

# N E B R A S K A

# JAIL BULLETIN

JULY/AUGUST 1998

NUMBER 142

The *Jail Bulletin* may be used as a supplement to your jail in-service training program. If officers study the material and complete the attached "open book" quiz, they may receive **one hour of credit**. The bulletin and quiz may be reproduced for staff use as necessary. **We welcome any material you would like to contribute to the "Jail Bulletin".**

## JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

Congress originally enacted the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, Public Law 93-415, 42 U.S.C. 5601 *et seq.*, to require the deinstitutionalization of status offenders and non-offenders as well as the separation of juvenile and adult offenders in detention and correctional settings.

Passage of the JJDP Act was aided by the strong consensus of three groups assembled, in part, to examine the juvenile justice system: (1) President's Commission on Law Enforcement and Administration of Justice (Commission), (2) National Council on Crime and Delinquency (NCCD) and (3) National Advisory Commission on Criminal Justice Standards and Goals (NACCJS). In 1966, the NCCD, at the request of the Commission, surveyed state and local detention and correctional facilities in the United States. The survey documented extensive use of detention facilities to house juveniles accused of noncriminal conduct. In 1967, the Commission recommended that "serious consideration ... should be given to complete elimination of the court's power over children for noncriminal conduct." In 1974, the NACCJS observed that a least 50% of juvenile detention populations were "status offenders" who had committed no crime and were often held under deplorable conditions.

In 1980, Congress found that among the adverse effects of detaining juveniles in adult jails and lockups were a high suicide rate (more than five times that of juveniles held in juvenile detention facilities), physical and mental abuse, sexual assault, inadequate care and programs, negative labeling and exposure to serious offenders and mental patients. As a result of their jail experience, juveniles often learned antisocial behavior from habitual criminals and had to fight for survival in an inmate culture characterized by rigid rules and

psychological and physical terror. Congress responded by passing the 1980 amendments to the JJDP Act requiring the removal of juveniles from adult jails and lockups.

In 1988 and 1992, Congress turned its attention toward the disproportionately high number of minorities arrested and confined in secure detention and correctional facilities.

Statistical studies have shown that incarceration rates for minorities in many states are two to four times that of Caucasians. The 1988 and 1992 amendments to the JJDP Act include provisions requiring states to analyze this issue and provide appropriate programmatic responses where over representation is found.

The following is a summary of the JJDP Act's four primary requirements relating to secure confinement of juveniles. A detention or correctional facility is considered "secure" when its architectural design or physical plant features physically restrict the movement or activities of persons in custody through locked doors, bars, fences or other hardware. Further, if a juvenile is physically secured to a stationary object, such as handcuffed to a cuffing ring, this is also considered a "secure" hold.

## **DEINSTITUTIONALIZATION OF STATUS OFFENDERS AND NON-OFFENDERS**

Under the Deinstitutionalization of Status Offenders and Non-Offenders (DSO) Requirement (Section 223(a)(12), as a general rule, no status offender or non-offender may be held in a secure detention or correctional facility (i.e., jail, lockup or juvenile detention facility). However, status offenders and non-offenders may be held in juvenile detention and correctional facilities under the circumstances described in the exceptions listed below.

By federal definition, a status offender is a juvenile who is charged or adjudicated for an act that would not be a crime if committed by an adult, (i.e., runaway, ungovernable, truant, Minor In Possession of Alcohol or Tobacco). A non-offender is a juvenile who has not committed a crime but is in need of assistance through the court, (i.e., abused, dependent or neglected child or a material witness).

### **THE IDENTIFICATION EXCEPTION**

Implementing regulations (28 CFR Part 31, effective 1991) provide the Identification Exception allowing accused status offenders and non-offenders to be securely confined in juvenile detention facilities. Accused status offenders and non-offenders may be held for up to 24 hours, excluding holidays and weekends, prior to an initial court appearance, for purposes of identification, investigation, processing, release to parent or transfer to court or a non-locked facility.

### **THE INITIAL COURT APPEARANCE EXCEPTION**

Recent regulations (28 CFR Part 31, effective 12-10-96) permit accused status offenders or non-offenders to be held in a juvenile detention facility for up to 24 hours, excluding holidays and weekends, immediately following an initial court appearance.

### **THE OUT-OF-STATE RUNAWAY EXCEPTION**

Out-of-state runaways may be securely confined in a juvenile detention facility for more than 24 hours in response to a want, warrant or request issued from a jurisdiction in another state or pursuant to a court order, until the juvenile can be returned to proper custody in the home state.

**PLEASE NOTE:** The previous exceptions only apply to accused status offenders and non-offenders. Additionally, an accused or adjudicated status offender can be held in a juvenile detention or correctional facility under the following exceptions.

### **THE VIOLATION OF A VALID COURT ORDER (VCO) EXCEPTION**

The Violation of a Valid Court Order Exception permits an accused or adjudicated status offender found to have violated such an order to be held in a juvenile detention or correctional facility for more than 24 hours. The juvenile must be afforded all due process protections and rights prior to the issuance of the court order as well as prior to and throughout the violation hearing held in a court of jurisdiction. Additionally, a public agency other than the court or law enforcement agency must review the case and alternatives available to secure confinement, submitting a written report to the court of jurisdiction.

The Violation of a Valid Court Order Exception does not apply to non-offenders. A non-offender cannot be placed in a juvenile detention facility for violation of a valid court order.

### **THE MINOR IN POSSESSION OF A HANDGUN EXCEPTION**

By federal regulation, Minor In Possession of a Handgun is considered a delinquent or criminal offense rather than a status offense due to the serious nature of the crime. Juveniles accused or adjudicated for Minor In Possession of a Handgun are considered misdemeanants under Nebraska law and are not subject to the DSO requirements. However, Jail Removal requirements governing the secure confinement of juvenile criminal-type offenders in adult jails and lockups do apply.

### **JAIL REMOVAL**

Under the Jail Removal Requirement (Section 223(a)(14), as a general rule, accused and adjudicated juvenile criminal-type offenders (misdemeanants or felons) cannot be confined in adult jails and lockups. However, under the following exceptions, juvenile criminal-type offenders may be held for specific periods of time provided all sight and sound separation requirements are met.

### **THE SIX HOUR LAW ENFORCEMENT EXCEPTION**

Implementing regulations (28 CFR Part 31, effective 1991) permit an accused juvenile criminal-type offender to be securely confined in an adult jail or lockup for up to 6 hours for the limited purposes of identification, investigation, processing, release to parent or transfer to court or a juvenile facility. The Six Hour Exception does not apply to status offenders, non-offenders or adjudicated juvenile criminal-type offenders.

### **THE RURAL EXCEPTION**

The U.S. Justice Department's Office of Juvenile Justice and Delinquency Prevention granted the state of Nebraska use of the Rural Exception, effective April 14, 1998. The Rural Exception allows adult jails and lockups located outside of Metropolitan Statistical Areas to securely confine an accused juvenile criminal-type offender (misdemeanant or felon) for up to 24 hours, excluding weekends and holidays, while awaiting initial court appearance for the purposes of identification, investigation, processing, release to parent or transfer to court or a juvenile facility. The juvenile must have an initial court appearance within 24 hours, excluding holidays and weekends, of being securely confined and a determination made that no acceptable alternative placement is available.

The Rural Exception only applies to adult jails and lockups located outside of Metropolitan Statistical Areas. Jails and lockups in the following counties are not eligible for the 24 hour Rural Exception due to their location within a Metropolitan Statistical Area:

Douglas County  
Sarpy County  
Cass County

Washington County  
Lancaster County  
Dakota County

Adult jails and lockups in the above counties can only securely detain an accused juvenile criminal-type offender for up to 6 hours under the Six Hour Exception described above or for the periods of time specified under the exceptions described on the following page.

### **THE BAD WEATHER / LONG DISTANCE EXCEPTION**

If weather or road conditions do not allow for reasonably safe travel, an accused juvenile criminal-type offender may be securely confined in an adult jail or lockup for up to 24 hours after the time that conditions allow for safe travel. If distance or lack of a highway, road or other ground transportation do not allow for an initial court appearance within 24 hours, a brief delay not to exceed 48 hours is allowed.

## **THE COURT APPEARANCE EXCEPTION**

Recent regulations (28 CFR Part 31, effective 12-10-96) permit an accused or adjudicated juvenile criminal-type offender to be held in an adult jail or lockup for up to 6 hours immediately before a court appearance and up to 6 hours following a court appearance.

## **THE FELONY FILING EXCEPTION**

A juvenile who has been formally charged with a felony offense in a court of adult jurisdiction may be securely confined in an adult jail or lockup for longer than the periods of time specified in the above exceptions. Once the prosecutor has formally filed adult felony charges through a criminal complaint or information being received by an officer of the court, the juvenile is considered an alleged criminal felony offender being processed through the adult criminal justice system and not subject to the requirements of the JJDP Act.

### **PLEASE NOTE:**

The Felony Filing Exception no longer applies once a juvenile formally charged as a felon in adult criminal court subsequently enters into a plea agreement reducing the charges to the misdemeanor level. Once the felony charge(s) is reduced to a misdemeanor(s), the Felony Filing Exception is no longer in effect.

The Felony Filing Exception also does not apply once a juvenile who was originally charged with a felony in adult criminal court is subsequently transferred to juvenile court. Once transferred to juvenile court, the Felony Filing Exception is no longer in effect.

## **THE FEDERAL WARD EXCEPTION**

A juvenile who is under the jurisdiction of a federal agency, such as the U.S. Immigration and Naturalization Service or the military, may be placed in an adult jail, lockup or juvenile detention or correctional facility while awaiting a jurisdictional transfer, appearance as a material witness or return to their lawful residence or country of citizenship.

## **SIGHT AND SOUND SEPARATION**

Under the Separation Requirement (Section 223(a)(13)), juvenile offenders shall not be securely confined in a detention or correctional facility where they have sight or sound contact with adult criminal offenders, including trustees.

Sight contact is defined as clear visual contact between incarcerated adults who are in close proximity to juvenile offenders. Sound contact is defined as direct oral communication between incarcerated adults and juveniles.

Separation must be provided in all secure portions of the facility, including sally ports, admission / booking area, hallways, sleeping rooms, dining areas, recreational areas, program areas and health care areas.

Sight or sound contact that is both brief and inadvertent or accidental is considered a violation of the Separation Requirement only if it occurs in a secure area of the facility dedicated for use by juvenile offenders, including residential areas used for overnight confinement.

## **DISPROPORTIONATE MINORITY CONFINEMENT**

The Disproportionate Minority Confinement (DMC) Requirement (Section 223(a)(23)) provides that states determine if minority youth are disproportionately confined in secure detention or correctional facilities. When the proportion of minority youth in confinement exceeds the proportion that group represents in the state's general population, the state is to address any features of its system that may account for disproportionate confinement. To comply the DMC Requirement, states must go through several stages of data collection, analysis, problem identification, assessment, program development and systems improvement initiatives. The DMC Requirement neither requires nor establishes numerical standards or quotas in order for a state to achieve or maintain compliance.

Nebraska conducted a research study and analysis of minority youth confined through the state's juvenile justice system during 1990-1991. Research findings published in 1993 indicate that a larger percentage of minority youth are arrested, detained, prosecuted and confined than their statistical representation in the state's general population. Beginning in 1995, an in-depth study was conducted to identify factors related to the disproportionate confinement of minority youth in both urban and rural settings. Results of the second study are pending.

## **FOR FURTHER INFORMATION**

For further information on the JJDP Act and its requirements, please contact Michele Borg at (402) 471-3133 or Jeff Hart at (402) 471-3998.

Material prepared by staff of the Nebraska Commission on Law Enforcement and Criminal Justice. If you or your agency wish to contribute to the ***Jail Bulletin*** or have a special subject to be addressed through the bulletin, please contact: Jail Standards Division, P.O. Box 94946, Lincoln, Nebraska 68509-94946, Telephone 402-471-3710, FAX 402-471-2837.

The contents of the *Jail Bulletin* represent the views of the author(s) and do not necessarily reflect official views or policies of the Nebraska Crime Commission or the Nebraska Jail Standards Board.

# QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in service training each year. The Jail Bulletin may be used to supplement in service training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

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**JULY/AUGUST 1998**

**NUMBER 142**

**SUBJECT: JUVENILE JUSTICE AND  
DELINQUENCY PREVENTION  
ACT**

**NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

1. From the material, which of the following are conditions that would allow a "status or non-offender to be housed in a secure juvenile detention facility for up to 24 hours prior to initial court appearance? (circle those that apply)
  - a. For purposes of identification and investigation.
  - b. To serve a short sentence.
  - c. processing.
  - d. Transfer to court or a non-locked facility.
  - e. Release to parents.
  - f. All of the above except b.
  
2. Out of state runaways may be held in a secure juvenile detention facility for more than 24 hours: (Circle one)
  - a. In response to a want or warrant
  - b. Request issued from a jurisdiction in another state.
  - c. Pursuant to a court order.
  - d. None of the above.e. All of the above.
  
3. In 1980, Congress found that the adverse effects of detaining juveniles in adult jails included? (Circle those that apply)
  - a. High suicide rate.
  - b. Physical and mental abuse.
  - c. Sexual assault
  - d. Exposure to serious offenders.
  - e. All of the above.



4. Juveniles charged with criminal offenses can be confined in an adult jail or lock-up under six conditions. Which of the following are included in those six conditions? (Circle those that apply)
- a. The felony filing exception.
  - b. The rural exception.
  - c. The mental health exception.
  - d. The serious misdemeanor exception.
  - e. The court appearance exception.
  - f. a, b, and e
5. The violation of a valid court order exception permits an accused or adjudicated status or non-offender found to have violated such an order to be held in a juvenile detention facility for more than 24 hours. (Circle one)
- a. True
  - b. False
6. The JJDP act requires the sight and sound separation of juveniles from adults while in adult jails. This includes: (circle those that apply)
- a. Saltyports.
  - b. Booking area.
  - c. Sleeping areas.
  - d. Recreational areas.
  - e. Only b and c.
  - f. a, b, c and d
7. An accused juvenile criminal offender can be securely confined in an adult jail for up to 6 hours for identification, investigation, processing, release to parents or transfer to court or juvenile facility. (Circle one)
- a. True
  - b. False

**CREDIT: One Hour credit for jail in service training requirement.**

## QUIZ

## (Answers)

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in service training each year. The Jail Bulletin may be used to supplement in service training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

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  - c. Pursuant to a court order.
  - d. None of the above.
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  - e. **All of the above.**
  
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  - d. The serious misdemeanor exception.
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  - f. **a, b, and e**

5. The violation of a valid court order exception permits an accused or adjudicated status or non-offender found to have violated such an order to be held in a juvenile detention facility for more than 24 hours. (Circle one)
- a. **True**  
b. False
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- a. Sallyports.  
b. Booking area.  
c. Sleeping areas.  
d. Recreational areas.  
e. Only b and c.  
f. **a, b, c and d**
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**requirement.**

**Answer sheet should be retained by the Jail Administrator.**