



South Dakota Legislative Research Council

Issue Memorandum 95-30

JUVENILE DETENTION: REQUIREMENTS AND OPTIONS FOR LOCAL AUTHORITIES

BACKGROUND

Juvenile detention is a difficult and unique issue for corrections professionals. This is especially true at the local levels, where authorities are often faced with a shortage of bed space. Rising arrest rates for juveniles have contributed to this crowding problem. The crowding problem is also affected by mandates from both the federal and state levels.

Like adults, the incidence of serious--often violent--crime committed by juveniles has increased in recent years. In 1992, juveniles were responsible for 13 percent of all violent crimes and 23 percent of all property crimes. Based on 1992 FBI clearance data, juveniles were responsible for:

- ◆ 9 percent of murders
- ◆ 12 percent of aggravated assaults
- ◆ 14 percent of forcible rapes

- ◆ 16 percent of robberies
- ◆ 20 percent of burglaries
- ◆ 23 percent of larceny-thefts
- ◆ 24 percent of motor vehicle thefts
- ◆ 42 percent of arsons

How does South Dakota fit into all this?

The following chart compares this state with seven other states in this region. It should be noted that of the states shown, only Wisconsin does not rank among the lowest twelve states for violent juvenile crime. West Virginia, New Hampshire, Vermont, Maine, and South Carolina, along with the seven included in the following chart, have the lowest violent crime index (VCI) arrests per 100,000 juveniles ages 10-17. The VCI is dominated by arrests for two of the four offenses listed--robbery and aggravated assault. In 1992, 93 percent of juvenile Violent Crime Index arrests were for robbery and aggravated assault.

Arrests per 100,000 Juveniles Ages 10-17					
State	VCI	Murder	Forc.Rape	Robbery	Agg.Assault
Iowa	159	0	9	17	133
Minnesota	179	3	12	29	136
Montana	94	1	16	19	58
Nebraska	104	1	13	32	59
North Dakota	58	0	15	13	30
South Dakota	120	2	23	8	87
Wisconsin	376	16	21	149	190
Wyoming	82	2	10	5	65

Assuming both population growth and continuing increases in arrest rates, the number of juvenile violent crime arrests is expected to **double by 2010**. If current trends continue, by the year 2010 the number of arrests for murder is expected to increase 145 percent over the 1992 level. The increase in juvenile crime over the past 20 plus years is serious. From 1972 to 1992, the average age of the U.S. population increased by three years; yet, the average age for arrestees on murder and weapons law violations was nearly three years *younger*. In fact, between 1987 and 1992, the juvenile arrest rate for weapons violations increased 75 percent. These statistics suggest that not only are juveniles frequently breaking the law, but they are committing more serious offenses.

Policymakers at both the state and federal levels have increased the severity of punishments for violent or habitual juvenile offenders. Many states have also made it easier for serious juvenile offenders to be tried as adults. Congress has authorized standards that must be met when detaining juveniles. These standards frequently leave local authorities with a predicament as to

where they can legally house a juvenile offender, and the answers are often both costly and frustrating.

FEDERAL REQUIREMENTS

There are federal standards that must be met for a state or other jurisdiction to be deemed "in compliance." If a state is not in compliance, federal funding can be withheld. This money usually goes to counties.

South Dakota was one of the final states that agreed to participate in the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP). This was done in 1992. The JJDP is administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the United States Department of Justice.

Federal money was awarded to the SD Department of Corrections to address five federally mandated goals. These include: (1) deinstitutionalization of status offenders-- A status offense is an act or conduct that is illegal only when committed by a juvenile. Examples of these violations include truancy,

curfew violation, consumption of alcohol or running away. This mandate refers to a policy of removing juvenile status offenders from secure detention facilities to placement within non-secure facilities such as group homes (non-secure residential facilities for adjudicated juveniles) and shelter care facilities (temporary, non-secure, detention facilities); (2) removal of juveniles from adult jails; (3) separation of juveniles from adults in secure facilities; (4) consideration of the issue of over-representation of children of color in the juvenile justice system; and (5) development of a compliance monitoring system.

Each state must have a State Advisory Group (SAG). SAG members are appointed by the Governor. The South Dakota SAG has been named the Juvenile Justice Advisory Committee (JJAC).

The South Dakota Department of Corrections is required by OJJDP to:

- (1) Establish a method to identify and monitor all residential facilities within the State that might hold juveniles pursuant to court authority;
- (2) Classify these facilities as:
 - (a) secure or non-secure--Non-secure facilities provide a nonphysically restricted environment, whereas secure units have hardware and fixtures that restrict the offender's movement and activities;
 - (b) public or private;
 - (c) adult or juvenile; and
 - (d) residential or non-residential--Residential treatment centers are facilities that provide temporary housing for juveniles and attempt to change their problem behaviors to assist juveniles in adjusting to their natural environment. Non-residential offer treatment, counseling and other program options while allowing the

- juvenile to continue living at home.
- (3) Inspect all facilities to:
 - (a) determine compliance with the sight and sound mandate;
 - (b) review program and staff policies;
 - (c) review records for necessary data elements; and
 - (d) determine the security level;
- (4) Collect and verify data of juveniles held in secure facilities;
- (5) Analyze data to determine compliance with deinstitutionalization of status offenders, sight and sound separation, and jail removal;
- (6) Conduct recordkeeping by:
 - (a) creating a compliance monitoring manual;
 - (b) completing the State Monitoring Report annually; and
 - (c) reporting activities and compliance status to the Juvenile Justice Advisory Committee and subcommittees.

OJJDP officials are authorized to make grants to states and units of local government or combinations thereof to assist in improving all programs in the area of juvenile delinquency and programs to improve the juvenile justice system. These grants are intended to provide technical assistance to states, units of local government, and local private agencies to facilitate compliance with the JJDP and implementation of the state plan. The federal government determines an individual state's need based upon the population of "juveniles at risk." The available funds are then divided among eligible states based on a formula.

In order to receive grants, a state must have submitted a three-year plan to meet federal mandates. This plan may be amended annually to adjust for any new programs and activities subsequent to state participation.

The state must submit annual performance reports to update the OJJDP on the status of compliance with state plan requirements.

If a state fails to comply with the federal requirements in any fiscal year, the state's allotment for that fiscal year will be reduced by 25 percent for each incident of noncompliance. In addition, the state will be ineligible for any other allotments for that fiscal year. The state will be granted further federal funding only if it agrees to expend the federal assistance toward bringing the state back into compliance.

STATE REQUIREMENTS

South Dakota law provides authorities with options for detaining offenders, both juvenile and adult. SDCL 26-7A-26, like the federal requirements, forbids juveniles from being held in the same facility as adult offenders. Juveniles may be held in an adult lockup or jail for up to six hours "for purposes of identification, processing, interrogation, transfer to juvenile facility, or release to parents if the delinquent child is separated by sight and sound from adult prisoners." Sight and sound separation requires that juvenile and adult offenders be unable to see each other and that no conversation is possible. This requirement must at minimum be accomplished in the areas which include recreation, education, counseling, health care, dining, sleeping and other living activities. This section also allows any juvenile offender that has been transferred to adult court to be held in an adult facility. A transfer is permitted, provided the offender is at least fifteen years of age, and has committed a "crime of violence" [SDCL 22-1-2(9)] or of sexual contact under Section 22-22-7.

Section 26-11-4 details the process for

transferring a juvenile to adult court. Amended in the 1994 session, this section distinguishes what is necessary to transfer a juvenile offender to adult court. The latest amendment also requires that any juvenile offender transferred to adult court shall be treated as an adult regarding any "subsequent commission of any crime, petty offense, or municipal ordinance violation." Only if the offender was found not guilty of the offense for which the original transfer was ordered can the offender be handled in juvenile court.

Again, juvenile offenders can be held in an adult jail for up to six hours provided certain conditions are met. The intake officer may hold the child for up to 24 hours, excluding Saturdays, Sundays and court holidays, "if the parents, guardian, or custodian are not available or are not suitable to receive the child" and at least one of five circumstances exist. These include: 1) the child has failed to comply with a court-ordered program; 2) the child is found to be a parole or probation violator, is a runaway, or is under court-ordered detention in another jurisdiction; 3) "the child has a demonstrated propensity to run away from the child's home" or from agencies charged with providing temporary care; 4) "the child is under court-ordered home detention in this jurisdiction;" 5) "there are specific, articulated circumstances which justify the detention for the protection of the child from potentially immediate harm to the child or others. The shelter or detention authorized shall be the least restrictive alternative available." If the child is found to be in violation of a valid court order and a temporary custody hearing, pursuant to 26-7A-14, is held within 24 hours of the child being placed in a detention facility, the child may be detained for more than 24 hours.

Clearly, counties can use their adult facilities to house juvenile offenders that are

transferred to adult court. Still, the majority of juvenile offenders do not commit a crime serious enough to warrant a transfer to adult court. Therefore, in most cases, local authorities are faced with the task of finding a holding facility for these offenders and must do so within six hours.

State law requires that counties be responsible for temporary detention costs of juvenile offenders (26-7A-25). Counties might determine that their caseload warrants construction of a juvenile detention facility. For those that do arrive at this decision, they must construct a facility that meets federal requirements. Many counties do not have the resources to build such a facility, however.

OPTIONS FOR LOCAL AUTHORITIES

Multiple jurisdictions have the option of joining together in constructing a facility. According to 24-11-4.1, “any combination of counties or municipalities” may enter into an agreement “for the creation of an area jail or juvenile detention facility compact which may be a separate legal entity.” Such an agreement would serve as a regional facility, with all contracting parties responsible for expenses. In exchange, compact members would be assured of having bedspace for their offenders. These group facilities could still contract with non-compact counties.

Jurisdictions that have a juvenile detention center are also free to enter into contracts with other jurisdictions that do not (26-7A-23). When two jurisdictions enter into an agreement for housing offenders, the county from which the offender was committed is responsible for all expenses of keeping and maintaining the prisoner (24-11-3). Some counties in the state, like Pennington, have reached agreements with other jurisdictions and provide detention for a daily fee.

There are several other instances in the state where entities agree to house offenders for a daily fee. Some of these are licensed group care centers, others are private, for-profit, facilities and still others are operated by counties or municipalities. Regardless, they are all free to contract out their bed space.

Some of the private facilities will, in fact, contract with any client, regardless of geography. In other words, these facilities will house juveniles from other states, provided the offender’s home jurisdiction pays the associated costs. In addition, these private facilities are not required to reserve any beds for South Dakota residents. Usually, these facilities operate on a first-come, first-served basis.

Some states have attempted to utilize existing bed space while pushing the limits of what federal standards allow. In Minnesota, for instance, four conditions from the OJJDP had to be met in order to use sections of existing facilities for housing juveniles. Minnesota’s plan called for using portions of existing detention facilities that currently house adults for holding juveniles as well. The state was allowed to do this but had to meet several conditions.

First, the state’s local authorities had to meet the requirement that juvenile offenders would have total separation from adult offenders in all spatial areas. There could be no haphazard or accidental contact between juvenile and adult offenders. The second waiver required that all program activities be separated and be held in segregated areas. In other words, all recreation, education, counseling, health care, dining, sleeping and general living activities must be held in separate areas.

Staff for juveniles and adults must also be distinct. This includes management, security

staff and direct care staff such as recreation, education, and counseling. Specialized services staff such as cooks, bookkeepers, or medical professionals who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation between adults and juveniles, can serve both.

The final condition required that those facilities housing juveniles must meet any existing state licensing standards. Once the state feels that these four conditions are met, officials can apply to the OJJDP and request that the office concur that a “separate” juvenile facility exists. Sufficient documentation must be provided with the request to enable the office to determine that each requirement is met.

This arrangement would provide juvenile detention space, and while less expensive than new construction, the cost of meeting the four requirements met by Minnesota could still amount to a considerable expense. Additional staff would have to be hired and trained, and likely some recreation and education areas would have to be added to the existing facility. If the county feels that there is a wing, or segment, of their facility that could be modified to meet these four conditions, then this could be a viable solution.

Another option that is simple, but probably not appealing to very many counties, is to fall out of compliance with federal regulations. If a county falls out of compliance, then they are free to conduct their business any way they choose. There are several reasons that this path might make local authorities somewhat apprehensive, however.

It is common for offenders to file lawsuits for alleged mistreatment. For counties that

are not in compliance with federal mandates, the conditions that offenders are held under could be treated with more skepticism by the court system. Because local detention facilities would not be meeting any commonly-accepted standards, the courts might be less inclined to side with local authorities.

There is also the concern that an adult offender might harm a juvenile in some way. Should an adult injure or harm a juvenile in any way while housed in the same facility, the local jurisdiction would face huge liability issues. While frivolous lawsuits are possible, situations of this nature could inflict serious damage upon a county’s finances.

Another reason this route might not be the most popular is funding, or the removal thereof. As already mentioned, the federal government can withhold monies that could be used in this area. Recent figures place this total at approximately \$887,000 for federal fiscal year 1996. According to Department of Corrections officials, if even one county drops out of compliance the entire federal appropriation would be jeopardized. In this age of ever-tightening budgets, disregarding a potentially substantial allocation in federal funding is a difficult, and likely unacceptable, option.

Areas used by local authorities to temporarily house juveniles are referred to as “holdover sites.” Upgrading these holdover sites are projects that frequently receive federal funding from OJJDP. Another area where counties frequently receive federal money is for reimbursement of transportation expenses. New construction is prohibited under the JJDPA.

All counties are eligible for federal support of holdover services and reimbursement of transportation expenses. Starting October 1,

1995, reimbursements will be done through a voucher system. Starting on this same date, the 21 juvenile detention centers in South Dakota will be offered contracts for holdover services.

Counties can apply on an individual basis for assistance in prevention efforts and start-up programs. These two efforts can be similar, but because funding comes from different sources within the federal government, different rules often apply. Typically, prevention efforts include various delinquency prevention programs. Start-up programs include various diversion efforts, after-school tutoring, crisis intervention, home-based therapy, etc. Applications are handled by the Department of Corrections. Assistance is awarded on a contractual basis.

In a field whose professionals frequently confront difficult situations, one of the most perplexing in corrections is juvenile

detention. Faced with extensive regulation, state and local governments must stay aware of many governmental mandates.

Compliance with these mandates often places a jurisdiction in a difficult financial position because daily detention fees can become a serious burden to a county's budget-- provided that an acceptable facility even has an opening.

Counties facing a shortage of bed space must be careful when determining their juvenile detention plans. Some may find that segregating a wing and hiring separate staff like Minnesota may be the most cost-efficient. Another option might be for several counties to form a cooperative effort and build a regional detention center. Falling out-of-compliance is a gamble for any jurisdiction given today's litigious climate. Whatever route a jurisdiction may choose, it would be well advised to be cognizant of all regulations and the potential consequences of their decisions.

This issue memorandum was written by Chris Eitemiller, Fiscal Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
