 50% by the same legislation.

A precedent for state involvement and assistance in funding already exists in Missouri as a result of the following:

> "549.490. State aid to county for care of neglected or delinquent children.--Whenever a county shall own, use or operate an institution as a home for neglected and delinquent children as provided in Section 549.480, the state of Missouri shall pay to the county the sum of fifty dollars per month toward the care and maintenance of each of these children, upon an order or voucher submitted to the state by the county court."

In 1969 when this legislation was passed, this amount of money was more significant than it is today. Inflation has affected the costs associated with providing residential care in terms of personnel costs, food, utilities, etc. For the state to even maintain its original commitment, this funding needs to be increased. It also seems logical the state has a responsibility to at least provide services to juveniles at a comparable level provided for adults. The current assistance provided for adults under Section 221.105 R.S.Mo. is $8 per day.

It is the MJJRC's contention that the following benefits would be derived by increasing the reimbursement rate of $1.67 per day ($50 per month) to $8 per day:

- Juvenile courts, with the support of their county courts/governing bodies, will be more apt to place children in non-jail facilities for the purpose of detention or shelter care.
- The $8 per day reimbursement would provide a realistic incentive for courts to develop shelter care facilities for status offenders and non-offenders (victims of abuse/neglect).
- The $8 per day reimbursement provides a more viable rate from which to negotiate contracting for detention services from other counties.

Increasing state financial aid to local units of government as an incentive to improving detention services and alternatives to secure detention is seen as essential. However, there is also a need to insure that services are better coordinated through a rational planning process to maximize the use of all resources. To this end, there are a number of activities which need to occur which the MJJRC feels can best be performed by the Office of State Courts' Administrator. In order to fill the void in comprehensive information which exists and to facilitate statewide coordination, uniformity, and minimum levels of service, the MJJRC recommends that provisions be made to:

1. Designate the Office of State Courts' Administrator to collect data on detention and protective custody cases from all forty-three (43) circuits on children which come under the jurisdiction of the juvenile court. Not only should this agency have the responsibility for collecting this data, but they should also have the authority to impose sanctions in order to assure the timely and accurate reporting of this data.
2. Assign to the Office of State Courts' Administrator the responsibility for planning and coordination to perform the following from a statewide perspective:
   a. Insure that necessary information is available to examine:
      (1) Existing needs for detention services,
      (2) Existing detention services, and
      (3) Constraints to providing services;
   b. Establish a monitoring mechanism to identify and insure local practices conform to statutes and Supreme Court Rules;
   c. Evaluate effectiveness and cost of existing alternatives to secure detention;
   d. Disseminate above information on a statewide basis;
   e. Incorporate evaluative and other information in an ongoing planning process to alleviate the voids which

exists in detention services;

f. Establish minimum criteria for operation of secure detention facilities;

g. Provide an incentive for the development of alternatives to secure detention in the form of shelter care facilities such as foster care, group homes, etc. This incentive could be provided by setting the reimbursement rate of state aid to counties for detention care proportionately higher when non-secure facilities are used than when secure detention facilities are used; and

h. Pursue a goal of removing all juvenile offenders from all jail detention settings by 1985, and establishing regional secure detention facilities for juveniles as an alternative to jail detention.

There have been tremendous improvements made in Missouri in recent years in providing detention services for juveniles. As mentioned earlier, many of the juvenile detention facilities have been built within the past ten years. Of equal importance is the increased awareness and concern which has occurred in regard to the problems associated with detaining juveniles. The state of Missouri is now at an important turning point. Along with recent improvements and by carrying out the recommendations contained in this paper, the MJJRC strongly believes Missouri has an opportunity to fulfill the goals outlined in Missouri's Juvenile Code. Providing appropriate detention services and shelter care for Missouri's youth is a formidable task. This is a responsibility, however, which must be met or else we will be forced to pay through the chain reaction of negative consequences which result from the inappropriate treatment of juveniles.

FOOTNOTES

1. U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service, National Jail Census, 1970: A Report on the Nation's Local Jails and Types of Inmates, Washington, U.S. Government Printing Office, 1971.

2. 42 U.S.C. 5633 (a) (12) (13).

3. Wescenmo, Inc., Survey of Juvenile Detention: State of Missouri 1978, Sedalia, Missouri, pp. 104-106.

4. U.S. Department of Justice Law Enforcement Assistance Administration Manual M 4100.1F State Planning Agency Grants, Office of Planning and Management, January 18, 1977, Appendix 1, p. 4.

5. "CHILDREN: Neglected and Dependent," Senate Bill 126, Missouri, 1905, Section 22.

6. Revised Statutes of Missouri, Chapter 211, Section 211.011.

7. Charles P. Smith, et al., A Preliminary National Assessment of the Status Offender and the Juvenile Justice System: Role Conflicts, Constraints, and Information Gaps, American Justice Institute, Washington D.C., April, 1980, p. 163.

8. Donnell M. Pappenfort, et al., Use of Secure Detention for Juveniles and Alternatives to Its Use, Law Enforcement Assistance Administration, Office of Juvenile Justice and Delinquency Prevention, Washington D.C., 1977, p.3.

9. R. Perkins, "Your Detention Program. Is it Focused on the Needs of the Children Detained?" Juvenile Court Judges Journal 19 (1968) pp. 55-56.

10. Missouri Juvenile Justice Review Committee, draft report of "Missouri's 1981 JJDP Monitoring Report."

11. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, It's Your Move: The Un-jailing of Juveniles in America, April, 1981.

12. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Standards for the Administration of Juvenile Justice Report of the National Advisory Committee for Juvenile Justice and Delinquency Prevention, July 1980, p. 374.

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DETENTION OF JUVENILES

A REVIEW OF THE PRACTICES IN MISSOURI

EXECUTIVE SUMMARY

MISSOURI JUVENILE JUSTICE REVIEW COMMITTEE

December 1981

DETENTION OF JUVENILES
A REVIEW OF THE PRACTICES IN MISSOURI

Executive Summary

Prepared by

Missouri Juvenile Justice Review Committee

December 1981

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TABLE OF CONTENTS

INTRODUCTION

This executive summary is provided to cover the key findings resulting from the Missouri Juvenile Justice Review Committee's (MJJRC) review of "detention" of juveniles in Missouri. Based upon this review, MJJRC recommends several actions be taken. Many of these changes can occur within a relatively short period of time. Other recommendations will involve setting in motion the mechanisms which can provide additional information and options for more long-term improvements.

The executive summary includes a brief review of the basic philosophical assumptions applied in the MJJRC's review process. This is followed by a brief summary of key problem areas identified along with related recommendations. More detailed analysis of the information utilized in reaching these recommendations can be found in the body of the paper on "Detention of Juveniles, a Review of the Practices in Missouri."

I. ASSUMPTIONS

The recommendations included are based on an examination of the effects of existing statutes, Supreme Court Rules and local practices on the use of detention in Missouri. The resulting areas identified as needing change have a thread of continuity. The commonality in each case reflects the absence of a rationale which would lead to the implementation of the basic philosophy of the Juvenile Code.

The assumptions the MJJRC have relied on are really the central theme of the Juvenile Code. A portion of the Juvenile Code states:

> ". . .each child coming within the jurisdiction of the Juvenile Court shall receive such care, guidance, and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the state and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should be given him by them." (R.S.Mo. 211.011)

This philosophy clearly identifies one role of the juvenile court as that of providing control of the child and for the best interests of the State. In the process of performing that role, the MJJRC strongly believes the role of providing for individualized needs of care and treatment for each child must be met at the same time. In fulfilling both roles of providing for the welfare of the child and the best interest of the State, the least restrictive setting possible must be used when the juvenile is removed from the home. In those cases where detention is found to be necessary, it is essential that the juvenile's rights are protected through the establishment and consistent application of proper detention practices.

II. IDENTIFIED PROBLEMS AND RECOMMENDATIONS

A. Jail Detention

A problem which continues to exist in Missouri is the detention of juveniles in adult jails and lockups that do not provide for separation of juveniles from adult offenders. Forty-six percent of the adult jails and lockups recently identified as being utilized for the detention of juveniles do not provide sight and sound separation of juveniles and adult of-

fenders. During July and August of this year, 66 juveniles were held in adult jails and lockups without sight and sound separation of juveniles and adult offenders. While various reasons and excuses are given for this practice, it is in direct conflict with Supreme Court Rule 111.03.b(4) and Section 211.151.1(4) R.S.Mo.

To clarify and strengthen current requirements related to the use of jail detention, the MJJRC recommends provisions be made to:

1. Require that sight and sound separation be absolute at all times and in all respects between juveniles and adults when a jail or other facility for the detention of adults is used for the detention of a juvenile. (Related Statute: 211.151.1(4); Related Supreme Court Rule: 111.03.b(4);
2. Provide that any person violating the sight and sound separation requirement be guilty of a Class A misdemeanor; and shall, upon conviction, be punished by a fine not to exceed one thousand dollars or imprisonment in the county jail not to exceed one year or by both fine and imprisonment; and
3. Require that when jail detention is utilized there shall be a judicial determination within 72 hours (excluding non-judicial days) that the child's habits or conduct constitutes a menace and it is necessary to utilize a jail for custody.

B. Clarification Of Detention Practices

The MJJRC strongly supports the need for Supreme Court Rules that provide uniform detention practices and protect the rights of juveniles held in detention. A problem which exists is that various juvenile courts apply these Rules inconsistently. Some courts try to apply the Rules to law violators, status offenders, and neglected/abused children. Other courts apply the Rules only to law violators and status offenders. This inconsistent application appears to result from more than the individual differences in philosophy of the various courts. The real problem is the lack of an adequate distinction in the different purposes met when "detention" is used for the three different categories of juveniles. This is further complicated by the inadequate distinction made in defining the difference between using a secure detention facility or a shelter care facility for detention. Mixing all categories of juveniles and the different purposes of detention under the same Rules does not work. This often creates an added work load for the court to meet procedural requirements which are inappropriate; and, in fact, provides for the use of overly restrictive settings, particularly for status offenders and abused/neglected children.

To provide for Rules which are clear and can be uniformly applied depending on the category of juveniles being served and the purpose of providing detention, the MJJRC recommends provisions be made to:

1. Delete the definition of "detention facility" under Supreme Court Rule 110.05.a(6);
2. Define "secure detention facility" as a place of temporary care for juveniles in judicial custody pending court disposition who require secure custody and includes facilities which are physically confining; and
3. Define "shelter care facility" as a place of temporary care for juveniles in judicial custody pending court disposition who are in need of care or protective custody and includes facilities which are physically unrestriciting. (Related Statutes: 211.021 and 211.151 R.S.Mo.; Related Supreme Court Rules 110.05, 111.03, .04, .05, .06, 07, .09, and .10).

Further, to limit the inappropriate use of detention, the MJRRC recommends provisions be made to:

4. Provide that for those juveniles subject to the jurisdiction of the juvenile court pursuant to 211.031.1(2) an informal adustment process be used whenever possible;

5. Prohibit the detention of juveniles in "secure detention facilities" who come under the court's jurisdiction through the provision of Section 211.031.1(1). (Related Statutes 211.141, .151, and .181 R.S.Mo.; Related Supreme Court Rules 111.02, .03, .04, .05, .06, and .07);
6. Provide that juveniles who come under the court's jurisdiction through the provisions of Section 211.031.1(2) not be held in "secure detention facilities" unless a non-secure facility has been attempted and been found to be insufficient or there is reason to believe the juvenile is in imminent danger and needs protection. (Related Statutes: 211.141, .151, and .181 R.S.Mo.; Related Supreme Court Rules 111.02, .03, .04, .05, .06, and .07);
7. Add the following additional criteria to limit when secure detention can be used:
   a. Protect the juvenile
      (1) Danger must be evident, or
      (2) Danger must be immediate, or
      (3) Danger must be specifically identified.
   b. Protect the person of others
      (1) Must be documented evidence of past violent behavior, or
      (2) Presence of violence within present referral.
   c. Protect the property of others
      (1) Past behavior of repeated violations, or
      (2) Type of property offense must be of a serious nature.
   d. Because juvenile may flee jurisdiction
      (1) Documented history of flight, or
      (2) Present referral involves flight.
   e. Because juvenile may be removed from jurisdiction
      (1) Documented history of flight, or
      (2) Present referral involves flight.
   f. Because juvenile has no custodian or other suitable adult to provide care and supervision for him and return him to court when required, and at least one of the above criteria (a through e) exists.
      (1) Absence is other than temporary, or
      (2) Immediate presence of custodian is esstential. (Related Statutes: 211.131 R.S.Mo.; Related Supreme Court Rule: 111.02.b(2)); and

8. Limit the amount of time between the filing of a petition and a hearing upon that petition to: a) a maximum of sixty (60) days for juveniles in physical custody unless good cause is shown and b) a maximum of ninety (90) days for juveniles not in physical custody unless good cause is shown. (Related Supreme Court Rule 111.07).

C. Inadequate Resources

In considering the possible places of detention, it is apparent the level of services available throughout the state varies significantly. Since detention services for juveniles are paid for primarily by local units of government, the wide variance in the tax revenues of different counties promotes a lack of uniformity in available services throughout the state. The current state aid to counties provides $50 per month for each child in detention. In 1969, when this level of reimbursement was set, this amount was more meaningful. With inflation and increased costs, this amount of money provides little incentive for providing proper detention services. The MJJRC feels this rate should at least be equivalent to the amount provided for adults which is $8 per day. Because of the lack of availability of ap-

propriate alternatives, the decision to place a juvenile in secure detention is sometimes made out of desperation rather than a choice of preference. Indeed this is one of the reasons given for the use of jail detention.

In order to promote a more uniform availability of resources for detention services and to promote the use of alternatives to secure detention, the MJJRC recommends provisions be made to:

1. Increase the base rate of state aid to counties for the care and maintenance of neglected or delinquent children to $8 per day for each of these children. (Related Statute: 549.490 R.S.Mo.);
2. Amend Section 207.020.1(8) and (17) to provide the Division of Family Services with the mandate to accept for care and custody all children subject to the jurisdiction of the court under Section 211.031.1(1) and (2) R.S.Mo. Along with the mandate for additional services, the Division of Family Services should receive additional correlative funding; and
3. Provide a conditioned release as an option to detention for juveniles comparable to that operable in the adult system. This conditioned release would specify conditions to be met and provide the notification that if these conditions are not met the court may exercise more restrictive control. (Related Statute: 211.141; Related Supreme Court Rule 111.02(c)).

D. Lack Of Information, Planning And Coordination

Inconsistencies exist between the intent of existing statutes, Supreme Court Rules and what actually occurs in the process which leads to detention of juveniles in Missouri. The availability of adequate secure detention facilities and alternatives to secure detention vary drastically throughout the State. There is a dearth of comprehensive information about detention needs, the types of services which exist, and the circumstances involved in the process of placing a juvenile in detention. These are indications of the types of problems which result when there is a lack of planning and coordination. There is not wide public knowledge of resulting inconsistencies and gaps in service because there are few measures for accountability. While the statutes and Supreme Court Rules are in most cases adequate, there is no monitoring system to determine if actual practices comply. Clearly, sanctions are not identified and enforced.

In order to fill the void in comprehensive information which exists and to facilitiate statewide coordination, uniformity, and minimum levels of service, the MJJRC recommends that provisions be made to:

1. Designate the Office of State Courts' Administrator to collect data on detention and protective custody cases from all forty-three (43) circuits on children which come under the jurisdiction of the juvenile court. Not only should this agency have the responsibility for collecting this data, but they should also have the authority to impose sanctions in order to assure the timely and accurate reporting of this data.
2. Assign to the Office of State Courts' Administrator the responsibility for planning and coordination to perform the following from a statewide perspective:
   a. Insure that necessary information is available to examine:
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   b. Establish a monitoring mechanism to identify and insure local practices conform to statutes and Supreme Court Rules;
   c. Evaluate effectiveness and cost of existing alternatives to secure detention;

   d. Disseminate the above information on a statewide basis;
   e. Incorporate evaluative and other information in an ongoing planning process to alleviate the voids which exist in detention services;
   f. Establish minimum criteria for operation of secure detention facilities;
   g. Provide an incentive for the development of alternatives to secure detention in the form of shelter care facilities such as foster care, group homes, etc. This incentive could be provided by setting the reimbursement rate of state aid to counties for detention care proportionately higher when non-secure facilities are used than when secure detention facilities are used; and
   h. Pursue a goal of removing all juvenile offenders from all jail detention settings by 1985, and establishing regional secure detention facilities for juveniles as an alternative to jail detention.

E. Educational Services

In addition to the above areas of concern, the MJJRC strongly endorses the need for a statutory mandate that educational services be provided to children in secure detention and shelter care facilities. To this end, we are recommending legislation be passed following the concept of the original version of SB 7 proposed in the 81st Session of the General Assembly.

END